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

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.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560–AH80

Conservation Reserve Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) amends the Conservation Reserve Program (CRP) regulations to update the terms and conditions of enrolling acreage in CRP and other eligibility requirements to implement certain provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The purpose of CRP is to cost-effectively assist producers in conserving and improving soil, water, wildlife, and other natural resources by converting environmentally-sensitive acreage from the production of agricultural commodities to a long-term vegetative cover.

DATES: *Effective Date:* This rule is effective June 29, 2009.

Comment Date: We will consider comments that we receive by August 28, 2009.

ADDRESSES: We invite you to submit comments on this interim rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register.** You may submit comments by any of the following methods:

- *E–Mail:* *robert.stephenson@wdc.usda.gov.*
- *Fax:* 202–720–4619.
- *Mail:* CRP Interim Rule Comments, c/o PAI Consulting, 4900 Seminary Road, Suite 360, Alexandria, Virginia 22311.
- *Hand Delivery or Courier:* Deliver comments to the above address.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Comments may be inspected at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the Farm Service Agency (FSA) home page at *http://www.fsa.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Beverly J. Preston, CRP Program Manager, at USDA/FSA/CEPD/STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513; telephone 202–720–9563; e-mail: *beverly.preston@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at 202–720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule revises CRP regulations in 7 CFR part 1410 to implement certain changes to CRP as required by the 2008 Farm Bill (Pub. L. 110–246) and for other purposes. The 2008 Farm Bill, among other things, provided the authority to maintain up to 39.2 million acres in CRP for fiscal years (FY) 2008 and 2009 and, for FY 2010 through FY 2012, maintain up to 32.0 million acres in CRP.

The purpose of CRP continues to be to cost-effectively assist producers in conserving and improving soil, water, wildlife, and other natural resources by converting highly erodible and other environmentally sensitive acreage generally devoted to the production of agricultural commodities to a long-term vegetative cover. CRP participants enroll land under contracts for 10 to 15 years in exchange for annual rental payments and financial assistance to install certain conservation practices and to maintain approved vegetative, tree, or other appropriate covers. That is not changing with this rule.

The 2008 Farm Bill added an additional program purpose of addressing issues raised by State, regional, and national conservation initiatives. This interim rule amends Part 1410 accordingly. Also, changes in the regulations are required to implement provisions in the 2008 Farm Bill regarding:

(1) The Farmable Wetlands Program (FWP) (a subprogram of CRP),

(2) Cost-sharing provisions to add provisions for thinning of trees to improve the condition of resources on certain enrolled land,

(3) Adjusted gross income requirements to reflect the new limits in the 2008 Farm Bill,

(4) County acreage limits,

(5) Cropping history,

(6) Eligible land,

(7) Haying and grazing,

(8) Acceptability of offers provisions to allow ''local preference'' as a consideration,

(9) Payment limitation, and

(10) Incentives for Indian tribes and for ''beginning,'' ''limited resource,'' and ''socially disadvantaged'' farmers and ranchers; incentives for pollinator habitat; and transition incentives for certain participants.

The provisions included in this interim rule adopt statutory requirements for three items in the foregoing list; namely those regarding: FWP, thinning of trees to improve the condition of resources, and amended adjusted gross income (provisions 1 through 3 described above). Provisions 4 through 10 listed above will be implemented in future rulemaking. (*See* the Environmental Evaluation section of this interim rule for additional information.) Also, this rule changes several sections to update dates, where appropriate, to be consistent with the 2008 Farm Bill. This rule also makes minor plain language changes to make the regulations more clear and concise.

Definitions and General Changes

This rule amends section 1410.1, Administration, to extend the effective dates for the regulations, as specified in the 2008 Farm Bill.

To accommodate new statutory provisions, this rule amends section 1410.2, ''Definitions,'' to add the definition for ''commercial pond-raised aquaculture facility.''

The 2008 Farm Bill makes commercial pond-raised aquaculture facilities eligible for enrollment in FWP within CRP. Aquaculture is generally considered to be the production of aquatic animals and plants under controlled conditions for all or part of their lifecycle. U.S. aquaculture production is composed of the production of food fish, ornamental fish, baitfish, mollusks, crustaceans, aquatic

plants and algae, and some reptiles such as alligators and turtles. These organisms are grown in a wide variety of climates in either fresh or salt water and utilize a number of different production systems that are specific to the type of aquaculture. These systems have limits that impact the potential conservation benefit that may be achieved. Generally, open earthen freshwater food fish production systems are more suitable for restoration to wetland type ecosystems; therefore, they are more suitable to be enrolled in FWP. Accordingly, this rule adds a definition for ''commercial pond-raised aquaculture facility'' that makes eligible any earthen facility from which $1,000 or more of freshwater food fish were sold or normally would have been sold during a calendar year.

This rule amends the definition of ''technical assistance'' to conform to the definition in the 2008 Farm Bill. This rule further amends the definition to include providing annual rental rate surveys. These surveys are required for market-based rental rates. The 2008 Farm Bill requires annual surveys of rental rates. Therefore, the revised definition includes providing annual rental rate surveys as a form of technical assistance.

In addition, this rule makes clarifying changes to the definition of ''annual rental payment.''

Farmable Wetlands Program

The 2008 Farm Bill expanded the eligibility criteria for FWP. Therefore, this rule amends section 1410.11, ''Farmable Wetlands Program,'' to reflect the changes. This rule expands eligibility to include certain constructed wetlands that are to be developed to provide nitrogen removal in row-crop agriculture drainage areas, land that is devoted to commercial pond-raised aquaculture, and land subject to the natural overflow of a prairie wetland during certain years. In the current regulations, wetlands generally excluded from FWP eligibility include any wetland, or land on a floodplain, that is adjacent to a perennial riverine system. The 2008 Farm Bill removed these exclusions and also increased CCC's flexibility in determining the size of buffers to be devoted to grass or tree covers to protect the wetlands; this rule amends this section of the regulations accordingly.

The 2008 Farm Bill also modified the maximum size of any wetland enrolled in FWP from 10 to 40 contiguous acres (except for ''aquaculture'' ponds) and added limits on the amount of land enrolled for constructed wetlands of 40 contiguous acres and of flooded farmland of 20 contiguous acres. Further, the 2008 Farm Bill removed a provision that limited payment to no more than five acres per tract. Land formerly devoted to aquaculture has no size limitations other than those required by technical guidelines. The 2008 Farm Bill also provides for a history requirement applicable for commercial pond-raised aquaculture land, specifically that such land must have been devoted to commercial pond-raised aquaculture in any year between calendar years 2002 through 2007, and for land subject to the natural overflow of a prairie wetland 3 of 10 years after January 1, 1990, and before December 31, 2002. This rule amends section 1410.11 to reflect these changes.

Acreage will continue to be limited to 100,000 acres in any one state.

Obligations of Participants

The 2008 Farm Bill made a technical change, which conforms to long-standing practice, to require CRP participants to undertake management on the land as needed to implement the accompanying conservation plan. This rule amends section 1410.22, CRP Conservation Plan, to add this requirement for management activities. CRP participants will need to implement a conservation plan providing for management of the land in addition to, for example, reducing erosion, improving water quality, protecting wildlife or wetlands, or protecting a public well head.

Cost-Share Payments—Thinning

The 2008 Farm Bill added authority to make cost-share payments to conduct thinning of trees that is necessary to improve the condition of resources on the land, such as wildlife habitat. Therefore, this rule amends the regulations in section 1410.40, Cost-share Payments, to add a new paragraph (g) to provide that a cost-share rate of up to 50 percent is authorized for the reasonable and necessary costs for thinning.

Payment Limitation and Adjusted Gross Income

The interim rule titled ''Farm Program Payment Limitation and Payment Eligibility for 2009 and Subsequent Crop, Program, or Fiscal Years,'' published in the **Federal Register** on December 29, 2008 (73 FR 79267–79284) and made effective on December 23, 2008, among other things, implemented the revised payment limitations and average adjusted gross income limitation for conservation programs. The revised limits are those specified in the 2008 Farm Bill. The payment limitations interim rule implemented the payment limitations in 7 CFR part 1400 and the average adjusted gross income limitations in 7 CFR part 1400 subpart F.

The 2008 Farm Bill amends the payment limitation and average adjusted gross income provisions, effective for contracts signed for FY 2009. Prior to the implementation of both this interim rule and the payment limits interim rule, the $50,000 limitation on annual rental payments had been applied to a ''person'' as previously defined by statute and determined in accordance with the existing regulations at that time. The regulations prior to the payment limits interim rule provided for the ''3-entity rule'' that allowed a ''person'' to receive payment indirectly through no more than 3 entities, if payment was not received directly, and through no more than 2 entities if payment was received directly. Although under the 2008 Farm Bill and the current regulations the payment limitation on annual rental payments under CRP remains at $50,000, the limitation is now applied by determining the amount received by each ''natural person'' and legal entity, directly or indirectly. The 3-entity rule was eliminated in the 2008 Farm Bill and removed from the regulations by the payment limits interim rule.

As specified in 7 CFR 1400.500(d), for 2009 through 2012 conservation programs specified in 7 CFR 1400.1, a person or legal entity that has an average adjusted gross nonfarm income that exceeds $1,000,000 will not be eligible to receive payments or benefits under conservation and related programs, and other programs made applicable by statute or regulation, unless not less than 66.66 percent of the of the average adjusted gross income of the person or legal entity is average adjusted gross farm income.

This limitation may be waived on a case-by-case basis by the Administrator or NRCS Chief for the protection of environmentally sensitive land of special significance. Such a written waiver request must document that land within or adjacent to the producer's agricultural operation contains critical resources such as, but not limited to, threatened, endangered, or at-risk species; historical or cultural resources; unique wetlands; or critical groundwater recharge areas. In addition, the waiver request must either:

- Show that use of conservation program funding by an individual producer is critical to the success of a project that benefits multiple producers in a community, watershed, or other geographic area or

• Show that conservation program funding will achieve enduring conservation treatment through use of a long-term agreement that is greater than 15 years in duration or through use of a deed restriction on the land.

This rule modifies the regulations in sections 1410.42, ''Annual Rental Payments'' (to specify payment limitations) and 1410.44, ''Adjusted Gross Income,'' to be consistent with the 2008 Farm Bill and the payment limitation regulations in 7 CFR part 1400. However, these changes to reflect new provisions in the 2008 Farm Bill are effective only for FY 2009 and later contracts—that is, contracts executed after October 1, 2008. For contracts executed before that date, the regulations in the January 1, 2008 edition of the *Code of Federal Regulations* apply. That is, the rules in place when the contracts were executed will apply on questions of payment limits and adjusted gross income limits on eligibility.

Request for Comments

The authorized purpose and scope of CRP has changed over time. Since CRP was originally enacted by the 1985 Farm Bill, there has been an evolution of the types and kinds of land enrolled. Initially, a substantial amount of land was enrolled which primarily met commodity supply goals. By the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127, commonly known as the 1996 Farm Bill), increased focus was placed on environmental goals including the continuous signup of relatively small acreages that protected much larger acreages and included land devoted to buffers, filter strips, and grass waterways.

After the passage of the 1996 Farm Bill, CCC, in addition to more customary enrollments, collaborated with the State governments and leveraged Federal and State resources to target environmental priorities of the State and the Nation. Since the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, commonly known as the 2002 Farm Bill), further attention has been devoted to enrollment of land for the benefit of quail and other upland birds, certain wetlands, ducks, other high priority wildlife species identified by states, and longleaf pine restoration.

Under the 2008 Farm Bill, the overall CRP enrollment authority was reduced from 39.2 million acres to, by FY 2010, 32.0 million acres, which provides an opportunity to further refine and re-direct program resources.

We request comments on detailed environmental and other needs and goals on which CRP resources should be focused or targeted to optimize environmental benefits consistent with program goals and purposes.

As CRP's purpose and goals have changed over time, it is possible that unintended barriers to enrollment may exist. Therefore, we also request comments on any barriers to enrollment (outside of statutory provisions) and what steps should CCC take to remove such barriers to enrollment or to streamline program participation within the CRP consistent with the statutory objectives of the program.

Executive Order 12866

This rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. A Cost Benefit Analysis is summarized below and is available from the contact information listed above.

Cost Benefit Analysis

The 2008 Farm Bill extends CRP enrollment authority through September 30, 2012, and requires that enrollment be reduced to no more than 32 million acres beginning October 1, 2009. While the 2008 Farm Bill authorizes additional changes, this interim rule only addresses certain provisions, including: (1) Changes to Farmable Wetland Pilot Program eligibility criteria; (2) provision of 50-percent cost-share for tree thinning activities; and (3) implementation of new payment limitation applicability and new adjusted gross income-based eligibility criteria. Table 1 provides additional details on the 2008 Farm Bill changes covered by this interim rule. Other changes that involve discretionary authority will be covered in a separate rule and cost benefit analysis.

The provisions implemented by this interim rule are statutorily-mandated, meaning the no-action alternatives are not feasible, and are used only to demonstrate impacts of the new or revised provisions. The alternatives are:

• Implement payment limit and AGI-based eligibility provisions or not,

• Implement cost-sharing for tree thinning or not, or

• Implement revised Farmable Wetlands Program eligibility criteria or not.

TABLE 1—CHANGES TO CRP COVERED BY THE INTERIM RULE

Provision	2002 Farm Bill	2008 Farm Bill	Comment
Conservation Reserve Program			
Payment Limits	$50,000 per year per person	$50,000 per year per person or legal entity.	The 2008 Farm Bill repeals ''3-entity'' rule and requires direct attribution. (Provision assessed in separate CBA on payment limits and AGI-based eligibility.)
AGI–Based Eligibility	3-year average AGI must not exceed $2.5 million.	3-year average AGI must not exceed $1 million. No limit if 2/3rds from farm income.	Waivers allowed on case-by-case basis. (Impacts discussed in the separate payment limits CBA.)
Cost-share for Tree Thinning	No provision	Authorizes 50-percent cost-share for thinning activities.	Allows up to $100 million through 2012.
Farmable Wetland Program			
Maximum Enrollment	1 million acres	No change	

TABLE 1—CHANGES TO CRP COVERED BY THE INTERIM RULE—Continued

Provision	2002 Farm Bill	2008 Farm Bill	Comment
Eligibility	Small non-floodplain wetlands and associated buffers.	Adds floodplain wetlands, constructed wetlands, former aquaculture lands, and flooded formerly farmed wetlands.	Also adds buffers to each category. Some categories are already eligible under other CRP (non-FWP) authority. Flooded farmlands limited to lands subject to natural overflow of prairie wetland.
Wetland Size Limits	10 acres per wetland, 40 acres of wetland plus buffer per tract.	40-acre-limit per floodplain and non-floodplain wetland, and constructed wetland. 20-acre limit on flooded prairie land. No limit on former aquaculture ponds.	Applies only to wetland portion, not buffer.
Buffer Size	The greater of: 3 times the size of the wetland or 150 feet on either side of the wetland.	As determined appropriate and needed by the Secretary in consultation with State Technical Committee.	Applies to all eligibility categories.
Cropping History	3 of 10 years prior to enrollment ..	No cropping requirement for aquaculture ponds or constructed wetlands; 3 of 10 years between 1990 and 2002 for flooded farmland.	For floodplain and non-floodplain wetlands, 3 of 10 years prior to enrollment (no change).
Payment Criteria	Only 5 acres per wetland eligible for payment. All buffers eligible.	All wetland and buffer acres eligible for payment.	All acres receive same incentive payments as filter strips under continuous CRP.

Based on estimates concerning the amount of land that will be eligible, assumed participation rates and annual enrollment, and estimated per-acre costs, the costs of implementing the changes considered in the interim rule are estimated to total $79.6 million through FY 2012 and $191.2 million through FY 2018. This averages to $19.1 million per year over 10 years. The estimated costs of the changes made by the 2008 Farm Bill and implemented in this rule are provided in table 2:

TABLE 2—ESTIMATED COSTS OF CRP CHANGES IN THIS RULE

[$1,000,000]

	FY 2009–2012	FY 2013–2018	FY 2009–2018
Tree Thinning	$43.8	$16.7	$60.5
Aquaculture Ponds	7.6	22.6	30.2
Flooded Farmland	17.9	40.7	58.6
Constructed Wetlands	10.3	31.6	41.9
Total	79.6	111.6	191.2

The extent of environmental benefits derived from this rule depends on participation rates and the specific conservation measures adopted. For example, tree thinning has the potential to enhance wildlife habitat, provide for carbon sequestration, and reduce the risk of wildfires. Enrollment of aquaculture ponds and flooded farmland and associated buffers can increase migratory waterfowl and other wildlife species populations, and potentially reduce flood damage, protect water quality, and provide for carbon sequestration. Constructed wetlands and buffers can reduce nitrate loadings, reduce down-stream flood damages, and increase wildlife habitat.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. CCC is authorized by section 2904 of the 2008 Farm Bill to issue an interim rule effective on publication with an opportunity for comment.

Environmental Evaluation

In 2003, FSA finalized a Programmatic Environmental Impact Statement (PEIS) for the reauthorization of the CRP in Title II of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) and published a Record of Decision (ROD). Consistent with provisions in 40 CFR 1508.28, in order to focus primarily on the issues relevant to this specific rule and not duplicate material found in the 2003 EIS, FSA tiered a Programmatic Environmental Assessment (PEA) on select provisions of the 2008 Farm Bill for CRP to the 2003 PEIS; tiering is appropriate when the sequence of analysis is lesser in scope than the initial programmatic statement.

The PEA incorporated by reference general discussions and analysis from the 2003 PEIS to assess potential environmental impacts associated with implementation of only those non-discretionary provisions identified in this rule for CRP consistent with the 2008 Farm Bill. The Final PEA and Finding of No Significant Impact (FONSI) for this interim rule were published in the **Federal Register** on December 16, 2008 (73 FR 76331–76332) for public review and comment. The proposed changes analyzed in the PEA are separate and distinct from the

proposals for discretionary changes. For those 2008 Farm Bill changes not examined in the PEA where discretion may be exercised, FSA is currently developing a Supplemental Environmental Impact Statement (SEIS) to the 2003 Programmatic Environmental Impact Statement (PEIS) on CRP before any discretionary program changes are implemented. The implementation of the discretionary changes to CRP required by the 2008 Farm Bill will be made in future rulemaking in conjunction with the planned SEIS. In accordance with 40 CFR 1501.7, a Notice of Intent (NOI) will be published in the **Federal Register** to determine the scope and notify the public.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) before any judicial action may be brought concerning this rule, appeal rights afforded program participants in 7 CFR parts 11, 624, and 780 must be exhausted.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions that impose ''Federal Mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. This rule contains no Federal mandates as defined by Title II of UMRA for State, local, or tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, is the Conservation Reserve Program—10.069.

Paperwork Reduction Act

Section 2904 of the 2008 Farm Bill specifies that the issuance of regulations required by Title II of the 2008 Farm Bill are to be carried out without regard to chapter 35 of title 44, U.S. Code (commonly known as the Paperwork Reduction Act). This interim rule implements sections 2101–2111 of the 2008 Farm Bill, which are in Title II. Accordingly, these provisions of section 2904 apply to this rule.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been determined to be Major under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121) (SBREFA). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Consistent with section 2904(c) of the 2008 Farm Bill, FSA finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay implementation of the program changes required by the 2008 Farm Bill. Therefore, this rule is effective on the date of its publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1410

Administrative practice and procedure, Agriculture, Environmental protection, Natural resources, Reporting and recordkeeping requirements, Soil conservation, Technical assistance, Water resources, and Wildlife.

■ For the reasons explained above, amend 7 CFR part 1410 as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

■ 1. The authority citation for 7 CFR part 1410 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

■ 2. Revise § 1410.1(j) to read as follows:

§ 1410.1 Administration.

* * * * *

(j) Except as agreed by CCC and the participant together:

(1) The regulations in this part and others governing CRP as of September 30, 2008, will continue to govern contracts in effect as of that date (see 7 CFR part 1410 contained in the edition of 7 CFR parts 1200 to 1599 revised as of January 1, 2008); and

(2) Except as specified in paragraph (j)(1) of this section, this part will apply to all CRP contracts.

■ 3. Amend § 1410.2 as follows:

■ a. Revise the definitions in paragraph (b) for ''Annual rental payment'' and ''Technical assistance'' to read as set forth below; and

■ b. Add the definition in paragraph (b), in alphabetical order, for the term ''Commercial pond-raised aquaculture facility'' to read as set forth below.

§ 1410.2 Definitions.

* * * * *

(b) * * *

Annual rental payment means, unless the context indicates otherwise, the annual payment specified in the CRP contract that, subject to the availability of funds, is made to a participant to compensate a participant for placing eligible land in CRP, including any incentive payments that are not specifically cost-shares.

Commercial pond-raised aquaculture facility means, as determined by CCC, any earthen facility from which $1,000 or more of freshwater food fish were sold or normally would have been sold during a calendar year.

* * * * *

Technical assistance means assistance in regard to determining the eligibility of land and practices, implementing and certifying practices, ensuring contract performance, and providing annual rental rate surveys. The technical assistance provided in connection with CRP to owners or operators, as approved by CCC, includes technical expertise, information, and tools necessary for the conservation of natural resources on land; technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and, technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

* * * * *

§ 1410.3 [Amended]

■ 4. Amend § 1410.3 in paragraph (c) by removing the words ''including encouraging more permanent conservation practices and tree planting'' and adding, in their place, the words ''including, as appropriate, addressing issues raised by State, regional, and national conservation initiatives and encouraging more permanent conservation practices, such as, but not limited to, tree planting''.

■ 5. Revise § 1410.11 to read to as follows:

§ 1410.11 Farmable Wetlands Program.

(a) In addition to other allowable enrollments, land may be enrolled in this program through the Farmable Wetlands Program (FWP) within the overall Conservation Reserve Program provided for in this part.

(b) As determined by CCC, eligible owners and operators may enroll land in FWP provided that the land:

(1) Is a wetland, including a converted wetland, as determined by CCC, that has been planted or considered planted to an agricultural commodity, as defined in § 1410.2, in 3 of the 10 most recent crop years and that does not exceed the size limitations of this section;

(2) Is enrolled to be a constructed wetland that is to be developed to receive flow from a row crop agriculture drainage system and is designed to provide nitrogen removal in addition to other wetland functions and that does not exceed the size limitations of this section;

(3) Was a commercial pond-raised aquaculture facility in any year during the period of calendar years 2002 through 2007; or

(4) Was cropped, after January 1, 1990, and before December 31, 2002, at least 3 of 10 crop years, was subject to the natural overflow of a prairie wetland, and does not exceed the size limitations of this section.

(c) In addition, land may be enrolled in FWP if the land is buffer acreage that provides protection for and is contiguous to land otherwise eligible under paragraphs (b)(1), (b)(2), or (b)(4) of this section, subject to other provisions of this section.

(d) Total enrollment in CRP under this section may not exceed 1 million acres. In addition, the maximum size of a land enrolled under this section may not exceed, as determined by CCC:

(1) 40 contiguous acres for land made eligible by paragraph (b)(1) of this section;

(2) 40 contiguous acres for land made eligible by paragraph (b)(2) of this section;

(3) 20 contiguous acres for land made eligible by paragraph (b)(4) of this section; or

(4) A suitable buffer as determined by the Deputy Administrator for lands added under paragraph (c) of this section.

(e) All participants subject to a CRP contract under this section must agree to establish and maintain, as appropriate, the practice described in paragraph (b) of this section to the maximum extent possible, as determined by CCC, in accordance with NRCS FOTG including, as appropriate, restoring the hydrology of the wetland and establishing vegetative cover (which may include emerging vegetation in water and bottomland hardwoods, cypress, and other appropriate tree species in shallow water areas), as determined by CCC.

(f) Offers for contracts under this section must be submitted under continuous signup provisions as authorized in § 1410.30.

(g) Except as otherwise determined by CCC, all other requirements of this part apply to enrollments under this section, and CCC may add such other requirements or conditions as it deems necessary. Such additional conditions include, but are not limited to, payment limitations, adjusted gross income limitations, and limitations on the amount of acreage that can be enrolled in any one county.

■ 6. In § 1410.22, amend paragraph (b) by adding the words ''and management activities'' immediately after the word ''practices'' and by adding the following sentence at the end of paragraph (b) to read as follows:

§ 1410.22 CRP conservation plan.

* * * * *

(b) * * * The producer must undertake management activities on the land as needed throughout the term of the CRP contract to implement the conservation plan.

* * * * *

■ 7. Amend § 1410.40 by adding a new paragraph (g) to read as follows:

§ 1410.40 Cost-share payments.

* * * * *

(g) CCC may make cost-share payments for thinning of existing tree stands to benefit wildlife habitat and other resource conditions on enrolled land, as determined by CCC.

■ 8. Amend § 1410.42 by revising paragraph (d) to read as set forth below:

§ 1410.42 Annual rental payments.

* * * * *

(d) The maximum amount of rental payments that a person or legal entity may receive, directly or indirectly, under CRP for any fiscal year must not exceed $50,000. The regulations in part 1400 of this chapter will be applicable for determining whether the limit has been exceeded.

* * * * *

■ 9. Revise § 1410.44 to read as follows:

§ 1410.44 Average Adjusted Gross Income.

(a) Benefits under this part will not be available to persons or legal entities whose average adjusted gross income exceeds $1,000,000 or as further specified in part 1400 subpart F of this chapter.

(b) The limit specified in paragraph (a) of this section may be waived as specified in part 1400 subpart F of this chapter.

■ 10. Revise § 1410.53 to read as follows:

§ 1410.53 Executed CRP contract not in conformity with regulations.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is found to contain material errors of fact or is not in conformity with this part, these regulations will prevail, and CCC may, at its sole discretion, terminate or modify the CRP contract, effective immediately or at a later date as CCC determines appropriate.

Signed at Washington, DC, on June 23, 2009.

Dennis J. Taitano,

Acting for Executive Vice President, Commodity Credit Corporation.

[FR Doc. E9–15305 Filed 6–26–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0510; Directorate Identifier 2009–NE–16–AD; Amendment 39–15948; AD 2009–13–09]

RIN 2120–AA64

Airworthiness Directives; Microturbo SA Saphir 2 Model 016 Auxiliary Power Units

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, on which the

exhaust thermal insulation has been replaced since January 1, 1995. 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:

> Due to a lapse in manufacturing quality control, the exhaust thermal insulation of certain Microturbo SA Saphir 2 model 016 auxiliary power units (APUs) may not meet the approved design standard, and may fail in service. The affected part numbers are 016–33–01 (Inner Thermal Insulation), 016–33–02 (Outer Thermal Insulation), and 016–33–03 (EGT Sensor Thermal Insulation). This condition, if not corrected, could result in rapid deterioration and physical breakdown of the exhaust thermal insulation, leading to loss of insulation efficiency and ultimately exposure of the hot APU exhaust section and risk of fire.

We are issuing this AD to prevent rapid deterioration and physical breakdown of the exhaust thermal insulation, leading to loss of insulation efficiency and ultimately exposure of the hot APU exhaust section and risk of fire.

DATES: This AD becomes effective July 14, 2009

We must receive comments on this AD by July 29, 2009

The Director of the Federal Register approved the incorporation by reference of Microturbo SA Alert Service Bulletin No. 49–11A76, Revision 1, dated, September 6, 2007, listed in the AD as of July 14, 2009

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *michaelschwetz@faa.gov*; telephone (781) 238–7761; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0100, dated May 4, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products.] The MCAI states:

> Due to a lapse in manufacturing quality control, the exhaust thermal insulation of certain Microturbo SA Saphir 2 model 016 APUs may not meet the approved design standard, and may fail in service. The affected part numbers are 016–33–01 (Inner Thermal Insulation), 016–33–02 (Outer Thermal Insulation), and 016–33–03 (EGT Sensor Thermal Insulation). This condition, if not corrected, could result in rapid deterioration and physical breakdown of the exhaust thermal insulation, leading to loss of insulation efficiency and ultimately exposure of the hot APU exhaust section and risk of fire.

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

Relevant Service Information

Microturbo SA has issued Alert Service Bulletin No. 49–11A76, Revision 1, dated September 6, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, 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 EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires initial and repetitive visual inspections of certain exhaust thermal insulation for signs of deterioration on Microturbo SA Saphir 2 model 016 APUs. This AD also requires replacement of the affected exhaust thermal insulation as mandatory terminating action to the repetitive visual inspections.

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 of the potential for rapid deterioration and physical breakdown of the exhaust thermal insulation, leading to loss of insulation efficiency and ultimately exposure of the hot APU exhaust section and risk of fire. 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–2009–0510; Directorate Identifier 2009–NE–16–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 with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–13–09 Microturbo SA: Amendment 39–15948.; Docket No. FAA–2009–0510; Directorate Identifier 2009–NE–16–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Microturbo SA Saphir 2 model 016 auxiliary power units (APUs) on which the exhaust thermal insulation has been replaced since January 1, 1995. These APUs are installed on, but not limited to, Dassault Falcon 20 airplanes.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2009–0100, dated May 4, 2009, states:

Due to a lapse in manufacturing quality control, the exhaust thermal insulation of certain Microturbo SA Saphir 2 model 016 APUs may not meet the approved design standard, and may fail in service. The affected part numbers are 016–33–01 (Inner Thermal Insulation), 016–33–02 (Outer Thermal Insulation), and 016–33–03 (EGT Sensor Thermal Insulation). This condition, if not corrected, could result in rapid deterioration and physical breakdown of the exhaust thermal insulation, leading to loss of insulation efficiency and ultimately exposure of the hot APU exhaust section and risk of fire.

We are issuing this AD to prevent rapid deterioration and physical breakdown of the exhaust thermal insulation, leading to loss of insulation efficiency and ultimately exposure of the hot APU exhaust section and risk of fire.

Actions and Compliance

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

Initial and Repetitive Inspections

(1) Within 10 APU operating hours from the effective date of this AD, visually inspect the exhaust thermal insulation for signs of deterioration. Repeat the inspection at intervals not exceeding 10 operating APU hours.

(2) If deterioration is detected, replace the exhaust thermal insulation before operating the APU again. Use paragraphs 2.A. through 2.C.(4)(b) of Microturbo SA Alert Service Bulletin No. 49–11A76, Revision 1, dated September 6, 2007, to do the replacement.

Mandatory Terminating Action

(3) As mandatory terminating action to the repetitive visual inspections required by this AD, replace the exhaust thermal insulation within 50 APU operating hours from the effective date of this AD. Use paragraphs 2.A. through 2.C.(4)(b) of Microturbo SA Alert Service Bulletin No. 49–11A76, Revision 1, dated September 6, 2007, to do the replacement.

FAA AD Differences

(f) None.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2009–0100, dated May 4, 2009, for related information.

(i) Contact Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: michaelschwetz@faa.gov; telephone (781) 238–7761; fax (781) 238–7170, for more information about this AD.

Material Incorporated by Reference

(j) You must use Microturbo SA Alert Service Bulletin No. 49–11A76, Revision 1, dated September 6, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Microturbo SA, Technical Publications Department, 8, Chemin du pont de Rupe, BP 62089, 31019 Toulouse Cedex 2, France; telephone (33) (0)5 61 37 55 00; fax (33) (0)5 61 70 74 45.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on June 17, 2009.

Carlos Pestana,

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

[FR Doc. E9–14809 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0198; Directorate Identifier 2008–NM–129–AD; Amendment 39–15941; AD 2009–13–02]

RIN 2120-AA64

Airworthiness Directives; Fokker Model F.28 Mark 0100 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 certain Fokker Model F.28 Mark 0100 airplanes. That AD currently requires revisions to the airplane flight manual (AFM) to include procedures to prohibit use of reverse engine thrust power settings between idle and emergency maximum and to prohibit stabilized engine operation in a certain engine speed range on the ground. This new AD continues to require revising the AFM to include certain procedures. This AD also requires removing the normal maximum (second) detent for the reverse-thrust control. In addition, this AD requires revising the AFM to prohibit use of reverse thrust in flight and to limit operation of Max Reverse thrust. This AD results from issuance of mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to prevent inadvertent operation in the prohibited stabilized engine speed range on the ground, which could result in uncontained engine fan blade failure due to high cycle fatigue cracking.

DATES: This AD becomes effective August 3, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 3, 2009.

ADDRESSES: For service information identified in this 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.* 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 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: 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:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 98–06–07, amendment 39–10384 (63 FR 11985, March 12, 1998). The existing AD applies to certain Fokker Model F.28 Mark 0100 airplanes. That NPRM was published in the **Federal Register** on March 6, 2009 (74 FR 9774). That NPRM proposed to continue to require revising the AFM to include procedures prohibiting stabilized engine operation in a certain engine speed range on the ground. That NPRM also proposed to require removing the normal maximum (second) detent for the reverse-thrust control. In addition, that NPRM proposed to revise the AFM to prohibit use of reverse thrust in flight and to limit operation of Max Reverse thrust.

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
AFM revision (required by AD 98–06–07)	1	$80	$80	5	$400
Removal of second detent (new action)	3	80	240	5	1,200
AFM revision (new action)	1	80	80	5	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 39–10384 (63 FR 11985, March 12, 1998) and by adding the following new airworthiness directive (AD):

2009–13–02 Fokker Services B.V.: Amendment 39–15941. Docket No. FAA–2009–0198; Directorate Identifier 2008–NM–129–AD.

Effective Date

(a) This AD becomes effective August 3, 2009.

Affected ADs

(b) This AD supersedes AD 98–06–07.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0100 airplanes, certificated in any category, equipped with Rolls-Royce (RR) TAY 650–15 engines.

Subject

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

Unsafe Condition

(e) This AD results from issuance of mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to prevent inadvertent operation in the prohibited stabilized engine speed range on the ground, which could result in uncontained engine fan blade failure due to high cycle fatigue cracking.

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.

Certain Requirement of AD 98–06–07

Airplane Flight Manual (AFM) Revision

(g) Within 72 hours after March 27, 1998 (the effective date of AD 98–06–07), revise the Limitations Section of the FAA-approved AFM to add the following. This may be accomplished by inserting a copy of this AD in the AFM.

"LIMITATIONS POWERPLANT and APU LIMITATIONS

OPERATING LIMITS

• To avoid high fan blade stresses, stabilized operation in the speed range between 60% and 75% Low Pressure Rotational Speed (N1) is not permitted during Ground Operations in Forward or Reverse Thrust, except that passing through this range while increasing or decreasing thrust is permitted.

THRUST REVERSER

Thrust reversers are intended for ground use only. Intentional use of reverse thrust in flight is prohibited. After reverse thrust has been initiated, a full stop landing must be made.

Maximum Reverse Thrust Lever Positions

Normal Operation:

—The idle detent position shall not be exceeded in normal operation.

—Momentarily exceeding the idle detent position, while selecting idle reverse, is acceptable.

Emergency Operation:

—In case of emergency, the emergency maximum reverse thrust may be used.

—If directional control problems occur, reduce to idle reverse or select forward idle.

—Stabilized operation with the reverse lever in an intermediate position between idle reverse and emergency maximum reverse is prohibited, except (where approved) during Power-Back operations."

Note 1: Fokker Services Manual Change Notification—Operational Documentation (MCNO) No. F100–006, dated November 27, 1997, contains information that pertains to this subject. Rolls-Royce PLC Engine Operating Instruction Manual Reference F–TAY–3RR, revised by transmittal letter No. 13, dated October 15, 1997, also pertains to this subject.

New Actions Required by This AD

Removal of Normal Maximum Detent

(h) Within 12 months after the effective date of this AD, remove the normal maximum (second) detent for the reverse-thrust control, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–014, Revision 2, dated December 12, 2007. Accomplishing the removal terminates the requirements of paragraph (g) of this AD.

(i) Actions done before the effective date of this AD in accordance with Fokker Service Bulletin SBF100–76–014, dated October 1, 2001; or Revision 1, dated June 1, 2002; are acceptable for compliance with the requirements of paragraph (h) of this AD.

AFM Revision

(j) Concurrently with the requirements of paragraph (h) of this AD, revise the Limitations Section of the Fokker F.28 Mark 0100 AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

"THRUST REVERSERS

Thrust reversers are intended for ground use only. Intentional use of reverse thrust in flight is prohibited.

The use of Max Reverse thrust is limited to operations on short runways or on runways with a reduced runway surface friction coefficient or in emergency conditions. Max Reverse thrust shall not be used at airspeeds below 60 knots except in emergency conditions.

Reverse thrust selections between Idle Reverse thrust and Max Reverse thrust are prohibited."

Note 2: Fokker Manual Change Notification—Operational Documentation (MCNO) F100–032, Revision 1, dated September 21, 2007, contains information related to the AFM revision required by paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(k) 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.

Related Information

(l) European Aviation Safety Agency Airworthiness Directive 2008–0089, dated May 13, 2008, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use Fokker Service Bulletin SBF100–76–014, Revision 2, dated December 12, 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 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.*

(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 16, 2009.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–14676 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22039; Directorate Identifier 2005–NE–33–AD; Amendment 39–15950; AD 2009–14–01]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius 2F Turboshaft Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Turbomeca S.A. Arrius 2F turboshaft engines that have not incorporated Turbomeca Modification Tf75. That AD currently requires replacing the O-ring on the check valve piston in the lubrication unit at repetitive intervals. This AD requires the same repetitive replacements and would require incorporating Modification Tf75 as terminating action to the repetitive O-ring replacements. Modification Tf75 replaces the check valve piston with a piston design not requiring an O-ring. This AD results from the European Aviation Safety Agency (EASA) and Turbomeca S.A. mandating the incorporation of Modification Tf75. We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine, which could result in a forced autorotation landing and damage to the helicopter.

DATES: This AD becomes effective August 3, 2009. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 3, 2009.

ADDRESSES: You can get the service information identified in this AD from Turbomeca S.A., 40220 Tarnos, France; e-mail: *noria-dallas@turbomeca.com*; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, or go to: *http://www.turbomeca-support.com.*

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

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2005–17–17R1, Amendment 39–14940 (72 FR 6925, February 14, 2007), with a proposed AD. The proposed AD applies to Turbomeca S.A. Arrius 2F turboshaft engines that have not incorporated Turbomeca Modification Tf75. We published the proposed AD in the **Federal Register** on January 22, 2009 (74 FR 3978). That action proposed to require replacing the O-ring on the check valve piston in the lubrication unit at repetitive intervals and to require incorporating Modification Tf75 as terminating action to the repetitive O-ring replacements.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Change to the Mandatory Terminating Action Compliance Time

Since we issued the proposed AD, we realized that there is no direct relationship between the mandatory terminating action compliance date in the proposed AD and the usage rate of the affected helicopters. We changed the AD to require the terminating action be done within 150 flight hours after the effective date of this AD.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 94 Arrius 2F turboshaft engines installed on helicopters of U.S. registry. We also estimate that it will take about one work-hour per engine to perform an O-ring replacement, and about one work-hour to incorporate Modification Tf75. The average labor rate is $80 per work-hour. Required parts will cost about $16 per engine for O-ring replacement, and about $20 per engine for incorporating Modification Tf75. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $18,424.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14940 (72 FR 6925, February 14, 2007), and by adding a new airworthiness directive, Amendment 39–15950, to read as follows:

2009–14–01 Turbomeca S.A: Amendment 39–15950. Docket No. FAA–2005–22039; Directorate Identifier 2005–NE–33–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 3, 2009.

Affected ADs

(b) This AD supersedes AD 2005–17–17R1, Amendment 39–14940.

Applicability

(c) This AD applies to Turbomeca S.A. Arrius 2F turboshaft engines that have not incorporated modification Tf75. These engines are installed on, but not limited to, Eurocopter EC120B helicopters.

Unsafe Condition

(d) This AD results from the European Aviation Safety Agency (EASA) and Turbomeca S.A. mandating the incorporation of Modification Tf75. The actions specified in this AD are intended to prevent an uncommanded in-flight shutdown of the engine, which could result in a forced autorotation landing and damage to the helicopter.

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.

O-ring Replacement

(f) Replace the O-ring on the check valve piston in the lubrication unit at the intervals specified in Table 1 of this AD. Use the Instructions to be Incorporated paragraphs 2.A. through 2.C.(2) of Turbomeca Alert Service Bulletin No. A319 79 4802, Update No. 1, dated April 3, 2006, to replace the O-ring.

TABLE 1—COMPLIANCE TIMES FOR O-RING REPLACEMENT

If the class of oil is:	Then replace the O-ring by the later of:	Thereafter, replace the O-ring within:
(1) HTS or unknown.	300 hours time-since-new (TSN) or 50 hours after March 21, 2007 (effective date of AD 2005–17–17R1)..	300 hours time-since-last replacement (TSR).
(2) STD.	450 hours TSN or 50 hours after March 21, 2007 (effective date of AD 2005–17–17R1)..	500 hours TSR.

Mandatory Terminating Action

(g) Within 150 flight hours after the effective date of this AD, do the following mandatory terminating action to the repetitive O-ring replacements:

(1) Incorporate Turbomeca Modification Tf75 by replacing the check valve piston in the lubrication unit, with a check valve piston requiring no O-ring.

(2) Use the Instructions to be Incorporated paragraphs 2.A. through 2.B.(1)(r) of Turbomeca Mandatory Service Bulletin No. 319 79 4075, Version B, dated May 14, 2008, to replace the check valve piston.

Alternative Methods of Compliance

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

Related Information

(i) EASA AD 2008–0170, dated September 25, 2008, also addresses the subject of this AD.

(j) Contact Turbomeca S.A., 40220 Tarnos, France; e-mail: *noria-dallas@turbomeca.com*; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, or go to: *http://www.turbomeca-support.com*, for a copy of the service information identified in this AD.

(k) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(l) You must use the service information specified in the following Table 2 to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in the following Table 2 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Turbomeca S.A., 40220 Tarnos, France; e-mail: *noria-dallas@turbomeca.com*; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, or go to: *http://www.turbomeca-support.com*, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 2—INCORPORATION BY REFERENCE

Turbomeca Alert/Mandatory Service Bulletin No.	Page	Update/version	Date
A319 79 4802, Total Pages: 7	ALL	Update No. 1	April 3, 2006.
319 79 4075, Total Pages: 9	ALL	Version B	May 14, 2008.

Issued in Burlington, Massachusetts, on June 19, 2009.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–15099 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1071; Directorate Identifier 2008–NM–093–AD; Amendment 39–15951; AD 2009–14–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 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 certain Boeing Model 747 airplanes. That AD currently requires repetitive inspections to detect evidence of wear damage in the area at the interface between the vertical stabilizer seal and fuselage skin, and corrective actions, if necessary. The existing AD also provides for an optional terminating action for the repetitive inspections. For all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, this new AD requires repetitive inspections for wear damage and cracks of the fuselage skin in the interface area of the vertical stabilizer seal and fuselage skin, a detailed inspection for wear damage and cracks of the surface of any skin repair doubler in the area, and corrective actions if necessary. For airplanes on which the fuselage skin has been blended to remove wear damage, this new AD requires repetitive external detailed inspections or high frequency eddy current inspections for cracks of the blended area of the fuselage skin, and corrective actions if necessary. This AD results from reports of wear damage on airplanes with fewer than 8,000 total flight cycles. In addition, there have been three reports of skin wear damage on airplanes that applied Boeing Material Specifications 10–86 Teflon-filled coating (terminating action per the existing AD). We are issuing this AD to detect and correct wear damage and cracks of the fuselage skin in the interface area of the vertical stabilizer seal and fuselage skin in sections 46 and 48, which could cause in-flight depressurization of the airplane.

DATES: This AD becomes effective August 3, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 3, 2009.

On February 10, 2003 (68 FR 476, January 6, 2003), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

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 2002–26–15, amendment 39–13003 (68 FR 476, January 6, 2003). The existing AD applies to certain Boeing Model 747 series airplanes. That NPRM was published in the **Federal Register** on October 8, 2008 (73 FR 58903). That NPRM proposed to require, for all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, repetitive inspections for wear damage and cracks of the fuselage skin in the interface area of the vertical stabilizer seal and fuselage skin, a detailed inspection for wear damage and cracks of the surface of any skin repair doubler in the area, and corrective actions if necessary. For airplanes on which the fuselage skin has been blended to remove wear damage, that NPRM proposed to require repetitive external detailed inspections or high frequency eddy current (HFEC) inspections for cracks of the blended area of the fuselage skin, and corrective actions if necessary.

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 for Change in Applicability

Boeing requests that the second paragraph under ''Relevant Service Information'' of the NPRM be revised to list the specific Boeing Model 747 series airplanes affected by this rule. The commenter states that Boeing Model 747–8 series airplanes, which are not yet FAA type-certificated, should be excluded because they are equipped with corrosion-resistant steel rubstrips on the affected skins, which are a baseline configuration on these airplanes.

We find that clarification is necessary. The applicability in paragraph (c) of the AD identifies specifically affected Boeing Model 747 airplanes. However, the ''Relevant Service Information'' section is not restated in the final rule. Therefore, for clarity, we have specified in the Discussion section of this AD the specific Boeing Model 747 airplanes identified in the AD applicability (paragraph (c)) of this AD.

Request To Delay Issuance of the AD

Japan Airlines (JAL) requests that we delay the issuance of the AD until the service bulletin is revised and the repair doubler wear limits can be incorporated into the final rule. JAL states that the NPRM and Boeing Alert Service Bulletin 747–53A2478, Revision 1, dated March 27, 2008, do not provide any wear limits for the repair doublers. JAL also states that operators would have to contact Boeing for repair instructions, replace the repair, or replace the repair doubler even if minor blending is found.

We disagree with the request to delay issuance of this AD. The wear limits provided in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2478, Revision 1,

dated March 27, 2008, are also applicable to skin repair doublers since the skin repair doublers have the same function as the fuselage skin. Because of the degree of urgency associated with addressing the identified unsafe condition, we have determined that further delay of this final rule is not appropriate. We have not changed this final rule regarding this issue.

Request for an Alternative Inspection Plan

Cargolux Airlines International S.A. (CLX) and Royal Dutch Airlines (KLM) request an alternative inspection plan for paragraph (i)(1) of the NPRM. The commenters request that we increase the grace period from 6,000 flight hours after the effective date of this AD to 12,000 flight hours after the effective date of this AD (for those airplanes over the threshold); and change the repetitive interval for the detailed inspection from 7,500 flight hours to 12,000 flight hours (or 24 months) after the effective date of this AD, combining the detailed inspection and a surface HFEC inspection. CLX states that the higher sensitivity of the HFEC inspection would justify the increase in the inspection interval. KLM and CLX also state that a 12,000-flight-hour interval will allow for inspections to be done at regular ''C-check'' maintenance intervals. KLM also adds that there is a large economic impact due to its airplanes having passed the threshold and being the subject to the low repetitive interval of 7,500 flight hours.

We disagree with the request to include an alternative inspection plan. The service and analytical data from the airplane manufacturer do not support this request because significant wear damage has been found on an airplane with the Teflon-filled coating at 21,371 flight hours. Also, one commenter's proposed surface HFEC inspection does not detect wear damage to the skin; a surface HFEC inspection is used to detect cracks.

In developing the compliance times for this AD, we considered not only the safety implications of the identified unsafe condition, but the average utilization rate of the affected fleet and the practical aspects of an orderly inspection, repair, and modification of the fleet during regular maintenance periods. We have considered the commenters' requests, and we have concluded that the proposed compliance times remain appropriate. However, under the provisions of paragraph (m) of this AD, we may consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that an alternative inspection plan would provide an acceptable level of safety. We have not changed this final rule regarding this issue.

Request To Revise the Compliance Times in Paragraph (i) of This AD

Northwest Airlines (NWA) requests a change in the initial inspection threshold and repetitive inspection interval specified in paragraph (i) of the NPRM. The commenter requests that we change the compliance time to:

> 20,000 total flight hours from delivery, or to 20,000 flight hours after the last application of Teflon-filled coating, or within 9,000 flight hours after the effective date of this AD, whichever occurs later.

NWA states that the threshold fails to recognize an equivalent effectiveness of a subsequent Teflon application after delivery. NWA believes that a grace period of 9,000 flight hours after the effective date of this AD would enable the proposed actions to occur during a heavy maintenance check visit in a suitable and safer environment. The commenter also recommends a repetitive inspection interval of up to 20,000 flight hours from the last Teflon application.

We disagree with the commenter's request. The service and analytical data from the airplane manufacturer do not support the request to change the initial inspection threshold because significant wear damage has been found on an airplane with the Teflon-filled coating at 21,371 total flight hours. In addition, we do not agree that a repetitive inspection interval of 20,000 flight hours from the last Teflon application is appropriate because the affected skins are more likely to have suffered damage from the accumulated debris and other sources after prolonged usage since delivery.

We consider that the compliance times remain appropriate. However, under the provisions of paragraph (m) of this AD, we may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that an alternative inspection plan would provide an acceptable level of safety. We have not changed this final rule regarding this issue.

Explanation of Restatement of Optional Terminating Action

We have restated paragraph (b) of AD 2002–26–15 as paragraph (g) of this AD. We have added the phrase ''prior to the effective date of this AD'' to paragraph (g) of this AD. If operators complied with the optional terminating action prior to the effective date of this AD, the repetitive inspections in paragraph (f)(1) of this AD are terminated. However, after the effective date of this AD, the repetitive inspections cannot be terminated until the inspections in paragraph (i) of this AD are done.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 917 airplanes of the affected design in the worldwide fleet. 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
Inspection (required by AD 2002–26–15).	12	$80	None	$960, per inspection cycle.	253	$242,880, per inspection cycle.
Inspection and application of BMS 10–86 Teflon-filled coating (new action).	8	$80	None	$640, per inspection cycle.	165	$105,600, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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 39–13003 (68 FR 476, January 6, 2003) and by adding the following new airworthiness directive (AD):

2009–14–02 Boeing: Amendment 39–15951. Docket No. FAA–2008–1071; Directorate Identifier 2008–NM–093–AD.

Effective Date

(a) This AD becomes effective August 3, 2009.

Affected ADs

(b) This AD supersedes AD 2002–26–15.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2478, Revision 1, dated March 27, 2008.

Unsafe Condition

(d) This AD results from reports of skin wear damage on airplanes with fewer than 8,000 total flight cycles. In addition, there have been three reports of skin wear damage on airplanes on which Boeing Material Specifications (BMS) 10–86 Teflon-filled coating was applied (terminating action per AD 2002–26–15). We are issuing this AD to detect and correct wear damage and cracks of the fuselage skin in the interface area of the vertical stabilizer seal and fuselage skin in sections 46 and 48, which could cause in-flight depressurization of the airplane.

Compliance

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

Requirements of AD 2002–26–15

Inspections for Damage/Corrective Actions

(f) For airplanes identified in Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002: Prior to the accumulation of 15,000 total flight cycles, or within 1,200 flight cycles after February 10, 2003 (the effective date of AD 2002–26–15), whichever occurs later, perform a detailed inspection to detect evidence of wear damage of the fuselage skin at the interface area of the vertical stabilizer seal and fuselage skin, per Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002.

(1) If no wear damage of the fuselage skin is detected or any existing blendout is within the structural repair manual (SRM) allowable damage limits: Repeat the detailed inspection at intervals not to exceed 6,000 flight cycles.

(2) If any wear damage of the fuselage skin is detected or any existing blendout exceeds the allowable damage limits specified in the SRM: Before further flight, repair the vertical stabilizer seal interface and refinish the skin with BMS 10–86 Teflon-filled coating, per Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002. Accomplishment of the repair and refinishing is terminating action for the repetitive inspections required by paragraph (f)(1) of this AD.

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

Optional Terminating Action for Paragraph (f) of This AD

(g) Refinishing the fuselage skin with BMS 10–86 Teflon-filled coating, prior to the effective date of this AD, per Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002, terminates the repetitive inspections required by paragraph (f)(1) of this AD.

Previously Accomplished Inspections and Terminating Action

(h) For airplanes identified in Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002: Inspections and terminating action done before February 10, 2003, per Boeing Service Bulletin 747–53–2192, dated July 21, 1981, are acceptable for compliance with the corresponding actions required by paragraph (f) of this AD, provided BMS 10–86 Teflon-filled coating was used, and the new allowable damage limits specified in Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002, are met.

New Requirements of This AD

New Repetitive Inspections

(i) Except as provided by paragraph (j) of this AD: At the applicable times specified in Table 1 of this AD, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD, as applicable. Accomplishing the initial inspection specified in paragraph (i) terminates the requirements of paragraph (f) of this AD.

(1) For all airplanes: Do the actions specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD, as applicable.

(i) Do repetitive external detailed inspections for wear damage and cracks of the fuselage skin in the interface area of the vertical stabilizer seal and fuselage skin, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2478, Revision 1, dated March 27, 2008.

(ii) Where a skin repair doubler is present in the interface area of the vertical stabilizer seal and fuselage skin, do a detailed inspection for wear damage and cracks of the surface of the repair doubler.

(2) For airplanes that have reduced skin thickness in section 46 due to blending without reinforcement: Do repetitive external detailed inspections or high frequency eddy (HFEC) current inspections for cracks of the

blended area of the fuselage skin, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2478, Revision 1, dated March 27, 2008.

TABLE 1—COMPLIANCE TIMES

Action	Compliance time (whichever occurs later)		Repeat interval (Not to exceed)
	Threshold	Grace Period	
For actions required by paragraph (i)(1) of this AD.	Prior to the accumulation of 20,000 total flight hours since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 7,500 flight hours after the last inspection of this AD, whichever occurs later.	Within 6,000 flight hours after the effective date of this AD.	7,500 flight hours.
For actions required by paragraph (i)(2) of this AD.	Prior to the accumulation of 20,000 total flight cycles since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 6,000 flight cycles after the initial blend, whichever occurs later.	Within 1,000 flight cycles after the effective date of this AD.	1,200 flight cycles for external detailed inspection, or 6,000 flight cycles for HFEC inspection.

Exception to the Repetitive Inspections

(j) If corrosion-resistant steel rubstrips are installed in the interface area of the vertical stabilizer seal and fuselage skin: Within the applicable compliance times specified in paragraph (i) of this AD, inspect the fuselage skin using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

For No Wear Damage or Cracks Found: Apply Teflon

(k) If no wear damage or crack is found in the fuselage skin (or skin repair doubler) during any inspection required by paragraph (i) of this AD: Before further flight, apply Boeing Material Specifications (BMS) 10–86 Teflon-filled coating in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2478, Revision 1, dated March 27, 2008.

For Any Wear Damage or Crack Found: Applicable Corrective Actions

(l) If any wear damage or crack is found in the fuselage skin (or skin repair doubler) during any inspections required by paragraph (i) of this AD: Before further flight, after the inspection required by paragraph (i), do the actions specified in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2478, Revision 1, dated March 27, 2008.

(1) Measure the depth of the wear and record the location.

(2) Repair any wear damage and any crack.

(3) Apply BMS 10–86 Teflon-filled coating.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

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

Material Incorporated by Reference

(n) You must use Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002; and Boeing Alert Service Bulletin 747–53A2478, Revision 1, dated March 27, 2008; 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 Boeing Alert Service Bulletin 747–53A2478, Revision 1, dated March 27, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002, on February 10, 2003 (68 FR 476, January 6, 2003).

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(4) 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.

(5) You may also review copies of the service information 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 19, 2009.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–15085 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0160; Directorate Identifier 2008–NM–176–AD; Amendment 39–15947; AD 2009–13–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all McDonnell Douglas Model MD–90–30 airplanes. This AD requires repetitive inspections for cracks of the upper aft skin panels on the horizontal stabilizer, and related investigative and corrective actions if necessary. This AD results from a report of cracks found in the aft skin panels on the upper right side of

the horizontal stabilizer at the aft inboard corner. We are issuing this AD to detect and correct cracks in the fail-safe structure that may not be able to sustain limit load, which could result in the loss of overall structural integrity of the horizontal stabilizer.

DATES: This AD is effective August 3, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 3, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.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: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all McDonnell Douglas Model MD–90–30 airplanes. That NPRM was published in the **Federal Register** on March 23, 2009 (74 FR 12100). That NPRM proposed to require repetitive inspections for cracks of the upper aft skin panels on the horizontal stabilizer, and related investigative and corrective actions if necessary.

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 relevant data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 16 airplanes of U.S. registry. 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
Inspection	4	$80	None	$320 per inspection cycle.	16	$5,120 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2009–13–08 McDonnell Douglas: Amendment 39–15947. Docket No. FAA–2009–0160; Directorate Identifier 2008–NM–176–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 3, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model MD–90–30 airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Unsafe Condition

(e) This AD results from a report of cracks found in the right upper aft skin panel of the horizontal stabilizer at the aft inboard corner. We are issuing this AD to detect and correct cracks in the fail-safe structure that may not be able to sustain limit load, which could result in the loss of overall structural integrity of the horizontal stabilizer.

Compliance

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

Inspections

(g) Except as required by paragraphs (h) and (i) of this AD: At the times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD90–55A012, dated September 23, 2008, do an eddy current inspection for cracks of the upper aft skin panels on the left and right sides of the horizontal stabilizer, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of the service bulletin.

Exceptions to Service Bulletin Specifications

(h) Where Boeing Alert Service Bulletin MD90–55A012, dated September 23, 2008, specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin MD90–55A012, dated September 23, 2008, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

Inspections Done According to Multiple Operator Message

(j) Inspections and corrective actions done before the effective date of this AD are acceptable for compliance with the corresponding requirements of this AD, if done in accordance with Boeing Multiple Operator Message 1–669017091–1, dated November 9, 2007.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, in the FAA Flight Standards District Office (FSDO), or lacking a principal inspector, your local FSDO. The AMOC approval letter must specifically reference this AD.

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

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin MD90–55A012, dated September 23, 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 Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.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 16, 2009.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–14680 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM04–7–006; Order No. 697–C]

Market-Based Rates For Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities

Issued June 18, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission is granting in part and denying in part the requests for rehearing and clarification of its determinations in Order No. 697–B, which granted rehearing and clarification of certain revisions to Commission regulations and to the standards for obtaining and retaining market-based rate authority for sales of energy, capacity and ancillary services to ensure that such sales are just and reasonable.

DATES: *Effective Date:* This order on rehearing will become effective July 29, 2009.

FOR FURTHER INFORMATION CONTACT:

Michelle Barnaby (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8407.

Paige Bullard (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6462.

SUPPLEMENTARY INFORMATION:

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Before Commissioners: Jon Wellinghoff, Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

Order on Rehearing and Clarification

I. Introduction

1. In this order, the Commission addresses requests for rehearing and clarification of Order No. 697–B. Specifically, the Commission clarifies the requirement that sellers file a notification of change in status when they acquire sites for new generation capacity development.[1] The Commission denies the requests for rehearing of the tariff provision governing mitigated sales at the metered boundary and affirms its determination in Order No. 697–B to revise the mitigated sales tariff provision in order to ensure that a mitigated seller making market-based rate sales at the metered boundary does not sell power into the mitigated market either directly or through its affiliates.[2]

II. Background

2. On June 21, 2007, the Federal Energy Regulatory Commission (Commission) issued Order No. 697,[3] codifying and, in certain respects, revising its standards for obtaining and retaining market-based rates for public utilities. In order to accomplish this, as well as streamline the administration of the market-based rate program, the Commission modified its regulations at 18 CFR part 35, subpart H, governing market-based rate authorization. The Commission explained that there are three major aspects of its market-based regulatory regime: (1) Market power analyses of sellers and associated conditions and filing requirements; (2) market rules imposed on sellers that participate in Regional Transmission Organization (RTO) and Independent System Operator (ISO) organized markets; and (3) ongoing oversight and enforcement activities. Order No. 697 focused on the first of the three features to ensure that market-based rates charged by public utilities are just and reasonable. Order No. 697 became effective on September 18, 2007.

3. The Commission issued an order clarifying four aspects of Order No. 697 on December 14, 2007.[4] Specifically, that order addressed: (1) The effective date for compliance with the requirements of Order No. 697; (2) which entities are required to file updated market power analyses for the Commission's regional review; (3) the data required for horizontal market power analyses; and (4) what constitute ''seller-specific terms and conditions'' that sellers may list in their market-based rate tariffs in addition to the standard provisions listed in Appendix C to Order No. 697. The Commission also extended the deadline for sellers to file the first set of regional triennial studies that were directed in Order No. 697 from December 2007 to 30 days after the date of issuance of the December 14 Clarification Order.

4. On April 21, 2008, the Commission issued Order No. 697–A,[5] in which it responded to a number of requests for rehearing and clarification of Order No. 697. In most respects, the Commission affirmed the determinations made in Order No. 697 and denied rehearing of the issues raised. However, with respect to several issues, the Commission granted rehearing or provided clarification.

5. On July 17, 2008, the Commission issued an order clarifying certain aspects of Order No. 697–A related to the allocation of simultaneous transmission import capability for purposes of performing the indicative screens.[6] Specifically, that order granted the requests for rehearing with regard to footnote 208 of Order No. 697–A and clarified that in performing the indicative screen analysis, market-based rate sellers may allocate the simultaneous import limit capability on a *pro rata* basis (after accounting for the seller's firm transmission rights) based on the relative shares of the seller's (and its affiliates') and competing suppliers' uncommitted generation capacity in first-tier markets.[7]

6. On December 19, 2008, the Commission issued Order No. 697–B[8] in which it clarified and affirmed the determinations made in Order No. 697–A. Specifically, the Commission provided clarification regarding the allocation of seasonal and longer transmission reservations. The Commission also clarified that it will require a seller making an affirmative statement as to whether a contractual arrangement transfers control to seek a ''letter of concurrence'' from other affected parties identifying the degree to which each party controls a facility, and to submit these letters with its filing. The Commission denied the request that it clarify that only sites for which necessary permitting for a generation plant has been completed and/or sites on which construction for a generation plant has begun apply under the definition of ''inputs to electric power production'' in § 35.36(a)(4) of the Commission's regulations. The Commission also revised the definition of ''affiliate'' in section 35.36(a)(9) of its regulations to delete the separate definition for exempt wholesale generators. In addition, the Commission provided a number of other clarifications with regard to, among others, the pricing of sales of non-power goods and services and the tariff provision governing sales at the metered boundary.

7. On January 28, 2009, in response to Tampa Electric Company's (Tampa Electric) request for extension of time to comply with the tariff provision on

[1] 18 CFR 35.42 (2008).

[2] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697–B, 73 FR 79,610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008).

[3] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252 (Order No. 697 or Final Rule), *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, 73 FR 25,832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268 (2008); *clarified,* 124 FERC ¶ 61,055 (2008) (July 17 Clarification Order), *order on reh'g,* Order No. 697–B, 73 FR 79,610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008).

[4] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* 121 FERC ¶ 61,260 (2007) (December 14 Clarification Order).

[5] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 (2008).

[6] July 17 Clarification Order, 124 FERC ¶ 61,055.

[7] *Id.* P 5.

[8] Order No. 697–B, FERC Stats. & Regs. ¶ 31,285.

mitigated sales at the metered boundary as revised in Order No. 697-B, the Commission issued an order granting the extension requested by Tampa Electric until such time as the Commission issues an order on rehearing of Order No. 697–B.[9] That order clarified that affected entities must continue to comply with the mitigated sales tariff provision adopted in Order No. 697–A [10] (which became effective on June 6, 2008), until such time as the Commission acts on the requests for rehearing of Order No. 697–B.

III. Discussion

A. Vertical Market Power

Other Barriers to Entry

Background

8. Order No. 697 adopted the NOPR proposal to consider a seller's ability to erect other barriers to entry as part of the vertical market power analysis, but modified the requirements when addressing other barriers to entry.[11] It also provided clarification regarding the information that a seller must provide with respect to other barriers to entry (including which inputs to electric power production the Commission will consider as other barriers to entry) and modified the proposed regulatory text in that regard.[12]

9. On rehearing, the Commission clarified that it was not its intent for the term ''inputs to electric power production'' to encompass every instance of a seller entering into a coal supply contract with a coal vendor in the ordinary course of business. The Commission clarified that Order No. 697 encompasses physical coal sources and ownership of or control over who may access transportation of coal via barges and railcar trains.[13] Thus, the Commission revised its definition of ''inputs to electric power production'' in § 35.36(a)(4) as follows: ''intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for new generation capacity development; physical coal supply sources and ownership of or control over who may access transportation of coal supplies.'' [14]

10. In Order No. 697–B, the Commission rejected the Electric Power Supply Association's (EPSA) proposal that the term ''sites for new generation capacity development'' mean only sites with respect to which permits for new generation have been obtained or where construction of new generation is underway, and not encompass land that could potentially be used for generation. The Commission explained that ''sites for new generation capacity development'' should be construed to include ownership of land that could potentially be used for generation, not just sites for which permits for new generation have been obtained or where construction of new generation is underway. The Commission also clarified that ''sites for new generation capacity development'' does not include land that cannot be used for generation capacity development.[15]

Requests for Rehearing

11. American Wind Energy Association (American Wind) requests rehearing of Order No. 697–B's clarification that sites for new generation capacity development should be construed to include ownership of land that could potentially be used for generation, arguing that the scope and intent behind this requirement was not fully illuminated until the Commission's clarification of this requirement in Order No. 697–B.[16] American Wind contends that the Commission should grant rehearing of the term ''sites for new generation capacity development'' so as to only require reporting for sites for new generation development that are located in load pockets where a ''potential'' for vertical market power may exist, and should clarify that it will rely on the existing rebuttable presumption that all other sites do not create a barrier to entry.[17]

12. American Wind argues that the Commission's interpretation of the reporting burden to include sites that could potentially be used for generation substantially increases the regulatory compliance burden on market-based rate sellers, and that the increased burden can be illustrated with respect to the impact on wind energy developers. It explains that in developing new wind power generation sites, wind energy developers seek to initially lease approximately 150 acres for each turbine. American Wind states that in developing a 100 megawatt project using 1.5 megawatt wind turbines, a developer may seek to initially have 10,000 acres of land under control. It further explains that control over such land may result from leases that would likely be made with multiple landowners over a period of several months, and that in regions with significant wind development, it would not be surprising to find a vast number of acres for potential new generation sites under some form of control, via leases or some other form of agreement, by wind energy developers.[18]

13. According to American Wind, the requirement to file notifications of change in status every time a market-based rate seller or its affiliates acquire sites that potentially could be used for generation would create a substantial burden and a competitive risk, while not providing any associated benefit to the Commission. American Wind asserts that wind developers in particular would be subjected to increased risk of the disclosure of their proprietary and competitive information because wind developers regularly compete for new land that can be used for wind development projects.[19] It states that in the development process, wind energy developers spend significant time and effort searching for new land that may be appropriate for wind development sites, and that information as to where a wind energy developer is considering the development of new generation projects is highly proprietary and confidential. American Wind contends that even assuming a filing submitted at the Commission includes information ''on a summarized, balancing authority area basis, given the small size of some balancing authorities, the public release of such proprietary and confidential information could lead to competitive harm.'' [20] American Wind also argues that if a seller's control of potential new generation sites were alleged to create a new barrier to entry, the Commission, either pursuant to a complaint filed by a third party or a Commission-initiated investigation, would have ample authority to take action and challenge the rebuttable presumption that ownership or control over sites for new generation development does not create a barrier to entry.[21]

14. American Wind therefore requests that the Commission grant rehearing of the term ''sites for new generation capacity development'' so as to only require reporting for sites for new

[9] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* 126 FERC ¶ 61,072 (2009) (Order Granting Extension of Time to Comply).

[10] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at Appendix C.

[11] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

[12] *Id.*

[13] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 176 (emphasis in original).

[14] *Id.*

[15] Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 at P 38.

[16] American Wind January 21, 2009 Rehearing Request at 5.

[17] *Id.* at 5–6.

[18] *Id.* at 6–7.

[19] *Id.* at 7.

[20] *Id.*

[21] *Id.* at 8.

generation capacity development that are located in load pockets where a ''potential'' for vertical market power may exist. American Wind argues that for the purposes of this reporting requirement, the Commission could define load pockets as submarkets where the Commission has determined that internal transmission constraints make the market smaller than the balancing authority area, RTO/ISO footprint or RTO/ISO submarket.[22]

15. If the Commission declines to grant its request to only require reporting for sites for new generation development that are located in load pockets where a ''potential'' for vertical market power may exist, American Wind requests clarification that the Commission will only require reporting for sites for new generation capacity development when ''site control'' is first required to be demonstrated in the interconnection process.[23] American Wind claims that sites that have not yet been required to demonstrate site control in the interconnection process would not likely be used to enhance a seller's vertical market power, and accordingly, there is no need for the Commission to be notified of such sites prior to when ''site control'' is required to be demonstrated. American Wind argues that using this milestone as the triggering point for when a seller must notify the Commission of sites for new generation capacity development ''would better align the reporting requirement with the underlying vertical market power concerns that are at the heart of the requirement'' and ''would strike a better balance between the Commission's regulatory concerns and the compliance burden on and competitive risks to market-based rate sellers.'' [24]

Commission Determination

16. We will deny American Wind's request for rehearing of the definition of ''inputs to electric power production'' so that it requires only reporting for sites for new generation capacity development that are located in load pockets where a ''potential'' for vertical market power may exist. Such a revision to the requirement is too narrowly focused and therefore would not allow the Commission to timely monitor for potential barriers to entry or affiliate abuse involving generation sites. Since load pockets typically exist in areas (*e.g.*, population centers) that are not well-suited for the development of renewable generation sources (*e.g.*, large wind farms requiring thousands of acres of land),[25] limiting the reporting of sites for new generation development to just load pockets would mean that the Commission would not be informed of most instances where land was being acquired for the development of new renewable generation capacity.

17. With respect to American Wind's alternative request that the Commission only require reporting for sites for new generation capacity development when site control is first required to be demonstrated in the interconnection process, we believe this approach has merit, as modified below. Modifications are necessary because it is not clear that American Wind's request would address both its concerns about the disclosure of commercially sensitive information and the Commission's regulatory concerns regarding a seller's ability to erect barriers to entry through its acquisition of sites for new generation capacity development. First, the information provided in an interconnection request, including the demonstration of site control, is not required to be public.[26] Second, transmission providers post the location of interconnection requests on OASIS by county and State, but do not post the identity of the interconnection customer when the interconnection request is made ''because disclosing the identity at that early stage may put the Interconnection Customer at a competitive disadvantage and its project at risk.'' [27] Thus, the American Wind alternative approach would require the seller to report information that in the interconnection process may be considered non-public and proprietary. While American Wind's concerns about the disclosure of commercially sensitive information could be addressed by allowing sellers to file site information with the Commission confidentially, we do not believe that it is appropriate to routinely permit change in status reports to be filed at the Commission as non-public documents. One of the purposes of the change of status reporting requirement is to provide interested parties the opportunity to intervene and comment if they believe the seller's acquisition of sites for new generation capacity development creates a barrier to entry, which could be undermined if such reports were routinely filed with confidential information redacted.[28]

18. Accordingly, in order to address our regulatory concerns and the concerns of American Wind, we grant rehearing and revise section 35.42 of our regulations to require, for all entities with market-based rate authorization, quarterly reporting of a seller's acquisition of a site or sites for new generation capacity development for which site control has been demonstrated in the interconnection process and for which the potential number of megawatts that are reasonably commercially feasible on the site or sites for new generation capacity development is equal to 100 megawatts or more. For the purposes of this reporting requirement, we will use the definition of ''site control'' that is provided in section 1 of the Standard Large Generator Interconnection Procedures (LGIP).[29] To the extent that a seller elects to make a monetary deposit so that it may demonstrate site control at a later time in the interconnection process,[30] such deposit will trigger this quarterly reporting requirement instead of the demonstration of site control if the

[22] *Id.* at 9.

[23] *Id.* at 11.

[24] *Id.*

[25] *See id.* at 6 (stating that ''in developing a 100 MW project using 1.5 MW wind turbines (approximately 65 turbines), a developer may seek to initially have under control 10,000 acres of land.'').

[26] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 270 (2003), *order on reh'g,* Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g,* Order No. 2003–B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g,* Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC,* 475 F.3d 1277 (D.C. Cir. 2007).

[27] *Id.* P 114.

[28] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446; 1018 (explaining that the Commission will allow intervenors to rebut the presumption that a seller's ownership of, control of or affiliation with entities that own or control inputs to electric power production do not allow a seller to raise entry barriers).

[29] Section 1 of the LGIP adopted in Order No. 2003 defines ''site control'' as ''documentation reasonably demonstrating: (1) Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Interconnection Customer and the entity having the right to sell, lease or grant Interconnection Customer the right to possess or occupy a site for such purpose.'' Order No. 2003, FERC Stats. & Regs. ¶ 31,146, LGIP § 1. The same requirements apply to small generators and wind generating facilities. *See* Order No. 2006, FERC Stats. & Regs. ¶ 31,180, Small Generator Interconnection Procedures § 1.5; *Interconnection for Wind Energy,* Order No. 661, FERC Stats. & Regs. ¶ 31,186, *order on reh'g,* Order No. 661–A, FERC Stats. & Regs. ¶ 31,198 (2005).

[30] *See* LGIP § 3.3.1 (stating that ''[t]o initiate an Interconnection Request, Interconnection Customer must submit all of the following: (i) a $10,000 deposit, (ii) a completed application in the form of Appendix 1, and (iii) demonstration of Site Control or a posting of an additional deposit of $10,000. Such deposits shall be applied toward any Interconnection Studies pursuant to the Interconnection Request. If Interconnection Customer demonstrates Site Control within the cure period specified in Section 3.3.3 after submitting its Interconnection Request, the additional deposit shall be refundable; otherwise, all such deposit(s), additional and initial, become non-refundable.'').

potential number of megawatts that are reasonably commercially feasible on the site or sites for new generation capacity development is equal to 100 megawatts or more.[31] All market-based rate sellers will be required to report the acquisition of control of sites for new generation capacity development on a quarterly basis instead of within 30 days of the acquisition.[32] Such quarterly filings must be submitted within 30 days after the end of each quarter, *e.g.*, by April 30 for the first quarter. Thus, the time period in which sellers are required to report the acquisition of control of sites for new generation capacity development is being extended, which will ease some of the administrative burden about which American Wind has raised concerns. For all changes in status other than the acquisition of control of sites for new generation capacity development, all sellers will still be required to file a change in status report no later than 30 days after the change in status occurs.[33]

19. The quarterly reports that entities will be submitting to report the acquisition of control of a site or sites for new generation capacity development must include: (a) The number of sites acquired; (b) the relevant geographic market in which the sites are located; [34] and (c) the maximum potential number of megawatts that are reasonably commercially feasible on the sites reported, which must be justified.[35] The information regarding the maximum potential number of megawatts for the sites may be reported on an aggregate basis for each relevant geographic market(s) in which the site(s) are located, *i.e.*, without providing the specific location of particular sites. Sellers must provide a justification for the number of megawatts that they estimate could be developed on the site or sites. Such justification must be based on the maximum potential number of megawatts that could be produced on the site with the technology for which the site was acquired. Sellers must be forthright in estimating and reporting the maximum potential number of megawatts that are reasonably commercially feasible on the site or sites for new generation capacity development. The Commission will use all of this reported information to identify sellers that may be erecting barriers to entry. We will revise section 35.42 of our regulations to reflect this site acquisition change to the change in status reporting requirement.

20. Separate and apart from the above reporting requirement, and in order to address our concern that Sellers may acquire land that is not used for the development of new generation capacity, and that is instead acquired for the purpose of preventing new generation capacity from being developed on that land, a Seller must also report any land it has acquired, taken a leasehold interest in, obtained an option to purchase or lease, or entered into an exclusivity or other arrangement to acquire for the purpose of developing a generation site and for which site control has not yet been demonstrated (as discussed above) during the prior three years (triggering event), and for which the potential number of megawatts that are reasonably commercially feasible on the land for new generation capacity development is equal to 100 megawatts or more. A Seller must report each such triggering event in a single report by January 1 of the year following the calendar year in which the triggering event occurred. Thus, for example, if a Seller acquires land for new generation capacity development in January 2009, and additional land in March 2009 and it has not demonstrated site control for generation projects on that land (as described above) as of January and March 2012, respectively, then such Seller must file a change in status report notifying the Commission of both acquisitions by January 1, 2013. The information that must be provided and the aggregation of the maximum potential number of megawatts by relevant geographic market is the same as required in the quarterly reports, as described above. We will revise section 35.42 of our regulations to reflect this additional change to the change in status reporting requirement.

21. Finally, for acquired, leased or optioned land lacking site control that have already been held for three years or more prior to the effective date of this order, a Seller must report the required information by January 1, 2010, unless this information has been previously provided to the Commission.

22. We believe that our revision to this requirement strikes a balance by addressing American Wind's concern regarding the burden of the existing requirement and its concern that commercially sensitive information about sites for wind generation development will be made public, and by also providing the Commission with the information necessary to evaluate a seller's ability to erect barriers to entry. In particular, permitting the information on sites for new generation capacity development to be provided on an aggregate basis for each relevant geographic market reduces any potential competitive harm that could result from reporting the location of the sites (since reporting will be on an aggregate basis), and also enables the Commission, which evaluates vertical market power by examining the relevant geographic market in which a seller is located, to obtain the information it needs to evaluate a seller's ability to exercise market power in a particular relevant geographic market. Requiring quarterly (and yearly, as necessary) reporting of sites acquired for new generation capacity development also reduces the administrative burden on sellers, which previously were required to report the acquisition of sites within 30 days of the acquisition. In addition, requiring reporting on a quarterly basis (and yearly, as necessary) will likely reduce any potential competitive harm that could result from the disclosure of the nominal information regarding the location of the site or sites for new generation capacity development. Further, in their applications for market-based rate authority and their updated market power analyses, sellers are obligated to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into

[31] We note that if a term other than ''site control'' is used to describe the specific means by which site control is demonstrated in the interconnection process, then the reporting requirement will be triggered when a demonstration of site control is made under that term. For example, ''site exclusivity'' is considered as the specific means by which site control is determined in the California Independent System Operator's (CAISO's) Generator Interconnection Process Reform tariff amendment. *See California Independent System Operator Corp.,* 124 FERC ¶ 61,292, at P 40–41, 63 (2008). Therefore, the demonstration of ''site exclusivity'' in the interconnection process set forth in the CAISO's Generator Interconnection Process Reform tariff amendment will trigger the quarterly requirement to report a seller's acquisition of control of a site or sites for new generation capacity development.

[32] In this context, ''control'' refers to ''site control'' as it is defined in the LGIP, or as explained in footnote 31.

[33] A change in status includes, but is not limited to, the following: Ownership or control of generation capacity that results in net increases of 100 MW or more, or of inputs to electric power production, or ownership, operation or control of transmission facilities, or affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation facilities or inputs to electric power production or that owns, operates or controls transmission facilities, or affiliation with any entity that has a franchised service area. *See* 18 CFR 35.42.

[34] The relevant geographic markets include those defined in Order No. 697 and those defined in subsequent Commission orders. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 231–32, 237.

[35] We note that if a site is later expanded to allow for additional generation capacity development and such expansion results in an increase of 100 megawatts or more, a seller will be required to file a notification of change in status to notify the Commission of such a change within 30 days after the end of that quarter.

the relevant market. This continuing obligation provides assurance to the Commission that a seller is not erecting barriers to entry.[36]

B. Mitigation

Protecting Mitigated Markets

Sales at the Metered Boundary

Background

23. In Order No. 697, the Commission stated that it would continue to apply mitigation to all sales in the balancing authority area in which a seller is found, or presumed, to have market power. However, the Commission said it would allow mitigated sellers to make market-based rate sales at the metered boundary between a balancing authority area in which a seller is found, or presumed, to have market power and a balancing authority area in which the seller has market-based rate authority, under certain circumstances.[37] The Commission also adopted a requirement that mitigated sellers wishing to make market-based rate sales at the metered boundary between a balancing authority area in which the seller was found, or presumed, to have market power and a balancing authority area in which the seller has market-based rate authority maintain sufficient documentation and use a specific tariff provision for such sales.[38]

24. On rehearing in Order No. 697–A, the Commission revised the tariff language governing market-based rate sales at the metered boundary to conform with the discussion in the December 14 Clarification Order regarding use of the term ''mitigated market.'' The Commission stated that, as explained in the December 14 Clarification Order, ''balancing authority area in which a seller is found, or presumed, to have market power'' is a more accurate way to describe the area in which a seller is mitigated.[39]

25. In addition, after considering comments regarding the difficulty of determining and documenting intent, the Commission decided in Order No. 697–A to eliminate the intent element of the tariff provision, which stated that ''any power sold hereunder is not intended to serve load in the seller's mitigated market.'' Because the Commission eliminated the seller's intent requirement, it modified the tariff provision to require that ''the mitigated seller and its affiliates do not sell the same power back into the balancing authority area where the seller is mitigated.'' [40] In this regard, the Commission noted that ''[t]o provide additional regulatory certainty for mitigated sellers, the Commission clarified that once the power has been sold at the metered boundary at market-based rates, the mitigated seller and its affiliates may not sell that same power back into the mitigated balancing authority area, whether at cost-based or market-based rates.'' [41] The Commission also stated that because it was eliminating the intent requirement, it need not address issues raised regarding documentation necessary to demonstrate the mitigated seller's intent.

26. Further, in response to a request for clarification submitted by the Pinnacle West Companies (Pinnacle), the Commission also clarified in Order No. 697–A that mitigated sellers and their affiliates are prohibited from selling power at market-based rates in the balancing authority area in which a seller is found, or presumed, to have market power.[42] Accordingly, the Commission clarified that an affiliate of a mitigated seller is prohibited from selling power that was purchased at a market-based rate at the metered boundary back into the balancing authority area in which the seller has been found, or presumed, to have market power. The Commission stated that to the extent that the mitigated seller or its affiliates believe that it is not practical to track such power, they can either choose to make no market-based rate sales at the metered boundary or limit such sales to sales to end users of the power, thereby eliminating the danger that they will violate their tariff by re-selling the power back into a balancing authority in which they are mitigated.[43]

27. In Order No. 697–B, in response to the rehearing request of E.ON U.S. LLC (E.ON), the Commission explained that it appreciated concerns regarding the difficulty of defining the term ''same power.'' For this reason, the Commission revised the tariff provision for market-based rate sales at the metered boundary, which included revising the provision stating that the ''Seller and its affiliates do not sell the same power back into the balancing authority area where the seller is mitigated,'' to state that ''if the Seller wants to sell at the metered boundary of a mitigated balancing authority area at market-based rates, then neither it nor its affiliates can sell into that mitigated balancing authority area from the outside.'' The Commission noted that this revised tariff language will prevent a mitigated seller making market-based rate sales at the metered boundary from selling power into the mitigated market through its affiliates. It also explained that sellers may choose to make no market-based rate sales at the metered boundary, or to limit such sales to end users of the power, thereby eliminating the danger they will violate their tariff by re-selling power back into a balancing authority in which they are mitigated.[44]

Requests for Rehearing

28. On rehearing of Order No. 697–B, E.ON again takes issue with the mitigated sales tariff provision, arguing that the Commission erred in revising the mitigated sales tariff provision in Order No. 697–B. E.ON contends that the revised tariff provision is overbroad and prohibits legitimate transactions. It argues that the tariff provision should be revised to state that ''(ii) if the Seller *sells* at the metered boundary of a mitigated balancing authority area at market-based rates, then neither it nor its affiliates can sell into that mitigated balancing authority area from the outside *at the same border for delivery at the same time except pursuant to long-term (one-year or longer) agreements or as a result of changed circumstances.*'' [45] E.ON argues that, as revised in Order No. 697–B, the tariff provision governing mitigated sales does not expressly state that a border sale need actually occur. E.ON suggests that the Commission should change the words ''wants to sell'' to ''sells'' to eliminate any risk of misinterpretation. In support of its proposal, E.ON argues that the mitigated sales tariff provision should contain a ''temporal limitation'' so that it cannot be read to prohibit a mitigated seller or its affiliates from ever selling from the outside into the mitigated balancing authority area. E.ON believes that the Commission intended only to stop the ''looping'' of power in a manner that circumvents the mitigation imposed on an entity.[46]

29. E.ON also argues that the mitigated sales tariff provision should contain an exemption for retail or

[36] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

[37] *Id.* P 817 (citing North American Electric Reliability Corporation, *Glossary of Terms Used in Reliability Standards* at 2 (2007), available at *ftp://www.nerc.com/pub/sys/all_updl/standards/rs/Glossary_02May07.pdf*)).

[38] *Id.* P 830.

[39] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 333.

[40] *Id.* P 334.

[41] *Id.* n.464.

[42] *Id.* P 335.

[43] *Id.* P 336.

[44] Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 at P 77 (citing Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 336).

[45] E.ON January 21, 2009 Rehearing Request at 3, 5.

[46] *Id.* at 8.

wholesale cost-based requirements contracts into the mitigated balancing authority area from the outside so that long-term purchases from outside a mitigated market used to serve retail or cost-based wholesale requirements customers do not restrict the ability of a mitigated seller from making a spot ''outbound'' border sale. According to E.ON, failure to modify the condition in this manner would severely restrict the ability of its public utility subsidiaries Louisville Gas and Electric Company and Kentucky Utilities Company to make truly ''outbound'' off-system sales at the border of their control area, leading to higher prices.[47] E.ON also proposes adding language to the condition so as to carve out long-term agreements of one-year or more in duration that provide for the sale of power into the mitigated market from the outside. E.ON contends that as revised in Order No. 697–B, the mitigated sales tariff provision could prohibit transactions necessitated by reserve sharing agreements or changed operational circumstances, and could have a chilling effect on forward contracting by forcing mitigated sellers to only transact in real time because of their concerns that they may guess wrong and need to buy power at the last minute if they are short, or sell power at the last minute if called upon under a reserve sharing agreement.[48] In addition, E.ON asserts that the revised mitigated sales tariff provision could prohibit opportunity purchases by utilities that seek to reduce the costs of serving load.[49]

30. Pinnacle, too, seeks further revision to the mitigated sales tariff provision and argues that the Commission erred in linking all market-based rate sales made at the metered boundary to all incoming sales into a mitigated balancing authority area. Pinnacle requests that the Commission clarify that making a border sale does not prohibit all future sales of a mitigated seller or its affiliates from entering the mitigated balancing authority area. It states that, at a minimum, the Commission should clarify that it does not intend for the revised provision to capture cost-based sales into or out of a mitigated balancing authority area.[50] Pinnacle states that if the revised provision is interpreted to prohibit any subsequent sales of a mitigated seller or its affiliates from entering the mitigated balancing authority area, this would completely preclude the mitigated seller from selling into the mitigated balancing authority area. Such a result, Pinnacle contends, could endanger the stability of the Phoenix Valley Load Pocket in the event of an emergency,[51] and could result in Pinnacle violating its must-offer requirements. Specifically, Pinnacle states that if it is not permitted to make sales into the mitigated balancing authority area, or is effectively prohibited from making sales at border points, its posting of available capacity will be less effective for the Southwest in that Pinnacle would have to withhold available generation due to its inability to make sales in certain areas.[52]

31. MidAmerican Energy Company (MidAmerican) and American Electric Power Service Corporation (AEP) also seek rehearing of the mitigated sales tariff provision as revised in Order No. 697–B. These petitioners argue that the Commission erred in adopting an overly broad mitigation provision that could restrict legitimate transactions. They contend that under the tariff provision adopted in Order No. 697–B, mitigated utilities are presented with three alternatives, each of which ''unnecessarily and unfairly'' disadvantages their customers: (i) Decline to make market-based rate sales and thereby forego revenues used to reduce system costs; (ii) decline to import power from ''the outside'' and thereby forego least-cost resources that could be used to reliably serve load and make sales within the mitigated market; or (iii) make sales to customers within the mitigated market at prices that may not recover incremental costs, thereby unfairly subsidizing those transactions.[53] MidAmerican and AEP therefore assert that the Commission should rescind Order No. 697–B's revision and revert to the mitigated sales tariff provision adopted in Order No. 697. According to these petitioners, the tariff provision adopted in Order No. 697 captures transactions purposefully structured to evade mitigation while permitting utilities to continue to engage in legitimate transactions from the ''outside,'' even when energy scheduled under those transactions subsequently is reflected in the price for opportunity sales made within the balancing authority area.[54]

32. MidAmerican and AEP argue that if the Commission declines to grant rehearing, it should clarify that the mitigated sales tariff provision applies only to short-term purchases made from the ''outside'' by the mitigated seller and not to deliveries scheduled from the mitigated seller's own generation originating ''outside'' the mitigated balancing authority area or from long-term capacity contracts entered into to meet load requirements. These petitioners contend that these arrangements ''do not involve the Commission's ricochet concern and should not be swept within the Order No. 697–B mitigation provision.'' [55]

33. Xcel Energy Services Inc. (Xcel) requests clarification that the prohibition on sales into the mitigated balancing authority area does not prevent a mitigated seller from engaging in a purchase of economy power from outside the mitigated balancing authority area in order to lower costs for serving native load. It argues that mitigated sellers that make sales of power at border locations may have opportunities to enter into legitimate economy purchases outside the balancing authority area that would serve to lower overall generation costs to their native load customers. Xcel contends that one mitigation option is to ''track the power from a border sale with the possibility of retroactive re-pricing.'' [56]

34. Xcel requests clarification that mitigated sellers are only prohibited from making sales into a mitigated balancing authority area if the seller is simultaneously engaged in a sale at the metered boundary.[57] In support of this request, Xcel argues that during periods when the seller is not making sales at the border of its mitigated balancing authority area, there would be no way for the seller or its affiliates to benefit from their market power in the mitigated balancing authority area through a sale that originates outside of that mitigated balancing authority area.[58] Xcel therefore asks for clarification that it is permitted to enter into a sale at a delivery point located outside of the mitigated balancing authority area to a counterparty within the balancing authority area.

35. The Edison Electric Institute (EEI) likewise seeks rehearing of the mitigated sales tariff provision as set forth in Order No. 697–B.[59] EEI contends that

[47] *Id.* at 10.

[48] *Id.* at 12.

[49] *Id.* at 13.

[50] Pinnacle January 21, 2009 Rehearing Request at 5.

[51] *Id.* at 3–4.

[52] *Id.* at 4.

[53] MidAmerican January 21, 2009 Rehearing Request at 6.

[54] *Id.* at 7–8.

[55] *Id.* at 8.

[56] Xcel January 21, 2009 Request for Clarification at 7.

[57] *Id.* at 5.

[58] *Id.* at 8.

[59] We note that EEI's request for rehearing of the mitigated sales tariff provision is out-of-time insofar as EEI did not raise issues concerning mitigated sales at the metered boundary on rehearing of Order

the revised provision will unnecessarily constrain sales by mitigated sellers and their affiliates to the detriment of customers in all markets. EEI argues that as revised in Order No. 697–B, the mitigated sales tariff provision could be interpreted to prohibit all sales by mitigated sellers and their affiliates into a mitigated market from the outside if the sellers opt to engage in one or more metered boundary sales. EEI asserts that this interpretation would completely exclude all sales into the mitigated balancing authority area by a mitigated seller and its affiliates, removing these sellers from the marketplace and exacerbating any potential imbalance of market power in the mitigated balancing authority area.[60] EEI contends that the revised tariff language could be interpreted to violate certain must-offer and load-following requirements.

36. EEI argues that the Commission should return to the intent-based concept adopted in Order No. 697, while also identifying five types of transactions that would be permitted without first needing to demonstrate intent even if a mitigated seller does engage in market-based rate sales at the metered boundary.[61] EEI asserts that the following five types of transactions should be permitted without first needing to demonstrate intent, even if a mitigated seller does engage in market-based rate border sales: (1) Sales at ''liquid trading hubs'' or into ISO and RTO markets outside of the seller's mitigated market; (2) cost-based sales in which title transfers within the mitigated market (whether they are sourced and sunk in the mitigated market, are sourced ''into'' the mitigated market from the outside by the seller or its affiliates, or are wheeled ''out of'' the mitigated market by a purchaser); (3) sales to load-serving entities such as investor-owned utilities, municipalities, and cooperatives that serve retail load outside the mitigated market, even if those entities may at times need to sell power back into the mitigated market if their supply is too great (since the timing and occurrence of such excess-power sales back into the mitigated market will be beyond the control of the mitigated seller); (4) other types of transactions that are independent of the border sales, such as sales of blocks of power to be delivered at dates and times other than the border sale block of power, power made available under must-offer requirements, and load-following power; and (5) to bolster reliability, the Commission should clarify that the border sale constraints do not require a mitigated seller or its affiliates, which otherwise would be precluded from selling power into the mitigated area from the outside, to withhold making those sales during times at which the seller or affiliates are called on to act to maintain system reliability. EEI argues that at a minimum, the Commission should clarify that the border sales constraints will not prevent emergency sales, sales that are required to maintain reserve levels or to comply with system redispatch obligations, or sales that are otherwise authorized by the Commission either generically or case-by-case.[62]

37. EEI also includes an expedited motion for partial stay in its rehearing request in which it asks that the Commission stay the effectiveness of the border sales constraints set forth in Order Nos. 697, 697–A and 697–B until at least 30 days after the Commission has acted on the merits of EEI's request for rehearing.[63]

38. Separately, Tampa Electric submitted a motion for an extension of time to comply with the revised mitigated sales tariff provision set forth in Order No. 697–B. Tampa Electric requests that the Commission defer the effective date of the modified language governing mitigated sales at the metered boundary pending Commission action on requests for rehearing of Order No. 697–B on this issue.[64] Tampa Electric also states that it supports EEI's request for rehearing.

39. On January 27, 2009, the National Rural Electric Cooperative Association (NRECA) and the American Public Power Association (APPA) filed an answer in response to EEI's motion for partial stay. NRECA and APPA argue that EEI's motion for partial stay should be denied because EEI does not demonstrate that a stay is appropriate. They argue that EEI does not specify any irreparable injury that EEI or its member companies will suffer absent a stay, does not address whether the requested stay would substantially harm other parties, and does not show that the stay is in the public interest. They point out that EEI's request for rehearing is the third time in this proceeding that sellers have requested the Commission to modify the restrictions on market-based sale at the metered boundaries of mitigated balancing authority areas.[65] NRECA and APPA also argue that ending all restrictions on market based rate sales at the metered boundary of balancing authority areas in which a seller is mitigated, even temporarily, would harm wholesale markets and customers.[66]

Commission Determination

Procedural Issues

40. We find that EEI does not provide the required justification for a stay of the mitigated sales tariff provision. Under section 705 of the Administrative Procedure Act (APA), the Commission may stay its action when it finds that ''justice so requires.''[67] In addressing motions for stay, the Commission considers: (1) Whether the moving party will suffer irreparable injury without a stay; (2) whether issuing a stay will substantially harm other parties; and (3) whether a stay is in the public interest.[68] The Commission's general policy is to refrain from granting a stay of its orders, to assure definiteness and finality in Commission proceedings.[69] The key element in the inquiry is irreparable injury to the moving party.[70] If a party is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.[71] However, the Commission may examine the other factors where appropriate.[72]

41. EEI's request for stay does not address whether it will suffer irreparable injury without a stay of the mitigated sales tariff provision, and also does not address whether issuing a stay

Nos. 697 and 697–A and appears to be an attempt to re-litigate the determinations made by the Commission in those orders.

[60] EEI January 22, 2009 Corrected Rehearing Request at 5–6.

[61] *Id.* at 3.

[62] *Id.* at 8–9.

[63] *Id.* at 9.

[64] In its request for an extension of time to comply with the revised mitigated sales tariff provision, Tampa Electric states that it supports EEI's request for rehearing. On January 28, 2009, the Commission issued an order granting Tampa Electric's request for an extension of time to comply with the tariff provision on mitigated sales at the metered boundary as revised in Order No. 697–B until such time as the Commission issues an order on rehearing of Order No. 697–B. Order Granting Extension of Time to Comply, 126 FERC ¶ 61,072; *see supra* P 6.

[65] NRECA and APPA January 27, 2009 Answer at 1–2.

[66] *Id.* at 3–4.

[67] 5 U.S.C. 705 (2006).

[68] *Pinnacle West Capital Corp.,* 115 FERC ¶ 61,064, at P 8 (2006) (citing *CMS Midland, Inc., Midland Cogeneration Venture Limited Partnership,* 56 FERC ¶ 61,177, at 61,361 (1991), *aff'd sub nom. Michigan Municipal Cooperative Group* v. *FERC,* 990 F.2d 1377 (D.C. Cir. 1993), *cert. denied,* 510 U.S. 990 (1993)).

[69] *Id.*

[70] *Id.*

[71] *CMS Midland, Inc., Midland Cogeneration Venture Limited Partnership,* Midland Cogeneration Venture Limited Partnership, 56 FERC ¶ 61,177, at 61,631 (1991) (footnote omitted).

[72] *Pinnacle West Capital Corp.,* 115 FERC ¶ 61,064, at P 8 (2006) (citing *The Montana Power Company, Confederated Salish and Kootenai Tribes of the Flathead Reservation,* 85 FERC ¶ 61,400, at 62,535 (1998)).

will substantially harm other parties or whether a stay is in the public interest. Rather, EEI's request for stay consists only of the following statement: ''[g]iven the serious, negative potential effects of the border sales related constraints set out in Orders No. 697, 697–A, and 697–B on market participants and customers in mitigated and non-mitigated markets, EEI requests that the Commission stay the effectiveness of those constraints until at least 30 days after the Commission has acted on the merits of EEI's request for rehearing.'' [73] This claim is too broad and speculative to justify the granting of injunctive relief.[74] We also note that EEI did not raise issues concerning mitigated sales at the metered boundary on rehearing of Order Nos. 697 and 697–A. Because EEI fails to provide the required justification for a stay of the mitigated sales tariff provision, EEI's motion for a partial stay is denied.[75]

Substantive Issues

42. We deny the requests for rehearing concerning the mitigated sales tariff provision. However, we agree with E.ON that the tariff provision should be revised to state ''if the Seller sells'' instead of ''if the Seller wants to sell * * *.'' We clarify that it is not the seller's intent, but rather the seller's action that triggers the limitation set forth in the mitigated sales tariff provision. We affirm our determination to revise the mitigated sales tariff provision in Order No. 697–B in order to ensure that a mitigated seller making market-based rate sales at the metered boundary does not sell power into the mitigated market either directly or through its affiliates. Thus, we will revise the mitigated sales tariff provision to provide that ''if the Seller sells at the metered boundary of a mitigated balancing authority area at market-based rates, then neither it nor its affiliates can sell into that mitigated balancing authority area from the outside.'' [76] Petitioners' arguments on rehearing of Order No. 697–A indicated that they cannot guarantee that sales at the metered boundary ultimately serve load in a competitive market beyond the balancing authority area where the seller is mitigated.[77] As explained in Order No. 697, ''[a]llowing market-based rate sales by a seller that has been found to have market power, or has so conceded, in the very market in which market power is a concern is inconsistent with the Commission's responsibility under the FPA to ensure that rates are just and reasonable and not unduly discriminatory.'' [78] Accordingly, mitigated sellers and their affiliates are prohibited from selling power at market-based rates in the balancing authority area in which the seller is found, or presumed, to have market power.[79] Thus, we affirm the Commission's determination to revise the mitigated sales tariff provision in Order No. 697–B in order to ensure that a mitigated seller making market-based rate sales at the metered boundary does not sell power into the mitigated market either directly or through its affiliates. We also reiterate that mitigated sellers may choose to make no market-based rates sales at the metered boundary, or to limit such sales to end users, thereby eliminating the risk that they will re-sell power back to the balancing authority area where they are mitigated.[80]

43. With respect to petitioners' arguments that the mitigated sales tariff provision adopted in Order No. 697–B interferes with must-offer and reliability requirements, reserve sharing agreements, and cost-based requirement contracts, we note that if a mitigated seller does not make market-based rate sales at the border, either that mitigated seller or its affiliates may make sales at cost-based rates into the balancing authority area in which it is mitigated. A mitigated seller can perform each of the above-enumerated functions either by selling at cost-based rates within its restricted balancing authority area, selling at cost-based rates at the metered boundary of its restricted balancing authority area, or by selling at market-based rates at the metered boundary as long as it makes sure that title to the power sold transfers at or beyond the metered boundary. Moreover, we note that our restrictions on sales at the border only apply to new agreements that the seller enters into prospective from the date that Order No. 697–B became effective. No existing agreements are upset or need to be revised in any way provided that the seller abides by our restrictions on any new agreements that it enters into prospectively. Of the rehearing requests that have been filed in this proceeding on this issue, none have identified in this rehearing why it is burdensome or unreasonably costly for sellers to enter into new power sales agreements where title transfers at or beyond the metered boundary between the mitigated and non-mitigated balancing authority areas.[81] Given that many petitioners have acknowledged that the approaches in Order No. 697 and 697–A would be extremely difficult to enforce because even the sellers themselves cannot guarantee that power sold on the seller's side of the metered boundary will not somehow find its way back into the restricted market, we do not believe it is appropriate to return to a rule that is difficult not only for sellers to comply with but also for the Commission to enforce. Such an impracticable rule will not enable the Commission to ensure that market power is not being exercised in the restricted market.

44. With respect to petitioners' requests that the Commission return to the intent-based concept first used in Order No. 697, we note that in Order

[73] EEI January 21, 2009 Rehearing Request at 9.

[74] In *Wisconsin Gas* v. *FERC,* 758 F.2d 669, 674 (D.C. Cir. 1985) the court stated that, to meet the irreparable injury test for granting a stay:

''First, the injury must be both certain and great; it must be actual and not theoretical. Injunctive relief ''will not be granted against something merely feared as liable to occur at some indefinite time,'' *Connecticut* v. *Massachusetts,* 282 U.S. 660, 674, 75 L. Ed. 602, 51 S. Ct. 286 (1931); the party seeking injunctive relief must show that ''the injury complained of [is] of such imminence that there is a 'clear and present' need for equitable relief to prevent irreparable harm.'' *Ashland Oil, Inc.* v. *FTC,* 409 F. Supp. 297, 307 (D.D.C.), *aff'd,* 179 U.S. App. D.C. 22, 548 F.2d 977 (D.C. Cir. 1976) (citations and internal quotations omitted).''

[75] In granting Tampa Electric's request for extension of time to comply with the tariff provision on mitigated sales at the metered boundary as revised in Order No. 697–B, the Commission clarified that affected entities must continue to comply with the mitigated sales tariff provision adopted in Order No. 697–A until such time as the Commission acts on the requests for rehearing of Order No. 697–B. Order Granting Extension of Time to Comply, 126 FERC ¶ 61,072.

[76] Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 at Appendix C.

[77] *Id.* P 66–67, 69; E.ON May 21, 2008 Rehearing Request at 12–14, Pinnacle May 21, 2008 Rehearing Request at 4–6.

[78] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 819. The Commission also stated ''While we generally agree that it is desirable to allow market-based rate sales into markets where the seller has not been found to have market power, we do not agree that it is reasonable to allow a mitigated seller to make market-based rate sales anywhere within a mitigated market. It is unrealistic to believe that sales made anywhere in a balancing authority area can be traced to ensure that no improper sales are taking place. Such an approach would also place customers and competitors at an unreasonable disadvantage because the mitigated seller has dominance in the very market in which it is making market-based rate sales.'' *Id.; see also Westar Energy, Inc.* v. *FERC,* No. 08–1196, slip op. at 5 (D.C. Cir. June 12, 2009) (stating that in Order No. 697 the Commission concluded that ''it 'is unrealistic to believe that' such sales 'can be traced to ensure that no improper sales are taking place.' '') (citation omitted); Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 321.

[79] *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 335.

[80] *Id.* P 336.

[81] As the Court of Appeals for the District of Columbia Circuit recently confirmed, ''a wholesaler * * * can easily comply with the [Commission] rule and still make sales into other regions at market-based rates. A wholesaler simply needs to ensure that title passes at or beyond the metered boundary between the mitigated and non-mitigated areas, instead of inside a mitigated area.'' *Westar Energy, Inc.* v. *FERC,* No. 08–1196, slip op. at 5 (D.C. Cir. June 12, 2009) (citation omitted).

No. 697–A, the Commission revised the mitigated sales tariff provision to remove the intent element in response to petitioners' requests, including Pinnacle, who questioned how the Commission could ensure that a mitigated seller knows what an unaffiliated buyer intends to do with power, and complained that it is difficult and administratively burdensome to determine and document intent.[82] In Order No. 697–A, the Commission agreed with petitioners that it would be difficult to determine and document intent, and therefore decided to eliminate the intent element of the tariff provision. On rehearing of Order No. 697–B, petitioners have not provided any new arguments that persuade us that returning to the intent-based concept first used in Order No. 697 will not present the same problems regarding the ability to determine and document intent.

45. In addition, the mitigated sales tariff provision in Appendix C of Order Nos. 697–A and 697–B inadvertently omitted language that was included in the provision adopted in Order No. 697. Accordingly, we will revise the tariff provision for market-based rate sales at the metered boundary as follows (bold font indicates new text):

Sales of energy and capacity are permissible under this tariff in all balancing authority areas where the Seller has been granted market-based rate authority. Sales of energy and capacity under this tariff are also permissible at the metered boundary between the Seller's mitigated balancing authority area and a balancing authority area where the Seller has been granted market-based rate authority provided: (i) Legal title of the power sold transfers at the metered boundary of the balancing authority area **where the seller has market-based rate authority**; and (ii) if the Seller sells at the metered boundary of a mitigated balancing authority area at market-based rates, then neither it nor its affiliates can sell into that mitigated balancing authority area from the outside. Seller must retain, for a period of five years from the date of the sale, all data and information related to the sale that demonstrates compliance with items (i) and (ii) above.

46. Sellers that have already adopted the tariff language prescribed in Order No. 697–B are directed to revise the provision in accordance with this order on the next occasion when they otherwise would be required to file revised tariff sheets with the Commission, a change in status filing, or triennial review.[83]

C. Implementation Process

Clarifications on Implementation Process

Background

47. In Order No. 697, to ensure greater consistency in the data used to evaluate Category 2 sellers, the Commission modified the timing for the submission of updated market power analyses. Order No. 697 requires analyses to be filed for each seller's region on a pre-determined schedule, rotating by geographic region where two regions are reviewed each year, with the cycle repeating every three years.[84] In Order No. 697–A, the Commission provided additional guidance regarding the implementation process. In particular, it explained that in the December 14 Clarification Order, it clarified that ''*transmission-owning* utilities with market-based rate authority and their affiliates with market-based rate authority are the entities required to file their updated market power analyses first in each region.'' [85] Accordingly, in Order No. 697–A, the Commission revised Appendix D to make clear that transmission owners and their affiliates have earlier filing periods than other entities required to file in each region.[86]

48. Upon further review of the Schedule for All Other Entities provided at Appendix D–2 to Order No. 697–A, it has come to our attention that the list of entities required to file updated market power analyses omits the 2010 filing dates for Southwest and Northwest non-transmission owning entities.[87] Accordingly, we will revise Appendix D to add the following:

Appendix D—2

SCHEDULE FOR ALL OTHER ENTITIES

Entities required to file	Filing period (anytime during the month)	Study period
Others in Southwest that did not file in December and have not been found to be Category 1 sellers.	June 2010	Dec. 1, 2009–Nov. 30, 2010.
Others in Northwest that did not file in June and have not been found to be Category 1 sellers.	December 2010	Dec. 1, 2009–Nov. 30, 2010.

IV. Information Collection Statement

49. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by an agency.[88] The Final Rule's revisions to the information collection requirements for market-based rate sellers were approved under OMB Control No. 1902–0234. While this order clarifies aspects of the existing information collection requirements for the market-based rate program, it does not add to these requirements. Accordingly, a copy of this order will be sent to OMB for informational purposes only.

V. Document Availability

50. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

51. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

52. User assistance is available for eLibrary and the FERC's Web site during

[82] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 334.

[83] The revised tariff language set forth in the paragraph above is effective as of the effective date of Order No. 697–A.

[84] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at Appendix D. The regions include the Northeast, Southeast, Central, Southwest Power Pool, Southwest, and Northwest.

[85] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 374 (citing December 14 Clarification Order, 121 FERC ¶ 61,260 at P 9) (emphasis in original).

[86] *Id.*

[87] These entities were included in the Regional Market Power Update Schedule provided in Appendix D to Order No. 697.

[88] 5 CFR 1320.11.

normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VI. Effective Date

53. Changes adopted in this order on rehearing will become effective July 29, 2009.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements by the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends part 35 Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 35.42 is revised to read as follows:

§ 35.42 Change in status reporting requirement.

(a) As a condition of obtaining and retaining market-based rate authority, a Seller must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, the following:

(1) Ownership or control of generation capacity that results in net increases of 100 MW or more, or of inputs to electric power production, or ownership, operation or control of transmission facilities, or

(2) Affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation facilities or inputs to electric power production, affiliation with any entity not disclosed in the application for market-based rate authority that owns, operates or controls transmission facilities, or affiliation with any entity that has a franchised service area.

(b) Any change in status subject to paragraph (a) of this section, other than a change in status submitted to report the acquisition of control of a site or sites for new generation capacity development, must be filed no later than 30 days after the change in status occurs. Power sales contracts with future delivery are reportable 30 days after the physical delivery has begun. Failure to timely file a change in status report constitutes a tariff violation.

(c) When submitting a change in status notification regarding a change that impacts the pertinent assets held by a Seller or its affiliates with market-based rate authorization, a Seller must include an appendix of assets in the form provided in Appendix B of this subpart.

(d) A Seller must report on a quarterly basis the acquisition of control of a site or sites for new generation capacity development for which site control has been demonstrated in the interconnection process and for which the potential number of megawatts that are reasonably commercially feasible on the site or sites for new generation capacity development is equal to 100 megawatts or more. If a Seller elects to make a monetary deposit so that it may demonstrate site control at a later time in the interconnection process, the monetary deposit will trigger the quarterly reporting requirement instead of the demonstration of site control. A notification of change in status that is submitted to report the acquisition of control of a site or sites for new generation capacity development must include:

(1) The number of sites acquired;

(2) The relevant geographic market in which the sites are located; and

(3) The maximum potential number of megawatts (MW) that are reasonably commercially feasible on the sites reported.

(e) A Seller must report to the Commission any land it has acquired, taken a leasehold interest in, obtained an option to purchase or lease, or entered into an exclusivity or other arrangement to acquire for new generation capacity development and for which site control has not yet been demonstrated during the prior three years (triggering event), and for which the potential number of megawatts that are reasonably commercially feasible on the land for new generation capacity development is equal to 100 megawatts or more. A Seller must report each such triggering event in a single report by January 1 of the year following the calendar year in which the triggering event occurred. The information that must be provided and the aggregation of the maximum potential number of megawatts by relevant geographic market is the same as required in the quarterly reports, as described in paragraph (d) of this section.

(f) For the purposes of paragraph (d) of this section, ''control'' shall mean ''site control'' as it is defined in the Standard Large Generator Interconnection Procedures (LGIP).

Note: The following appendix will not be published in the Code of Federal Regulations.

Appendix C to Order No. 697–C

* * * * *

Mitigated Sales

Sales of energy and capacity are permissible under this tariff in all balancing authority areas where the Seller has been granted market-based rate authority. Sales of energy and capacity under this tariff are also permissible at the metered boundary between the Seller's mitigated balancing authority area and a balancing authority area where the Seller has been granted market-based rate authority provided: (i) Legal title of the power sold transfers at the metered boundary of the balancing authority area where the seller has market-based rate authority; and (ii) if the Seller sells at the metered boundary of a mitigated balancing authority area at market-based rates, then neither it nor its affiliates can sell into that mitigated balancing authority area from the outside. Seller must retain, for a period of five years from the date of the sale, all data and information related to the sale that demonstrates compliance with items (i) and (ii) above.

* * * * *

Appendix D–2

SCHEDULE FOR ALL OTHER ENTITIES

Entities required to file	Filing period (anytime during the month)	Study period
All others in Northeast that did not file in December including all power marketers that sold in the Northeast.	June 2008	Dec. 1, 2005–Nov. 30, 2006.

SCHEDULE FOR ALL OTHER ENTITIES—Continued

Entities required to file	Filing period (anytime during the month)	Study period
All others in Southeast that did not file in June including all power marketers that sold in the Southeast and have not already been found to be Category 1 sellers.	December 2008	Dec. 1, 2005–Nov. 30, 2006.
All others in Central that did not file in December including all power marketers that sold in the Central and have not already been found to be Category 1 sellers.	June 2009	Dec. 1, 2006–Nov. 30, 2007.
All others in SPP that did not file in June including all power marketers that sold in SPP and have not already been found to be Category 1 sellers.	December 2009	Dec. 1, 2006–Nov. 30, 2007.
Others in Southwest that did not file in December and have not been found to be Category 1 sellers.	June 2010	Dec. 1, 2009–Nov. 30, 2010.
Others in Northwest that did not file in June and have not been found to be Category 1 sellers.	December 2010	Dec. 1, 2009–Nov. 30, 2010.
Others in Northeast that did not file in December and have not been found to be Category 1 sellers.	June 2011	Dec. 1, 2008–Nov. 30, 2009.
Others in Southeast that did not file in June and have not been found to be Category 1 sellers.	December 2011	Dec. 1, 2008–Nov. 30, 2009.
Others in Central that did not file in December and have not been found to be Category 1 sellers.	June 2012	Dec. 1, 2009–Nov. 30, 2010.
Others in SPP that did not file in June and have not been found to be Category 1 sellers.	December 2012	Dec. 1, 2009–Nov. 30, 2010.
Others in Southwest that did not file in December and have not been found to be Category 1 sellers.	June 2013	Dec. 1, 2010–Nov. 30, 2011.
Others in Northwest that did not file in June and have not been found to be Category 1 sellers.	December 2013	Dec. 1, 2010–Nov. 30, 2011.

[FR Doc. E9–14784 Filed 6–26–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 1

46 CFR Part 1

[USCG–2009–0314]

RIN 1625–ZA22

Establishment of Suspension and Revocation National Center of Expertise

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes non-substantive, technical changes to Titles 33 and 46 of the CFR to reflect the authorization and establishment of the Coast Guard Suspension and Revocation National Center of Expertise (S&R NCOE). The S&R NCOE is responsible for performing suspension and revocation functions regarding Merchant Mariner Credentials. Investigating Officers (IOs), both military and civilian employees, are assigned to the S&R NCOE for this purpose. These changes affect internal Coast Guard organization and functioning only and will have no substantive effect on mariners or other members of the public.

DATES: Effective on June 29, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket, are part of USCG–2009–0314 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–2009–0314 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 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 at S&R COE co-located with the National Maritime Center, 100 Forbes Drive, Martinsburg, WV between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Commander Scott Budka, Supervisor, S&R NCOE, U.S. Coast Guard, telephone 304–433–3744. If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone or 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this 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 is unnecessary. This rulemaking makes amendments to rules regarding agency organization and functioning. As such, comments are unnecessary because they would not change the Coast Guard's internal delegation of authority and duty regarding the Suspension and Revocation process or provide additional expertise regarding Coast Guard functioning.

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** because these changes affect internal Coast Guard organization and functioning only and will have no substantive effect on the public.

Background and Purpose

The Coast Guard published the Marine Safety Performance Plan for Fiscal Years 2009–2014 in November 2008. The plan is available at: *http://www.uscg.mil/hq/cg5/cg54/mspp.asp*. The plan announced the Coast Guard's intention to establish National Centers of Expertise to provide venues for professional development of Coast Guard personnel. One such National Center of Expertise is the Suspension and Revocation National Center of Expertise (S&R NCOE). The Coast Guard is charged by law to ensure that over 200,000 credentialed merchant mariners are competent and their conduct promotes marine safety, security and protection of the marine environment. *See* generally, 46 U.S.C. Part E. One of the mechanisms the Coast Guard utilizes to ensure the safe operation of the Maritime Transportation System (MTS) and protect the lives and safety of those at sea is our suspension and revocation (S&R) process regarding Merchant Mariner's Credentials (MMCs). *See* 46 U.S.C. Chapter 77. The Coast Guard recognizes that mariners spend a great deal of time and effort to receive and to maintain their MMCs, which provides them a livelihood. The significant implications that result from the suspension or revocation of an MMC demand that Coast Guard investigating officers (IOs) be properly trained and proficient in the S&R process and administrative hearing procedures. The creation of an S&R NCOE will help to improve the professionalism and proficiency of IOs involved in the S&R process and administrative hearing procedures, but will not change the S&R process or procedures. The S&R NCOE will initially operate as a detached duty office of the Coast Guard's Office of Quality Assurance and Traveling Inspections (CG–546), with future plans to operate under the Commander, Coast Guard Force Readiness Command (FORCECOM).

Discussion of the Rule

This rule amends Coast Guard regulations to incorporate the S&R NCOE into the S&R process. Specifically, changes to 33 CFR 1.01–20 and 46 CFR 1.01–15 update the authority of the Commanding Officer of the National Maritime Center to refer issues regarding MMCs to the S&R NCOE, in addition to the current process of referring such cases to the processing Regional Examination Center or the cognizant Officer in Charge, Marine Inspection (OCMI). This update broadens the team of Coast Guard personnel who may handle a S&R case, but will not affect the process or procedures for a mariner who is the subject of an S&R case.

This rule also updates the S&R process to reflect that the IOs at the S&R NCOE are authorized to initiate S&R proceedings by issuing complaints directly to mariners and handle all other aspects of S&R case processing. Current regulations authorize an OCMI, or an IO under the supervision of an OCMI, to initiate an S&R action. Under 46 CFR 5.15, IOs are Coast Guard officials designated by either an OCMI, a District Commander, or Commandant for the purpose of conducting investigations of matters pertaining to the conduct or persons applying for or holding MMCs, among other matters. In accordance with internal delegation of authority and duty, IOs assigned to the S&R NCOE will be designated as IOs by the Commandant, and as such will be authorized to initiate S&R actions under existing authority in 46 CFR 5.15. To reflect this, 46 CFR 1.01–25 is amended by replacing specific language regarding the IOs with a cross-reference to the definition of IOs in 46 CFR 5.15. This update also broadens the team of Coast Guard personnel who may handle a S&R case, but will not affect the process or procedures for a mariner who is the subject of an S&R case.

Section 1.01–25 is also amended by updating specific terms used to describe the S&R process, but these changes are nonsubstantive and reflect only changes in current term usage. This amendment will make the general flow of functions information found in Part 1 compatible with the existing definition and authorities of an IO found in Part 5. Additionally, 46 CFR 1.01–25(c)(1)(i) is updated to accurately reflect that, under existing authority in 46 CFR part 5 and 33 CFR part 20, either party (the Coast Guard or the respondent) may appeal an Administrative Law Judge's decision. Currently, paragraph 1.01–25(c)(1)(i) only addresses appeals filed by a respondent, and a new cross-reference to 33 CFR 20.1001 points the reader to the existing procedures for filing such an appeal.

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 analysis is not necessary. As this rule involves only non-substantive changes involving *internal Coast Guard organization and functioning*, it will not impose any costs on the public.

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. It is not expected that this amendment will have a significant economic impact on any small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this technical amendment will not have a significant economic impact on a substantial number of small entities.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This amendment 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 concern an environmental risk to health or 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 that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(b), of the Instruction, which excludes regulatory actions concerning internal agency functions or organization, such as delegation of authority. This rule concerns Coast Guard internal functioning and organization. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Organization and functions, Delegation of authority.

46 CFR Part 1

Administrative practice and procedure, Organization and functions, General flow of functions.

■ For the reasons set forth in the preamble, the Coast Guard amends 33 CFR part 1 and 46 CFR part 1 as follows:

Title 33

PART 1—GENERAL PROVISIONS

■ 1. The authority citation for 33 CFR part 1 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 401, 491, 525, 1321, 2716, and 2716a; 42 U.S.C. 9615; 49 U.S.C. 322; Department of Homeland Security Delegation No. 0170.1; section 1.01–70 also issued under the authority of E.O. 12580, 3 CFR, 1987 Comp., p. 193; and sections 1.01–80 and 1.01–85 also issued under the authority of E.O. 12777, 3 CFR, 1991 Comp., p. 351.

■ 2. Revise § 1.01–20(b)(2) to read as follows:

§ 1.01–20 Officer in Charge, Marine Inspection.

* * * * *

(b) * * *

(2) Referring to the processing Regional Examination Center (REC), the Suspension and Revocation National Center of Expertise, or cognizant OCMI potential violations of law, negligence, misconduct, unskillfulness, incompetence or misbehavior of persons holding merchant mariner's documents, licenses, certificates or credentials issued by the Coast Guard, and recommending suspension or revocation under 46 U.S.C. Chapter 77 when deemed appropriate; and

* * * * *

Title 46

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

■ 3. The authority citation for 46 CFR part 1 continues to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

■ 4. Revise § 1.01–15(c)(2) to read as follows:

§ 1.01–15 Organization; Districts; National Maritime Center.

* * * * *

(c) * * *

(2) Refer to the processing Regional Examination Center (REC), the Suspension and Revocation National Center of Expertise, or cognizant OCMI potential violations of law, negligence, misconduct, unskillfulness, incompetence or misbehavior of persons holding merchant mariner's documents, licenses, certificates or credentials issued by the Coast Guard, and recommend suspension or revocation under 46 U.S.C. Chapter 77 when deemed appropriate; and

* * * * *

■ 5. Revise § 1.01–25(c)(1) and (c)(1)(i) to read as follows:

§ 1.01–25 General flow of functions.

* * * * *

(c) * * *

(1) In the United States, the Commonwealth of Puerto Rico, Territory of Guam, the Virgin Islands, and other possessions, the proceedings are initiated by the issuance of a complaint against the holder of the Coast Guard credential. A Coast Guard Investigating Officer, as defined in 46 CFR 5.15, causes the complaint to be served on the person described therein (respondent) who is a holder of a Coast Guard credential. At a hearing the Coast

Guard submits evidence to support the allegations of the complaint, while the respondent may submit evidence in rebuttal or mitigation. The Administrative Law Judge renders a decision on the basis of the evidence adduced at the hearing and the law. The Administrative Law Judge's decision is given to the respondent.

(i) In a case where an appeal is made by either party (Coast Guard or respondent), the notice of appeal is filed in accordance with the procedures of 33 CFR 20.1001(a).

* * * * *

Dated: June 22, 2009.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. E9–15195 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3007

[Docket No. RM2008–1; Order No. 225]

Treatment of Non-Public Materials Submitted by the Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a final rule on the treatment of non-public material submitted by the Postal Service. This action is consistent with Commission obligations under a recent change in law.

DATES: Effective July 29, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

Regulatory History

73 FR 50532 (August 26, 2008).
74 FR 13370 ((March 27, 2009).

I. Introduction
II. Statutory Standards for According Confidentiality to Materials Filed With the Commission
III. Analysis of Comments on Order No. 194
IV. Section-by-Section Analysis
V. Ordering Paragraphs

I. Introduction

In this order, the Postal Regulatory Commission (Commission) adopts rules which implement 39 U.S.C. 504(g) of the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006). These final rules establish a procedure for according appropriate confidentiality for non-public materials [1] filed with the Commission.

These rules lay a foundation for the Commission's treatment of non-public materials filed by the Postal Service and other parties. This order focuses primarily on comments which suggest a need for changes, and the Commission incorporates its discussion of the proposed rules, especially for those issues that did not receive comments published in PRC Order No. 194, March 20, 2009, located at 74 FR 13370 (March 27, 2009). The remainder of part I of this order includes background information and sets forth the procedural history of this docket. Part II of this order briefly recapitulates the statutory standards for according confidentiality. Part III gives an overview of the comments and presents a discussion of the issues raised by the parties in response to the second notice of proposed rulemaking. Part IV provides a section-by-section analysis of each final rule. The complete final rules are set forth at the end of this order.

On August 13, 2008, the Commission issued a notice and order of proposed rulemaking to establish rules governing the treatment of non-public materials.[2] Order No. 96 proposed rules to meet the statutory standards for according confidentiality to Postal Service materials. The rules proposed in that order only applied to materials filed by the Postal Service and claimed to be non-public. *Id.* at 5–6. The rules used one test applicable to discovery requests and requests to publicly disclose Postal Service non-public materials. *Id.* at 7.

The Commission received eight comments and five reply comments on the proposed rules. Comments identified two main shortcomings in the proposed rules. Several commenters requested a mechanism to protect third-party non-public materials. *See, e.g.,* Comments of Pitney Bowes Inc., September 25, 2008, at 6–7. Several comments also addressed the Commission's departure from the test articulated in 39 U.S.C. 504(g)(3)(A), which is designed to balance the Postal Service's interest in avoiding commercial injury against the public's interest in financial transparency of a government agency competing in commercial markets. *See, e.g.,* Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments Regarding Regulations to Establish a Procedure for According Appropriate Confidentiality, September 25, 2008, at 11. On review, the Commission found those comments persuasive and subsequently issued a second notice of proposed rulemaking.[3]

In Order No. 194, the Commission modified its proposed rules to address commenter issues and respond to developments in ongoing proceedings. First, the Commission proposed procedures for any person to request early termination of non-public treatment of materials. The proposed rule's standard for decision was the balancing test set forth in 39 U.S.C. 504(g)(3)(A). *See id.* at 18. Second, the Commission proposed rules to govern the submission of third-party non-public materials and to establish procedures for challenging those assertions of confidentiality. *Id.* at 16, 18–20.

Because 39 U.S.C. 504(g) is silent as to the treatment of materials belonging to parties other than the Postal Service, the Commission proposed a different framework, under its general rulemaking authority in 39 U.S.C. 503, for assessing challenges to third-party assertions of confidentiality. *See* § 3007.33(b). *Id.* As 39 U.S.C. 504(g)(3)(B) directs the Commission to establish procedures for ensuring appropriate confidentiality for information furnished to any party, the Commission created §§ 3007.40–.42 and 3007.50–.52 to develop a framework for requests for access to non-public materials. *Id.* Other changes proposed in Order No. 194 include provision for ongoing access to non-public materials which are relevant to compliance and a mechanism for a person to make a data or information request to the Postal Service. *Id.* at 20.

II. Statutory Standards for According Confidentiality to Materials Filed With the Commission

As discussed in detail in Order No. 96 and Order No. 194, the PAEA directs the Commission to develop procedures for handling materials the Postal Service claims are non-public.

39 U.S.C. 504(g)(1) provides that the Postal Service may determine "that any document or other matter it provides to the Postal Regulatory Commission" is

[1] The term "non-public materials" as used in this order is defined in 39 CFR 3007.1(b). Essentially "non-public materials" means any document, information, or thing filed with the Commission and claimed exempt from disclosure under applicable sections of the United States Code by the Postal Service or protected from disclosure under Federal Rule of Civil Procedure 26(c) by a third party with a proprietary interest in the materials.

[2] PRC Order No. 96, Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, August 13, 2008 (Order No. 96).

[3] PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, March 20, 2009 (Order No. 194).

exempt from public disclosure under 39 U.S.C. 410(c) or 5 U.S.C. 552(b). Under 39 U.S.C. 504(g)(3)(A), the Commission may not publicly disclose materials claimed to be non-public by the Postal Service unless it ''has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality * * *.''

Similarly, 39 U.S.C. 504(g)(3)(B) allows the Commission to develop procedures to require production of designated non-public materials. However, 39 U.S.C. 504(g) is silent as to the Commission's treatment of third-party sensitive materials. The Commission relies on its general authority under 39 U.S.C. 503 to promulgate rules which govern whether and to what extent designated third-party non-public materials shall be accessed or released. *See* 39 U.S.C. 503. Rules governing the treatment of third-party non-public materials are necessary for the Commission to carry out its functions under the PAEA.

III. Analysis of Comments on Order No. 194

The Commission received five comments and three reply comments on the revised rules.[4] With one exception, the comments support the Commission's proposed procedures for according appropriate confidentiality to non-public materials filed with the Commission.

The Commission finds the comments in this docket thoughtful and helpful and appreciates the efforts of all commenters to refine and critique the proposed rules. Several comments identify minor aspects of the proposed rules that would benefit from a revision. Thus, these final rules differ slightly from the proposed rules in ways designed to clarify and improve the rules in response to the comments.

Overall, the comments in response to Order No. 194 indicate approval of the revised proposed rules, with several suggestions. *See, e.g.*, Postal Service Comments at 5; Public Representative Comments at 1; Discover Financial Services Comments at 2; GCA Reply Comments at 7; and PSA Reply Comments at 1. In its comments, Valpak reiterates several issues it believes remain relevant in spite of the revisions made between Order No. 96 and Order No. 194. *See* Valpak Comments. A more detailed discussion of the comments follows.

Appropriate standard for decision. Valpak directs most of its comments to its assertion that the balancing tests in rules 3007.33(b), 3007.42 and 3007.52 as provided ''in Order No. 194 still unlawfully displace the statutorily-required two-factor formula with the Rule 26(c) seven-factor [formula], contrary to the mandates of the PAEA * * *.'' Valpak Comments at 4–5. The rules at issue provide the standard of decision for termination of non-public status for third-party non-public materials, and access to Postal Service or third-party non-public materials.

Valpak argues that since the language of 39 U.S.C. 504(g)(3)(A) sets forth a two-factor balancing test, the Commission may not include any other elements. *See id.* at 5–8. Valpak claims third-party interests are adequately protected under the test articulated in 39 U.S.C. 504(g)(3)(A), and claims that the Postal Service's interests align with any third party which may submit sensitive materials through it. *Id.* at 8–14. Valpak also takes issue with the language of 39 U.S.C. 504(g)(3)(B) which directs the Commission to establish, based on ''rule 26(c) of the Federal Rules of Civil Procedure * * * procedures for ensuring appropriate confidentiality for information furnished to any party.'' *Id.* at 9. Valpak asserts that the ''procedures'' referred to in 39 U.S.C. 504(g)(3)(B) refer to ''protective conditions'' and do not allow the Commission to use an alternative standard for decision in determining the appropriate degree of confidentiality in the context of access to non-public materials. *Id.* at 9–10. In sum, Valpak believes the Commission erred by using the common law rule 26(c) balancing test to determine whether third-party non-public materials should be publicly disclosed and using the same test to determine if non-public materials may be accessed.

In its reply comments, the Greeting Card Association (GCA) addresses most of the points Valpak raises regarding the appropriate balancing tests. GCA points out that the test articulated in 39 U.S.C. 504(g)(3)(A) is preceded by 39 U.S.C. 504(g)(1), which states that the Postal Service may submit non-public materials if it claims they are exempt under 39 U.S.C. 410(c) and 5 U.S.C. 552(b). GCA Reply Comments at 6. GCA argues that the statutory language does not mandate exclusive use of the test or factors articulated in 39 U.S.C. 504(g)(3)(A). *Id.* at 2. GCA also refutes Valpak's assertion that the Postal Service's interests would always be aligned with a third-party submitter, especially in circumstances where the Postal Service elected not to pursue a business relationship with the third party. *Id.* at 4–7. GCA recommends that the Commission adopt the rules as proposed in Order No. 194. *Id.* at 7.

The Commission is not persuaded by Valpak's assertions. First, 39 U.S.C. 504 makes no reference to third-party non-public materials. 39 U.S.C. 504(g)(1) provides:

> If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission * * *contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service, shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

All that follows the 504(g)(1) introduction is predicated on the Postal Service's submission and determination that a document is exempt from disclosure under 39 U.S.C. 410(c) or 5 U.S.C. 552(b). The balancing test set forth in 39 U.S.C. 504(g)(3)(A) also only takes into account ''commercial injury to the Postal Service'' and ''public interest in maintaining the financial transparency of a government establishment competing in commercial markets[,]'' two factors which are not applicable to third-party materials.[5]

Second, the test in 39 U.S.C. 504(g)(3)(A) focuses on commercial injury to the Postal Service, and it does not protect third-party interests directly. For example, the Postal Service is presumably indifferent if ''Company A'' loses market share to ''Company B'' provided their volumes are shipped via the Postal Service. As GCA points out, Valpak's contention that only the statutory language should apply offers inadequate protection of third-party interests.

GCA's comment and hypothetical that third-party non-public materials which

[4] Comments of Valassis Direct Mail, Inc. on Second Notice of Proposed Rulemaking (Valassis Comments); Comments of the United States Postal Service in Response to Second Notice of Proposed Rulemaking (Postal Service Comments); Public Representative Comments on Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality (Public Representative Comments); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Initial Comments Regarding Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality (Valpak Comments), all filed on April 27, 2009; Comments of Discover Financial Services, April 28, 2009 (DFS Comments); Reply Comments of the Greeting Card Association, May 11, 2009 (GCA Reply Comments); Reply Comments of the United States Postal Service in Response to Second Notice of Proposed Rulemaking, May 11, 2009 (Postal Service Reply Comments); and Reply Comments of the Parcel Shippers Association in Response to Second Notice of Proposed Rulemaking, May 12, 2009 (PSA Reply Comments).

The Motion of Discover Financial Services for Late Acceptance of Comments, filed on April 28, 2009, is granted.

[5] This is not to minimize the importance of financial transparency of the government entity itself.

belong to a party no longer in negotiations or partnership with the Postal Service and would not implicate any commercial injury to the Postal Service is well taken. *See* GCA Reply Comments at 4–6. By its reading of 39 U.S.C. 504(g)(3)(A), Valpak would impose an exclusive test for determining the status of non-public materials when the statute does not require it, and significantly, regardless of the legitimate interests of third parties in the non-public materials at issue.

Third-party non-public materials are not referenced in 39 U.S.C. 504; however, the Commission receives such materials in the course of exercising its duties under title 39. Therefore, the Commission must exercise its general authority under 39 U.S.C. 503 to create a procedure for the treatment of such third-party non-public materials. The Commission adopts the standard as proposed in § 3007.33(b).

Third, Valpak's claim that the Commission's proposed rules conflict with 39 U.S.C. 504(g)(3)(B) is not persuasive. 39 U.S.C. 504(g)(3)(B) directs the Commission to develop ''procedures for ensuring appropriate confidentiality[,]'' but it does not state that those ''procedures'' are exclusively the ''procedural remedies'' found in Federal Rule of Civil Procedure 26(c). For example, 39 U.S.C. 504(g)(3)(A) directs the Commission to adopt regulations ''that establish a procedure for according appropriate confidentiality * * *.'' Part 3007 contains the regulations that establish a procedure for according appropriate confidentiality. By Valpak's logic, the Commission would be barred from introducing any substantive elements to its rules which establish such a procedure.

The Commission, therefore, adopts the procedures for ensuring appropriate confidentiality for access to non-public materials as described in §§ 3007.42 and 3007.52.

Notice requirement for expedited requests. Valassis recommends that when third-party non-public materials are requested under §§ 3007.40 and 3007.50, the requesting party should provide that third party with actual notice of the request to allow the Commission to resolve the issue in an expedited manner. Valassis Comments at 1–3. Discover Financial Services supports the notion of ''actual notice'' to the third party with a proprietary interest, but also believes a 7-day time to respond would be more appropriate. DFS Comments at 2–4. Parcel Shippers Association also agrees that actual notice is appropriate, and suggests that the Commission adopt Valassis's proposed language. *See* PSA Reply Comments. Finally, the Postal Service supports the actual notice requirement, but questions how a requester should get access to the name of the appropriate party. Postal Service Reply Comments at 2–4.

Valassis's suggestion is reasonable and is adopted. The 3-day response period is designed to expedite access to non-public materials. Requiring actual notice to the third party in the form of a conversation or e-mail exchange will ensure that the third party has timely notice and an opportunity to respond. Moreover, the requirement is not burdensome.

The Postal Service expresses concern regarding situations where the third party's identity may be confidential. In considering this issue, the Commission finds it appropriate to add § 3007.21(c)(2), which instructs the Postal Service to provide the name and contact information for the appropriate third party or for a Postal Service employee if the third party's identity is confidential. The Commission also finds it appropriate to add to §§ 3007.40(b)(1) and 3007.50(b)(1) to provide that actual notice may be accomplished by a face-to-face or telephone conversation or e-mail exchange.

Public Representative's suggestions. The Public Representative suggests that the rules redefine ''non-public materials'' to include a caveat that they are non-public upon identification by the Postal Service or third party, unless disclosure has been ordered under this part. Public Representative Comments at 4.

The Commission agrees that refining the definition of non-public materials will clarify an ambiguity in the rules, and modifies the definition in § 3007.1(b) accordingly.

The Public Representative also suggests that the Commission create a cross-reference within the confidentiality rules to the rules in part 3004 governing Freedom of Information Act procedures. *Id.* The Postal Service opposes this suggestion, arguing that the Commission may become a *de facto* Freedom of Information Act appellate body.

The Commission does not agree that it is appropriate to overlap the Freedom of Information Act requests and requests for access or disclosure under the confidentiality rules. The Commission will shortly revise its rules governing Freedom of Information Act procedures, and will resolve any ambiguity in its revisions to part 3004.

The Public Representative also asserts that the phrase ''the Commission may issue an order'' used in §§ 3007.40(d)(2) and 3007.50(d)(2) is unclear. *Id.* at 5–6. The rule, according to the Public Representative, is ambiguous as to when a person could attain access to non-public materials when no objection is made. *Id.* The Postal Service believes that it is ''a consistent expectation on the part of all parties that access is available only by order of the Commission* * *.'' Postal Service Reply Comments at 3–4. However, the Postal Service believes that the use of the word ''may'' preserves the Commission's discretion to preemptively quash an inappropriate request. *Id.* at 4.

The Commission agrees with the Public Representative and the Postal Service that access to non-public materials should only be granted following an appropriate order or ruling. The Commission also agrees with the Postal Service that discretion should be maintained for the Commission, *sua sponte,* to issue an order quashing an inappropriate request. Therefore, the Commission finds it appropriate to add language to §§ 3007.40 and 3007.50 that access commences only following the issuance of an appropriate order or ruling.

Finally, the Public Representative makes two minor editorial suggestions. First, the Public Representative suggests altering the title of § 3007.24 to read ''Commission and Court access to non-public materials.'' Public Representative Comments at 6. In the same rule, the Public Representative recommends editing paragraph (a)(2) of this section to read ''Commission employees including public representatives carrying out their appropriate responsibilities;''. *Id.*

The Commission agrees with the Public Representative that the rules will benefit from these suggestions and revises the rules accordingly.

IV. Section-by-Section Analysis

Below, the Commission provides a concise description of each rule, designed to assist commenters in understanding the scope and nature of the rules and changes.

Rule 3007.1 Definitions. This provision sets forth definitions of terms used in part 3007. The term ''non-public materials'' is defined as any information, documents, and things filed by the Postal Service which, pursuant to 39 U.S.C. 504(g), it determines to be exempt from disclosure. The term is also used to describe materials submitted by the Postal Service or other party in which a third party has a proprietary interest, *i.e.,* the third party believes is protectable under Federal Rule of Civil Procedure 26(c). Section 3007.1(b) is

edited to state that non-public materials are no longer non-public if such status expires or is terminated pursuant to this part. As used in the rules, the phrase ''materials claimed to be non-public'' has the same meaning as ''non-public materials.''

Rule 3007.2 Scope. This provision sets forth the scope of information, documents, and things that the Commission (or its authorized representative) may require the Postal Service to provide in connection with the Commission's responsibilities under chapter 36 of title 39 of the United States Code. It is intended to encompass information, documents, and things in whatever form likely to materially assist the Commission in fulfilling its statutory responsibilities.

Rule 3007.3 Data or information requests. This rule provides that the Commission, or its authorized representative, may issue data or information requests to the Postal Service concerning materials covered by § 3007.2. Under this rule, a person may request that the Commission issue such a request. Consistent with commenters' suggestions that the Commission protect third-party non-public material, paragraph (c) is added to this rule to allow the Commission to issue a data or information request to a third party.

Rule 3007.10 Submission of non-public materials under seal. This rule sets forth the manner in which non-public materials are to be filed with the Commission. More specifically, it provides that non-public materials are not to be filed electronically pursuant to § 3001.9, but are to be filed in sealed envelopes clearly marked as confidential. The rule requires non-public materials to be filed in hard copy as well as electronic form (compact discs), with the latter subject to certain conditions to ensure their utility. In addition, the rule requires that a redacted copy of the non-public materials be filed electronically pursuant to § 3001.9. The rule also requires that when the Postal Service or third party files redacted copies of non-public materials in electronic form, they must be in a searchable format (such as searchable Adobe PDF format), but spreadsheets, data files, or programs must be in native format. The method of redaction for hard copy submissions under this rule shall be the ''blackout'' or ''graphical'' redaction method unless the Postal Service or third party identifies particular, likely injury which may result from the use of such a method. If any other method is used, the Postal Service or third party must indicate, at the site of each redaction, in lines or pages, the amount of material removed.

Rule 3007.20 Application for non-public treatment. This rule directs the Postal Service to file an application for non-public treatment whenever it files non-public materials. It also instructs the Postal Service to contact any third party, which may have a proprietary interest in materials filed with the Commission to give that party an opportunity to file an application for non-public treatment, and address its confidentiality concerns directly with the Commission.

Rule 3007.21 Content of the Postal Service application for non-public treatment. This rule requires the Postal Service to identify the materials it asserts are non-public and to provide a detailed statement in support thereof, addressing, among other things, the rationale for the claim, including the statutory authority, the nature and extent of any commercial harm, a hypothetical example of such harm, the extent of public protection from public disclosure deemed necessary, and any other factors relevant to the application for non-public treatment. The rule also requires the Postal Service to identify and provide contact information for any third party who is known to have a proprietary interest in the non-public materials, or in the alternative, to provide contact details for a Postal Service employee who shall provide notice to that third party.

Rule 3007.22 Content of third-party applications for non-public treatment. This rule gives guidance to a third party with a proprietary interest in non-public materials on the content of an application for non-public treatment. The rule directs the third party to provide justification for non-public treatment of materials it believes should not be publicly disclosed or accessed.

Rule 3007.23 Treatment of non-public materials. This rule provides that the Commission will not disclose non-public materials except as pursuant to the rules in part 3007.

Rule 3007.24 Commission access to non-public materials. This rule permits Commissioners, Commission employees, including public representatives, other persons assisting the Commission in carrying out its statutory duties, and reviewing court personnel access to non-public materials subject to the limitations in 39 U.S.C. 504(g)(2)(A) and (B). Access to non-public materials for all persons not covered by this rule is by motion under §§ 3007.40 and 3007.50.

Rule 3007.25 Use of non-public materials. This rule states that persons with access to non-public materials under § 3007.24 may not use non-public materials for purposes other than those for which they were supplied or allow any other person to have access to the non-public materials.

Rule 3007.30 Termination of non-public status. This rule states that non-public status shall expire 10 years after filing, unless otherwise provided by the Commission or its authorized representative.

In the context of FOIA requests under part 3004, the Commission provides that information submitted to the Commission and claimed to be exempt from disclosure under 5 U.S.C. 552(b) (namely, trade secrets or commercially or financially sensitive materials) will lose any such exemption 10 years after its submission. The Commission believes that a 10-year sunset provision in this instance will also serve administrative convenience and sound records management practices while adequately protecting the commercial interest of the Postal Service.

Rule 3007.31 Request for early termination of non-public status. This rule states that any person may request that non-public status be removed from materials filed with the Commission. The rule gives details of the form and procedure of such a request. A request for early termination of non-public status must specifically address the Postal Service or third-party claims in its application for non-public treatment.

If a request for early termination of non-public status is made, the Postal Service or any third party with a proprietary interest may submit an answer within 7 days (or such longer period as specified in the notice). Given the expedited timetables under which the Commission ordinarily operates, this rule does not allow any filings after the initial answers. Thus, requests and answers should address all issues relevant to whether the non-public materials should be publicly disclosed. Following the receipt of the answers, if any, the Commission will issue an order concerning the appropriate status of the non-public materials.

Rule 3007.32 Preliminary determination of non-public status. This rule recognizes that as a matter of course, the Commission will review Postal Service materials designated as non-public for substance, and in the course of such review may have cause to question the claim that part or all of the materials should not be disclosed. Thus, the rule provides that the Commission may issue a notice of preliminary determination concerning the appropriate degree of protection, if

any, to be accorded non-public materials filed by the Postal Service.[6]

If a preliminary determination of non-public status is made, the Postal Service or any third party with a proprietary interest may submit an answer within 7 days (or such longer period as specified in the notice). Given the expedited timetables under which the Commission ordinarily operates, this rule does not allow any filings after the initial answers. Thus, those answers should address all issues relevant to whether the non-public materials should be publicly disclosed. Following the receipt of the answers, if any, the Commission will issue an order concerning the appropriate status of the non-public materials.

Rule 3007.33 Standard for decision for early termination of non-public status. Paragraph (a) of this rule sets out the balancing test prescribed in 39 U.S.C. 504(g)(3)(A) for determining the appropriate degree of confidentiality to be accorded Postal Service non-public materials for which a request for early termination of non-public status or a preliminary determination of non-public status has been made. Paragraph (b) of this rule sets out the balancing test, adapted from 39 U.S.C. 504(g)(3)(A), applicable to a request for early termination of non-public status for materials in which the Commission determines that a third party has proprietary interest.

Rule 3007.40 Request for access to non-public materials. This rule provides that any person, during a Commission proceeding and pursuant to the Commission's rules of practice, may make a motion to request access to non-public materials filed by the Postal Service under 39 U.S.C. 504(g)(1). Any person requesting access must file a motion, which must include a detailed statement in support of granting access. The person requesting access must identify all relevant affiliations, including employer, organization, agency or contractual relationships, and ties to the delivery services, communications, or mailing industry.[7]

Given the expedited timetables under which the Commission generally operates, these rules contemplate procedures that will expedite the process. Thus, this rule provides that the person submitting the motion may agree in advance to execute and attach protective conditions and must provide actual notice to any third party previously identified as having a proprietary interest in the non-public materials or the Postal Service's designee for such notice as identified in § 3007.21(c). In that event, answers to the motion are due within 3 days.[8]

Recognizing that protective conditions may vary based on the nature of the non-public materials at issue, the Commission encourages any person attaching protective conditions to tailor the conditions to fit that situation, *e.g.*, limiting access to competitive information to certain individuals. Persons attaching protective conditions should describe those conditions, particularly alterations to the standard form. If an executed copy of protective conditions is not attached, answers to the motion are due in 7 days. Following the filing of the answer, the Commission may issue an order concerning access to the non-public materials, or, if protective conditions are approved by the Postal Service or third party with a proprietary interest, the Commission or its authorized representative will grant access subject to the agreed protective conditions.

The rule explicitly provides that access shall commence only following an appropriate order or ruling.

Rule 3007.41 Termination of access to non-public materials. This rule states that access obtained under § 3007.40 terminates for all persons when the proceeding during which the materials were requested ends (by Commission order or report) or the person otherwise withdraws or ceases to be involved in the proceeding. Access granted under § 3007.40 may be maintained, subject to any applicable protective conditions, pending action on a motion to continue access made under § 3007.50.

Rule 3007.42 Standard for decision for request for access to non-public materials. This rule creates a balancing test to accord appropriate confidentiality. This test directs the Commission to balance the interests of the parties, similar to balancing done in Federal civil litigation under Federal Rule of Civil Procedure 26(c). The standard balances the need of the requesting party to have access to participate effectively in a Commission proceeding against the Postal Service or third party with a proprietary interest in the materials rights derived from section 26 of the Federal Rules of Civil Procedure.

Rule 3007.50 Request for access to non-public materials relevant to compliance. This rule provides procedures for any interested person to request access to non-public materials relevant to the ACD when outside an ongoing Commission proceeding. This rule also allows a person who has access subject to protective conditions (under §§ 3007.40 or 3007.50) to file a motion to continue access if the materials are relevant to compliance under 39 U.S.C. 3653. Any person requesting access must file a motion, which includes a statement justifying why access should be granted, and stating how the requested materials are relevant to the Commission's annual determination of compliance under 39 U.S.C. 3653. As with § 3007.40, the person requesting access must identify all relevant affiliations to assist the Postal Service in determining whether to object to access.

Given the short timetables under which the Commission often must operate, the rules provide procedures that will expedite the process. Thus, this rule provides that the person submitting the motion may execute and attach to the motion protective conditions and must provide actual notice to any third party previously identified as having a proprietary interest in the non-public materials or the Postal Service's designee for such notice as identified in § 3007.21(c). In that event, answers to the motion are due within 3 days.

Recognizing that protective conditions may vary based on the nature of the non-public materials at issue, the Commission encourages any person attaching protective conditions to tailor the conditions to fit that situation, *e.g.*, limiting access to competitive information to certain individuals. Persons attaching protective conditions should describe those conditions, particularly alterations to the standard form. If a copy of executed protective conditions is not attached, answers to the motion are due in 7 days. Following the filing of any answers, the Commission may issue an order concerning access to the non-public materials, or, if protective conditions are approved by the Postal Service or third party with a proprietary interest, the Commission or its authorized representative will grant access subject to the agreed protective conditions.

Under this rule, a person previously granted access to materials may make requests for continuing access to non-public materials.

[6] This aspect of the rule is designed to enable the Commission to address claims of confidentiality by the Postal Service or a third party on its own initiative. It is not intended to imply that the Commission will necessarily make a preliminary determination with respect to each filing by the Postal Service of non-public materials.

[7] Industry affiliations of the party requesting access to materials designated as protected by the Postal Service are disclosed to enable the Postal Service to determine whether to object in the context of an expedited matter.

[8] Consistent with the Commission's rules, any prescribed time period of 5 days or less excludes Saturdays, Sundays and legal holidays. *See* § 3001.15.

Rule 3007.51 Termination of access to non-public materials relevant to compliance. This rule states that access terminates for all persons with access under § 3007.50 when the Commission issues its next ACD or the person otherwise withdraws or ceases to be involved. This rule also allows a person who has access to maintain access, subject to any applicable protective conditions, pending action on a motion to continue access made under § 3007.50.

Rule 3007.52 Standard for decision for request for access to non-public materials relevant to compliance. This rule creates a balancing test to accord appropriate confidentiality when determining restrictions on access to materials requested by a person which are relevant to the ACD. The standard instructs the Commission to balance the parties' interests, similar to balancing done by the Federal courts under Federal Rule of Civil Procedure 26(c).

Rule 3007.60 Limitations on access to non-public materials. This rule identifies various limitations on access to non-public materials that may be ordered by the Commission pursuant to 39 U.S.C. 504(g)(3)(B). These limitations, which are generally similar to relief provided by Federal civil courts in discovery disputes under section 26(c) of the Federal Rules of Civil Procedure include, *inter alia*, not requiring the public disclosure of the materials, specifying the terms for public disclosure, ordering a specific method of disclosure, restricting to whom the information may be disclosed, specifying a time when access terminates, and such other relief as the Commission deems appropriate.

Rule 3007.61 Continued effectiveness of protective conditions. This rule specifies procedures to be followed if a court or other administrative agency issues a subpoena for (or otherwise orders production of) non-public materials which a person has obtained pursuant to a protective order issued by the Commission. This rule requires that any person required to disclose non-public materials make a good faith effort to obtain protective conditions in accord with those prescribed by the Commission. The rule also provides that unless overridden by the reviewing court, the protective conditions of the Commission (or its authorized representative) remain in effect. The procedures require notice to the Postal Service.

Rule 3007.62 Sanctions for violations of protective conditions. This rule reiterates that the protective conditions bar the dissemination of non-public materials by every person granted access to such materials to any person not authorized to access such materials. The rule provides sanctions for any person contravening the protective conditions. The sanctions include dismissing the proceeding in whole or part, issuing a default judgment against the violator of the protective conditions, and such other relief as the Commission (or its authorized representative) deems appropriate. In addition, the rule provides that the Postal Service may pursue whatever remedies may be available to it under law against the violator as well as the entity on whose behalf that person was acting.

V. Ordering Paragraphs

It is Ordered:

1. The Commission hereby adopts the final rules applicable to treatment of non-public materials that follow the Secretary's signature into the Commission's Rules of Practice and Procedure to appear in 39 CFR part 3007.

2. These rules shall take effect 30 days after publication in the **Federal Register.**

3. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3007

Administrative practice and procedure, Confidential business, Postal Service.

By the Commission.

Steven W. Williams,

Secretary.

■ For the reasons discussed above, the Commission amends 39 CFR chapter III by adding part 3007 to read as follows:

PART 3007—TREATMENT OF NON–PUBLIC MATERIALS PROVIDED BY THE POSTAL SERVICE

Sec.

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3007.50 Request for access to non-public materials relevant to compliance.
3007.51 Termination of access to non-public materials relevant to compliance.
3007.52 Standard for decision for request for access to non-public materials relevant to compliance.
3007.60 Limitations on access to non-public materials.
3007.61 Continued effectiveness of protective conditions.
3007.62 Sanctions for violations of protective conditions.
Appendix A to Part 3007—Statement of Compliance with Protective Conditions

Authority: 39 U.S.C. 503, 504.

§ 3007.1 Definitions for purposes of this part.

(a) *Authorized representative* means any Commissioner designated by the Chairman, any administrative law judge appointed by the Commission under 5 U.S.C. 3105, and any employee of the Commission designated by the Commission. The authorized representative may administer oaths, examine witnesses, take depositions, and receive evidence with respect to any proceeding before the Commission under title 39 of the U.S. Code or obtain information to assist the Commission in the preparation of a report or performance of a function under title 39 of the U.S. Code.

(b) *Non-public materials* means any information, documents, and things filed with the Commission which are claimed to be exempt from disclosure by the Postal Service pursuant to 39 U.S.C. 504(g), 3652(f) or 3654(f), or claimed to be protectable under Federal Rule of Civil Procedure 26(c) by a third party with a proprietary interest in the materials. Non-public materials cease to be non-public if the status has expired or been terminated by the Commission pursuant to this part.

§ 3007.2 Scope.

The Commission or its authorized representative may require the Postal Service to provide any information, documents, and things in its possession or control, or any information, documents, and things that it can obtain through reasonable effort and expense, that are likely to materially assist the Commission in its conduct of proceedings, in its preparation of reports, or in performance of its functions under title 39 of the U.S. Code. Information, documents, and

things the Postal Service may be required to provide, include, but are not limited to, paper hard copy and electronically stored data and materials—including writings, notes, e-mails, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form; or any tangible things.

§ 3007.3 Data or information requests.

(a) The Commission or its authorized representative may issue data or information requests to the Postal Service seeking information, documents, and things covered by § 3007.2. A data or information request shall describe the documents, information, and things sought, briefly explain the reason for the request, and specify a timeframe for receiving the requested information and materials.

(b) The Commission or its authorized representative may issue data or information requests to third parties seeking any information, document or thing. A data information request shall describe the documents, information and things sought, briefly explain the reason for the request, and specify a timeframe for receiving the requested materials.

(c) Any person may request that the Commission issue a data or information request by filing a motion with the Commission, pursuant to § 3001.21 of this chapter, which describes the documents, information, and things sought, explains the reasons the Commission should make the request, and includes a statement of how the materials sought are relevant and material to the Commission's duties under title 39 of the U.S. Code.

§ 3007.10 Submission of non-public materials under seal.

(a) Non-public materials shall not be filed electronically pursuant to § 3001.9 of this chapter, but shall be filed in sealed envelopes clearly marked ''Confidential. Do Not Post on Web.'' The person filing the non-public materials shall submit two copies consisting, where practicable, of two paper hard copies as well as two copies in easily usable electronic form such as compact discs (CDs) or digital video discs (DVDs) of the non-public materials which shall also be clearly marked ''Confidential. Do Not Post on Web.'' Spreadsheets submitted in electronic form shall display the formulas used, their links to related spreadsheets, and shall not be password protected. All workpapers or data shall be submitted in a form, and be accompanied by sufficient explanation and documentation to allow them to be replicated using a publicly available PC application. Each page of any paper hard copy non-public materials submitted shall be clearly marked as non-public.

(b) The person submitting the non-public materials shall also file an electronic public (redacted) copy of the non-public materials pursuant to § 3001.9 of this chapter. The electronic public (redacted) copy of the materials which are not spreadsheets, data files, or programs must be submitted in a searchable electronic format, but need not be submitted in its native format. As part of its publicly available electronic filing, the Postal Service must appropriately redact materials that contain both public and non-public information. For example, the Postal Service may not identify a whole page or a whole table as non-public materials if the page or table contains both public and non-public information, but must redact only the information it claims to be non-public. If practicable, the Postal Service shall sequentially number each page of the materials identified as non-public.

(c) The Postal Service or third party shall use the graphical redaction (blackout) method for all redacted materials. Should the Postal Service wish to use any other method, it must state with particularity the competitive harm associated with use of the graphical redaction method to justify the use of any other method, and indicate the number of lines or pages removed at each redaction.

(d) The Postal Service or third party shall mark each page, item, and thing, or portion thereof, that it seeks to protect from disclosure in a manner reasonably calculated to alert custodians to the confidential nature of the information or materials.

§ 3007.20 Application for non-public treatment.

(a) Whenever the Postal Service files non-public materials with the Commission, it shall at the same time file an application for non-public treatment under § 3007.21.

(b) Before the Postal Service files non-public materials with the Commission which the Postal Service has reason to believe may implicate a third-party proprietary interest, the Postal Service shall inform each such third party:

(1) Of the nature and scope of the filing with the Commission, including the pertinent docket, and

(2) That it may address its confidentiality concerns directly with the Commission.

(c) A third party with a proprietary interest in the materials may, if it deems necessary, independently seek non-public treatment under § 3007.22.

§ 3007.21 Content of the Postal Service application for non-public treatment.

(a) Whenever the Postal Service files non-public materials with the Commission, it must submit an application for non-public treatment that clearly identifies all non-public materials and describes the circumstances causing them to be submitted to the Commission.

(b) An application for non-public treatment is to fulfill the burden of persuasion that the non-public materials should be withheld from the public.

(c) The application for non-public treatment must include a specific and detailed statement setting forth:

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

(5) At least one specific hypothetical, illustrative example of each alleged harm;

(6) The extent of protection from public disclosure deemed to be necessary;

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

(8) Any other factors or reasons relevant to support the application.

§ 3007.22 Content of third-party application for non-public treatment.

(a) The application for relief from public disclosure submitted by a party other than the Postal Service must clearly identify all materials believed to be protected from disclosure.

(b) The application for non-public treatment must include a specific and detailed statement setting forth:

(1) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

(2) Particular identification of the nature and extent of the harm alleged and the likelihood of such harm; and

(3) Any other factors or reasons relevant to support the application.

§ 3007.23 Treatment of non-public materials.

The Commission or its authorized representative will not publicly disclose or grant access to non-public materials except as provided in the rules of this part.

§ 3007.24 Commission and court access to non-public materials.

(a) Non-public materials may be disclosed to the following persons:

(1) Members of the Commission;

(2) Commission employees including public representatives carrying out their appropriate responsibilities;

(3) Contractors, attorneys, or other subject matter experts assisting the Commission in carrying out its statutory duties;

(4) Reviewing courts and their staffs; or

(5) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.

(b) Access to non-public materials for all persons not covered by this section is pursuant to §§ 3007.40 and 3007.50.

§ 3007.25 Use of non-public materials.

Except as pursuant to this part, persons with access to non-public materials under § 3007.24 may not:

(a) Use such materials for purposes other than the purposes for which they are supplied.

(b) Permit anyone who is not allowed access under § 3007.24 to have access to any such materials.

§ 3007.30 Termination of non-public status.

Ten years after the date of filing with the Commission, non-public materials shall lose non-public status unless the Commission or its authorized representative enters an order extending the duration of that status.

§ 3007.31 Request for early termination of non-public status.

(a) Any person may make a request to the Commission that non-public materials be publicly disclosed. Each such request shall provide a specific and detailed statement justifying why the non-public materials should be made public, giving specific recognition to any pertinent rationale(s) provided in the application for relief submitted pursuant to § 3007.21 or § 3007.22. The request, however, shall not publicly disclose any of the non-public materials. If it is necessary to use the non-public materials to formulate the argument in favor of public disclosure, the argument utilizing the non-public materials shall be filed under seal.

(b) Any interested person, including the Postal Service, may file a response to the request within 7 days after such a request is filed, unless a longer period is specified by the Commission.

(c) Unless the Commission otherwise provides, no reply to a response filed pursuant to paragraph (a) of this section shall be filed.

(d) Following the filing of responses, if any, the Commission will issue an order determining the appropriate degree of protection, if any, to be accorded to the materials claimed to be non-public by the Postal Service or third party with a proprietary interest in the materials.

§ 3007.32 Preliminary determination of non-public status.

(a) Whenever the Postal Service files non-public materials, the Commission may issue a notice of preliminary determination concerning the appropriate degree of protection, if any, to be accorded to such materials.

(b) Any interested person, including the Postal Service, may file a response to the Commission's notice of preliminary determination within 7 days after such a notice is filed, unless a longer period is specified.

(c) Unless the Commission otherwise provides, no reply to a response filed pursuant to paragraph (b) of this section shall be filed.

(d) Following the filing of responses, if any, the Commission will issue an order determining the appropriate degree of protection, if any, to be accorded to the materials claimed to be non-public by the Postal Service or third party with a proprietary interest in the materials.

§ 3007.33 Standard for decision for early termination of non-public status.

(a) In determining whether to publicly disclose non-public materials filed by the Postal Service, the Commission shall balance the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.

(b) In determining whether to publicly disclose non-public materials in which the Commission determines a third party has a proprietary interest, the Commission shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).

§ 3007.40 Request for access to non-public materials.

(a) During a Commission proceeding, any person may file a motion pursuant to § 3001.21 of this chapter requesting access to non-public materials. The motion shall include:

(1) A detailed statement providing justification for access; and

(2) A list of relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the party requesting access, and whether that party is affiliated with the delivery services, communications or mailing industries.

(b) To expedite the process, each person seeking access to non-public materials may attach to the motion an executed copy of protective conditions such as those provided in Appendix A of this part.

(1) If an executed copy of protective conditions is attached and if actual notice of the motion has been provided by conversation or e-mail exchange to all persons identified by the Postal Service under § 3007.2(c), answers are due within 3 days after such a motion is filed.

(2) In all other circumstances, answers are due within 7 days after such a motion is filed.

(c) Unless the Commission otherwise provides, no reply to an answer filed pursuant to paragraph (b)(1) or paragraph (b)(2) of this section shall be filed.

(d) Following the filing of answers, if any:

(1) The Commission will issue an order allowing or denying access and setting forth the appropriate protective conditions, if any, to be accorded non-public materials, or

(2) If the Postal Service or third party with a proprietary interest does not contest a person's access subject to agreed protective conditions, the Commission or its authorized representative may issue an order allowing access subject to the agreed protective conditions.

§ 3007.41 Termination of access to non-public materials.

(a) Except as provided in paragraph (b) of this section, access to non-public materials obtained under § 3007.40 terminates either when the Commission issues a final order or report in the relevant proceeding or the person

withdraws or is otherwise no longer involved in the proceeding, whichever occurs first. For purposes of this section, an order or report is not considered final until after the possibility of judicial review expires.

(b) Access to non-public materials shall continue for persons seeking continued access under § 3007.50.

(c) Upon termination of access under paragraph (a) of this section, all non-public materials in a person's possession must be destroyed, and the form attached to the protective conditions certifying destruction must be executed and filed with the Commission.

§ 3007.42 Standard for decision for request for access to non-public materials.

In determining whether to grant a request for access to non-public materials, the Commission shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).

§ 3007.50 Request for access to non-public materials relevant to compliance.

(a) Any person may file a motion pursuant to § 3001.21 of this chapter requesting access to, or continued access to, non-public materials relevant to compliance under 39 U.S.C. 3653. The motion shall include:

(1) A detailed statement providing justification for access, including reference to the materials' relevance to compliance under chapter 36 of title 39 of the U.S. Code; and

(2) A list of relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the party requesting access, and whether that party is affiliated with the delivery services, communications or mailing industries.

(b) To expedite the process, each person seeking access to non-public materials may attach to the motion an executed copy of protective conditions such as those provided in Appendix A of this part.

(1) If an executed copy of protective conditions is attached and if actual notice of the motion has been provided by conversation or e-mail exchange to all persons identified by the Postal Service under § 3007.21(c), answers are due within 3 days after such a motion is filed.

(2) In all other circumstances, answers are due within 7 days after such a motion is filed.

(c) Unless the Commission otherwise provides, no reply to an answer filed pursuant to paragraph (b)(1) or paragraph (b)(2) of this section shall be filed.

(d) Following the filing of answers, if any:

(1) The Commission will issue an order allowing or denying access and setting forth the appropriate protective conditions, if any, to be accorded the non-public materials, or

(2) If the Postal Service or third party with a proprietary interest does not contest a person's access subject to agreed protective conditions, the Commission or its authorized representative may issue an order allowing access subject to the agreed protective conditions.

§ 3007.51 Termination of access to non-public materials relevant to compliance.

(a) Access to non-public materials obtained under § 3007.50 terminates either when the Commission issues its next Annual Compliance Determination (ACD) or the person withdraws or is otherwise no longer involved in the relevant proceeding, whichever occurs first.

(b) Access to non-public materials shall continue for persons seeking continued access under § 3007.50.

(c) Upon termination of access under paragraph (a) of this section, all non-public materials in a person's possession must be destroyed, and the form attached to the protective conditions certifying destruction must be executed and filed with the Commission.

§ 3007.52 Standard for decision for request for access to non-public materials relevant to compliance.

In determining whether to grant a request for access to non-public materials relevant to compliance, the Commission shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).

§ 3007.60 Limitations on access to non-public materials.

To afford appropriate confidentiality to non-public materials during any stage of a proceeding before the Commission, or in connection with any other purpose under title 39 of the U.S. Code, the Commission may, based on Federal Rule of Civil Procedure 26(c):

(a) Prohibit the public disclosure of the non-public materials;

(b) Specify terms for public disclosure of the non-public materials;

(c) Order a specific method for disclosing the non-public materials;

(d) Restrict the scope of the disclosure of the non-public materials as they relate to certain matters;

(e) Restrict who may have access to non-public materials;

(f) Require that a trade secret be revealed only in a specific and limited manner or to limited or specified persons; and

(g) Order other relief as appropriate including, but not limited to, sealing a deposition or part of a proceeding.

§ 3007.61 Continued effectiveness of protective conditions.

(a) If a court or other administrative agency issues a subpoena or orders production of non-public materials which a person has obtained under protective conditions ordered by the Commission, the target of the subpoena or order shall, within 2 days of receipt of the subpoena or order for production, notify the Postal Service of the pendency of the subpoena or order to allow the Postal Service time to object to the production or to seek a protective order or seek such other relief as it deems appropriate.

(b) Any person seeking to disclose non-public materials shall make a good faith effort to obtain protective conditions at least as effective as those set forth in the Commission order establishing the protective conditions.

(c) Protective conditions ordered by the Commission or its authorized representative shall remain in effect throughout any subsequent review unless overridden by the action of the reviewing court.

§ 3007.62 Sanctions for violations of protective conditions.

(a) No person who has been granted access to materials subject to protective conditions shall disseminate the materials in whole or in part to any person not authorized to obtain access under the protective conditions imposed by the Commission. If a person who has been granted access to such non-public materials under a protective order violates the terms of such order, the Commission or its authorized representative shall impose sanctions on the person who violated the protective order or the individuals or entities on whose behalf the person was acting, or both. The sanctions may include:

(1) Dismissing the proceeding in whole or in part;

(2) Ruling by default against the person who violated the protective order; and

(3) Such other sanctions as the Commission or its authorized representative deems appropriate.

(b) The Postal Service, in its discretion, may pursue any remedies available to it under the law against the individual who violated the protective order, or the individuals or entities on whose behalf the person was acting, or both.

BILLING CODE 7710–FW–P

Appendix A to Part 3007—Statement of Compliance with Protective Conditions

The Postal Service (or a third party) has filed non-public materials identified as _____ in Commission Docket No. (if any) _____. The Postal Service (or a third party) requests confidential treatment of the materials (hereinafter "these materials").

The following protective conditions limit access to these materials identified as _____ by the Postal Service (or third party). Each person seeking to obtain access to these materials must agree to comply with these conditions, complete the attached certifications, and provide the completed certifications to the Commission and counsel for the Postal Service.

1. Access to these materials is limited to a person as defined in rule 5(f), 39 CFR 3001.5(f), or an individual employed by such person, or acting as agent, consultant, contractor, affiliated person, or other representative of such person for purposes related to the matter identified as _____. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.

2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.

3. Immediately after access has terminated under 39 CFR 3007.41 or 3007.51, a person (and any individual working on behalf of that person) who has obtained a copy of these materials shall certify to the Commission:

   (a) That the copy was maintained in accordance with these conditions (or others established by the Commission); and

(b) That the copy (and any duplicates) either have been destroyed or returned to the Commission.

4. The duties of each person obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically, or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.

5. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

6. These conditions shall apply to any revised, amended, or supplemental versions of these materials provided in the matter identified as _____.

7. The duty of nondisclosure of each person obtaining access to these materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 9 and 10, below.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

9. Any written materials that quote or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.

10. If a court or other administrative agency subpoenas or orders production of confidential information which a person has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within 2 business days) notify the Postal Service of the pendency of the subpoena or order to allow it time to object to that production or seek a protective order.

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as _____ by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as _____. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as _____ by the Postal Service has been terminated.

I certify that I have destroyed or returned to the Commission, all materials subject to protective conditions, relevant to the above matter. I also certify that these materials were maintained in accordance with the established protective conditions.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

[FR Doc. E9–15367 Filed 6–26–09; 8:45 am]
BILLING CODE 7710–FW–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0219; FRL–8921–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Michigan; Redesignation of the Detroit-Ann Arbor Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making a determination under the Clean Air Act (CAA) that the Detroit-Ann Arbor nonattainment area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Detroit-Ann Arbor area includes Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties. This determination is based on quality-assured ambient air quality monitoring data for the 2006–2008 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. EPA is approving a request from the State of Michigan to redesignate the Detroit-Ann Arbor area to attainment of the 8-hour ozone NAAQS. The Michigan Department of Environmental Quality (MDEQ) submitted this request on March 6, 2009. In approving this request, EPA is also approving, as a revision to the Michigan State Implementation Plan (SIP), the State's plan for maintaining the 8-hour ozone NAAQS in the area through 2020. EPA is approving the 2005 base year emissions inventory for the Detroit-Ann Arbor area as meeting the requirements of section 182(a)(1) of the CAA. EPA also finds adequate and is approving the State's 2020 Motor Vehicle Emission Budgets (MVEBs) for the Detroit-Ann Arbor area. EPA proposed these actions on April 23, 2009. EPA provided a 30-day review and comment period, which closed on May 26, 2009. EPA received comments in support of the redesignation from Consumers Energy and the Southeast Michigan Council of Governments. EPA received no comments in opposition to the proposal.

DATES: This final rule is effective June 29, 2009.

ADDRESSES: EPA has established a docket for this action: Docket ID No. EPA–R05–OAR–2009–0219. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov*.

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

Table of Contents

I. What Is the Background for This Rule?
II. What Comments Did We Receive on the Proposed Rule?
III. What Action Is EPA Taking?
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I. What Is the Background for This Rule?

A. What Is the General Background Information?

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million (ppm). EPA published a final rule designating and classifying areas under the 1997 8-hour ozone NAAQS on April 30, 2004 (69 FR 23857).

On March 12, 2008, EPA promulgated a more stringent 8-hour ozone standard of 0.075 ppm which was published in the **Federal Register** on March 27, 2008 (73 FR 16436). EPA will designate nonattainment areas under the 2008 8-hour ozone standard in 2010. Today's approval of Michigan's SIP revision addresses only the status of the Detroit-Ann Arbor area with respect to the 1997 8-hour ozone standard.

The background for today's actions with respect to the 1997 ozone standard is discussed in detail in EPA's April 23, 2009, proposal (74 FR 18479). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm. (*See* 69 FR 23857 (April 30, 2004) for further information.) The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness, as determined in accordance with appendix I of part 50.

Under the CAA, EPA may redesignate nonattainment areas to attainment if sufficient complete, quality-assured data are available to determine that the area has attained the standard and that it meets the other CAA redesignation requirements in section 107(d)(3)(E).

On March 6, 2009, MDEQ submitted a request to redesignate the Detroit-Ann Arbor area to attainment of the 8-hour ozone standard. The request included three years of complete, quality-assured data for the period of 2006 through 2008, indicating the 8-hour NAAQS for ozone had been achieved. The April 23, 2009, proposed rule provides a detailed discussion of how Michigan met this and other CAA requirements.

B. What Are the Impacts of the December 22, 2006, and June 8, 2007, United States Court of Appeals Decisions Regarding EPA's Phase 1 Implementation Rule?

On December 22, 2006, in *South Coast Air Quality Management Dist.* v. *EPA,* the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour ozone standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. *Id.,* Docket No. 04–1201. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates, and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By

limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision reaffirmed the Court's December 22, 2006, decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, contingent on an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8th decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

For the reasons set forth in the proposal, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of this area to attainment, because, even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

With respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8th decision clarified that, for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

II. What Comments Did We Receive on the Proposed Rule?

EPA provided a 30-day review and comment period. The comment period closed on May 26, 2009. EPA received comments in support of the redesignation from Consumers Energy and the Southeast Michigan Council of Governments. EPA did not receive any adverse comments.

III. What Action Is EPA Taking?

EPA is making a determination that the Detroit-Ann Arbor area has attained the 8-hour ozone NAAQS. EPA is also approving the maintenance plan SIP revision for the Detroit-Ann Arbor area. EPA's approval of the maintenance plan is based on Michigan's demonstration that the plan meets the requirements of section 175A of the CAA. After evaluating Michigan's redesignation request, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is approving the redesignation of the Detroit-Ann Arbor area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is approving the 2005 base year emissions inventory for the Detroit-Ann Arbor area as meeting the requirements of section 182(a)(1) of the CAA. Finally, EPA also finds adequate and is approving the State's 2020 MVEBs for the Detroit-Ann Arbor area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3) which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of planning requirements for this 8-hour ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under State law, and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a State to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

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

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Absent a prior existing requirement for the State to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of the action. This action may not be challenged later in proceedings to enforce its requirements. (*See* 42 U.S.C. 7607(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: June 11, 2009.

Walter W. Kovalick Jr,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart X—Michigan

■ 2. Section 52.1170(e) is amended by adding an entry to the end of the table to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* *	* * *	*		*
8-hour ozone maintenance plan	Detroit-Ann Arbor (Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	3/6/2009	6/29/2009	

■ 3. Section 52.1174 is amended by adding paragraph (z) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(z) Approval—On March 6, 2009, Michigan submitted a request to redesignate the Detroit-Ann Arbor area (Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties) to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). As part of its redesignation requests, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit subsequent maintenance plan revisions in 8 years as required by the Clean Air Act. If monitors in any of these areas record a violation of the 8-hour ozone NAAQS, Michigan will adopt and implement one or more contingency measures. The list of possible contingency measures

includes: Reduced VOC content in architectural, industrial, and maintenance (AIM) coatings rule; auto body refinisher self-certification audit program; reduced VOC degreasing/solvent cleaning rule; diesel retrofit program; reduced idling program; portable fuel container replacement rule; and, food preparation flame broiler control rule. Also included in the Michigan's submittal were a 2005 base year emissions inventory and motor vehicle emission budgets (MVEBs) for use to determine transportation conformity in the area. For the Detroit-Ann Arbor area, Michigan has established separate MVEBS for the Southeast Michigan Council of Governments (SEMCOG) region (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties) and for Lenawee County. MDEQ has determined the 2020 MVEBs for the SEMCOG region to be 106 tons per day for VOC and 274 tpd for NO_X. MDEQ has determined the 2020 MVEBs for Lenawee County to be 2.1 tpd for VOC and 4.4 tpd for NO_X.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. Section 81.323 is amended by revising the entry for Detroit-Ann Arbor, MI in the table entitled ''Michigan-Ozone (8-Hour Standard)'' to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN-OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Detroit-Ann Arbor, MI:				
Lenawee County	6/29/2009	Attainment.		
Livingston County.				
Macomb County.				
Monroe County.				
Oakland County.				
St. Clair County.				
Washtenaw County.				
Wayne County.				
*	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. E9–14750 Filed 6–26–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 143

[EPA–HQ–OW–2008–0644; FRL–8920–8]

RIN 2040–AF00

National Primary Drinking Water Regulations: Minor Correction to Stage 2 Disinfectants and Disinfection Byproducts Rule and Changes in References to Analytical Methods

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action, EPA is making a minor correction to the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR) and minor, unrelated, editorial changes in references to analytical methods in the regulations. EPA promulgated the Stage 2 Disinfectants and Disinfection Byproducts Rule on January 4, 2006. A requirement for ground water systems serving 500–9,999 people was unintentionally excluded from the final rule. As a result, the rule allowed for less routine compliance monitoring than intended for this category of public water systems (PWSs). These PWSs should have been required to monitor for both total trihalomethanes (TTHM) and haloacetic acids (HAA5) concentrations at two locations. Due to the error, they were only required to monitor for either TTHM or HAA5 at two locations. EPA is also making minor, unrelated changes in the regulations by adding references to the list of analytical methods approved under the Expedited Approval Process, removing references to outdated methods, and specifying a new source for the publication titled *Technical Notes on Drinking Water Methods.*

DATES: This final rule is effective on July 29, 2009. For judicial review purposes, this final rule is promulgated as of June 29, 2009. The incorporation by reference of certain publications listed in this rule is effective as of June 29, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW–2008–0644. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the OW 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 for the Public Reading Room is (202) 566–1744, and the telephone number for the OW docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For information concerning the Stage 2 DBPR minor correction contact Tom Grubbs, Standards and Risk Management Division, Office of Ground Water and Drinking Water, M/C 4607M, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number (202) 564–5262; e-mail address *grubbs.thomas@epa.gov*. For information concerning the methods

reference update in the CFR contact Patricia Fair, Standards and Risk Management Division, Technical Support Center, Office of Ground Water and Drinking Water, M/C 140, Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268; telephone number (513) 569–7937; e-mail address *fair.pat@epa.gov*. For general information, contact the Safe Drinking Water Hotline, telephone number: (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 10 a.m. to 4 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially regulated by this regulation are public water systems (PWSs). A public water system, as defined by section 1401 of the Safe Drinking Water Act (SDWA), is ''a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals.'' EPA defines ''regularly served'' as receiving water from the system 60 or more days per year. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities
State, Tribal and Local Government	State, Tribal or local government-owned/operated water supply systems using ground water, surface water or mixed ground water and surface water.
Federal Government	Federally owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water.
Industry	Privately owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water.

This table is not intended to be an exhaustive list, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of ''public water system'' in § 141.2, the section entitled ''Coverage'' (§ 141.3), and the sections entitled ''General requirements'' (§§ 141.600 and 141.620) in Title 40 of the *Code of Federal Regulations* and applicable criteria in §§ 141.605, and 141.621 of today's rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Minor Correction to the Stage 2 Disinfection and Disinfectant Byproduct Rule (DBPR)

Today's final rule corrects, as proposed (73 FR 67456, November 14, 2008) (USEPA, 2008b), a revised monitoring frequency for ground water systems serving 500–9,999 people to correct an error introduced when the tables were modified prior to publication of the (January 4, 2006) final rule. EPA has corrected the regulatory footnote at 40 CFR 141.605 and 141.621 to clarify that these systems must take dual rather than single monitoring samples. The monitoring for these small systems is not required to begin until the year 2012 or 2013 (page 415, USEPA 2006).

In the Stage 2 DBPR Economic Analysis (USEPA, 2005a) and in the Information Correction Rule Supporting Statement (Page 52, USEPA 2005b), EPA based the estimate of burden for these systems using the intended monitoring frequency. Population-based monitoring is discussed at length in the final Stage 2 DBPR (page 429, USEPA, 2006a) and the additional costs for monitoring by ground water systems serving 500–9,999 people are included (page 456, USEPA, 2006a). EPA is not developing a new economic analysis for this final rule because the existing economic analysis accounts for all costs associated with this rule.

C. Changes Related to Analytical Methods

1. Cross-references to Appendix A to Subpart C of Part 141.

When EPA determines that an alternative analytical method is ''equally effective'' (*i.e.*, as effective as a method that has already been promulgated in the regulations), the Safe Drinking Water Act (SDWA) allows EPA to approve the use of the alternative method through publication in the **Federal Register**. Section 1401(1) of SDWA states that the newly approved methods ''shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.'' EPA approved the first set of alternative methods using this authority in a **Federal Register** action published on June 3, 2008 (73 FR 31616) (USEPA 2008a). As part of that action, EPA added an appendix (Appendix A) to the regulations at 40 CFR Part 141, which lists the newly approved methods.

The current Part 141 drinking water regulations do not indicate that additional approved methods are available and are listed in an appendix. Therefore, EPA is amending the regulations at each section that lists approved analytical methods to add cross references to Appendix A to subpart C of part 141. This will make public water systems, laboratories, and States more aware of the alternative methods. References to the appendix are added at the following places:

—Section 141.21(f)(3) and (f)(6)
—Section 141.23(k)(1)
—Section 141.24(e)
—Section 141.25(a)
—Section 141.74(a)(1) and (a)(2)
—Section 141.131(b)(1), (c)(1), and (d)
—Section 141.402(c)(2)
—Section 141.704(a) and (b)
—Section 143.4(b)

2. Removal of methods that are no longer approved.

When the arsenic maximum contaminant level (MCL) was revised to 0.010 mg/L, some of the analytical methods that were previously approved for analyzing samples for arsenic were no longer sensitive enough to determine compliance. EPA added footnote 15 to the table at 40 CFR 141.23(k)(1) to indicate that use of these methods would not be allowed after January 23, 2006. EPA is updating the listing of approved arsenic methods to remove methods that are no longer allowed (EPA 200.7, SM 3120 B and SM 3120 B–99). EPA is also revising footnotes 13 and 14 to the table to paragraph (k)(1) to remove references to methods that are no longer approved to determine arsenic. EPA is also removing Footnote 15 and reserving this footnote number for future use.

Paragraph (e)(2) of 40 CFR 141.24 lists methods that were approved for use until June 1, 2001. Since these methods are no longer approved, EPA is removing the paragraph. EPA is also removing footnote 1 to the table at 40

CFR 141.24(e)(1) because it refers to 40 CFR 141.24(e)(2). Footnote 1 is reserved for future use. The header to the table is revised to remove the reference to footnote 1.

3. Source for obtaining copies of *Technical Notes on Drinking Water Methods,* EPA–600/R–94–173, October 1994.

This document is now available at no cost from the National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242–0419 or *http://www.epa.gov/nscep/*. EPA is updating the following regulations to reflect this new information:

—Section 141.23(k)(1)

—Section 141.74(a)(1)

—Section 143.4(b)

D. Summary of Public Comments

EPA requested public comment in the proposed rule (USEPA 2008b) and received one comment. This comment is available in the docket for this final rule. The comment concerns a section of the Stage 2 DBPR for which EPA did not propose a change, nor was the section discussed in the proposed rule. Therefore, the comment is outside the scope of this rulemaking. The commenter noted that the reduced monitoring frequency and the distribution system monitoring location per monitoring period for ground water systems serving fewer than 500 people in the table in 40 CFR 141.623(a) did not agree. Systems in that category that qualify for reduced monitoring are required to take one TTHM and one HAA5 sample every third year, with a provision for the system to take a dual sample set (a TTHM and an HAA5 sample taken at the same location and the same time) if specific criteria are met. The monitoring period in the column titled ''Distribution system monitoring location per monitoring period'' indicates that the monitoring period for a dual sample set is per year, rather than every third year, which is what it should have been to agree with the monitoring frequency. Since the Agency did not propose this correction, it will not address it in this final action.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction

This action does not impose any new information collection burden. In this action, EPA is making a minor correction to the Stage 2 DBPR, adding references in the *Code of Federal Regulations* (CFR) to the list of methods approved under the Expedited Approval Process, removing references to outdated methods in the CFR, and specifying a new source for the publication titled *Technical Notes on Drinking Water Methods*. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the Stage 2 DBPR existing regulations at 40 CFR Part 141 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number (number 2040–0265). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. There is no burden associated with regard to the minor, editorial changes in references to analytical methods in the CFR. This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

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

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems (PWS) serving 10,000 or fewer persons. As required by the RFA, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and finalized the alternative definition in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that Final Rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This correction does not impose any new costs or burdens on PWSs. The ground water system monitoring costs were accounted for and detailed in the Stage 2 DBPR Economic Analysis and summarized in the preamble of the Stage 2 DBPR (USEPA, 2006a). A copy of Stage 2 DBPR and the final rule's Economic Analysis can be found in the Docket for this rule.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This rule makes a minor correction to the Stage 2 DBPR and minor, editorial changes in references to analytical methods in the *Code of Federal Regulations*. Therefore, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule 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. As previously stated, this rule makes a minor correction to the Stage 2 DBPR and minor, editorial changes in references to analytical methods in the *Code of Federal Regulations;* actions that will not significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of

regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule makes a minor correction to the Stage 2 DBPR and minor, editorial changes in references to analytical methods in the *Code of Federal Regulations*. The Stage 2 DBPR (USEPA 2006) states that the final rule will not have federalism implications and, with regard to the minor, editorial changes to references of analytical methods in the *Code of Federal Regulations,* those changes do not impose 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. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule makes a minor correction to the Stage 2 DBPR and minor, editorial changes in references to analytical methods in the *Code of Federal Regulations,* actions that will not have tribal implications. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

This final rule does not involve technical standards. Therefore, EPA is not considering 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 (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA 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. This rule makes a minor correction to the Stage 2 DBPR and minor, editorial changes in references to analytical methods in the *Code of Federal Regulations*. These actions will not have a disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Enforcement 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 the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 29, 2009.

References

USEPA. 2005a. Economic Analysis for the Final Stage 2 Disinfectants and Disinfection Byproducts Rule. Washington, DC. EPA 815–R–05–010.

USEPA. 2005b. Information Collection Request for National Primary Drinking Water Regulations: Final Stage 2 Disinfectants and Disinfection Byproducts Rule. Washington, DC. EPA 815–Z–05–002.

USEPA. 2006. National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule. EPA 815–Z–06–002. 71 FR 4644. January 4, 2006.

USEPA. 2008a. Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures. 73 FR 17902. June 3, 2008.

USEPA. 2008b. National Primary Drinking Water Regulations: Minor Correction to Stage 2 Disinfectants and Disinfection Byproducts Rule and Changes in References to Analytical Methods. EPA 815–Z–08–003. 73 FR 67456. November 14, 2008.

List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Chemicals, Indians—lands, Water—supply.

Dated: June 16, 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 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 2. Section 141.21 is amended by revising the introductory text preceding the table in paragraph (f)(3), and the introductory text of paragraph (f)(6), to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) Public water systems must conduct total coliform analyses in accordance with one of the analytical methods in the following table or one of the alternative methods listed in Appendix A to subpart C of this part.

* * * * *

(6) Public water systems must conduct analysis of Escherichia coli in accordance with one of the following analytical methods or one of the alternative methods listed in Appendix A to subpart C of this part.

* * * * *

■ 3. Section 141.23 is amended as follows by:

■ a. Revising the introductory text preceding the table in paragraph (k)(1);

■ b. Revising entry 3 in the table to paragraph (k)(1);

■ c. Revising footnotes 13 and 14 to the table to paragraph (k)(1); and

■ d. Removing and reserving footnote 15 to the table to paragraph (k)(1).

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(k) * * *

(1) Analysis for the following contaminants shall be conducted in accordance with the methods in the following table, or the alternative methods listed in Appendix A to subpart C of this part, or their equivalent as determined by EPA. Criteria for analyzing arsenic, barium, beryllium, cadmium, calcium, chromium, copper, lead, nickel, selenium, sodium, and thallium with digestion or directly without digestion, and other analytical test procedures are contained in *Technical Notes on Drinking Water Methods,* EPA–600/R–94–173, October 1994. This document is available from the National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242–0419 or *http://www.epa.gov/nscep/*.

Contaminant	Methodology [13]	EPA	ASTM [3]	SM [4] (18th, 19th ed.)	SM [4] (20th ed.)	SM online [22]	Other
*	*	*	*	*	*		*
3. Arsenic [14]	ICP-Mass Spectrometry	[2] 200.8					
	Atomic Absorption; Platform.	[2] 200.9					
	Atomic Absorption; Furnace.	.....	D2972–97, 03 C	3113 B	.....	3113 B–99	
	Hydride Atomic Absorption.	.....	D1972–97, 03 B	3114 B	.....	3114 B–97	
*	*	*	*	*	*		*

* * * * *

[2] "Methods for the Determination of Metals in Environmental Samples—Supplement I," EPA/600/R–94/111, May 1994. Available at NTIS, PB95–125472.

[3] *Annual Book of ASTM Standards,* 1994, 1996, 1999, or 2003, Vols. 11.01 and 11.02, ASTM International; any year containing the cited version of the method may be used. The previous version of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the Annual Book of ASTM Standards, 1994, Vol. 11.01. Copies may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] *Standard Methods for the Examination of Water and Wastewater,* 18th edition (1992), 19th edition (1995), or 20th edition (1998). American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. The cited methods published in any of these three editions may be used, except that the versions of 3111 B, 3111 D, 3113 B and 3114 B in the 20th edition may not be used.

* * * * *

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2x preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher. For direct analysis of cadmium by Method 200.7, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D, unless multiple in-furnace depositions are made.

[14] If ultrasonic nebulization is used in the determination of arsenic by Method 200.8, the arsenic must be in the pentavalent state to provide uniform signal response. For direct analysis of arsenic with Method 200.8 using ultrasonic nebulization, samples and standards must contain 1 mg/L of sodium hypochlorite.

[15] [Reserved]

* * * * *

[22] Standard Methods Online are available at *http://www.standardmethods.org*. The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

* * * * *

■ 4. Section 141.24 is amended by:

■ a. Revising paragraph (e) introductory text;

■ b. Removing and reserving footnote 1 to the table to paragraph (e)(1); and

■ c. Removing and reserving paragraph (e)(2).

§ 141.24 Organic chemicals, sampling and analytical requirements.

* * * * *

(e) Analyses for the contaminants in this section shall be conducted using the methods listed in the following table, or the alternative methods listed in Appendix A to subpart C of this part,

or their equivalent as determined by EPA.

(1) * * *

Contaminant	EPA method	Standard methods	ASTM	Other
* * * *	*	*		*

[1] [Reserved]

* * * * *

(2) [Reserved]

* * * * *

■ 5. Section 141.25 is amended by revising the introductory text preceding the table in paragraph (a) to read as follows:

§ 141.25 Analytical methods for radioactivity.

(a) Analysis for the following contaminants shall be conducted to determine compliance with § 141.66 (radioactivity) in accordance with the methods in the following table, or the alternative methods listed in Appendix A to subpart C this part, or their equivalent determined by EPA in accordance with § 141.27.

* * * * *

■ 6. Section 141.74 is amended by revising the introductory text preceding the tables in paragraphs (a)(1) and (a)(2) to read as follows:

§ 141.74 Analytical and monitoring requirements.

(a) * * *

(1) Public water systems must conduct analysis of pH and temperature in accordance with one of the methods listed at § 141.23(k)(1). Public water systems must conduct analysis of total coliforms, fecal coliforms, heterotrophic bacteria, and turbidity in accordance with one of the following analytical methods or one of the alternative methods listed in Appendix A to subpart C of this part and by using analytical test procedures contained in *Technical Notes on Drinking Water Methods,* EPA–600/R–94–173, October 1994. This document is available from the National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242–0419 or *http://www.epa.gov/nscep/*.

* * * * *

(2) Public water systems must measure residual disinfectant concentrations with one of the analytical methods in the following table or one of the alternative methods listed in Appendix A to subpart C of this part. If approved by the State, residual disinfectant concentrations for free chlorine and combined chlorine also may be measured by using DPD colorimetric test kits. In addition States may approve the use of the ITS free chlorine test strip for the determination of free chlorine. Use of the test strips is described in Method D99–003, ''Free Chlorine Species ($HOCl^-$ and OCl^-) by Test Strip,'' Revision 3.0, November 21, 2003, available from Industrial Test Systems, Inc., 1875 Langston St., Rock Hill, SC 29730. Free and total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days, or with a protocol approved by the State.

* * * * *

■ 7. Section 141.131 is amended by revising paragraphs (b)(1) introductory text, (c)(1) introductory text, and (d) introductory text to read as follows:

§ 141.131 Analytical requirements.

* * * * *

(b) * * * (1) Systems must measure disinfection byproducts by the methods (as modified by the footnotes) listed in the following table or one of the alternative methods listed in Appendix A to subpart C of this part:

* * * * *

(c) * * * (1) Systems must measure residual disinfectant concentration for free chlorine, combined chlorine (chloramines), and chlorine dioxide by the methods listed in the following table or one of the alternative methods listed in Appendix A to subpart C of this part:

* * * * *

(d) *Additional analytical methods.* Systems required to analyze parameters not included in paragraphs (b) and (c) of this section must use the following methods or one of the alternative methods listed in Appendix A to subpart C of this part. A party approved by EPA or the State must measure these parameters.

* * * * *

■ 8. Section 141.402 is amended by revising paragraph (c)(2) introductory text preceding the table to read as follows:

§ 141.402 Ground water source microbial monitoring and analytical methods.

* * * * *

(c) * * *

(2) A ground water system must analyze all ground water source samples collected under paragraph (a) of this section using one of the analytical methods listed in the following table in paragraph (c)(2) of this section or one of the alternative methods listed in Appendix A to subpart C of this part for the presence of *E. coli*, enterococci, or coliphage:

* * * * *

■ 9. Section 141.605 is amended by revising footnote 2 to the table in paragraph (b) to read as follows:

§ 141.605 Subpart V compliance monitoring location recommendations.

* * * * *

(b) * * *

[2] Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for subpart H systems serving 500–3,300. Ground water systems serving 500–9,999 on annual monitoring must take dual sample sets at each monitoring location. All other systems on annual monitoring and subpart H systems serving 500–3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. For systems serving fewer than 500 people, only one location with a dual sample set per monitoring period is needed if the highest TTHM and HAA5 concentrations occur at the same location and month.

* * * * *

■ 10. Section 141.621 is amended by revising footnote 2 to the table in paragraph (a)(2) to read as follows:

§ 141.621 Routine monitoring.

(a) * * *

(2) * * *

[2] Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for subpart H systems serving 500–3,300. Ground water systems serving 500–9,999 on annual monitoring must take dual sample sets at each monitoring

location. All other systems on annual monitoring and subpart H systems serving 500–3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. For systems serving fewer than 500 people, only one location with a dual sample set per monitoring period is needed if the highest TTHM and HAA5 concentrations occur at the same location and month.

* * * * *

■ 11. Section 141.704 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 141.704 Analytical methods.

(a) *Cryptosporidium.* Systems must analyze for *Cryptosporidium* using *Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA,* 2005, United States Environmental Protection Agency, EPA–815–R–05–002 or *Method 1622: Cryptosporidium in Water by Filtration/IMS/FA,* 2005, United States Environmental Protection Agency, EPA–815–R–05–001, which are incorporated by reference, or alternative methods listed in Appendix A to subpart C of this part. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these methods online from *http://www.epa.gov/safewater/disinfection/lt2* or from the United States Environmental Protection Agency, Office of Ground Water and Drinking Water, 1201 Constitution Ave., NW., Washington, DC 20460 (*Telephone:* 800–426–4791). You may inspect a copy at the Water Docket in the EPA Docket Center, 1301 Constitution Ave., NW., Washington, DC (*Telephone:* 202–566–2426) 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) *E. coli.* System must use methods for enumeration of E. coli in source water approved in § 136.3(a) of this chapter or alternative methods listed in Appendix A to subpart C of this part.

* * * * *

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

■ 12. The authority citation for part 143 continues to read as follows:

Authority: U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 13. Section 143.4 is amended by revising the introductory text preceding the table in paragraph (b) to read as follows:

§ 143.4 Monitoring.

* * * * *

(b) Measurement of pH, copper and fluoride to determine compliance under § 143.3 may be conducted with one of the methods in § 141.23(k)(1). Analyses of aluminum, chloride, foaming agents, iron, manganese, odor, silver, sulfate, total dissolved solids (TDS) and zinc to determine compliance under § 143.3 may be conducted with the methods in the following table or alternative methods listed in Appendix A to subpart C of part 141. Criteria for analyzing aluminum, copper, iron, manganese, silver and zinc samples with digestion or directly without digestion, and other analytical test procedures are contained in *Technical Notes on Drinking Water Methods,* EPA–600/R–94–173, October 1994. This document is available from the National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242–0419 or *http://www.epa.gov/nscep/.*

* * * * *

[FR Doc. E9–14598 Filed 6–26–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3830

[LLWO3200000–L1999000.PP0000]

RIN 1004–AE09

Required Fees for Mining Claims or Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is promulgating this final rule to make statutorily authorized adjustments to its location and maintenance fees for unpatented mining claims, mill sites, and tunnel sites. These adjustments reflect changes in the Consumer Price Index (CPI), which is published by the Bureau of Labor Statistics.

DATES: The final rule is effective June 29, 2009.

ADDRESSES: You may mail inquiries to the Bureau of Land Management—Solid Minerals Division, Room 501 LS, 1849 C Street, NW., Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: Rick Deery in the Solid Minerals Division at (202) 452–0353. For assistance in reaching Mr. Deery, persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1 (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Final Rule
III. Procedural Matters

I. Background

The Mining Law of 1872 allows individuals and corporations to prospect for mineral deposits in public lands, and stake (or ''locate'') a claim on the deposits discovered. Historically, annual assessment work and related filings have been required by statute in order to maintain an unpatented mining claim or site. 30 U.S.C. 28–28e; 43 U.S.C. 1744(a) and (c).

Beginning in fiscal year 1993, mining claimants have been required to pay an annual ''maintenance'' fee in lieu of performing annual assessment work and making annual filings. Mining claimants locating new claims or sites must also pay a one-time location fee. *See* 30 U.S.C. 28f–28k.

This rule implements 30 U.S.C. 28j(c), which authorizes adjustments to the location and annual maintenance fees ''to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor every 5 years after August 10, 1993, or more frequently if the Secretary determines an adjustment to be reasonable.'' Section 28j(c) also requires that mining claimants be provided ''notice of any adjustment made under this subsection not later than July 1 of any year in which the adjustment is made,'' and that any fee adjustment ''shall begin to apply the first assessment year which begins after adjustment is made.''

As enacted in 1993, the one-time location fee was $25, and the annual maintenance fee was $100 per mining claim or site. In 2004, the BLM increased the amount of the location and maintenance fees to $30 and $125 respectively, based on the change in the CPI from September 1, 1993 to December 31, 2003. 69 FR 40294–40296

(July 1, 2004). The BLM has not adjusted the location and maintenance fees since 2004, but has promulgated two rules that have affected other aspects of the table of charges and fees at 43 CFR 3830.21, the regulation that is amended in this rule. For example, a new regulation issued in 2005 (43 CFR 3000.12) provides for a variety of processing fees, some of which are included in the table at section 3830.21. 70 FR 58873 (Oct. 7, 2005); see also 72 FR 50882 (Sept. 5, 2007).

The adjustments made in this rule are based upon the change in the CPI from December 31, 2003 to December 31, 2008, as reported by the Bureau of Labor Statistics in the CPI Detailed Report, Data for December 2008, Table 24C. Historical Chained Consumer Price Index for All Urban Consumers (C–CP–U): U.S. city average, all items (*http://www.bls.gov/cpi/cpid0812.pdf*). The calculated change is 11.93 percent from December 31, 2003 through December 31, 2008. A calculated value for the fees was obtained by inflating the location and maintenance fees established in the 2004 rulemaking by 11.93 percent.

The new location fee is $34, and the new maintenance fee is $140 per mining claim or site. The new location fee is based on rounding the calculated value to the nearest $1. The maintenance fee is based on rounding the calculated value to the nearest $5.

Mining claimants must pay the new location fee for any mining claim or site located after the effective date of this final rule. Mining claimants must pay the new maintenance fee to maintain mining claims and sites starting from the 2010 maintenance year. These fees are due on or before September 1, 2009. Under 43 CFR 3834.23, mining claimants who have already submitted maintenance fees for the 2010 maintenance year will be given an opportunity to pay the additional amount without penalty upon notice from BLM.

II. Discussion of the Final Rule

The BLM is adopting this final rule solely to adjust the location and maintenance fee amounts in section 3830.21. The BLM for good cause finds under 5 U.S.C. 553(b)(3)(B) that notice and an opportunity for public comment for this rule are unnecessary, and that this rule may properly take effect upon publication. The reason is that this rule implements a statutory requirement to adjust the location and annual maintenance fees at least every 5 years, and the last adjustment was made in 2004. The statute specifies the method of calculation of the fee adjustments and prescribes the form and manner of notice of the fee adjustment. The BLM has no discretion to exercise in complying with this statutory mandate. The BLM also determines under 5 U.S.C. 553(d) that there is good cause to place the rule into effect on the date of publication, because the adjustments made in the rule are explicitly authorized by statute.

This final rule contains only the specific amendments necessary to conform to the requirements of the statute. The amendments appear as modifications of the fee transaction table at 43 CFR 3830.21 to change the amount of the location and annual maintenance fees required to be paid for each mining claim, mill site, or tunnel site.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, BLM has determined that this rule is not a significant regulatory action.

- The rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The fee adjustment does not change the substance of current mining claim administration within the BLM. The total amount of fees to be collected, including the effects of the adjustment, is estimated to be $61 million annually, of which approximately $7 million will be attributable to the adjustments made in this rule.
- This rule will not create inconsistencies with other agencies' actions. It does not change the relationships of the BLM to other agencies and their actions.
- This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. The rule does not address any of these programs.
- This rule will not raise novel legal or policy issues because it makes no major substantive changes in the regulations. The Constitutionality of the location and maintenance fees has been challenged in the Federal courts. The courts have consistently upheld the fee legislation and implementing regulations.

Regulatory Flexibility Act

The BLM certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The rule will have a minor impact because the fees paid by small entities will be adjusted. However, the fee adjustment is authorized by statute and the BLM has no discretion in the form or manner of making the adjustments. A final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required. For the purposes of this section a ''small entity'' is an individual, limited partnership, or small company, at ''arm's length'' from the control of any parent companies, with fewer than 500 employees for business concerns engaged in mining or less than $7 million in revenue for business concerns providing support activities for mining. This definition accords with Small Business Administration regulations at 13 CFR 121.201.

Small Business Regulatory Enforcement Fairness Act

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

- Will not have an annual effect on the economy of $100 million or more. The revised regulation will not materially alter current BLM policy. The fee adjustments are authorized by statute. The total amount of fees collected, including the effects of the adjustment, is estimated to be $61 million annually, of which $7 million is attributable to the adjustments made in this rule.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

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

- This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is unnecessary.
- This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The changes implemented in this rule do not require anything of any non-Federal governmental entity.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the BLM finds that the rule does not have takings implications. A takings implication assessment is not required. This rule does not substantially change BLM policy. Nothing in this rule constitutes a taking. The Federal courts have heard a number of suits challenging the imposition of the rental and maintenance fees as a taking of a right, or, alternatively, as an unconstitutional tax. The courts have upheld the fee legislation and the BLM regulations as a proper exercise of Congressional and Executive authorities.

Executive Order 13132, Federalism

The final rule 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. Therefore, in accordance with Executive Order 13132, the BLM has determined that the final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the BLM has determined that the rule does not unduly burden the judicial system and therefore meets the requirements of sections 3(a) and 3(b)(2) of the Order. The BLM consulted with the Department of the Interior's Office of the Solicitor during the drafting process.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the regulation that this final rule is amending, under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004–0114.

National Environmental Policy Act

The BLM has determined that this final rule is of a procedural nature, and part of the routine administration of the fee legislation. Therefore, this rule is categorically excluded from environmental review under Section 102(2)(C) of the National Environmental Policy Act, pursuant to 43 CFR 46.210(i). In addition, this rule does not present any of the 12 extraordinary circumstances listed in 43 CFR 46.215. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and 43 CFR 46.205, the term ''categorical exclusion'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have considered the impact of this rule on the interests of Tribal governments. Because this rule does not specifically involve Indian reservation lands, government-to-government relationships will remain unaffected.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. To the extent that the rule affects the mining of energy minerals (*i.e.*, uranium and other fissionable metals), the rule applies only a statutory adjustment of the mining claim location and maintenance fees that the BLM has been collecting for many years. It will not significantly change financial obligations of the mining industry.

Authors

The principal author of this final rule is Rick Deery in the Solid Minerals Division, Washington Office, BLM, assisted by Jean Sonneman in the Regulatory Affairs Division, Washington Office, BLM.

List of Subjects in 43 CFR Part 3830

Land Management Bureau, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Maintenance fees.

■ For the reasons stated in the preamble, and under the authority of 30 U.S.C. 28f–28k, as amended by Public Law 110–161, Division F, part 3830, Group 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as follows:

PART 3830—LOCATION OF MINING CLAIMS

■ 1. The authority citation for part 3830 continues to read as follows:

Authority: 18 U.S.C. 1001, 3571; 30 U.S.C. 22 *et seq.*, 242, 611; 31 U.S.C. 9701; 43 U.S.C. 2, 1201, 1212, 1457, 1474, 1701 *et seq.*; 44 U.S.C. 3501 *et seq.*; 115 Stat. 414.

Subpart D—BLM Service Charge and Fee Requirements

■ 2. Revise § 3830.21 to read as follows:

§ 3830.21 What are the different types of service charges and fees?

The following table lists service charges, maintenance fees, location fees, and oil shale fees (all cross-references refer to this chapter):

Transaction	Amount due per mining claim or site	Waiver available
(a) Recording a mining claim or site location (part 3833).	(1) A total sum which includes ..... (i) the processing fee for notices of location found in the fee schedule in § 3000.12 of this chapter. (ii) A one-time $34 location fee. (iii) An initial $140 maintenance fee.	No.
(b) Amending a mining claim or site location (§ 3833.20).	The processing fee for amendment of location found in the fee schedule in § 3000.12 of this chapter.	No.
(c) Transferring a mining claim or site (§ 3833.30)	The processing fee for transfer of mining claim/site found in the fee schedule in § 3000.12 of this chapter.	No.
(d) Maintaining a mining claim or site for one assessment year (part 3834).	A $140 annual maintenance fee	Yes, see part 3835.
(e) Recording an annual FLPMA filing (§ 3835.30)	The processing fee for recording an annual FLPMA filing found in the fee schedule in § 3000.12 of this chapter.	No .

Transaction	Amount due per mining claim or site	Waiver available
(f) Submitting a petition for deferment of assessment work (§ 3836.20).	The processing fee for deferment of assessment work found in the fee schedule in § 3000.12 of this chapter.	No.
(g) Maintaining an oil shale placer mining claim (§ 3834.11(b)).	An annual $550 fee	No.
(h) Recording a notice of intent to locate mining claims on Stockraising Homestead Act Lands (part 3838).	The filing fee for recording a notice of intent to locate mining claims on Stock Raising Homestead Act Lands found in the fee schedule in § 3000.12 of this chapter.	No.

Dated: June 18, 2009.

Ned Farquhar,

Acting Assistant Secretary of the Interior, Land and Minerals Management.

[FR Doc. E9–15248 Filed 6–26–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2008–0020]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

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

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

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

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

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

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

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No: B–1033).	Town of Cave Creek (08–09–1202P).	December 18, 2008; December 25, 2008; *Arizona Business Gazette*.	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 5140 East New River Road Cave Creek, AZ 85331.	April 24, 2009	040129
Maricopa (FEMA Docket No: B–1033).	Unincorporated areas of Maricopa County (08–09–1202P).	December 18, 2008; December 25, 2008; *Arizona Business Gazette*.	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	April 24, 2009	040037
Maricopa (FEMA Docket No: B–1036).	Unincorporated areas of Maricopa County (08–09–1420P).	December 25, 2008; January 1, 2009; *Arizona Business Gazette*.	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	May 4, 2009	040037
Delaware: New Castle (FEMA Docket No: B–1033).	Unincorporated areas of New Castle County (08–03–1537P).	December 18, 2008; December 25, 2008; *The News Journal*.	The Honorable Christopher Coons, New Castle County Executive, 87 Reads Way, New Castle, DE 19720.	April 17, 2009	105085
Florida:					
Lake (FEMA Docket No: B–1036).	Town of Lady Lake (08–04–5093P).	January 12, 2009; January 19, 2009; *The Villages Daily Sun*.	The Honorable Jim Richards, Mayor, Town of Lady Lake, 409 Fennell Boulevard, Lady Lake, FL 32159.	January 30, 2009	120613
Miami-Dade (FEMA Docket No: B–1036).	City of Coral Gables (09–04–0251P).	January 12, 2009; January 20, 2009; *Miami Daily Business Review*.	The Honorable Don Slesnick, II, Mayor, City of Coral Gables, 405 Biltmore Way, 2nd Floor, Coral Gables, FL 33134.	December 31, 2008 ..	120639
Georgia: Columbia (FEMA Docket No: B–1030).	Unincorporated areas of Columbia County (08–04–4889P).	December 14, 2008; December 21, 2008; *The Columbia County News Times*.	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	April 20, 2009	130059
Idaho:					
Ada (FEMA Docket No: B–1033).	Unincorporated areas of Ada County (08–10–0528P).	December 22, 2008; December 29, 2008; *Idaho Statesman*.	The Honorable Fred Tilman, Chairman, Ada County, Board of Commissioners, 200 West Front Street, Boise, ID 83702.	April 28, 2009	160001
Ada (FEMA Docket No: B–1033).	City of Eagle (08–10–0528P).	December 22, 2008; December 29, 2008; *Idaho Statesman*.	The Honorable Phil Brandy, Mayor, City of Eagle, P.O. Box 1520, Eagle, ID 83616.	April 28, 2009	160003
Kentucky: Lexington-Fayette Urban County Government (FEMA Docket No: B–1046).	Lexington-Fayette Urban County Government (08–04–5296P).	December 12, 2008; December 19, 2008; *Lexington Herald Leader*.	The Honorable Jim Newberry, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, 12th Floor, Lexington, KY 40507.	November 28, 2008 ..	210067
Maryland:					
Carroll and Frederick (FEMA Docket No: B–1030).	Unincorporated areas of Carroll County (08–03–1713P).	December 15, 2008; December 22, 2008; *Carroll County Times*.	The Honorable Julia Gouge, President, Carroll County Board of Commissioners, 225 North Center Street, Westminster, MD 21157.	April 21, 2009	240015
Carroll and Frederick (FEMA Docket No: B–1030).	Unincorporated areas of Frederick County (08–03–1713P).	December 12, 2008; December 19, 2008; *Frederick News Post*.	The Honorable Jan Gardner, President, Frederick County Board of Commissioners, 12 East Church Street, Frederick, MD 21701.	April 21, 2009	240027
New Hampshire: Grafton (FEMA Docket No: B–1046).	Town of Waterville Valley (08–01–0905P).	September 4, 2008; September 11, 2008; *Record Enterprise*.	The Honorable Dave Jenkins, Chair, Board of Selectman, Town of Waterville Valley, Town Office, P.O. Box 500, Waterville Valley, NH 03215.	January 9, 2009	330077
New Jersey:					
Somerset (FEMA Docket No: B–1036).	Borough of Bound Brook (09–02–0051P).	January 9, 2009; January 16, 2009; *Courier News*.	The Honorable Carey Pilato, Mayor, Borough of Bound Brook, 230 Hamilton Street, Bound Brook, NJ 08805.	December 24, 2008 ...	340430
Somerset (FEMA Docket No: B–1036).	Township of Bridgewater (09–02–0051P).	January 9, 2009; January 16, 2009; *Courier News*.	The Honorable Patricia Flannery, Mayor, Township of Bridgewater, P.O. Box 6300, Bridgewater, NJ 08807.	December 24, 2008 ..	340432

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
North Carolina:					
Alamance (FEMA Docket No: B–1030).	Unincorporated areas of Alamance County (08–04–4817P).	December 10, 2008; December 17, 2008; *The Times-News*.	Mr. David I. Smith, Manager, Alamance County, Alamance County Office Building, 124 West Elm Street, Graham, NC 27253.	April 16, 2009	370001
Iredell (FEMA Docket No.: B–039).	Unincorporated areas of Iredell County (08–04–2756P).	January 7, 2009; January 14, 2009; *Statesville Record & Landmark*.	Mr. Joel Mashburn, Manager, Iredell County, P.O. Box 788, Statesville, NC 28687.	May 14, 2009	370313
Oklahoma:					
Oklahoma (FEMA Docket No: B–1036).	Town of Arcadia (08–06–2651P).	January 7, 2009; January 14, 2009; *The Oklahoman*.	The Honorable Marilyn Murrell, Mayor, Town of Arcadia, P.O. Box 268, Arcadia, OK 73004.	December 23, 2008 ..	400551
Tulsa (FEMA Docket No: B–1036).	City of Broken Arrow (08–06–2075P).	January 9, 2009; January 16, 2009; *Tulsa Daily Commerce & Legal News*.	The Honorable Wade McCaleb, Mayor, City of Broken Arrow, P.O. Box 610, Broken Arrow, OK 74013.	December 24, 2008 ..	400236
Pennsylvania:					
Allegheny (FEMA Docket No: B–1036).	Municipality of Monroeville (09–03–0036P).	January 12, 2009; January 19, 2009; *Pittsburgh Post Gazette*.	The Honorable Gregory Rosenko, Mayor, Municipality of Monroeville, 2700 Monroeville Boulevard, Monroeville, PA 15146.	December 31, 2008 ..	420054
Berks (FEMA Docket No: B–1030).	Township of Colebrookdale (08–03–1560P).	December 11, 2008; December 18, 2008; *The Boyertown Area Times*.	The Honorable Todd Gamler, President, Township of Colebrookdale, Board of Commissioners, 765 West Philadelphia Avenue, Boyertown, PA 19512.	April 17, 2009	421057
Chester (FEMA Docket No: B–1033).	Township of Birmingham (08–03–1499P).	December 30, 2008; January 6, 2009; *The Daily Local News*.	The Honorable John L. Conklin, Chairman, Birmingham Township, Board of Supervisors, 1040 West Street Road, West Chester, PA 19382–8012.	May 6, 2009	421474
Texas:					
Fort Bend (FEMA Docket No: B–1036).	Fort Bend County M.U.D #23 (08–06–2237P).	January 9, 2009; January 16, 2009; *Fort Bend Herald*.	The Honorable Ellen Hughes, Board President, Fort Bend County Municipal, Utility District No. 23, 1715 Misty Fawn Lane, Fresno, TX 77545.	December 31, 2008 ..	481590
Harris (FEMA Docket No: B–1036).	Unincorporated areas of Harris County (08–06–2044P).	January 9, 2009; January 16, 2009; *Houston Chronicle*.	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	January 30, 2009	480287

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

Dated: June 17, 2009.

Deborah S. Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–15362 Filed 6–26–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0808041045–9796–02]

RIN 0648–AW64

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 16

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved measures of Amendment 16 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP)(Amendment 16), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule establishes a seasonal closure of the recreational and commercial fisheries for gag and associated shallow-water grouper species; establishes a seasonal closure of the recreational fishery for vermilion snapper; reduces the aggregate bag limit for grouper and tilefish; reduces the bag limit for gag or black grouper combined; reduces the bag limit for vermilion snapper; prohibits captain and crew of a vessel operating as a charter vessel or headboat from retaining any fish under

the aggregate bag limit for grouper and tilefish or the vermilion snapper bag limit; establishes semiannual quotas for the commercial vermilion snapper fishery; establishes a quota for the commercial gag fishery; establishes restrictions on the possession, sale, and purchase of gag and associated shallow-water grouper species after the gag commercial quota is reached; and requires possession of a dehooking device on board a vessel when fishing for South Atlantic snapper-grouper and use of such device as needed to release fish with a minimum of injury. In addition, Amendment 16, for both gag and vermilion snapper, revises the definitions of maximum sustainable yield (MSY) and optimum yield (OY), specifies total allowable catch (TAC), and establishes interim allocations of TACs for the recreational and commercial sectors. Amendment 16 also specifies a minimum stock size threshold (MSST) for gag and, based on the new assessment, for vermilion snapper. The intended effects of this final rule are to end overfishing of gag and vermilion snapper, protect shallow-water grouper during their spawning season, and reduce bycatch mortality of snapper-grouper species in the South Atlantic.

DATES: This final rule is effective July 29, 2009.

ADDRESSES: Copies of the Final Regulatory Flexibility Analysis (FRFA) and the Record of Decision (ROD) may be obtained from Karla Gore, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; email *Karla.Gore@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Karla Gore, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Karla.Gore@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On December 24, 2008, NMFS published a notice of availability of Amendment 16 and requested public comment (73 FR 79037). On February 6, 2009, NMFS published the proposed rule to implement Amendment 16 and requested public comment (74 FR 6257). NMFS partially approved Amendment 16 on March 25, 2009; the provision requiring possession and use of a venting tool has been disapproved and is not included in this final rule. Amendment 16 proposed a requirement to use venting tools and dehooking devices to reduce bycatch mortality of incidentally caught snapper-grouper species. In light of the public comments and new information opposing the use of venting tools, along with scientific studies that suggest the use of venting tools may actually increase mortality of some species depending on capture depth, the part of the action that requires the possession and use of venting tools has been disapproved as being overly broad and not in accordance with the administrative record developed for Amendment 16. The rationale for the measures in Amendment 16 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

Comments and Responses

The following is a summary of the 120 comments NMFS received on Amendment 16 Final Environmental Impact Statement (FEIS), Notice of Availability, and the proposed rule from the public, state and county agencies and non-governmental organizations and the respective NMFS' responses. Of these comments, six expressed general opposition to Amendment 16 and seven comments expressed general support. Other comments provided specific concerns related to the amendment and those comments are addressed below. Three comments were received that were unrelated to the scope of this action and are therefore not addressed.

Comment 1: Thirty-nine comments were received expressing concern the management measures proposed in Amendment 16 would cause economic hardship on the commercial, recreational and for-hire sectors, and would have negative consequences on the tourism industry and affected communities.

Response: NMFS recognizes the management measures proposed in Amendment 16 will have immediate, short-term, negative socioeconomic impacts on the fisheries and communities of the South Atlantic region. The Council made efforts to balance the requirement of the Magnuson-Stevens Act to end overfishing of gag and vermilion snapper and minimize associated adverse socioeconomic impacts to the extent practicable. NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to analyze the economic impacts of the proposed rule on small entities, including commercial fishermen, charter vessels and headboats. The IRFA was included with the proposed rule. A FRFA accompanies this final rule and considers the comments received on this action. A Regulatory Impact Review has also been prepared that provides analyses of the economic benefits and costs of each alternative to the nation and the fishery as a whole. This analysis was included in the FEIS. To minimize socioeconomic impacts, the Council included an action in Amendment 16 which would allow the Regional Administrator to make adjustments to vermilion snapper management measures if a new assessment indicated an improved status of the stock. The new benchmark assessment for vermilion snapper was completed in October 2008 and verified the stock was experiencing overfishing but indicated less restrictive management measures were needed. Based on the action included in Amendment 16 to allow the Regional Administrator to address this situation, less restrictive management measures were adopted for vermilion snapper.

Comment 2: Two comments were received expressing concern that the gag closure proposed in Amendment 16 should not apply to Florida fishermen as gag are not often caught in Florida and the closure is unnecessary.

Response: The intent of Amendment 16 is not limited to just the protection of gag and vermilion snapper. Rather, the focus of the management actions is to improve the status of shallow-water grouper species including gag, black grouper, red grouper, scamp, red hind, rock hind, coney, yellowfin grouper, yellowmouth grouper, and tiger grouper. These shallow-water grouper species change sex, are long lived, and may be particularly vulnerable to overexploitation during the spawning season since many grouper species (i.e. black grouper, gag, scamp, red hind) form aggregations at known locations. Therefore, the Council not only sought to address overfishing of gag and vermilion snapper through measures in the amendment, but they also recognized the need to protect shallow-water grouper in spawning condition, as well as grouper spawning aggregations, which are more susceptible to overfishing since they are easily targeted by commercial and recreational fishermen. Information provided by scientists from the Southeast Fisheries Science Center (SEFSC) indicates some spawning aggregations of black grouper in South Florida have likely been fished out. The Council also received information indicating gag were commonly caught in the Florida Keys 15 to 18 years ago and were targeted during the January-March spawning season. The concern that management actions are not needed in the Florida Keys

because so few gag are caught in the area was addressed when the Council considered an alternative that included different management measures for gag and shallow-water grouper species for Monroe County relative to areas north within the Council's jurisdiction.

Comment 3: Three comments were received that opposed the use of venting tools to release incidentally caught snapper grouper species. These comments stated that possession and use of venting tools by anglers should not be required because they may not reduce mortality nor provide any benefits to released fish. Three other comments supported the use of venting tools.

Response: Research has shown that venting, when properly executed, will likely increase survival of some species captured at certain depth zones. The use of venting tools may also reduce predation on reef fish species by allowing rapid return to depth, making them less vulnerable to predators. However, the benefits of venting are not clear for all species, and recent studies suggest venting could cause harm in some cases. Therefore, NMFS has decided to disapprove the portion of the action that requires venting tools until guidance is developed specifying species and capture depths for which venting is most appropriate.

Comment 4: Sixteen comments were received stating the data used to determine stock status and develop Amendment 16 are flawed.

Response: Status determinations for gag and vermilion snapper were derived from the Southeast Data Assessment and Review (SEDAR) process. SEDAR is an inclusive and rigorous process designed to ensure each stock assessment reflects the best available scientific information. The findings and conclusions of each SEDAR workshop are documented in a series of reports, which are ultimately reviewed and discussed by the Council and their Science and Statistical Committee (SSC). The stock assessments determined gag is experiencing overfishing and is approaching an overfished condition; and vermilion snapper is experiencing overfishing but is not overfished. On June 12, 2007, the Council was notified gag and vermilion snapper are experiencing overfishing. At its June 2008 meeting, the SSC determined the results of the gag assessment are based upon the best available science and recommended harvest levels based on the fishing mortality rate associated with optimum yield in accordance with the new mandates specified by the reauthorized Magnuson-Stevens Act, which requires catch levels be set at a level to ensure overfishing does not occur. The new stock assessment for vermilion snapper was determined by the SSC to be based on the best available science in December 2008. Additionally, the SEFSC issued a memorandum dated December 18, 2008, certifying that Amendment 16 is based upon the best available science.

Red grouper and black grouper have been listed as experiencing overfishing in every Report to Congress on the Status of U.S. Fisheries since 1999. The latest information on the status of these species was published by the SEFSC in 2001. The SSC reviewed this report at their October 2005 meeting and concluded that in the absence of new SEDAR assessments, the existing determinations based on the 2001 report are the best available science. Further, on November 14, 2008, the SEFSC indicated that in the absence of new assessments, red grouper and black grouper are considered to be experiencing overfishing. The Council recognizes there is no recent SEDAR assessed information to indicate stock status of red grouper and black grouper; however, there are several recent publications by SEFSC staff suggesting red grouper and black grouper are undergoing overfishing. Black grouper and red grouper are scheduled for SEDAR stock assessments in 2009, which will be completed in 2010. Given the reauthorized Magnuson-Stevens Act requires the Council to end overfishing of all species, the Council believed it was appropriate to take actions to reduce harvest of red grouper and black grouper. Furthermore, the Council's intent is also to protect shallow-water grouper species in spawning condition including black grouper and red grouper as well as grouper spawning aggregations, which form during January through April. A 4-month spawning season closure could have positive biological effects including protecting spawning aggregations, increasing the percentage of males, enhancing reproductive success, reducing fishing mortality, increasing the magnitude of recruitment, and reducing the chance that overfishing is occurring.

Comment 5: Twenty-five comments were received opposing the recreational and for-hire management measures and pointing to the commercial longline and shrimp trawl fisheries as the cause of the snapper-grouper species decline. Commenters stated that strict regulations are needed for the commercial fisheries.

Response: The management measures proposed in Amendment 16 are intended to end overfishing of gag and vermilion snapper and protect shallow-water grouper species in spawning condition, some of which are taken incidentally when targeting gag and vermilion snapper. Vermilion snapper, gag, and shallow-water grouper species are targeted by commercial and recreational fishermen. Management measures imposed by the Council are intended to reduce harvest in proportion to the total landings from each sector. The preferred alternatives in Amendment 16 would result in commercial/recreational allocations of 68 percent/32 percent and 51 percent/49 percent for vermilion snapper and gag, respectively. To achieve the yield at 75 percent of F_{MSY} and end gag overfishing, a reduction of 35 percent in commercial harvest and 37 percent in recreational harvest would be required. To achieve the yield at 75 percent of F_{MSY} and end vermilion overfishing, a reduction of 47 percent of the recreational harvest and 29 percent of commercial harvest is necessary. These reductions have been recommended by the Council's SSC and determined by the SEFSC to be based on the best available scientific information. To achieve these reductions in harvest, commercial and recreational management measures are required. Management measures directed at the commercial fishery only will not achieve the required reductions. Bottom longline gear used in the snapper-grouper fishery and shrimp trawl gear likely have minimal impacts of fishing mortality of gag and vermilion snapper. Bottom longline gear is restricted to depths greater than 50 fathoms (91.4 m) where these species rarely occur and is used to target deep water snapper-grouper species such as golden tilefish and snowy grouper. Vermilion snapper, gag, and shallow-water grouper species are not commonly taken as bycatch in the shrimp trawl fishery.

Comment 6: Eight comments were received in support of the spawning season closures but in opposition to the other proposed measures (i.e. bag limit reductions).

Response: The Council considered a broad range of management measures to end overfishing of vermilion snapper and gag. The Council decided not to adopt seasonal closures for vermilion snapper and gag as the only management measure for the recreational sector because a longer time period would be required to end overfishing without bag limit reductions.

Comment 7: Two comments were received that oppose the recreational regulations and point to the unchecked populations of goliath grouper as they prey on other shallow-water grouper species.

Response: The Magnuson-Stevens Act requires the Council to prepare a plan amendment or proposed regulations to end overfishing. The Council considered a broad range of management measures to reduce harvest of vermilion snapper, gag, and shallow-water grouper species in the recreational sector. The goliath grouper populations are thought to be increasing and likely prey on snapper-grouper species. However, there is no evidence that goliath grouper populations are having a negative impact on populations of vermilion snapper, gag, or shallow-water grouper species.

Comment 8: Four comments were received in support of bag limit reductions and in opposition to the seasonal closures; stating that without a seasonal closure, fishermen would be allowed to fish year round.

Response: The management measures proposed in Amendment 16 are needed to end overfishing of gag and vermilion snapper and to improve the status of all shallow-water grouper species, some of which are taken incidentally when targeting gag and vermilion snapper. Reducing the gag bag limit from 2–fish per person per day bag limit to 1 fish per person per day, the 5–fish grouper aggregate to 3 fish per trip, and the vermilion snapper bag limit from 10 fish per person per day to 5 fish per person per day would not be sufficient to end overfishing of gag and vermilion snapper. The Council did not support an increase in the size limit of gag and other shallow-water groupers because the discard rate is already high and an increase in the size limit would likely increase the discard rate and the number of fish thrown back dead. The Council supported a January through April closure for gag and other shallow-water grouper because this is a known spawning period for these species. Furthermore, many of the grouper species form spawning aggregations at known locations increasing their vulnerability to fishing pressure. The Council also did not support an increase in the size limit of vermilion snapper because the magnitude of regulatory discards was already high. The Council supported a seasonal closure for vermilion snapper during November through March because the greatest amount of recreational fishing for this species occurs during the summer months, and the November through March closure would have less negative economic and social impacts than a summer closure. In order to achieve the necessary reduction in harvest, a combination of bag limit reductions and seasonal closures is necessary.

Comment 9: Six comments were received in opposition to the vermilion snapper bag limit reduction and vermilion snapper seasonal closure. Commenters stated that these measures would restrict the headboat and charter vessel fisheries to a point that would not be economically viable.

Response: To end vermilion snapper overfishing and achieve 75 percent of F_{MSY}, a reduction of 47 percent of the recreational harvest and 29 percent of commercial harvest is necessary. The Council considered a combination of management measures for the vermilion snapper recreational sector that included a combination of reduced bag limits, seasonal closures, and increased size limits. The Council considered three alternatives, which increase the recreational size limit in combination with a reduction in the bag limit and a seasonal closure. The Council chose not to select as their preferred alternative an increase in the minimum size limit because it would be expected to increase the number of regulatory discards as was observed when the recreational size limit was increased to 11 inches (28 cm) total length (TL) in 1999 and again in 2007, when the recreational size limit was increased to 12 inches (31 cm) TL. Instead, the Council chose to reduce harvest through a combination of bag limit adjustments and seasonal closures. The length of the closed season may influence its effectiveness in reducing fishing mortality on vermilion snapper due to shifting of effort to weeks before and after the closure. A longer closed season, as proposed in alternatives that require greater reductions in harvest, may be more effective, as it would be more difficult for fishermen to shift all their effort. The Council recognizes that the bag limit reduction and seasonal closure will have negative economic impacts on the headboat and charter vessel components of the fishery; however, reductions in harvest are needed to end overfishing. The Council chose the combination of management measures that they believed would end overfishing and have the least amount of short-term negative and social impacts on the headboat and charter sectors. In addition, the Council believed that a winter closure of vermilion snapper would have less negative economic and social impacts than a summer closure because most of the fishery is prosecuted during summer.

Comment 10: Two comments were received on the cumulative impacts of Amendment 16, a possible interim rule for red snapper, and the future Amendment 17 which will set annual catch limits and accountability measures for snapper-grouper species experiencing overfishing. The comments indicated the combination of these amendments and management measures will have severe economic and social impacts for the commercial, headboat, charter and recreational fisheries and their communities.

Response: The cumulative impacts of Amendment 16 were described and analyzed in the cumulative effects analysis (CEA) of the FEIS. The CEA takes into consideration past, current and reasonable foreseeable management actions. Amendment 17 is being developed by the Council, and it is difficult to determine when it would be implemented, if it is approved by the Secretary of Commerce. At this time, it is not possible to determine the economic and social impacts. However, Amendment 17 will include a CEA that will analyze the impacts of that action as well as those recently implemented (i.e. Amendment 16). Further, the management measures in Amendment 17 will consider the effects of management measures being implemented through Amendment 16. If an interim rule for red snapper is developed for implementation, the associated impacts would be evaluated in the environmental assessment and other supporting documents.

Comment 11: Four comments referenced the most recent red grouper and black grouper stock assessments as being outdated, and claim these data sources should not be used as a basis for implementing a seasonal closure. One comment objected to a 4-month shallow-water grouper closure based on the status of gag.

Response: The actions proposed in Amendment 16 are not based solely upon the status of red grouper, black grouper, or gag. In addition to actions intended to end overfishing of gag and vermilion snapper, the intent of Amendment 16 and the proposed January-April closure is to protect all shallow-water grouper species during their spawning season, regardless of their status. These shallow-water grouper species include: Gag, red grouper, and black grouper, which are listed as undergoing overfishing; scamp, which is not experiencing overfishing; and yellowmouth grouper, tiger grouper, yellowfin grouper, red hind, rock hind, graysby, and coney, whose status is unknown. The Council believed a January-April spawning season closure was warranted because shallow-water grouper species change sex, are long lived, and are particularly vulnerable to overexploitation during the spawning season since many grouper species (i.e. black grouper, scamp, gag, red hind, and

others) form aggregations at known locations. Furthermore, many grouper species occur in the same location at the same time further increasing susceptibility to fishing gear.

While the actions in Amendment 16 are not dependent upon the status of red grouper and black grouper, it is acknowledged in the amendment that red grouper and black grouper are listed as experiencing overfishing in The Report to Congress on the Status of U.S. Fisheries (2008), and actions proposed in Amendment 16 would likely improve their status. SEDAR assessments are scheduled for red grouper and black grouper in 2009–2010. The SEFSC and the SSC indicate in the absence of new assessments, red grouper and black grouper are undergoing overfishing.

Comment 12: Several North Carolina groups stated that if the State of Florida fails to comply with Federal rules, a large portion of the recreational catch of gag could occur in Florida's state waters and these catches would be deducted from an annual catch limit (ACL) resulting in seasonal closures, which could deprive North Carolina from equal access to the fishery.

Response: Amendment 16 does not establish catch limits or quotas for the recreational sector. As required by the reauthorized Magnuson-Stevens Act, ACLs are being considered for the gag recreational sector in Amendment 17, which is being developed by the Council. Furthermore, Amendment 18 is being developed and includes alternatives for regional catch limits for the gag recreational sector.

Comment 13: One individual stated all allocations should be 50 percent recreational, 30 percent commercial, and 20 percent for-hire. This would result in an allocation between recreational and commercial business as 50/50.

Response: The allocation for vermilion snapper and gag is based on historical landings in the commercial and recreational sectors. The Council was concerned that splitting the recreational allocation into for-hire and private sectors would increase the uncertainty associated with recreational landings estimates. The Snapper-Grouper Advisory Panel (AP) and Council examined the complete time series for vermilion snapper and noticed there was little difference in the percentage of commercial and recreational landings when any time series was examined. The AP and Council concluded the longest time series of landings (Alternative 2) was the best approach for estimating allocations. In addition, the Council discussed whether an additional alternative was necessary but, given the similar distribution of commercial and recreational landings over the years, the Council concluded two alternatives were appropriate for this action. Using historical landings, there was no basis for an alternative that would allocate 50 percent of the TAC to the commercial and recreational sectors.

In contrast, the Council chose an allocation for gag that is 51 percent commercial and 49 percent recreational and is the closest to the Snapper-Grouper AP's recommendation for a 50/50 allocation. The AP examined the allocation tables and noted the distribution of catch was about 50/50 in recent years and they believed this was fair among the two sectors. This alternative would specify commercial and recreational allocation at percentages that have occurred in recent years.

Comment 14: Two individuals indicated separate quotas were needed for North Carolina.

Response: The Council considered an alternative which would establish regional quotas for gag. The Council's rationale was that fishermen off Florida could have an advantage and catch part of the quota early in the year when bad weather would prevent fishermen from catching gag off North Carolina and South Carolina. The Council examined monthly gag landings and found the percentage of annual gag landings among states was similar after the proposed January through April spawning season closure would take place; thus, negating the underlying rationale for proposing a regional quota. The Council examined commercial landings of vermilion snapper and found that over 70 percent occurred off of North Carolina and South Carolina; therefore, regional quotas were not considered for this species.

Comment 15: One commenter expressed concern about the vermilion snapper assessment stating that ''despite the misgivings of the Committee of Independent Experts (CIE) about the models used, the Scientific and Statistical Committee (SSC) of the SAFMC approved the assessment as being acceptable for management.''

Response: Contrary to the statement of the commenter, the SSC did not override the opinions of the review panel, consisting of individuals from the CIE, when accepting the vermilion snapper assessment as best available science. The CIE indicated there was some uncertainty as to whether or not vermilion snapper was experiencing overfishing; however, the CIE accepted the assessment. The CIE stated, ''The panel accepted the vermilion snapper stock assessment, and concluded that the stock was not over-fished. However, the panel concluded that over-fishing was occurring but this conclusion was highly uncertain due to a lack of robustness to key model assumptions.'' Therefore, the conclusions of the SSC are in accordance with those from the CIE for the vermilion snapper SEDAR stock assessment.

Changes from the Proposed Rule

In the proposed rule (74 FR 6257, February 6, 2009), amendatory instruction 8 incorrectly indicated that in § 622.45 paragraph (d)(8) was being revised; however, it was paragraph (d)(7) that was to be revised. This final rule corrects the paragraph designation in the amendatory instruction and the associated codified text. Other than the paragraph designation, there is no change to the associated regulatory text.

In accordance with the disapproval of the measure requiring possession and use of a venting tool, paragraph § 622.41(n)(2) has been removed and reserved in this final rule.

Classification

The Administrator, Southeast Region, NMFS determined that Amendment 16 is necessary for the conservation and management of the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an FRFA for this action. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed supporting the action. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

Several comments were received on the economic effects of the proposed rule. However, no comments specific to the IRFA were received. Many comments stated the proposed rule would have devastating economic effects on the regional fishing industry. Some comments noted that the proposed seasonal closure would create undue hardships on for-hire crew, support industries, and associated communities. Other comments stated that the economic analysis underestimated the adverse economic effects of the proposed rule on the for-hire sector in particular and the recreational sector in general because of the large number of recreational fishers

and fishing trips and the large amount of recreational expenditures. Finally, three comments opposed the proposed mandatory possession and use of venting tools.

The economic analysis conducted for the proposed rule estimated the expected quantitative effects of each alternative to the extent possible. Qualitative discussion of expected effects was provided where data or analytical techniques were not available. The economic analysis concluded that, with the exception of the no action alternatives, practically all alternatives would result in short-term adverse economic effects on fishers, support industries, and associated communities. Some alternatives to the proposed rule would be expected to result in lower adverse economic effects but would not achieve the Council's objective for that particular action. Other alternatives to the proposed rule may have been projected to achieve the Council's objectives but were projected to result in greater adverse economic effects than the proposed rule. No options exist that meet the conservation goals with lesser economic impacts.

The economic analysis conducted for the proposed rule evaluated the expected change in economic value, where economic value was measured by net operating revenues for commercial and for-hire vessels and consumer surplus for recreational anglers. Although an expenditure analysis, as suggested by public comment, is useful for examining the distributional effects of a regulatory change, evaluating the change in economic value is the appropriate methodology for analyzing the costs and benefits to society of the proposed management measures.

The proposed requirement for the possession and use of a venting tool has been disapproved and is not included in this final rule because this requirement is overly broad and not in accordance with the administrative record supporting Amendment 16. This action may be re-considered when guidance is developed specifying species and capture depths for which venting is most appropriate. NMFS agrees with the Council's choice of preferred alternatives for the other actions as those which would be expected to best achieve the Council's objectives while minimizing the adverse effects on fishers, support industries, and associated communities and no additional changes in the final rule were made in response to public comment.

This final rule is expected to directly affect vessels that operate in the South Atlantic commercial and for-hire snapper-grouper fisheries. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all affiliated operations worldwide. For for-hire operations, the other qualifiers apply and the annual receipts threshold is $7 million (NAICS code 713990, recreational industries).

A commercial snapper-grouper permit is required to operate in the South Atlantic snapper-grouper fishery, and a two-tier license limitation program, which imposes a 225–lb (102–kg) snapper-grouper trip limit for some vessels and an unlimited snapper-grouper trip-limit for other vessels, has been in effect in this fishery since 1998. Logbook data from 2001–2006 were used in the analysis of the expected impacts of this action. Over this period, an average of 1,101 vessels per year were permitted to operate in the commercial snapper-grouper fishery. However, only an average of 922 vessels per year had recorded landings of snapper-grouper species. The total average annual dockside revenue from snapper-grouper species and all other species harvested on trips that harvested snapper-grouper species over this period was approximately $15.58 million (2005 dollars), resulting in a per vessel average of approximately $16,900. The highest producers included an average of 27 vessels per year that harvested more than 50,000 lb (22,680 kg) of snapper-grouper per year, valued at approximately $100,000 per vessel. Vessels that operate in the snapper-grouper fishery may also operate in other fisheries that are not covered by the logbook program. As such, the revenues from these fisheries cannot be determined with these data and are not reflected in the totals provided above.

Although a vessel that possesses a commercial snapper-grouper permit can harvest any snapper-grouper species, except for wreckfish which requires a separate permit, during the period 2001–2006, only 299 vessels per year had recorded harvests of gag and only 259 vessels had recorded harvests of vermilion snapper. These totals are not additive, because some vessels landed both species. Total dockside revenues from all snapper-grouper species and other species on trips that harvested gag averaged approximately $5.74 million (2005 dollars) over this period, resulting in a per vessel average of approximately $19,200. Total dockside revenues from all snapper-grouper species and all other species on trips that harvested vermilion snapper averaged approximately $6.98 million (2005 dollars) over this period, resulting in a per vessel average of approximately $26,950. Among the vessels with recorded gag harvests, an average of 12 vessels per year harvested more than 10,000 lb (4,536 kg) of gag per year, generating dockside revenues of approximately $29,300 per vessel. An average of 43 vessels per year harvested more than 10,000 lb (4,536 kg) of vermilion snapper, generating dockside revenues of approximately $24,000 per vessel.

For the period 2001–2006, an average of 1,273 vessels were permitted to operate in the snapper-grouper for-hire fishery, of which 82 are estimated to have operated as headboats. Within this total of vessels, 235 vessels also possessed a commercial snapper-grouper permit and would be included in the summary information provided above on the commercial sector. The for-hire fleet consists of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The average annual gross revenue (in 2005 dollars) for charter vessels is estimated to range from approximately $62,000-$84,000 for Florida vessels, $73,000-$89,000 for North Carolina vessels, $68,000-$83,000 for Georgia vessels, and $32,000-$39,000 for South Carolina vessels. For headboats, the appropriate estimates are $170,000-$362,000 for Florida vessels, and $149,000-$317,000 for vessels in the other states. Some fleet activity may exist in both the commercial and for-hire snapper-grouper sectors, but the extent of such is unknown and all vessels are treated in this analysis as independent entities.

Based on the average revenue figures provided above, NMFS determines, for the purpose of this analysis, that all commercial and for-hire vessels that will be affected by this final rule are small entities. Because all entities expected to be affected by this final rule are considered small entities, the issue of disproportional impacts of this final rule on small and large entities does not arise.

The gag and other shallow-water grouper management measures are expected to reduce annual net operating revenues of commercial vessels by approximately $848,000 for all vessels combined that harvest at least 1.0 lb (0.45 kg) of snapper-grouper. Based on an average of 299 vessels per year with

recorded gag landings and an average of 922 vessels per year with recorded snapper-grouper landings, this reduction in net revenue results in an average of approximately $2,800 per vessel with gag landings and approximately $900 per vessel with snapper-grouper landings. Although net revenues are not directly comparable to gross revenues, the average annual revenues from all species on trips that harvested gag is estimated to be approximately $19,200 and the comparable revenue total for snapper-grouper vessels is approximately $16,900.

For the for-hire fishery, the gag and other shallow-water grouper management measures in this final rule are expected to reduce annual producer surplus for the entire fishery by approximately $285,000. Although 1,456 vessels are permitted to operate in the snapper-grouper fishery, not all vessels are expected to harvest or be affected by the gag and other shallow-water grouper regulations. However, a meaningful method for determining how to apportion the expected reduction in producer surplus over the vessels in the fleet has not been identified.

The vermilion snapper management measures in this final rule are expected to reduce annual operating revenues to commercial vessels that harvest snapper-grouper by approximately $1.62 million. Based on an average of 259 vessels per year with recorded vermilion snapper landings and 922 vessels per year with recorded snapper-grouper landings, this reduction in net revenue results in an average of approximately $7,300 per vessel with vermilion snapper landings and approximately $1,800 per vessel with snapper-grouper landings. As stated above, although net revenues are not directly comparable to gross revenues, the average annual revenue from all species on trips that harvested vermilion snapper is estimated to be approximately $26,950 and the comparable average revenue total for snapper-grouper vessels is approximately $16,900.

For the for-hire fishery, the vermilion snapper management measures in this final rule are expected to reduce annual producer surplus for the entire fishery by approximately $58,000. Similar to the discussion on the gag and other shallow-water grouper management measures, a meaningful method for apportioning the expected reduction in producer surplus over the 1,456 vessels in the fleet has not been identified.

The requirement in this final rule to use dehooking tools to reduce the bycatch mortality of snapper-grouper is expected to increase gear costs by less than $15 per vessel. Many fishermen are not expected to incur any new gear costs as a result of this requirement because the possession and use of dehooking devices is expected to already be widespread.

Two alternatives, including the final action, were considered for the action to specify the gag TAC. The single alternative to the final TAC is the no action alternative, which would not set a TAC for gag. Because a TAC is required to make some management determinations, the no action alternative would not achieve the Council's objective.

Four alternatives, including the final action, were considered for the action to specify an interim allocation for gag. The first alternative to the final action, the no action alternative, would not establish an allocation of gag between the commercial and recreational sectors. The absence of an allocation would hinder overall TAC management and the ability to take corrective action in the appropriate sector should TAC overages occur. This alternative, therefore, would not achieve the Council's objective. The other two alternatives to the final action would result in higher allocations to the commercial sector than the final action and, thus, would result in lower adverse economic impacts on the commercial small entities. However, these alternatives would increase the adverse impacts on the recreational sector (for-hire businesses). The overall net effects of the alternative allocations cannot be estimated at this time due to the absence of appropriate data and comparable commercial and recreational models. The final allocation was selected because it best matches with current harvest distributions and is, thus, expected to be the least disruptive to current harvest practices.

Seven alternatives (with sub-alternatives), including the final actions, were considered for the action to specify gag and other shallow-water grouper management measures. The final action encompasses three separate alternatives: one alternative to establish a spawning closure, one alternative to establish a directed commercial quota, and one alternative to establish recreational management measures. The first alternative to the final action is the no action alternative, which would apply to both the commercial and recreational sectors. The no action alternative would not achieve the Council's objective of ending overfishing of gag. Two alternatives to the final action would only apply to the commercial sector. The first of these alternatives would divide the commercial quota into North Carolina/South Carolina and Georgia/Florida regional sub-quotas. Although this alternative may result in a more even distribution of the economic effects of the final quota across participants in all South Atlantic states, the total reduction in economic value is expected to be greater than that of the final action. The second commercial alternative to the final action would establish a 1,000–lb (454–kg) trip limit. This alternative would be expected to result in greater adverse economic effects than the final action. One alternative to the final action would apply only to the recreational sector and would extend the final action's spawning closure by an additional month. As a result, this alternative would increase the adverse economic effects on the recreational sector. A final alternative would apply to both the commercial and recreational sectors. This alternative would establish special management regulations for waters off Monroe County, Florida. This alternative would be expected to result in greater adverse economic effects on entities in the commercial sector than the final action and have only minor economic effects on entities in the recreational sector.

Two alternatives, including the final action, were considered for the action to specify the vermilion snapper TAC. The single alternative to the final TAC is the no action alternative, which would not set a TAC for vermilion snapper. Because a TAC is required to make some management determinations, the no action alternative would not achieve the Council's objective.

Two alternatives, including the final action, were considered for the action to specify an interim allocation for vermilion snapper. The only alternative to the final action is the no action alternative, which would not establish an allocation for vermilion snapper. The absence of an allocation would hinder overall TAC management and the ability to take corrective action in the appropriate sector should TAC overages occur. This alternative, therefore, would not achieve the Council's objective.

Five alternatives (with multiple sub-alternatives), including the final action, were considered for the action to establish management measures for vermilion snapper. The final action encompasses three separate alternatives: one alternative to establish a directed commercial quota, one alternative to allocate the commercial quota to two periods, January through June and July through December, and one alternative to establish recreational management

measures. The first alternative to the final action is the no action alternative, which would not change current management measures for vermilion snapper. The no action alternative would not achieve the Council's objective of ending overfishing of vermilion snapper. Two alternatives to the final action would only apply to the commercial sector. The first of these alternatives addresses the seasonal allocation of the commercial quota and contains two sub-alternatives. The first of these sub-alternatives would allocate 40 percent of the quota to the first season and 60 percent to the second season instead of the final action's 50 percent allocation to each period (as adjusted for post quota bycatch mortality (PQBM)). This alternative would be expected to have almost identical effects on commercial entities as the final action and is not expected to reduce the overall adverse economic effects of the final action. The second sub-alternative would maintain the equal 50–percent seasonal allocation (as adjusted for PQBM), as in the final action, but would lengthen the first season by 2 months, thereby establishing 8-month and 4-month seasons. This alternative would be expected to result in greater adverse economic impacts on commercial entities than the final action. The second alternative to the final action that would apply only to the commercial sector would establish a 1,000–lb (454–kg) trip limit and a May 1st start to the fishing year in lieu of seasonal quotas. Relative to the final action, this alternative would be expected to result in slightly lower adverse economic effects for vessel trips landing at least 1.0 lb (.45 kg) of vermilion snapper, but the Council did not choose this alternative because it would alter the distribution of harvests across the various areas. One alternative, which includes five sub-alternatives including the final action, would apply only to the recreational sector. Two of these sub-alternatives would maintain the zero bag limit for captain and crew, similar to the final action, but would impose higher minimum size limits and lower bag limits. As a result, these two sub-alternatives would be expected to result in greater adverse economic impacts on recreational small entities than the final action. The remaining two alternatives would maintain the zero bag limit for captain and crew like the final action. The first of these two alternatives would also establish a higher minimum size limit and a higher bag limit but a shorter seasonal closure than the final action. As a result of the higher bag limit and shorter seasonal closure, this alternative would result in lower adverse economic effects than the final action. The Council believes, however, that this alternative would have lower probability of achieving the target reduction in recreational harvest than the final action. The second of these two alternatives would maintain the same size limit as the final action but would establish a lower bag limit and longer seasonal closure. This alternative would result in greater adverse economic impacts on small entities than the final action. Overall, the Council believes that the final action on bag limit and seasonal closure, while maintaining the current size limit, will provide a higher probability of achieving the target reduction in recreational harvest at a reasonably acceptable economic cost to small entities.

Three alternatives (with one set of sub-alternatives), including the final action, were considered for the action to reduce the bycatch mortality of snapper-grouper. The first alternative to the final action is the no action alternative, which would not require additional measures to reduce bycatch mortality of snapper-grouper and would not achieve the Council's objective. In addition to the requirement of the final action for vessels fishing for snapper-grouper to possess dehooking devices and use them as needed, the second alternative to the final action would also require the use of circle hooks and venting tools. This alternative could be expected to adversely affect the harvest of certain target species because the morphology of mouths and biting habits of some fish species would not allow circle hooks to be an effective harvest gear. As a result, this alternative would be expected to reduce the harvest of target species and result in greater adverse economic effects than the final action. Additionally, within this rejected alternative, sub-alternatives considered the application of the requirements to only the commercial sector, just the recreational sector, or both sectors. The final rule will apply to both sectors. Although the application of the new bycatch reduction requirements to a single sector would reduce the adverse economic effects for the exempted sector, the overall benefits of bycatch reduction would be lower. As a result, sector exemption would not achieve the Council's objective. The original proposed action would require the use of dehooking devices and venting tools, but the venting tool requirement has been disapproved for the final rule as being overly broad and not in accordance with the administrative record. This action may be reconsidered when guidance is developed specifying species and capture depths for which venting is most appropriate.

In addition to the actions discussed above, Amendment 16 considered alternatives to establish management reference points and stock status criteria for gag and vermilion snapper. These alternatives are discussed in the following paragraphs.

For both gag and vermilion snapper, the final management reference points are such that MSY would be equated to the yield produced at F_{MSY}, F_{OY} equated to the fishing mortality rate specified in the rebuilding plan when the stock is overfished or at 75 percent of F_{MSY} when the stock is rebuilt, and OY equated to the yield produced at F_{MSY}. In terms of economic effects, these management reference points only have meaningful content when evaluated through the management measures that would restrict the respective species to the allowable harvest levels. Also, because they are reference points and would not directly place any harvest restrictions on the fishery, none of the alternatives would result in any direct effects on any entities in the gag and vermilion snapper fisheries.

Two alternatives, including the final action, were considered for the action to specify gag and vermilion snapper management reference points. The first alternative to the final action, the no action alternative, would retain the current definitions of MSY and OY. These definitions are not consistent with the most recent scientific advice and would not achieve the Council's objective of basing management decisions on the best available scientific information. The second alternative contains three sub-alternatives for the specification of OY, one of which is the final OY specification. Each of the two alternative specifications to the final OY is based on the same specification of MSY, but provides for different OY levels, one more than the final OY and one less. All OY levels, including the final action, would result in relatively restrictive management measures. However, the final OY is expected to provide the best balance between short-term adverse economic impacts and long-term protection to the stock.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the final rule, and shall designate such publications as ''small entity

compliance guides.'' As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery-bulletin will be sent to all vessel permit holders for the South Atlantic Snapper-Grouper fishery.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 23, 2009

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.35, paragraphs (j) and (k) are added to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

* * * * *

(j) *Seasonal closure of the recreational and commercial fisheries for gag and associated grouper species.* During January through April each year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, or coney. In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply in the South Atlantic, regardless of where such fish are harvested, i.e., in state or Federal waters.

(k) *Seasonal closure of the recreational fishery for vermilion snapper.* The recreational fishery for vermilion snapper in or from the South Atlantic EEZ is closed from November 1 through March 31, each year. In addition, for a person on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, this closure applies in the South Atlantic, regardless of where the fish are harvested, i.e., in state or Federal waters. During the closure, the bag and possession limit for vermilion snapper in or from the South Atlantic EEZ is zero.

§ 622.36 [Amended]

3. In § 622.36, paragraph (b)(4) is removed and reserved.

■ 4. In § 622.39, paragraphs (d)(1)(ii) introductory text, (d)(1)(ii)(A), and (d)(1)(v) are revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(d) * * *

(1) * * *

(ii) Grouper and tilefish, combined—3. However, no grouper or tilefish may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero. In addition, within the 3–fish aggregate bag limit:

(A) No more than one fish may be gag or black grouper, combined;

* * * * *

(v) Vermilion snapper—5. However, no vermilion snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

* * * * *

■ 5. In § 622.41, paragraph (n) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(n) *Required gear in the South Atlantic snapper-grouper fishery.* For a person on board a vessel to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (n)(1) of this section.

(1) *Dehooking device.* At least one dehooking device is required and must be used as needed to remove hooks embedded in South Atlantic snapper-grouper with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without re-engaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(2) [Reserved]

■ 6. In § 622.42, paragraph (e)(4) is revised, and paragraph (e)(7) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(4) *Vermilion snapper.* (i) For the period January through June each year—315,523 lb (143,119 kg).

(ii) For the period July through December each year—302,523 lb (137,222 kg).

(iii) Any unused portion of the quota specified in paragraph (e)(4)(i) of this section will be added to the quota specified in paragraph (e)(4)(ii) of this section. Any unused portion of the quota specified in paragraph (e)(4)(ii) of this section, including any addition of quota specified in paragraph (e)(4)(i) of this section that was unused, will become void and will not be added to any subsequent quota.

* * * * *

(7) *Gag*—352,940 lb (160,091 kg).

* * * * *

■ 7. In § 622.43, paragraph (a)(5) is revised to read as follows:

§ 622.43 Closures.

* * * * *

(a) * * *

(5) *South Atlantic gag, greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, and red porgy.* (i) The appropriate bag limits specified in § 622.39(d)(1) and the possession limits specified in § 622.39(d)(2) apply to all harvest or possession of the applicable species in or from the South Atlantic EEZ, and the sale or purchase of the applicable species taken from or possessed in the EEZ is prohibited.

(ii) The bag and possession limits for the applicable species and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e., in state or Federal waters.

(iii) For gag only, when the commercial quota for gag is reached, the provisions of paragraphs (a)(5)(i) and (ii) of this section apply to gag and the following associated grouper species: black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, and coney.

* * * * *

■ 8. In § 622.45, paragraph (d)(7) is revised to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) * * *

(7) During January through April, no person may sell or purchase a gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, or coney harvested from or possessed in the South Atlantic EEZ or, if harvested or possessed by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South

Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., state or Federal waters. The prohibition on sale/purchase during January through April does not apply to such species that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of such species harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting such fish;

(iii) The port and date of offloading from the vessel harvesting such fish, and;

(iv) A statement signed by the dealer attesting that such fish was harvested from an area other than the South Atlantic.

* * * * *

[FR Doc. E9–15342 Filed 6–26–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080521698–9067–02]

RIN 0648–XQ01

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Closure of the Eastern U.S./Canada Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces a temporary closure of the Eastern U.S./Canada Area to limited access NE multispecies days-at-sea (DAS) vessels. Based upon Vessel Monitoring System (VMS) reports and other available information, the Administrator, Northeast Region, NMFS (Regional Administrator) has projected that the total allowable catch (TAC) of Georges Bank (GB) cod allocated to be harvested from the Eastern U.S./Canada Area from May 1, 2009, through July 31, 20098, would be harvested on or around June 24, 2009, if current catch rates continue. This action is being taken to prevent the Eastern U.S./Canada Area TAC specified for the first quarter of the 2009 fishing year from being exceeded. This area will be reopened on August 1, 2009, to provide access to the shared U.S./Canada Stocks of cod, haddock, and yellowtail flounder.

DATES: The temporary closure of the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels is effective 0001 hr June 26, 2009, through 2400 hr local time, July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Management Specialist, (978) 281–9122, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the U.S./Canada Management Area are found at § 648.85. These regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the Eastern U.S./Canada Area under specific conditions. The final 2009 Interim Rule published on April 13, 2009 (73 FR 17030) set the Eastern GB cod TAC allocation for the 2009 fishing year at 527 mt. The Interim Rule also delayed the opening of the Eastern U.S./Canada Area to trawl vessels until August 1, 2009, and set a TAC for the first quarter of the 2009 fishing year for fixed-gear vessels at 5 percent of the annual TAC (26.4 mt). To prevent over-harvesting the TAC allocations for the U.S./Canada Management Area, the regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to close access to the Eastern U.S./Canada Area for all limited access NE multispecies DAS vessels.

Based upon VMS daily catch reports and other available information, 79 percent of the first quarter 2009 Eastern GB cod TAC of 26.4 mt has been harvested. Assuming this catch rate continues, it is estimated that 100 percent of the 2009 Eastern GB cod TAC specified for the first quarter will be caught on or around June 24, 2009. Therefore, based on the available information described above, to ensure that the first quarter TAC for Eastern GB cod will not be exceeded, the Eastern U.S./Canada Area is temporarily closed to all limited access NE multispecies DAS vessels, effective 0001 hr June 26, 2009, pursuant to § 648.85(a)(3)(iv)(E). This area will reopen on August 1, 2009, to all NE multispecies DAS vessels fishing with approved gear, as well as to vessels participating in the Eastern U.S./Canada Haddock Special Access Program, for the purpose of providing access to the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder, pursuant to the regulations at § 648.85(a)(3)(iv)(D).

Vessel owners that have made a correct VMS declaration indicating their intention to fish in the Eastern U.S./Canada Area, and crossed the demarcation line prior to 0001 hr June 26, 2009 may continue to fish for the remainder of their trip in the Eastern U.S./Canada Area. Vessels that are currently declared into the Eastern U.S./Canada Area and have already ''flexed out'' or ''flexed west,'' may not reenter the Eastern U.S./Canada Area after 0001 hr June 26, 2009. Any vessel that leaves the Eastern U.S./Canada Area after 0001 hr June 26, 2009 is prohibited from reentering the Eastern U.S./Canada Area for the remainder of the fishing year, unless otherwise notified.

Classification

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

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment and a delayed effectiveness would be impracticable and contrary to the public interest. The temporary closure of the Eastern U.S./Canada Area to NE multispecies DAS vessels is necessary to prevent the Eastern U.S./Canada Area GB cod TAC cap from being exceeded during the first quarter of the 2009 fishing year. It is projected that 100 percent of the GB cod TAC cap of 5 percent will be harvested if the Eastern U.S./Canada Area is closed immediately. This projection was not available until June 19, 2009.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to prevent over-harvesting the U.S./Canada Management Area TACs. The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent the agency from taking immediate action to halt the catch of GB cod in the Eastern U.S./Canada Area and prevent the first quarter Eastern U.S./Canada Area GB cod TAC from being exceeded prior to the end of the first quarter, July 31, 2009. To allow vessels to continue fishing effort on Eastern GB cod during the period necessary to publish and receive comments on a proposed rule could allow the Eastern GB cod harvest to

exceed the Eastern GB cod TAC for the first quarter of the 2009 fishing year. Exceeding the first quarter 2009 Eastern GB cod TAC would necessitate that any overage of the Eastern GB cod TAC during the first quarter by fixed gear vessels be deducted from the Eastern GB cod TAC for all NE multispecies DAS vessels for the remainder of the 2009 fishing year. Reducing the 2009 TAC for the remainder of this fishing year due to exceeding the first quarter 2009 TAC would create an unnecessary burden on the fishing industry and further negative economic and social impacts that were not previously considered.

The public is able to obtain information on the rate of harvest of the first quarter Eastern GB cod TAC via the NMFS Northeast Regional Office website (*http://www.nero.noaa.gov*), which provides at least some advanced notice of a potential action to prevent the first quarter TAC for Eastern GB cod from being exceeded during the 2009 fishing year. Further, the potential for this action was considered and open to public comment during the development of the 2009 Interim Rule. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: June 24, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–15312 Filed 6–24–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 123
Monday, June 29, 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.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1231

RIN 2590–AA08

Golden Parachute and Indemnification Payments

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing an amendment to the final Golden Parachute Payments regulation that was published in the **Federal Register** on January 29, 2009. This proposed amendment addresses prohibited and permissible golden parachute payments to entity-affiliated parties in connection with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks (regulated entities) as well as the Office of Finance. It also sets forth prohibited and permissible indemnification payments that regulated entities and the Office of Finance may make to an entity-affiliated party in connection with administrative proceedings or civil actions instituted by FHFA.

DATES: Written comments on the proposed amendment must be received on or before July 29, 2009. For additional information, *see* **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments on the proposed amendment, identified by regulatory information number ''RIN 2590–AA08,'' by any of the following methods:

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA08, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA08, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail at *RegComments@fhfa.gov*. Please include ''RIN 2590–AA08'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include ''RIN 2590–AA08'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, (202) 414–3788 (not a toll free number). The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed amendment and will take all comments into consideration before issuing the final regulation. FHFA previously requested comments on a proposed amendment, addressing indemnification payments, to the Golden Parachute Payments regulation that was published on November 14, 2008 (73 FR 67424). Comments received in response to the November 14, 2008 publication will be considered along with comments received in response to this amendment.

Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Internet Web site at *http://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

II. Background

A. General Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal Government.[1] FHFA was established to oversee the prudential operations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and the Federal Home Loan Banks (FHLBanks) (collectively, regulated entities) and to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and rules, regulation, guidelines, and orders issued under the Safety and Soundness Act, and their respective authorizing statutes; and carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest. FHFA also has regulatory authority over the Office of Finance of the Federal Home Loan Bank System.

The Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) will be abolished one year after enactment of HERA. However, the regulated entities continue to operate under regulations promulgated by OFHEO and FHFB until such regulations are superseded by regulations promulgated by FHFA.

B. Rulemaking Background

Section 1114 of HERA amended section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)) to provide explicit authorities to FHFA in addressing golden parachute payments and indemnification payments. FHFA published the interim final regulation on Golden Parachute and Indemnification Payments in the

[1] *See* Division A, titled the ''Federal Housing Finance Regulatory Reform Act of 2008,'' Title I, Section 1101 of HERA.

Federal Register on September 16, 2008 (73 FR 53356). Subsequently, it published corrections rescinding that portion of the regulation that addressed indemnification payments on September 19, 2008 (73 FR 54309) and on September 23, 2008 (73 FR 54673). On November 14, 2008 (73 FR 67424), FHFA published a proposed amendment to the interim final regulation in the **Federal Register**, which addressed indemnification payments. The public notice and comment period closed on December 29, 2008. On January 29, 2009 (74 FR 5101), FHFA published the final regulation on Golden Parachute Payments.

FHFA is proposing an amendment to the final Golden Parachute Payments regulation that would address in more detail prohibited and permissible golden parachute payments. FHFA believes it is useful to provide an opportunity to the public to read and comment on both the proposed golden parachute payments and indemnification payments amendments in context. Therefore, this proposed amendment also contains a re-proposal of the indemnification payments amendment that was first proposed on November 14, 2008.

III. Office of Finance

Section 1114 of HERA amended section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)) by providing FHFA with additional authorities in addressing golden parachute and indemnification payments made by the regulated entities. The Office of Finance is a joint office of the FHLBanks that was established by a predecessor to FHFA. The Office of Finance is governed by a three-person board of directors consisting of two FHLBank presidents and one independent member. Under the regulations of FHFB, the Office of Finance is subject to the same regulatory oversight authority and enforcement powers as are the FHLBanks and their respective directors, officers, and employees.[2] The Office of Finance also is subject to the cease-and-desist authority of FHFA, and its directors, officers and management are subject to the removal and prohibition authority of FHFA.[3] Although the Office of Finance is not directly covered by section 1318(e), it is subject to the Director's ''general regulatory authority'' under section 1311(b)(2) of the Safety and Soundness Act (12 U.S.C. 4511(b)(2)), as amended by HERA. The Director is required to exercise that authority as necessary to ensure that the purposes of the Safety and Soundness Act, the authorizing statutes, and other applicable law are carried out.

Because of the unique nature of the Office of Finance and the interrelationship between it and the FHLBanks, FHFA believes that the purposes underlying the limitations on golden parachute and indemnification payments can best be carried out if the limitations are consistent between the FHLBanks and the Office of Finance, their joint office. Therefore, based on its general regulatory authority over the Office of Finance, FHFA is proposing that the amendment would apply to the Office of Finance.

IV. Golden Parachute Payments

FHFA published a final regulation, Golden Parachute Payments in the **Federal Register** on January 29, 2009 (74 FR 5101). The final Golden Parachute Payments regulation addressed public comment on factors the Director would consider in acting on golden parachute payments. As stated in the preamble of the final regulation, comments received that addressed other elements of a golden parachute regulation would be considered by FHFA in subsequent rulemaking for public comment. Specifically, in response to comments received, it was stated that FHFA would consider adding provisions similar to those of the Federal Deposit Insurance Corporation (FDIC) golden parachute regulation in the subsequent rulemaking. The FDIC regulation describes more specifically benefits included or excluded from the term ''golden parachute payment.'' Thus, the provisions of the proposed amendment addressing golden parachute payments are substantially similar to the FDIC regulation that limits golden parachute payments by insured depository institutions to institution-affiliated parties.[4]

The proposed amendment would describe prohibited and permissible golden parachute payments that a regulated entity or the Office of Finance may make to an entity-affiliated party. The term ''entity-affiliated party'' is statutorily defined under the Safety and Soundness Act to include any ''officer'' of the regulated entity.[5] The term ''officer'' for purposes of the Director's oversight of golden parachute payments has broader coverage than the term ''executive officer'' as defined in section 4502(12) of the Safety and Soundness Act (12 U.S.C. 4502(12)) with respect to the Director's authority to prohibit and withhold executive compensation under section 1318(a) of the Safety and Soundness Act (12 U.S.C. 4518(a)).

In proposing the amendment, FHFA recognizes that prior to the enactment of HERA, the regulated entities or the Office of Finance may have entered into agreements that provide for golden parachute payments beyond that which is proposed to be permissible under section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)) and the proposed amendment. FHFA intends that the proposed amendment would apply to agreements entered into by a regulated entity or the Office of Finance with an entity-affiliated party on or after the date the regulation is effective.

V. Indemnification Payments

The proposed amendment would describe prohibited and permissible indemnification payments that a regulated entity and the Office of Finance may make to an entity-affiliated party in connection with administrative proceedings or civil actions instituted by FHFA. The provisions of the proposed amendment addressing indemnification payments are substantially similar to the FDIC regulation that limits indemnification by insured depository institutions to institution-affiliated parties.[6]

The proposed amendment is substantially similar to the proposed amendment addressing indemnification payments published in the **Federal Register** on November 14, 2008 (73 FR 67424). FHFA received seven comment letters and will consider those comment letters with comments received in response to this proposed rulemaking.

In proposing the amendment, FHFA recognizes that prior to the enactment of HERA, the regulated entities or the Office of Finance may have entered into indemnification agreements that provide for indemnification beyond that which is proposed to be permissible under section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)) and the proposed amendment. FHFA intends that the proposed amendment would apply to agreements entered into by a regulated entity or the Office of Finance with an entity-affiliated party on or after the date the regulation is effective.

FHFA is also of the view that the enactment of section 1114 of HERA makes clear that Congress has authorized FHFA to limit or prohibit a regulated entity or the Office of Finance from indemnifying an entity-affiliated

[2] 12 CFR 985.4 and 985.7.

[3] 12 U.S.C.4631(a) and 4636a(a).

[4] The FDIC regulation is found at 12 CFR part 359.

[5] 12 U.S.C. 4502(11).

[6] 12 CFR part 359.

party for any civil money penalty, notwithstanding the language of 12 U.S.C. 4636(g). Nevertheless, FHFA is of the view that it would be in the best interests of the regulated entities to permit indemnification of first and second tier civil money penalties where the administrative proceeding or civil action relates to conduct occurring while the regulated entity was in conservatorship.

VI. Differences Between FHLBanks and Enterprises

Section 1313(f) of the Safety and Soundness Act (12 U.S.C. 4513(f)), as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the FHLBanks, to consider the differences between the FHLBanks and the Enterprises with respect to the FHLBanks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing the proposed amendment, the Director considered the differences between the FHLBanks and the Enterprises as they relate to the above factors. The Director requests comments from the public about whether differences related to these factors should result in a revision of the proposed amendment as it relates to the FHLBanks.

Regulatory Impact

Paperwork Reduction Act

The proposed amendment does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed amendment under the Regulatory Flexibility Act. FHFA certifies that the proposed amendment is not likely to have a significant economic impact on a substantial number of small business entities because the proposed amendment is applicable only to the regulated entities which are not small entities for the purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1231

Golden parachutes, Government-sponsored enterprises, Indemnification.

Accordingly, for reasons stated in the preamble, under the authority of 12 U.S.C. 4518(e) and 4526, FHFA proposes to amend part 1231 of subchapter B of title 12 CFR Chapter XII as follows:

Subchapter B—Entity Regulations

PART 1231—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

1. The authority citation for part 1231 is revised to read as follows:

Authority: 12 U.S.C. 4518(e); 12 U.S.C. 4526.

2. The heading to part 1231 is revised to read as set forth above.

3. Section 1231.1 is revised to read as follows:

§ 1231.1 Purpose.

The purpose of this part is to implement section 1318(e) of the Safety and Soundness Act (12 U.S.C. 4518(e)) by setting forth the standards that the Director will take into consideration in determining whether to limit or prohibit golden parachute payments and by setting forth prohibited and permissible indemnification payments that regulated entities and the Office of Finance may make to entity-affiliated parties.

4. Section 1231.2 is amended by:

a. Removing the paragraph designations before each definition and arranging definitions in alphabetical order.

b. Removing the reserved paragraphs (l) through (n).

c. Removing the definition for the term ''Act.''

d. Adding definitions for the terms ''Benefit plan,'' ''Bona fide deferred compensation plan or arrangement,'' ''Liability or legal expense,'' ''Nondiscriminatory,'' ''Payment,'' ''Prohibited indemnification payment,'' and ''Safety and Soundness Act'' in alphabetical order.

e. Revising the definition for the terms ''Entity-affiliated party,'' ''Golden parachute payment,'' and ''Troubled condition.''

The additions and revisions read as follows:

§ 1231.2 Definitions.

* * * * *

Benefit plan means any plan, contract, agreement, or other arrangement which is an ''employee welfare benefit plan'' as that term is defined in section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1002(1)), or other usual and customary plans such as dependent care, tuition reimbursement, group legal services or cafeteria plans; provided however, that such term shall not include any plan intended to be subject to paragraphs (2)(iii) and (v) of the term *golden parachute payment* as defined in this section.

Bona fide deferred compensation plan or arrangement means any plan, contract, agreement or other arrangement whereby:

(1) An entity-affiliated party voluntarily elects to defer all or a portion of the reasonable compensation, wages or fees paid for services rendered which otherwise would have been paid to such party at the time the services were rendered (including a plan that provides for the crediting of a reasonable investment return on such elective deferrals) and the regulated entity or the Office of Finance either:

(i) Recognizes compensation expense and accrues a liability for the benefit payments according to generally accepted accounting principles (GAAP); or

(ii) Segregates or otherwise sets aside assets in a trust which may only be used to pay plan and other benefits, except that the assets of such trust may be available to satisfy claims of creditors of the regulated entities or the Office of Finance in the case of insolvency; or

(2) A regulated entity or the Office of Finance establishes a nonqualified deferred compensation or supplemental retirement plan, other than an elective deferral plan described in paragraph (1) of this definition:

(i) Primarily for the purpose of providing benefits for certain entity-affiliated parties in excess of the limitations on contributions and benefits imposed by sections 401(a)(17), 402(g), 415, or any other applicable provision of the Internal Revenue Code of 1986 (26 U.S.C. 401(a)(17), 402(g), 415); or

(ii) Primarily for the purpose of providing supplemental retirement benefits or other deferred compensation for a select group of directors, management or highly compensated employees (excluding severance payments described in paragraph (2)(v) of the term *golden parachute payment* as defined in this section and

permissible golden parachute payments described in § 1231.3(b); and

(3) In the case of any nonqualified deferred compensation or supplemental retirement plans as described in paragraphs (1) and (2) of this definition, the following requirements shall apply:

(i) The plan was in effect at least one year prior to any of the events described in paragraph (1)(ii) of the term *golden parachute payment* as defined in this section;

(ii) Any payment made pursuant to such plan is made in accordance with the terms of the plan as in effect no later than one year prior to any of the events described in paragraph (1)(ii) of the term *golden parachute payment* as defined in this section and in accordance with any amendments to such plan during such one-year period that do not increase the benefits payable thereunder;

(iii) The entity-affiliated party has a vested right, as defined under the applicable plan document, at the time of termination of employment to payments under such plan;

(iv) Benefits under such plan are accrued each period only for current or prior service rendered to the employer (except that an allowance may be made for service with a predecessor employer);

(v) Any payment made pursuant to such plan is not based on any discretionary acceleration of vesting or accrual of benefits which occurs at any time later than one year prior to any of the events described in paragraph (1)(ii) of the term *golden parachute payment* as defined in this section;

(vi) The regulated entity or the Office of Finance has previously recognized compensation expense and accrued a liability for the benefit payments according to GAAP or segregated or otherwise set aside assets in a trust which may only be used to pay plan benefits, except that the assets of such trust may be available to satisfy claims of the regulated entity's creditors in the case of insolvency; and

(vii) Payments pursuant to such plans shall not be in excess of the accrued liability computed in accordance with GAAP.

* * * * *

Entity-affiliated party means:

(1) With respect to the Office of Finance, any director, officer, or management of the Office of Finance; and

(2) With respect to a regulated entity:

(i) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(ii) Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Federal Home Loan Bank solely by virtue of being a shareholder of, and obtaining advances from, that Federal Home Loan Bank;

(iii) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if:

(A) The independent contractor knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice; and

(B) Such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;

(iv) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

(v) The Office of Finance.

* * * * *

Golden parachute payment means:

(1) Any payment (or any agreement to make any payment) in the nature of compensation by any regulated entity or the Office of Finance for the benefit of any current or former entity-affiliated party pursuant to an obligation of such regulated entity or the Office of Finance that:

(i) Is contingent on, or by its terms is payable on or after, the termination of such party's primary employment or affiliation with the regulated entity or the Office of Finance; and

(ii) Is received on or after, or is made in contemplation of, any of the following events:

(A) The insolvency (or similar event) of the regulated entity which is making the payment;

(B) The appointment of any conservator or receiver for such regulated entity; or

(C) A determination by FHFA that the regulated entity is in a troubled condition; or

(D) The Enterprise is assigned a composite rating of ''Significant Concerns'' or ''Critical Concerns'' by FHFA, or the Federal Home Loan Bank or the Office of Finance is assigned a composite rating of 3 or 4 by FHFA.

(2) *Exceptions.* The term *golden parachute payment* shall not include:

(i) Any payment made pursuant to a pension or retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401) or pursuant to a pension or other retirement plan which is governed by the laws of any foreign country;

(ii) Any payment made pursuant to a ''benefit plan'' as that term is defined in this section;

(iii) Any payment made pursuant to a bona fide deferred compensation plan or arrangement as that term is defined in this section;

(iv) Any payment made by reason of death or by reason of termination caused by the disability of an entity-affiliated party; or

(v) Any payment made pursuant to a nondiscriminatory severance pay plan or arrangement which provides for payment of severance benefits to all eligible employees upon involuntary termination other than for cause, voluntary resignation, or early retirement; provided, however, that no employee shall receive any such payment which exceeds the base compensation paid to such employee during the 12 months (or such longer period or greater benefit as the Director shall consent to) immediately preceding termination of employment, resignation, or early retirement, and such severance pay plan or arrangement shall not have been adopted or modified to increase the amount or scope of severance benefits at a time when the regulated entity or the Office of Finance is in a condition specified in paragraph (1)(ii) of the term *golden parachute payment* as defined in this section or in contemplation of such a condition without the prior written consent of the Director; or

(vi) Any severance or similar payment which is required to be made pursuant to a State statute or foreign law which is applicable to all employers within the appropriate jurisdiction (with the exception of employers that may be exempt due to their small number of employees or other similar criteria); or

(vii) Any other payment which the director determined to be permissible in accordance with § 1231.3(b).

* * * * *

Liability or legal expense means:

(1) Any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(2) The amount of, and the cost incurred in connection with, any settlement of any claim, proceeding, or actions; and

(3) The amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

Nondiscriminatory means that the plan, contract, or arrangement in question applies to all employees of a regulated entity or the Office of Finance who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length of service requirements. A nondiscriminatory plan, contract, or arrangement may provide different benefits based only on objective criteria such as salary, total compensation, length of service, job grade, or classification, which are applied on a proportionate basis (with a variance in severance benefits relating to any criterion of plus or minus ten percent) to groups of employees consisting of not less than the lesser of 33 percent of employees or 1,000 employees.

* * * * *

Payment means:

(1) Any direct or indirect transfer of any funds or any asset;

(2) Any forgiveness of any debt or other obligation;

(3) The conferring of any benefit, including but not limited to stock options and stock appreciation rights; and

(4) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(i) The determination, after such date, of the liability for the payment of such amount; or

(ii) The liquidation, after such date, of the amount of such payment.

Prohibited indemnification payment means:

(1) Any payment (or any agreement to make any payment) by any regulated entity or the Office of Finance for the benefit of any current or former entity-affiliated party, to pay or reimburse such person for any civil money penalty or judgment resulting from any administrative or civil action instituted by FHFA, or for any other liability or legal expense with regard to any such administrative proceeding or civil action that results in a final order or settlement pursuant to which such person:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the regulated entity or the Office of Finance; or

(iii) Is required to cease-and-desist from or take any affirmative action described in section 1371 of the Safety and Soundness Act (12 U.S.C. 4631) with respect to the regulated entity.

(2) *Exceptions.* (i) The term *prohibited indemnification payment* shall not include any reasonable payment by a regulated entity or the Office of Finance that is used to purchase any commercial insurance policy or fidelity bond, provided that such insurance policy or fidelity bond shall not be used to pay or reimburse an entity-affiliated party for the cost of any judgment or civil money penalty assessed against such person in an administrative proceeding or civil action commenced by FHFA, but may pay any legal or professional expenses incurred in connection with such proceeding or action or the amount of any restitution to the regulated entity or the receiver or to the Office of Finance.

(ii) The term *prohibited indemnification payment* shall not include any reasonable payment by a regulated entity or the Office of Finance that represents partial indemnification for legal or professional expenses specifically attributable to particular charges for which there has been a formal and final adjudication or finding in connection with a settlement that the entity-affiliated party has not violated certain laws or regulations, has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty, unless the administrative proceeding or civil action has resulted in a final prohibition order against the entity-affiliated party under section 1377 of the Safety and Soundness Act (12 U.S.C. 4636a).

(iii) The term *prohibited indemnification payment* shall not include a payment by a regulated entity for a civil money penalty under section 1376(b)(1) and (2) of the Safety and Soundness Act (12 U.S.C. 4636(b)(1) and (2)) where the regulated entity has been placed in conservatorship.

* * * * *

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as amended.

Troubled condition means a regulated entity that:

(1) Is subject to a cease-and-desist order or written agreement issued by FHFA that requires action to improve the financial condition of the regulated entity or is subject to a proceeding initiated by the Director, which contemplates the issuance of an order that requires action to improve the financial condition of the regulated entity, unless otherwise informed in writing by FHFA; or

(2) Is informed in writing by the Director that it is in a troubled condition for purposes of the requirements of this part on the basis of the most recent report of examination or other information available to FHFA.

5. Section 1231.3 is added to read as follows:

§ 1231.3 Golden parachute payments.

(a) *Prohibited golden parachute payments.* No regulated entity or the Office of Finance shall make or agree to make any prohibited golden parachute payment, except as provided in this part.

(b) *Permissible golden parachute payments.* (1) A regulated entity or the Office of Finance may agree to make or may make a golden parachute payment if and to the extent that:

(i) The Director determines that such a payment or agreement is permissible; or

(ii) Such an agreement is made in order to hire a person to become an entity-affiliated party either at a time when the regulated entity or the Office of Finance satisfies or in an effort to prevent it from imminently satisfying any of the criteria set forth in paragraph (1)(ii) of the term *golden parachute payment* as defined in § 1231.2, and the Director consents in writing to the amount and terms of the golden parachute payment. Such consent by the Director shall not improve the entity-affiliated party's position in the event of the insolvency of the regulated entity since such consent can neither bind a receiver nor affect the provability of receivership claims; or

(iii) Such a payment is made pursuant to an agreement which provides for a reasonable severance payment, not to exceed 12 months salary, to an entity-affiliated party in the event of a change in control of the regulated entity; provided, however, that a regulated entity shall obtain the consent of the Director prior to making such a payment and this paragraph (b)(1)(iii) shall not apply to the regulated entity being placed into conservatorship or receivership; and

(iv) A regulated entity or the Office of Finance making a request pursuant to paragraphs (b)(1)(i) through (iii) of this section shall demonstrate that it does not possess and is not aware of any information, evidence, documents, or other materials that would indicate that there is a reasonable basis to believe, at the time such payment is proposed to be made, that:

(A) The entity-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the

regulated entity or the Office of Finance that is likely to have a material adverse effect on the regulated entity or the Office of Finance;

(B) The entity-affiliated party is substantially responsible for the insolvency of, the appointment of a conservator or receiver for, or the troubled condition of the regulated entity;

(C) The entity-affiliated party has materially violated any applicable Federal or State law or regulation that has had or is likely to have a material effect on the regulated entity or the Office of Finance; and

(D) The entity-affiliated party has violated or conspired to violate section 215, 657, 1006, 1014, or 1344 of title 18 of the United States Code, or section 1341 or 1343 of such title affecting a ''financial institution'' as the term is defined in title 18 of the United States Code (18 U.S.C. 20).

(2) In making a determination under paragraphs (b)(1)(i) through (iii) of this section, the Director may consider:

(i) Whether, and to what degree, the entity-affiliated party was in a position of managerial or fiduciary responsibility;

(ii) The length of time the entity-affiliated party was affiliated with the regulated entity or the Office of Finance, and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and

(iii) Any other factor the Director determines relevant to the facts and circumstances surrounding the golden parachute payment, including any fraudulent act or omission, breach of fiduciary duty, violation of law, rule, regulation order or written agreement, and the level of willful misconduct, breach of fiduciary duty, and malfeasance on the part of the entity-affiliated party.

6. Section 1231.4 is added to read as follows:

§ 1231.4 Indemnification payments.

(a) *Scope.* (1) This section applies only after an administrative proceeding or civil action has been instituted by FHFA.

(2) The provisions of this section shall remain in full force and effect with respect to a regulated entity that is in conservatorship.

(b) *Prohibited indemnification payments.* No regulated entity or the Office of Finance shall make or agree to make any prohibited indemnification payment, except as provided in this part.

(c) *Permissible indemnification payments.* (1) A regulated entity or the Office of Finance may make or agree to make reasonable indemnification payments to an entity-affiliated party with respect to an administrative proceeding or civil action initiated by FHFA, including payment for a civil money penalty pursuant to paragraph (2)(iii) of the definition of the term *prohibited indemnification payment* in § 1231.2 if:

(i) The board of directors of the regulated entity or the Office of Finance, in good faith, determines in writing after due investigation and consideration that the entity-affiliated party acted in good faith and in a manner he or she reasonably believed to be in the best interests of the regulated entity.

(ii) The board of directors of the regulated entity or the Office of Finance, in good faith, determines in writing after due investigation and consideration that such payments will not materially adversely affect the safety and soundness of the regulated entity or the Office of Finance;

(iii) The indemnification payments do not constitute ''prohibited indemnification payments'' as that term is defined in § 1231.2; and

(iv) The entity-affiliated party agrees in writing to reimburse the regulated entity or the Office of Finance, to the extent not covered by payments from insurance or bonds purchased pursuant to paragraph (2)(i) of the definition of the term *prohibited indemnification payment* in § 1231.2, for that portion of any advanced indemnification payments that subsequently become ''prohibited indemnification payments,'' as such term is defined in § 1231.2.

(2) An entity-affiliated party requesting indemnification payments shall not participate in any way in the board's discussion and approval of such payments; provided, however, that such entity-affiliated party may present his or her request to the board of directors and respond to any inquiries from the board of directors concerning his or her involvement in the circumstances giving rise to the administrative proceeding or civil action.

(3) In the event that a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and provide the remaining members of the board with a written opinion of counsel as to whether the conditions delineated in paragraph (c)(1) of this section have been met. If independent legal counsel opines that said conditions have been met, the remaining members of the board of directors may rely on such opinion in authorizing the requested indemnification.

(4) In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in paragraph (c)(1) of this section have been met. If independent legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

7. Section 1231.5 is revised to read as follows:

§ 1231.5 Applicability in the event of receivership.

The provisions of this part, or any consent or approval granted under the provisions of this part by FHFA, shall not in any way bind any receiver of a regulated entity in receivership. Any consent or approval granted under the provisions of this part by FHFA shall not in any way obligate FHFA or receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification, or other agreement. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of an entity-affiliated party contrary to section 1318(e)(3) of the Safety and Soundness Act (12 U.S.C. 4518(e)(3)).

8. Section 1231.6 is added to read as follows:

§ 1231.6 Filing instructions.

(a) *Scope.* This section contains the procedures to apply for the consent of the Director to make golden parachute payments under § 1231.3(b) or to make excess nondiscriminatory severance plan payments under paragraph (2)(v) of the definition of the term *golden parachute payment* in § 1231.2.

(b) *Where to file.* A Federal Home Loan Bank or Office of Finance applicant must submit a letter application to the Deputy Director of the Division of Federal Home Loan Bank Supervision. An Enterprise applicant must submit a letter application to the Deputy Director of the Division of Enterprise Regulation.

(c) *Content of filing.* The letter application must contain the following:

(1) The reasons why the regulated entity or the Office of Finance seeks to make the payment;

(2) An identification of the entity-affiliated party who will receive the payment;

(3) A copy of any contract or agreement regarding the subject matter of the filing;

(4) The cost of the proposed payment and its impact on the capital and earnings of the regulated entity;

(5) The reasons why the consent to the payment should be granted; and

(6) Certification and documentation as to each of the factors listed in § 1231.3(b)(1)(iv).

(d) *Additional information.* FHFA may request additional information at any time during the processing of the letter application.

(e) *Written notice.* FHFA shall provide the applicant with written notice of the decision as soon as it is rendered.

Dated: June 22, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–15329 Filed 6–26–09; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0294; Directorate Identifier 2009–NE–08–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2500–A1, V2527E–A5, V2530–A5, and V2528–D5 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for International Aero Engines AG (IAE) V2500–A1, V2527E–A5, V2530–A5, and V2528–D5 turbofan engines. This proposed AD would require reducing the published life limit of certain high-pressure compressor (HPC) stage 9–12 disc assemblies. This proposed AD would also remove from service those HPC stage 9–12 disc assemblies using a drawdown schedule. This proposed AD results from IAE updating the low-cycle-fatigue (LCF) life analysis for certain HPC stage 9–12 disc assemblies. We are proposing this AD to prevent an uncontained failure of the HPC stage 9–12 disc assembly, resulting in an in-flight engine shutdown and possible damage to the airplane.

DATES: We must receive any comments on this proposed AD by August 28, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.riley@faa.gov*; telephone (781) 238–7758; fax (781) 238–7199.

Contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565–5515; fax: (860) 565–5510, for a copy of the service information identified in this proposed AD.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2009–0294; Directorate Identifier 2009–NE–08–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

Discussion

IAE Engineering updated their life analysis for certain HPC stage 9–12 disc assemblies installed in V2500–A1, V2527E–A5, V2530–A5, and V2528–D5 turbofan engines. Stress analysis calculations have shown that missing ceramic liner material affects thermal gradients at the weld joining discs stage 11 and 12. This results in an increase in the stress in the weld, which affects the life of the component. This condition, if not corrected, could result in uncontained engine failure resulting in an in-flight engine shutdown and possible damage to the airplane.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require:

- Reducing the published life limit of HPC stage 9–12 disc assemblies, P/N 2A3200, 2A3300, 2A3400, 2A3500, 6A4131, and 6A7545, installed in V2500–A1 engines, from 15,000 cycles-since-new (CSN) to 14,600 CSN; and
- Reducing the published life limit of HPC stage 9–12 disc assemblies, P/N 6A4156 and 6A7547, installed in V2527E–A5 and V2530–A5 engines, from 12,000 CSN to 11,800 CSN; and
- Reducing the published life limit of HPC stage 9–12 disc assemblies, P/N 6A4156 and 6A7547, installed in V2528–D5 engines, from 13,200 CSN to 11,800 CSN.

This proposed AD would also remove from service those HPC stage 9–12 disc assemblies using a drawdown schedule.

Costs of Compliance

We estimate that this proposed AD would affect 18 engines installed on airplanes of U.S. registry. We also estimate that it would take about 200 work-hours per engine to perform the proposed actions, and that the average

labor rate is $80 per work-hour. The prorated cost due to a life reduction for a HPC stage 9–12 disc assembly installed in a V2500–A1 engine, is about $5,600 per engine, and for one installed in a V2527E–A5, V2530–A5, or V2528–D5 engine, is about $29,700 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $485,200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

International Aero Engines AG: Docket No. FAA–2009–0294; Directorate Identifier 2009–NE–08–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to International Aero Engines AG (IAE) V2500–A1, V2527E–A5, V2530–A5, and V2528–D5 turbofan engines. These engines are installed on, but not limited to, Airbus A320 and A321 series, and McDonnell Douglas Corporation MD–90 airplanes.

Unsafe Condition

(d) This AD results from IAE updating the low-cycle-fatigue (LCF) life analysis for certain HPC stage 9–12 disc assemblies. We are issuing this AD to prevent an uncontained failure of the HPC stage 9–12 disc assembly, resulting in an in-flight engine shutdown and possible damage to the airplane.

Compliance

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

V2500–A1 Turbofan Engines

(f) For V2500–A1 turbofan engines with HPC stage 9–12 disc assemblies, P/N 2A3200, 2A3300, 2A3400, 2A3500, 6A4131, and 6A7545, installed, remove from service as follows:

(1) For HPC stage 9–12 disc assemblies that have accumulated fewer than 12,000 cycles-since-new (CSN) on the effective date of this AD, remove from service before the disc assembly accumulates 14,600 CSN.

(2) For HPC stage 9–12 disc assemblies that have accumulated 12,000 or more CSN but fewer than 14,600 CSN on the effective date of this AD:

(i) If the next engine shop visit will occur before accumulating 14,600 CSN, then remove from service before accumulating 14,600 CSN.

(ii) If the next engine shop visit will occur upon accumulating 14,600 or more CSN, then remove from service at the next engine shop visit but not to exceed 15,000 CSN.

(3) For HPC stage 9–12 disc assemblies that have accumulated 14,600 or more CSN on the effective date of this AD, remove from service at the next engine shop visit but not to exceed 15,000 CSN.

V2527E–A5 and V2530–A5 Turbofan Engines

(g) For V2527E–A5 and V2530–A5 turbofan engines with HPC stage 9–12 disc assemblies, P/N 6A4156 and 6A7547 installed, remove from service as follows:

(1) For HPC stage 9–12 disc assemblies that have accumulated fewer than 9,000 CSN on the effective date of this AD, remove from service before the disc assembly accumulates 11,800 CSN.

(2) For HPC stage 9–12 disc assemblies that have accumulated 9,000 or more CSN but fewer than 11,800 CSN on the effective date of this AD:

(i) If the next engine shop visit will occur before accumulating 11,800 CSN, then remove from service before accumulating 11,800 CSN.

(ii) If the next engine shop visit will occur upon accumulating 11,800 or more CSN, then remove from service at the next engine shop visit but not to exceed 12,000 CSN.

(3) For HPC stage 9–12 disc assemblies that have accumulated 11,800 or more CSN on the effective date of this AD, remove from service at the next engine shop visit but not to exceed 12,000 CSN.

V2528–D5 Turbofan Engines

(h) For V2528–D5 turbofan engines with HPC stage 9–12 disc assemblies, P/N 6A4156 and 6A7547 installed, remove from service as follows:

(1) For HPC stage 9–12 disc assemblies that have accumulated fewer than 9,000 CSN on the effective date of this AD, remove from service before the disc assembly accumulates 11,800 CSN.

(2) For HPC stage 9–12 disc assemblies that have accumulated 9,000 or more CSN but fewer than 11,800 CSN on the effective date of this AD:

(i) If the next engine shop visit will occur before accumulating 11,800 CSN, then remove from service before accumulating 11,800 CSN.

(ii) If the next engine shop visit will occur upon accumulating 11,800 or more CSN, then remove from service at the next engine shop visit but not to exceed 13,200 CSN.

(3) For HPC stage 9–12 disc assemblies that have accumulated 11,800 or more CSN on the effective date of this AD, remove from service at the next engine shop visit but not to exceed 13,200 CSN.

Definition

(i) For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

Alternative Methods of Compliance

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

Related Information

(k) IAE Alert Service Bulletin No. V2500–ENG–72–A0554, Revision 1, dated June 27, 2008, also pertains to the subject of this AD. Contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565–5515; fax: (860) 565–5510, for a copy of this service information.

(l) Contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.riley@faa.gov*; telephone (781) 238–7758; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on June 22, 2009.

Peter A. White,

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

[FR Doc. E9–15250 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1130

Requirements for Consumer Registration of Durable Infant or Toddler Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 104(d) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA'') requires the United States Consumer Product Safety Commission (''Commission'') to promulgate a final consumer product safety rule requiring each manufacturer of a durable infant or toddler product to: Provide with each product a postage-paid consumer registration form; keep records of consumers who register such products with the manufacturer; and permanently place the manufacturer name and contact information, model name and number, and the date of manufacture on each such product. The Commission is proposing requirements that would fulfill this statutory direction.

DATES: Written comments must be received by September 14, 2009.

ADDRESSES: Submit your comments at *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. All comments will be posted as received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Patricia M. Pollitzer, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7634.

SUPPLEMENTARY INFORMATION:

A. Background

1. The CPSIA

The Consumer Product Safety Improvement Act of 2008 (''CPSIA'', Pub. L. 110–314) was enacted on August 14, 2008. Section 104(d) of the CPSIA requires the U.S. Consumer Product Safety Commission (''Commission'') to promulgate a final consumer product safety rule no later than August 14, 2009 that requires manufacturers of durable infant or toddler products to: (1) Provide with each product a postage-paid consumer registration form; (2) keep records of consumers who register such products with the manufacturer; and (3) permanently place the manufacturer name and contact information, model name and number, and the date of manufacture on each such product. The authority for this registration program is section 16(b) of the Consumer Product Safety Act (''CPSA''), which authorizes the Commission to issue a rule requiring manufacturers obtain and maintain records as necessary to implement the CPSA. 15 U.S.C. 2065(b).

Section 104(d)(2) of the CPSIA sets out certain requirements for registration forms and allows the Commission to prescribe the exact text and format for the registration form. Section 104(d)(3) of the CPSIA specifies recordkeeping and notification requirements. The Commission is issuing this notice of proposed rulemaking (''NPR'') that would set out the requirements stated in the CPSIA and specify the text and format for the required registration forms.

The CPSIA directs the Commission to assess the registration requirements in the future. Section 104(d)(4) of the CPSIA requires the Commission to conduct a study no later than four years from enactment of the CPSIA on the effectiveness of the consumer registration forms required by the CPSIA and whether to expand registration to other children's products. The Commission is to report its findings to appropriate Congressional committees. Section 104(e) of the CPSIA further requires that the Commission, beginning two years after the Commission has issued a rule implementing the registration requirement, regularly review recall notification technology and assess the effectiveness of such technology. In addition, within three years of the CPSIA's enactment, and periodically thereafter, the Commission must transmit a report to appropriate Congressional committees on its assessment of such technology. If, based on that assessment, the Commission determines by rule that a recall notification technology is likely to be as effective or more effective facilitating recalls of durable infant and toddler products, the Commission, pursuant to section 104(e)(2) of the CPSIA, shall submit a report on that determination to appropriate Congressional committees and shall permit its use in lieu of registration forms.

2. Previous Activities Regarding Product Registration

Before the CPSIA's enactment, the Commission staff studied the possibility of requiring registration for some consumer products. In 2001, the Commission considered issuing an advance notice of proposed rulemaking (''ANPR'') concerning the possibility of requiring manufacturers to create and maintain a system for identifying purchasers of certain consumer products in order to notify consumers in the event of a recall. *See http://www.cpsc.gov/library/foia/foia01/brief/purchase.pdf.* The draft ANPR prepared by the staff discussed the possibility that direct consumer notification could increase the effectiveness of recalls. The draft ANPR also discussed characteristics of product registration cards that might increase the likelihood that consumers would return them. Among the characteristics noted were: a standardized format, minimal information on the form, no marketing or personal information, a clear statement that the purpose of the form is for safety recalls, pre-addressed and postage paid forms, a design that draws attention to the form, pre-printed product and model identification information, ample space for the consumer to provide name and address, and attachment of the form to the product. Many of these characteristics are required explicitly in section 104(d) of the CPSIA.

In developing the proposed rule, the staff drew from its experience with the 2001 draft ANPR and subsequent activities considering how to improve recall effectiveness. The Commission also has held numerous public meetings discussing various aspects of recall effectiveness, including product registration. *See http://www.cpsc.gov/businfo/rem_sum1.pdf, http://www.cpsc.gov/businfo/rem_sum2.pdf,*

http://www.cpsc.gov/businfo/rem_sum3.pdf.

The Commission and staff are aware of, and this proposal has been informed by, the car seat registration program administered by the National Highway Traffic Safety Administration (''NHTSA''). Federal Motor Vehicle Safety Standard No. 213 requires manufacturers of child restraint systems for automobile use to provide a specified registration form with each seat and keep records of these registrants for use in the event of a safety recall of the product. 49 CFR 571.213 S5.8. The Commission's proposed registration form has several similarities to the NHTSA registration form for child restraint systems. When issuing its registration requirement, NHTSA noted that standardizing the text and layout of the registration form increases the likelihood that a purchaser will register the product. 57 FR 41428 (Sep. 10, 1992). A contractor conducted focus groups to evaluate registration forms for child restraint systems. NHTSA noted that participants in the focus groups indicated ''they would be most likely to return a pre-addressed, postage-prepaid card with an uncluttered graphic design that clearly and succinctly communicates the benefits of recall registration, differentiates itself from a warranty registration card, and requires minimal time and effort on the participant's part.'' *Id.* The Commission believes that these characteristics are also appropriate for registration forms for durable infant and toddler products.

B. Description of the Proposed Rule

The proposed rule would create a new 16 CFR part 1130 to establish requirements that manufacturers (including importers) of durable infant or toddler products must follow to enable consumers to register these products so that the consumer can be notified directly if the product is the subject of a recall or safety alert.

1. Scope and Definitions—Proposed §§ 1130.1 & 1130.2

Proposed § 1130.1 would explain that part 1130 prescribes requirements for consumer registration of durable infant or toddler products. The proposed requirements would apply to manufacturers (including importers) of durable infant or toddler products. Although section 104(d) of the CPSIA refers only to manufacturers of durable infant and toddler products, the definition of ''manufacturer'' in the Consumer Product Safety Act includes an importer. 15 U.S.C. 2052(a)(11). Consequently, proposed § 1130.1(b) would explain that the requirements apply to manufacturers, ''including importers,'' of durable infant or toddler products. Given that ''importer'' is included in the definition of ''manufacturer,'' the Commission is interested in comments concerning which party, the importer or a manufacturer (which might also include a foreign manufacturer), should have the primary responsibility for the registration obligations mandated by section 104 of the CPSIA and why. The Commission would also like comments on the practical and economic consequences of any decision as to whether the manufacturer or importer should assume the registration obligations, such as the logistics of an importer inserting a registration card when a product is manufactured overseas or, similarly, the logistics of a foreign manufacturer maintaining a database of registration card information received from consumers in the United States.

However, neither the CPSIA nor the proposed regulation requires the retailer of a durable infant or toddler product to establish or maintain a registration program. The Commission recognizes that, in some instances, a retailer may be the direct importer of a product and/or may be the only contact in the United States. In such circumstances, it may be most effective for the retailer to collect registration information and notify the consumer in the event of a recall or safety alert. While the Commission is not proposing to require retailers of durable infant and toddler products to conduct a registration program, it is considering whether any final rule based on this proposal should expressly allow other parties, such as retailers, distributors or private labelers, to establish and maintain a registration program. The Commission is interested in comments on whether and how it might allow a private labeler or retailer to assume the responsibility to establish and maintain a registration program, particularly when a product is produced by a foreign manufacturer and imported into the United States.

Proposed § 1130.2 would state that the definitions in section 3 of the CPSA apply.

Proposed § 1130.2(a) would define ''durable infant or toddler product'' in a manner similar to section 104(f) of the CPSIA. The proposed definition would include products that combine multiple functions. The CPSIA provides a broad definition of the term durable infant or toddler product—''a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years''—and then lists twelve specific examples each of which is defined more specifically with reference to the applicable voluntary standard for such products. Products that are not explicitly listed may still be durable infant or toddler products under the definition and may fall within the registration requirement.

The CPSIA does not define ''durable,'' but Webster's dictionary defines ''durable goods'' as ''goods usable for a relatively long time.'' In the economic or financial context, durable goods are generally considered to be ones that have a useful life of three or more years. The Bureau of Economic Analysis, in the Department of Commerce, defines ''durable goods'' as ''Tangible products that can be stored or inventoried and that have an average life of at least three years'' (*see* Bureau of Economic Analysis, Department of Commerce, Glossary definition of ''durable goods,'' accessed on the Internet at *http://www.bea.gov/glossary/glossary.cfm?letter=D* on May 20, 2009). The economic opposite term of durable goods is nondurable goods, a category that includes such items as food, clothing, drugs and services. These definitions give some guidance on what would be a durable infant or toddler product. Thus, clothing, blankets, and such textile products would not be considered durable infant or toddler products.

Additional guidance comes from considering the product examples in the statute and the ASTM voluntary standard subcommittees that cover such items. The product list in the statute, though not exclusive, illustrates the types of products covered. Likewise, other products involved in the ASTM voluntary standards committee activity reflect the type of products considered by Commission staff to be durable infant products which include: Children's folding chairs, changing tables, bouncers, infant bath tubs, bed rails and infant slings. Thus, while a changing table is not listed, it is similar to other nursery products, such as cribs and cradles, which are listed, and it is under the same ASTM subcommittee (F15.18) as cribs, toddler beds, play yards, bassinets and cradles. Bed rails are not listed, but they are similar to ''gates and other enclosures for confining a child,'' an enumerated category. Some other types of products, such as sports equipment, playground equipment, or toys would not appropriately be considered durable infant or toddler products. These are broad categories of products that are not like the nursery-type of products specified in the examples.

The statutory definition leaves uncertainty about which products would be considered durable infant or toddler products. Many products may last three or more years, but that does not necessarily mean that Congress intended them to be considered durable infant or toddler products under this section. An infant sling is not specifically listed and might be considered a textile product. However, it could be considered a type of infant carrier, a category that is listed as a durable infant or toddler product. The Commission is interested in comments on whether the final rule should contain a definitive listing of products requiring registration cards or any other comments that could help to clarify which products are covered by the registration card requirement when the final rule is published.

As discussed above, infant carriers that are used as car seats are already subject to registration requirements issued by NHTSA that are similar to the proposed CPSC registration requirements. The Commission proposes to exempt from this rulemaking car seats that are subject to NHTSA registration requirements.

Proposed § 1130.2(b) and (c) would define ''product recall'' and ''safety alert'' respectively.

2. General Requirements—Proposed § 1130.3

Proposed § 1130.3 would establish general requirements for consumer registration. In brief, proposed § 1130.2(a) would require each manufacturer of a durable infant or toddler product to provide consumers with a postage paid consumer registration form with each product; maintain a record of the contact information of consumers who register their products with the manufacturer; and permanently place the manufacturer's name and contact information, model name and number, and the date of manufacture on each durable infant or toddler product. Proposed § 1130.2(a) thus would correspond with the statutory requirements at section 104(d)(1) of the CPSIA.

Proposed § 1130.2(b) would prohibit the manufacturer from using or disseminating the consumer information collected pursuant to these requirements to any other party for any purpose other than notification of the consumer in the event of a product recall or safety alert. This would be consistent with section 104(d)(3) of the CPSIA.

3. Manufacturer and Product Identification on the Product—Proposed § 1130.4

Section 104(d)(1)(c) of the CPSIA requires the manufacturer to permanently place the manufacturer's name and contact information, model name and number, and the date of manufacture on each durable infant or toddler product. Proposed § 1130.4 would repeat this statutory requirement and would further specify that the required information must be in English, legible, and in a location on the product that is conspicuous to the consumer.

Another section of the CPSIA, section 103, requires that, beginning August 14, 2009, all children's products must have tracking labels providing certain identifying information (the manufacturer or private labeler, location and date of production and cohort information) permanently placed on the product. The requirements for tracking labels in section 103 differ from the product identification that section 104 requires for durable infant or toddler products. This raises the question of how a durable infant or toddler product could satisfy these requirements, *i.e.* does the more specific section 104 identification of the manufacturer on the product obviate the need for the same identification of the manufacturer as part of the section 103 tracking label. The Commission seeks comments on the interplay between the labeling requirements of these two sections given that their requirements differ. Several commenters on the tracking label provision raised the concern that requiring identification of the manufacturer on a tracking label could result in the disclosure of what they considered confidential business information. The Commission requests comments on whether the issue of confidentiality is a concern for the product identification requirement in section 104 of the CPSIA.

4. Requirements for Registration Forms—Proposed § 1130.5

Proposed § 1130.5 would establish the requirements for the registration forms themselves. In brief, proposed § 1130.5 would require registration forms to:

- Comply with specified text and format requirements;
- State all information in English;
- Be attached to the surface of each durable infant or toddler product so that the consumer must notice and handle the form after purchasing the product;
- Include the manufacturer's name, model name and number for the product and the date of manufacture;
- Include an option to register using the Internet; and
- Include a statement that information the consumer provides will only be used to facilitate a recall or safety alert.

With the exception of requiring compliance with particular text and format specifications and requiring that information be in English, the proposed requirements for registration forms are explicitly directed by section 104(d)(2) of the CPSIA. Section 104(d)(2) of the CPSIA also gives the Commission the option of prescribing the text and format for the registration form. The Commission believes that specifying uniform text and format will increase the likelihood that consumers will notice the forms and complete them.

The Commission also believes that it is appropriate to specify that the form be in the English language. This would clarify the language to be used for registration forms when a product is foreign-made. It also would add to the uniformity of the registration forms, increasing the effectiveness of the forms by increasing the likelihood that consumers would notice the forms and associate them with registrations for the purpose of recalls.

5. Format Requirements—Proposed § 1130.6

Proposed § 1130.6 would prescribe the registration form's size and layout. The top portion of the form would be retained by the consumer. It would provide the purpose statement and the manufacturer's contact information.

The lower part of the form, which would be returned to the manufacturer, would be the size of a standard post card, 6 inches wide by 4¼ inches high. It would have blocks for the consumer to provide his/her contact information and have pre-printed product information on one side of the card and the manufacturer's name and mailing address pre-printed on the other side.

Proposed § 1130.6 also would require that the registration form use Arial Black typeface and that the size of the type be at least 12-point for the purpose statement and no less than 10-point for all other information on the form. Typically, 12-point font size is preferred for instructions and long passages. Arial typeface is a commonly used sans serif typeface that presents a bold and sharp letter.

The Commission is proposing to prescribe the formatting for the registration forms. However, another approach would be to allow manufacturers to determine their own formatting. The Commission requests comments on these two approaches.

6. Text Requirements—Proposed § 1130.7

Proposed § 1130.7 would prescribe the registration form's text. It would require the following statement about the purpose of the registration:

PRODUCT REGISTRATION FOR SAFETY ALERT OR RECALL. We will use the information provided on this card to contact you only if there is a safety alert or recall for this product. We will not sell, rent, or share your personal information. To register your product, please complete and mail back this card or visit our online registration at *www.WEBSITE NAME.com.*

This statement is consistent with sections 104(d)(2)(E) and 104(d)(2)(G) of the CPSIA requiring that the form ''include a message explaining the purpose of the registration and designed to encourage consumers to complete the registration'' and also that it ''include a statement that information provided by the consumer shall not be used for any purpose other than to facilitate a recall of or safety alert regarding that product.'' The staff believes that having a uniform message will increase the likelihood that consumers will recognize the form and respond to it. Additionally, based on its experience examining recall effectiveness, the staff believes that a personal appeal to the consumer will increase the likelihood that a consumer will register the product.

Proposed § 1130.7(b) would require that the top of the registration form state the manufacturer's name and contact information, Web site address, product model name and number and manufacture date of the product. This part of the form would be retained by the consumer. The consumer would have the manufacturer's contact information and information identifying the product if needed to contact the manufacturer about any safety-related issues concerning the product. This aspect of the proposed rule goes beyond the explicit requirements of the CPSIA which only requires that the form include the manufacturer's name, model name and number for the product and its date of manufacture. However, the proposed information would complement the requirement in section 104(d)(1)(C) of the CPSIA which requires manufacturers of a durable infant or toddler product to ''permanently place the manufacturer name and contact information, model name and number, and the date of manufacture on each durable infant or toddler product.'' This will enable consumers to easily locate the information they need to contact the manufacturer. The Commission is interested in comments on whether a consumer would save and refer to the registration card stub rather than look for the contact information on the product itself, particularly for larger and more expensive products such as cribs. The Commission also asks for comments on the practicality of pre-printing a two part registration form—one section for consumers to send back to the manufacturer and the added requirement for another section for consumers to tear off and keep. The Commission is interested in comments on the practical and economic effect of this requirement.

Proposed § 1130.7 also would require blocks for the consumer to provide his/her name, mailing address, telephone number, and e-mail address. Section 104(d)(2)(B) of the CPSIA requires that the form ''include space sufficiently large to permit easy, legible recording of all desired information.'' The staff reviewed research regarding legible print for reading, and considered uses such as warnings and passport applications. Based on this review, the proposed rule would require that blocks for consumer information be 5 mm wide and 7 mm high. The number of blocks that would be required for the consumer's information is based on the size of the blocks and the size of the postcard.

The proposed rule would require pre-printed product information. As noted above, section 104(d)(2(D) of the CPSIA requires that the form provide the manufacturer's name, model name and number of the product, and the date of manufacture. This information will enable the manufacturer to match the consumer with the product purchased in the event that the product is the subject of a recall or safety alert. The proposed rule would require a rectangular box around the model name, model number, and manufacture date to draw the consumer's attention to the information. The manufacturer could print this information directly on the form or apply a pre-printed label that provides the required information.

7. Requirements for Internet Registration—Proposed § 1130.8

Consistent with section 104(d)(2)(F) of the CPSIA, the proposed rule would require that the consumer have the option of registering the product through the Internet. This could be accomplished by registration through the manufacturer's Web site. However, some companies, particularly smaller ones, may not have a Web site. Rather than the Commission mandating that all companies that sell durable infant and toddler products create and maintain a Web site, such companies could satisfy the statutory requirement by allowing consumers to send their registration information by e-mail. In such case a sentence would need to be added to the registration card indicating that registration could be made by sending an e-mail to the manufacturer. The Commission seeks comments on this approach.

Proposed § 1130.8 would require the same purpose statement (described earlier in part B.6 of this preamble (see the discussion of proposed § 1130.7)) on the Web site registration page as on the registration form. It would restrict the registration page to only requesting the consumer's name, address, telephone number, e-mail address, product name and number and the date of manufacture. The Commission seeks comments on whether there is a need to restrict navigation to other pages or Web sites.

The Commission notes that on-line registration could be designed in a manner that could further increase the effectiveness of product registrations. The on-line registration could be set up to allow consumers to notify the manufacturer of a change of address for products the consumer has previously registered. Such a system could allow sorting by customer name, address, product and model so that a consumer could change his/her address without re-entering other information. The proposed rule would not require such a system, but neither would it prevent manufacturers from designing their on-line registration systems in such a manner.

The Commission intends to encourage innovation in the use of the Internet for product registration and solicits comments on how to make the registration Web site easier for consumers to use and navigate. For example, Web sites could minimize the number of times consumers must enter information, could provide for registration at the time an item is purchased online, or take other approaches that would streamline registration.

8. Recordkeeping and Notification—Proposed § 1130.9

Consistent with section 104(d)(1)(B) of the CPSIA, proposed § 1130.9 would require that each manufacturer of a durable infant or toddler product maintain a record of registrants for each product manufactured that includes all of the information provided by the consumer. The manufacturer would be required to use the information provided to notify the registrant if the product is the subject of a recall or

safety alert. The proposed rule would require that the manufacturer maintain a record of the registration information for no less than 6 years after the date of manufacture of the product.

C. Request for Comments

The Commission requests comments on all aspects of this proposal, and specifically seeks comments concerning: What products are included in the definition of durable infant or toddler product; whether the Commission should prescribe the format of the registration cards or allow flexibility; the interplay between the permanent identification marking required to be placed on the product and the tracking label requirement; the party best situated to conduct the registrations (as among the manufacturer, importer, private labeler and retailer); the practical and economic impact of requiring an additional section on the registration form—one section for consumers to mail to the manufacturers and the other section for consumers to keep; allowing the consumer to e-mail registration information as an option; whether requirements on the ease of use and navigation of Web sites are necessary; and appropriateness of the proposed effective date.

D. Effective Date

The Administrative Procedure Act (''APA'') generally requires that the effective date of a rule be at least 30 days after publication of the final rule. *Id.* 553(d). This is unlikely to be sufficient time for manufacturers to put a registration program in place. Thus, the Commission proposes that a final rule would become effective 180 days after its date of publication in the **Federal Register**.

E. Regulatory Flexibility Certification

The Regulatory Flexibility Act (''RFA'') generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. However, section 104(d)(1) of the CPSIA removes this requirement for promulgating the rule implementing the CPSIA's consumer registration provision. Consequently no certification is necessary.

F. Paperwork Reduction Act

Section 104(d)(1) of the CPSIA also excludes this rulemaking from requirements of the Paperwork Reduction Act, 44 U.S.C. sections 3501 through 3520. Consequently, no Paperwork Reduction Act analysis is necessary.

G. Environmental Considerations

The Commission's regulations provide a categorical exemption for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement as they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This proposed rule falls within the categorical exemption.

List of Subjects in 16 CFR 1130

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

Therefore, the Commission proposes to amend Title 16 of the Code of Federal Regulations by adding part 1130 to read as follows:

PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

Sec.

1130.1 Purpose, scope, and effective date.
1130.2 Definitions.
1130.3 General requirements.
1130.4 Identification on the product.
1130.5 Requirements for registration form.
1130.6 Requirements for format of registration form.
1130.7 Requirements for text of registration form.
1130.8 Requirements for Internet registration.
1130.9 Recordkeeping and notification requirements.

Authority: 15 U.S.C. 2056a, 2065(b).

§ 1130.1 Purpose, scope, and effective date.

(a) *Purpose.* This part prescribes a consumer product safety rule establishing requirements for consumer registration of durable infant or toddler products. These requirements are intended to improve the effectiveness of recalls of, and safety alerts regarding, such products.

(b) *Scope.* Part 1130 applies to manufacturers, including importers, of durable infant or toddler products, as defined in § 1130.2(a). It does not apply to infant or child carriers intended for use in automobiles that are covered by the registration program of the National Highway Traffic and Safety Administration at 49 CFR 571.213.

(c) *Effective date.* The requirements of this part 1130 shall become effective on [180 days after publication of a final rule] and shall apply to durable infant or toddler products manufactured on or after that date.

§ 1130.2 Definitions.

In addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052), the following definitions apply:

(a) *Durable infant or toddler product* means a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years; and includes, but is not limited to, individual and combinations of:

(1) Full-size cribs and non-full-size cribs;
(2) Toddler beds;
(3) High chairs, booster seats, and hook-on chairs;
(4) Bath seats;
(5) Gates and other enclosures for confining a child;
(6) Play yards;
(7) Stationary activity centers;
(8) Infant carriers;
(9) Strollers;
(10) Walkers;
(11) Swings; and
(12) Bassinets and cradles.

(b) *Product recall* means action taken pursuant to sections 12, 15(c) or 15(d) of the CPSA (15 U.S.C. 2061,2054(c), or 2064(d)), and action taken pursuant to a corrective action plan implemented by a company in cooperation with the Commission, where the firm is conducting one or more of the following: repair of the product; replacement of the product; or refund of the purchase price of the product.

(c) *Safety alert* means notice or warning of a potential problem with an individual or class of products so that consumers and other users of the affected products respond accordingly to reduce or eliminate the potential for injury.

§ 1130.3 General requirements.

(a) Each manufacturer of a durable infant or toddler product shall:

(1) Provide consumers with a postage-paid consumer registration form that meets the requirements of this part 1130 with each such product;

(2) Maintain a record in accordance with the requirements set forth in § 1130.9 of the contact information (names, addresses, e-mail addresses, and telephone numbers) of consumers who register their products with the manufacturer under this part 1130;

(3) Permanently place the manufacturer name and contact information, model name and number, and the date of manufacture on each durable infant or toddler product in accordance with the requirements set forth in § 1130.4.

(b) Consumer information collected by a manufacturer pursuant to the requirements of this part 1130 shall not

be used by the manufacturer, nor disseminated by the manufacturer to any other party, for any purpose other than notification to such consumer in the event of a product recall or safety alert.

§ 1130.4 Identification on the product.

(a) Each durable infant or toddler product shall be permanently marked with the manufacturer name, and contact information (U.S. address and telephone number, toll free if available) model name and number, and date of manufacture.

(b) The information required by this section shall be in English, legible, and in a location that is conspicuous to the consumer.

§ 1130.5 Requirements for registration forms.

The registration form required under § 1130.3(a)(1) shall:

(a) Comply with the format and text requirements set forth in §§ 1130.6 and 1130.7 as shown in figures 1 and 2 of this part;

(b) State all information required by this part 1130 in the English language;

(c) Be attached to the surface of each durable infant or toddler product so that, as a practical matter, the consumer must notice and handle the form after purchasing the product;

(d) Include the manufacturer's name, model name and number for the product, and the date of manufacture;

(e) Include an option for consumers to register through the Internet;

(f) Include the statement required in § 1130.7(a) that information provided by the consumer shall not be used for any purpose other than to facilitate a recall of or safety alert regarding that product.

§ 1130.6 Requirements for format of registration forms.

(a) *Size of form.* The form shall be the size of a standard post card, 6 inches wide by 4¼ inches high.

(b) *Layout of form.* (1) *General.* The form shall consist of four parts: top and bottom, divided by perforations for easy separation, and front and back.

(2) *Top of form.* The top portion of the form is to be retained by the consumer. The front top portion shall provide the purpose statement set forth in § 1130.7(a). The back of the top portion shall provide the manufacturer's contact information as required in § 1130.7(b).

(3) *Bottom of form.* The bottom portion of the form is to be returned to the manufacturer. The bottom front panel shall have blocks for the consumer to provide his/her contact information as required in § 1130.7(c). Below the consumer contact information shall be product information as required in § 1130.7(d) which may be printed on the form or provided on a pre-printed label placed on the form by the manufacturer. The back of the bottom portion of the form shall be pre-addressed with the manufacturer's name and mailing address where registration information is to be collected.

(c) *Font size and typeface.* The registration form shall use Arial Black typeface. The size of the type shall be at least 12-point for the purpose statement required in § 1130.7(a) and no less than 10-point for the other information in the registration form.

§ 1130.7 Requirements for text of registration form.

(a) *Purpose statement.* The front top portion of each form shall state: ''PRODUCT REGISTRATION FOR SAFETY ALERT OR RECALL. We will use the information provided on this card to contact you only if there is a safety alert or recall for this product. We will not sell, rent, or share your personal information. To register your product, please complete and mail back this card or visit our online registration at *www.WEBSITE NAME.com.''*

(b) *Manufacturer and product information.* The back of the top portion of the form shall state the manufacturer's name and contact information (a U.S. mailing address, a telephone number, toll free if available), Web site address, product model name and number, and manufacture date of the product.

(c) *Consumer information.* The bottom front portion of the form shall have blocks for the consumer to provide his/her name, address, telephone number, and e-mail address. These blocks shall be 5 mm wide and 7 mm high. There shall be at least 23 blocks on each of two lines for name and mailing address. At least 15 blocks shall be provided for the city, 2 blocks for the State and 5 blocks for the zip code or postal code. There shall be 10 blocks for the telephone number with a dash provided after the place for the area code and between the third and fourth blocks for the rest of the number, and at least 29 blocks for the e-mail address.

(d) *Product information.* The following product information shall be provided on the back of the bottom portion of the form below the blocks for customer information printed directly on the form or on a pre-printed label that is applied to the form: the manufacturer's name, the model name and number, and the date of manufacture of the product. A rectangular box shall be placed around the model name, model number and manufacture date.

§ 1130.8 Requirements for Web site registration.

(a) *Link to registration page.* The manufacturer's Web site, or other Web site established for the purpose of registration under this part 1130, shall be designed with a link clearly identified on the main Web page that goes directly to ''Product Registration.''

(b) *Purpose statement.* The registration page shall have the following statement at the top of the page: ''PRODUCT REGISTRATION FOR SAFETY ALERT OR RECALL ONLY. We will use the information provided on this page only to contact you if there is a safety alert or recall for this product. We will not sell, rent, or share your personal information. If you register on this Web site you do not need to fill out the card that came with your product.''

(c) *Content of registration page.* The Web site registration page shall request only the consumer's name, address, telephone number, e-mail address, product model name and number, and the date of manufacture. The consumer's telephone number and e-mail address shall not be required for the consumer to submit the registration form.

§ 1130.9 Recordkeeping and notification requirements.

(a) Each manufacturer of a durable infant or toddler product shall maintain a record of registrants for each product manufactured that includes all of the information provided by each consumer registered.

(b) Each manufacturer of a durable infant or toddler product shall use the information provided by the registrant to notify the registrant in the event of a voluntary or involuntary recall of, or safety alert regarding, such product.

(c) Each manufacturer of a durable infant or toddler product shall maintain a record of the information provided by the registrant for a period of not less than 6 years after the date of manufacture of the product.

BILLING CODE 6355–01–P

PRODUCT REGISTRATION FOR
SAFETY ALERT OR RECALL ONLY

We will use the information provided on this card to contact you only if there is a safety alert or recall for this product. We will not sell, rent or share your personal information. To register your product, please complete and mail this card or visit our on-line registration at www.websitename.com.

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 1234 ALEXANDRIA, VA
POSTAGE WILL BE PAID BY ADDRESSEE

MANUFACTURER'S NAME
POST OFFICE BOX 0000
ANYTOWN, ST 12345-6789

FIGURE 1 TO PART 1130 - FRONT OF REGISTRATION CARD

Model Name :

Model Number :

Manufacture Date :

Manufacturer's Name

www.WEBSITENAME.com

Phone Number - Toll Free (if available) :

Tear off and mail this part.
Please print clearly in the spaces below.

Name

Mailing address

City **State** **Zip Code**

Telephone number

E-mail address

Model Name :

Model Number :

Manufacture Date :

FIGURE 2 TO PART 1130 - BACK OF REGISTRATION CARD

Dated: June 23, 2009.

Todd Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–15242 Filed 6–26–09; 8:45 am]

BILLING CODE 6355–01–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0383]

RIN 1625–AA00

Safety Zone; Paddle for Clean Water; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a safety zone upon the navigable waters of the Pacific Ocean, San Diego, CA, in support of a paddling regatta near the Ocean Beach Pier. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before July 29, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0383 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, Coast Guard; telephone 619–278–7262, e-mail *Shane.E.Jackson@uscg.mil.* If you have questions on viewing 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–2009–0383), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (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 delivery, 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–2009–0383'' 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–2009–0383 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

The Surfrider Foundation San Diego Chapter is sponsoring the Paddle for Clean Water. The event will consist of 900 to 1000 participants paddling around the Ocean Beach Pier. The sponsor will provide rescue vessels, as well as perimeter safety boats for the duration of this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone that would be enforced on September 13, 2009 from 9 a.m. to 4 p.m. The limits of the safety zone would be as follows:

32°45.00′ N, 117°15.12′ W;
32°45.10′ N, 117°15.30′ W;
32°44.55′ N, 117°15.38′ W;
32°44.43′ N, 117°15.19′ W; along the shoreline to
32°45.00′ N, 117°15.12′ W.

This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering

into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

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. This determination is based on the size and location of the safety zone. Commercial vessels would not be hindered by the safety zone. Recreational vessels would not be allowed to transit through the designated safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

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.

This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under 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 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 establishing a safety zone under figure 2–1, paragraph (34)(g), of the Instruction. 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a new temporary zone § 165.T11–201 to read as follows:

§ 165.T11–201 Safety zone; Paddle for Clean Water; San Diego; California

(a) *Location.* The limits of the safety zone would be as follows:

32°45.00′ N, 117°15.12′ W;
32°45.10′ N, 117°15.30′ W;
32°44.55′ N, 117°15.38′ W;
32°44.43′ N, 117°15.19′ W; along the shoreline to
32°45.00′ N, 117°15.12′ W.

(b) *Enforcement Period.* This section will be enforced on September 13, 2009 from 9 a.m. to 4 p.m. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Command Center (COMCEN). The COMCEN may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: June 17, 2009.

D.L. Leblanc,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. E9–15187 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2001–8876]

Federal Motor Vehicle Safety Standard No. 108; Lamp, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by General Motors on December 20, 2001. The petitioner requested that the agency amend the Federal motor vehicle safety standard (FMVSS) on lamps, reflective devices, and associated equipment to require the installation of daytime running lamps on passenger cars, multipurpose passenger vehicles, trucks, and buses that have a gross vehicle weight rating under 4,536 kilograms (10,000 lbs). NHTSA has reviewed the petition and performed an extensive analysis of real world crash data. Based on the results of our study we were unable to find solid evidence of an overall safety benefit associated with daytime running lamps and are therefore denying the petition for rulemaking. The agency maintains its neutral position with respect to the safety benefits from the use of daytime running lamps.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Markus Price, Office of Crash Avoidance Standards (Phone: 202–366–0098; FAX: 202–366–7002).

For legal issues, you may call Mr. Ari Scott, Office of the Chief Counsel (Phone: 202–366–2992; FAX: 202–366–3820).

You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Summary

This document denies a 2001 petition from General Motors (GM) requesting that the National Highway Traffic Safety Administration (NHTSA) mandate the installation of daytime running lamps (DRLs) on all vehicles with a gross vehicle weight rating (GVWR) under 4,536 kilograms (10,000 lbs). The rationale for denying the petition is that, overall, studies of the effectiveness of DRLs have not indicated that they are an effective means of preventing crashes. While GM presented studies that appear to indicate a degree of effectiveness, NHTSA's own studies contradict that finding. Furthermore, for reasons described in detail below, a careful analysis of the various studies of DRL effectiveness indicates flaws in the studies GM cites and that NHTSA should place greater weight on its own studies. Given the information currently available, the agency has been unable to determine if there are any demonstrable safety benefits associated with mandating DRLs, and therefore has decided that leaving them as a manufacturer option is the best course of action.

II. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 108; *Lamps, reflective devices, and associated equipment*, establishes lighting requirements for motor vehicles. Daytime Running Lamps (DRLs) are steady burning lamps that illuminate when the regular headlamps are not required for driving. While FMVSS No. 108 does not require DRLs, it does specify requirements that they must meet if a vehicle manufacturer voluntarily decides to install them.[1]

The requirements for DRLs were first established on January 11, 1993 in

[1] *See* 49 CFR 571.108, S7.10.1, Table I–a.

response to a petition from General Motors (GM) that asked the agency to facilitate the introduction of DRLs on motor vehicles. At that time, GM's view was that an amendment ''would allow manufacturers to install DRLs on new vehicles without being in violation of the multitude of State laws'' which at that time had ''the unintended effect of prohibiting them.'' Also, GM did not believe that there was justification for mandating DRLs as standard equipment because there was not yet evidence of a ''national safety need'' in the United States. As a result of GM's petition, FMVSS No. 108 was amended to permit, but not require, DRLs that comply with various marking and performance requirements.[2]

III. Petition

On December 20, 2001, GM petitioned the agency requesting that DRLs be made required equipment on passenger vehicles, trucks and buses that have a gross vehicle weight rating under 4,536 kilograms (10,000 lbs). In support of its petition, GM provided information from a study that reported a 5 percent decrease in daytime multiple vehicle crashes and a 9 percent reduction in vehicle to pedestrian crashes.[3] GM claimed that this report ''demonstrates that DRLs are preventing crashes and injuries, and saving lives.'' The data supporting this study were collected in 12 States from the years 1994 to 1997, using vehicle registration as a measure of exposure, and the ratio of crash rates estimated by the Poisson regression statistical method (described in detail below).

As an update to the 2000 study, GM most recently sponsored a study written by Steffey, Lau, and Ray of Exponent, Inc in 2008.[4] This study examined vehicles manufactured by GM, Saab, Toyota, Subaru, Volkswagen and Volvo. Crash data were analyzed from 18 States between the years 1996 and 2005. This study used two mathematical methods to determine if there was a link between DRLs and crash rates, the ratio of odds ratio method and the ratio of crash rates. This study reported the impact of DRLs on various types of vehicle crashes including head-on, rural area, highway, rain/fog, angle, urban area, sideswipe, pedestrian, and motorcycle.

The Steffey *et al.* (2008) study reported a statistically significant reduction in crashes associated with DRLs. For passenger cars, it reported a reduction in daytime head-on multi-vehicle crashes of 12.35 percent using the ratio of crash rates method. This study also reported a significant reduction in rural area daytime multi-vehicle crashes of 9.1 percent for passenger cars using this method.[5] Similar results were reported for light trucks. Similar to the 2001 GM study, this study reported a 5 percent decrease in daytime multiple vehicle crashes, but contrary to the 2001 study, a non-significant increase in vehicle to pedestrian crashes of 2.5 was observed. No statistically significant results were found for fatal crashes.

This study also analyzed the data using the ratio of odds ratio technique. GM stated that this methodology produced findings that correlated DRLs with a reduction in certain crash types. However, NHTSA's analysis found, with regard to the overall crash rates experienced by vehicles equipped with DRLs, the Steffey *et al.* study's analysis using the ratio of odds ratios method did not produce a statistically significant decrease in the crash rates of those vehicles.[6]

IV. Discussion and Analysis

After carefully reviewing the data in GM's petition, NHTSA has come to the conclusion that the evidence linking DRLs to lower incidents of crashes is not persuasive. To begin, NHTSA believes that one of the statistical techniques used in the two GM studies, the ratio of crash rates method, is less effective in this case than the ratio of odds ratio method used in the three NHTSA studies (to be fair, this methodology was also employed in the Steffey *et al.* study). Additionally, certain correlations in the GM study raise questions as to the validity of its findings. Contrary to this, NHTSA's studies do not show that DRLs are an effective means of crash avoidance. Given these issues, NHTSA does not believe that the case has been made to incorporate a change to require DRLs.

A. NHTSA Studies and Comparison

In 2000, NHTSA published a study that examined the effectiveness of DRLs installed on passenger cars manufactured in the 1990s.[7] In that study, no statistically significant results were found using the ratio of odds ratio method. In 2004, NHTSA again reported on the effectiveness of DRLs on crashes within the U.S.[8] Again, using a broader data set and a different control group, no results using the ratio of odds ratio method produced statistical significance.

In 2008, NHTSA completed a new study on the effectiveness of DRLs.[9] The data source is FARS (2000–2005), and State data from 9 States (2000–2005). The results of this NHTSA study (2008) are inconclusive regarding overall DRL effectiveness. When both light truck and cars are evaluated together, the result of DRL installation is a non-statistically significant decrease in two vehicle, all severity crashes of 0.3 percent (−2.5–3.1, 0.95 confidence). A statistically significant decrease of 5.7 percent (0.7–10.7, 0.95 confidence) in two vehicle type crashes for light trucks is somewhat offset by a non-significant 2 percent (−5.4–1.4, 0.95 confidence) increase in passenger car crashes of the same type and severity. Further complicating attempts to find a definitive pattern of safety impact that DRLs have, this study finds a non-significant increase of 12.2 percent (−50.1–25.7, 0.95 confidence) in light truck-motorcycle crashes. Contrarily, it also reports that a non-significant decrease of 1.2 percent (−18.5–20.9, 0.95 confidence) is observed for passenger cars of the same crash type. Continuing, this study was also unable to find a clear pattern of effectiveness between States. An overview of the results finds some positive and some negative results depending on crash type and crash severity. When all crashes are considered, a non-significant decrease of 0.1 percent is observed, demonstrating the overall safety benefits of DRLs in this study are inconclusive.

The agency is aware of some groups' concerns that DRLs may have a detrimental impact on motorcycle safety. The concern is that as motorcycles have historically been the only class of vehicles using DRLs, as other vehicle classes begin to use DRLs the unique conspicuity provided to motorcycles by DRLs will be diminished. Neither the GM, nor the agency's studies are able to establish new evidence with respect to this concern. Therefore, the potential ''masking effect'' is still unknown and was not considered in this denial notice analysis.

The agency believes that the result derived based on the ratio of odds ratios are more plausible and defendable than those based on crash rates used in GM's study. The Steffey *et al.* study found a

[2] *See* 59 FR 3501 January 11, 1993.

[3] Docket No. NHTSA–2001–8876–11.

[4] Docket No. NHTSA–2001–8876–15.

[5] Docket No. NHTSA–2001–8876–15 Steffey *et al.*, p. 21.

[6] Docket No. NHTSA–2001–8876–15 Steffey *et al.* page 38.

[7] DOT HS 808 645 Table 24 & 25 Available at *http://www.nhtsa.dot.gov/people/ncsa/pdf/DRL7_RPT.pdf.*

[8] DOT HS 809 760 Appendix B Available at *http://www-nrd.nhtsa.dot.gov/Pubs/809760.PDF.*

[9] HS 811 029.

4.28 percent decrease in nighttime multi-party car crashes as a result of DRL installation. It also found a 3.67 percent decrease in single vehicle light truck crashes. Additionally, the report found that DRLs would reduce nighttime fatal crashes by 11.4 percent for passenger cars and daytime single-vehicle crashes by 9.4 percent for light trucks.[10] These results cast doubt on the validity of the GM study because we do not believe these crash types are plausibly affected by DRL installation. The authors claim these numbers ''serve as useful control groups and benchmarks for comparison.'' [11] The agency respectfully disagrees, and believes this may demonstrate the lack of control for changes that may have occurred during the study period.

Another limitation regarding this GM study is the different time period for which vehicle registration was recorded compared to the times that the crashes occurred. The registration numbers were recorded as a snapshot in time on July first, but the crashes occurred throughout the entire year. This time difference may cause inaccuracies in the number of vehicles in the exposure group.

B. Differences in Statistical Methodology

As discussed above, numerous studies exist that attempt to quantify the crash risk relative to the installation of DRLs. Among these studies, various statistical techniques have been used for determining the effectiveness in real world crashes, including the ratio of odds ratios method (used in the NHTSA studies), and the ratio of crash rates method (used in the GM studies). NHTSA believes that the ratio of odds ratios is the most effective means for the analysis in these studies.

The primary statistical technique used in the studies submitted by GM in support of its petition is the ratio of crash rates method. This was used in the 2001 GM study, and was also used in certain parts of the 2008 Steffey *et al.* study. This technique compared the ratio of crashes to the number of vehicles of that type registered. This collision rate is calculated and compared for both vehicles with DRLs and for vehicles without DRLs. This comparison reportedly represents the effectiveness of the DRL. This is mathematically represented as follows:

$$DRL_{Effect} = \frac{CollisionRate_{DRL}}{CollisionRate_{no\text{-}DRL}} = \frac{Crashes_{DRL} / Vehicles\text{-}in\text{-}Use_{DRL}}{Crashes_{no\text{-}DRL} / Vehicles\text{-}in\text{-}Use_{no\text{-}DRL}}$$

Continuing, this expression is modeled using a Poisson regression model to estimate the overall DRL effect across all model pairs. Because this method uses vehicle registration as the measure of exposure, it may not reflect the actual on-road exposure of vehicles in use that, in actuality, may be involved in a crash. For example, this methodology would assign equal weight to a vehicle driven five miles per day as to a vehicle driven 25 miles per day, despite the fact that the latter vehicle is far more exposed to the risk of a crash.

The ratio of odds ratios method, which was used in NHTSA's studies and in some parts of the Steffey et al. study, avoids using vehicle registration as a method of exposure. This method compares the ratio of target crashes in the daytime with control crashes in the daytime. It continues by calculating the ratio of target crashes at night compared to the control crashes at night. The ratio of these ratios is then considered the odds of a vehicle becoming involved in a DRL relevant crash. This ratio is calculated for both a group of DRL-equipped vehicles, and for a group of vehicles which do not have DRLs installed. A comparison of the two groups' odds then determines the effectiveness of the DRL. This method is demonstrated as follows:

DRL-EQUIPPED VEHICLES

Light condition	Target crashes	Control crashes
Daytime	N_1	N_2.
Nighttime	N_3	N_4.

NON-DRL VEHICLES

Light condition	Target crashes	Control crashes
Daytime	N_5	N_6.
Nighttime	N_7	N_8.

$$R_1 = \frac{N_1}{N_3} \div \frac{N_2}{N_4} = \frac{N_1 * N_4}{N_2 * N_3} \qquad R_2 = \frac{N_5}{N_7} \div \frac{N_6}{N_8} = \frac{N_5 * N_8}{N_6 * N_7}$$

$$R = \frac{R_1}{R_2}$$

[10] Docket No. NHTSA–2001–8876–15 Steffey *et al.*, p. 24–25.

[11] Docket No. NHTSA–2001–8876–15 Steffey *et al.* p. 20.

The value of R represents the relative odds of daytime target crashes involvements between DRL-equipped vehicles and non-DRL vehicles. The agency believes the ratio of odds ratio is the optimal method because it has a strong confounding-factor-control ability. With regard to the previous example, the ratio of odds ratios would factor in a higher expected crash rate for the vehicle driven 25 miles per day than the vehicle driven five.

The ratio of odds ratios avoids using crash rates because the true exposure data generally do not exist. In GM's case, with regard to the portion of the study that utilized the ratio of crash rates method, vehicle registrations were used as the exposure data. However, registration data do not differentiate driving between DRL and non-DRL vehicles. They do not separate daytime and nighttime driving. Consequently, vehicle registrations are not considered to be an appropriate exposure measure for a DRL study. The contradicting results from the GM study demonstrate this. In contrast, the ratio of odds ratios method compares the ratio of target crashes (DRL-relevant) to control crashes (non DRL-relevant) in the daytime.

The Steffey *et al.* study incorporated both of the methodologies in arriving at its conclusions. Using the ratio of crash rates method, the study found an overall decrease in crash rates of 4.61 percent, which was noted as statistically significant.[12] However, using the ratio of odds ratios method, the same report found a non-significant decrease in the crash rates of 1.36 percent.[13] Given the significant divergence in results from the different methodologies, we feel that the results from the ratio of crash rates methodology should be assigned less weight in NHTSA's analysis of the safety effect of DRLs.

V. Conclusion

The agency's 2008 DRL study is a more robust study than previous attempts by the agency to quantify the effectiveness of DRLs. This newest study was unable to find solid evidence of overall safety benefits associated with DRLs installed on passenger vehicles using the ratio of odds ratio statistical technique. While DRLs may be beneficial for certain scenarios, the agency has been unable to document overall safety benefits due to DRL installation which could serve as a basis for mandating them. NHTSA is therefore denying this petition from GM. However, the agency is willing to re-examine the DRL issue if additional data is presented demonstrating overall safety benefits. Any such study should consider using the ratio of odds ratios technique as used in the latest NHTSA study, or provide compelling evidence that an alternative technique is superior at predicting the effectiveness of DRLs. In the meantime, the agency remains neutral with respect to a policy regarding the inclusion of DRLs in vehicles. Although we do not find data that provides a definitive safety benefit that justifies Federal regulation, we are not making recommendations that vehicle manufacturers should change their policies regarding DRLs. Manufacturers should continue to make individual decisions regarding DRLs in their vehicles.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued: June 23, 2009.

Nathaniel Beuse,

Director, Office of Crash Avoidance Standards.

[FR Doc. E9–15314 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–59–P

[12] Steffey *et al.*, p. 34.

[13] Steffey *et al.*, p. 38.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2009–0040; 92220–1113–0000–C5]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Lost River Sucker (Deltistes luxatus) and the Shortnose Sucker (Chasmistes brevirostris)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the Lost River sucker (*Deltistes luxatus*) and the shortnose sucker (*Chasmistes brevirostris*) from the Federal List of Threatened and Endangered Wildlife (List) under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that removing the Lost River sucker or shortnose sucker from the List may be warranted. Therefore, we will not initiate a status review for either species in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the Lost River and shortnose suckers or their habitat at any time.

DATES: The finding announced in this document was made on June 29, 2009. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/klamathfallsfwo.* Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the Klamath Falls Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1936 California Avenue, Klamath Falls, OR 97601; telephone (541) 885–8481; facsimile (541) 885–7837. Please send any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Laurie Sada, Field Supervisor, U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office (*see* **ADDRESSES**). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register.**

This finding is based on the information included in and with the petition and information available in our files at the time of the petition review. Under section 4(b)(3)(A) of the Act and our regulations at 50 CFR 424.14(b), our review is limited to a determination of whether the information in the petition meets the ''substantial scientific or commercial information'' threshold. Our standard for substantial information with regard to a 90-day petition finding is ''that

amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). In making this finding, we consider whether the petition: (1) Clearly indicates the administrative action recommended; (2) contains a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species and publish the results of that status review in a 12-month finding.

The factors for listing, delisting, or reclassifying species are provided at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction; (2) recovery; or (3) a determination that that the original data used for classification of the species as endangered or threatened were in error.

We received a petition dated January 13, 2009, from Mr. James L. Buchal requesting that the Lost River sucker and the shortnose sucker be removed from the List. The submission clearly identified itself as a petition and included the requisite identification information of the petitioner, as required in 50 CFR 424.14(a). This notice constitutes our 90-day finding on the petition.

Previous Federal Action

On July 18, 1988, we listed the Lost River sucker and shortnose sucker as endangered under the Act (53 FR 27130). On December 1, 1994, we proposed critical habitat for Lost River sucker and shortnose sucker (59 FR 61744); that proposal was never finalized.

A previous petition to delist the Lost River sucker and the shortnose sucker, dated September 12, 2001, was submitted by Mr. Richard A. Gierak, representing Interactive Citizens United. Three other similar petitions were treated as comments on Mr. Gierak's petition because they were considered equivalent to Mr. Gierak's petition. These three petitions were from Mr. Leo Bergeron, Mr. James L. Buchal, and Ms. Naomi Fletcher. On May 14, 2002, the Service published a 90-day finding stating that the petitions to delist the Lost River and shortnose suckers did not present substantial scientific or commercial information indicating that delisting the suckers may be warranted (67 FR 34422). On June 12, 2002, Walt Moden, Merle Carpenter, Charles Whitlatch, John Blair, Tiffany Bladock, and Dale Cross filed a complaint in Federal District Court alleging that our initial finding on the petition to delist the Lost River and shortnose suckers was arbitrary and capricious and violated the Act (*Moden* v. *U.S. Fish and Wildlife Service*, 281 F. Supp 2d 1193 (D. Or 2003)). On September 3, 2003, the court ruled that our finding was arbitrary and capricious because it reached unexplained conclusions not supported by the administrative record. The court remanded the 90-day finding and ordered us to either reissue the finding with further explanation or proceed to a status review. Consistent with the court's order, the Service made a new finding, clarifying our analysis as well as addressing additional comments made by the court and the petitioners. The new 90-day finding was published on July 21, 2004, stating again that we found that the petition did not present substantial information that delisting the Lost River and shortnose suckers may be warranted (69 FR 43554). That **Federal Register** notice also initiated 5-year status reviews of the Lost River and shortnose suckers under section 4(c)(2)(A) of the Act to consider any new information that had become available. The 5-year reviews for the two suckers were completed and signed on July 19, 2007. The review for the Lost River sucker recommended downlisting the species from endangered to threatened, and the review for the shortnose sucker recommended that the species remain classified as endangered.

Shortly before the 5-year reviews for the two suckers were published in July, 2007, Walt Moden, Merle Carpenter, Charles Whitlatch, and John Blair filed suit in Federal District Court seeking to have the reviews completed ''by a date certain'' (*Moden et al.* v. *U.S. Fish and Wildlife Service*, Case No. 07–799, D. Or.). The court dismissed that case after publication of the reviews. In a lawsuit filed on February 21, 2008, the same plaintiffs challenged the adequacy of the two sucker reviews (*Moden et al.* v. *U.S. Fish and Wildlife Service*, Case No. 08–214, D. Or.), and sought to have them set aside. The Service moved to dismiss the complaint. On October 27, 2008, the court dismissed the plaintiffs' complaint, holding that 5-year reviews do not constitute final agency action subject to judicial review.

Species Information

General Biology

Lost River sucker. Lost River suckers are large fish (up to 1 meter (m) long and 4.5 kilograms (kg) in weight) that are distinguished by their elongate body and sub-terminal mouth with a deeply notched lower lip. They have dark brown to black backs and brassy sides that fade to yellow or white on the belly. They are native to the Lost River and upper Klamath River systems in Oregon and California where they have adapted to lake living (Moyle 2002, p. 199).

Adult and juvenile Lost River suckers live in lakes where they feed on benthic organisms and material. While the fish can be found throughout the reservoirs they inhabit, they appear to prefer shorelines with emergent vegetation that can provide cover from predators and invertebrate food (Moyle 2002, pp. 199–200).

Lost River suckers grow rapidly in their first 5 to 6 years, reaching sexual maturity sometime between 5 and 14 years of age, with most maturing at 9 years (Buettner and Scoppettone 1990, p. 35). The majority of Lost River sucker spawning occurs from late February to early May in the larger tributaries of inhabited lakes. River spawning habitat is riffles or runs with gravel or cobble substrate, moderate flows, and depths of 21–128 centimeters (cm). Some Lost River suckers have been noted to spawn in lakes, particularly at springs occurring along the shorelines. Females are highly fecund (102,000–235,000 eggs each) and spawn with numerous males. A Lost River sucker can spawn multiple times during its life. It is unknown whether an individual fish will spawn multiple times in a single year or an individual will spawn every year (NRC 2004, p. 196).

Shortnose sucker. Shortnose suckers are distinguished by their large heads with oblique, terminal mouths with thin but fleshy lips. The lower lips are deeply notched. They are dark on their back and sides and silvery or white on the belly. They can grow to about 50 cm, but growth is variable among individuals. Shortnose suckers have been recorded to live as long as 33 years (Moyle 2002, p. 203).

Adult and juvenile shortnose suckers prefer shallow, turbid, and highly productive lakes that are cool, but not cold, in summer (generally 15 to 25 °C), have adequate dissolved oxygen (DO) (above 4 milligrams per liter (mg/l)), and

are moderately alkaline (Moyle 2002, p. 203).

Shortnose suckers grow rapidly in their first 5 years, reaching sexual maturity sometime between years 4 and 6. The majority of shortnose sucker spawning occurs from early April to early May in the larger tributaries of inhabited lakes. River spawning habitat is riffles or runs with gravel or cobble substrate, moderate flows, and depths of 11 to 130 cm. Historically, shortnose suckers have been noted to spawn in lakes, particularly at springs occurring along the shorelines (Moyle 2002, p. 204), although currently few shortnose suckers spawn along shorelines (NRC 2004, p. 194). A shortnose sucker can spawn multiple times during its life. It is unknown whether an individual fish will spawn multiple times in a single year or an individual will spawn every year (NRC 2004, p. 196).

Distribution

At the time of listing, the Lost River sucker and the shortnose sucker were reported from Upper Klamath Lake and its tributaries (Klamath County, Oregon); from the Lost River (Klamath County, Oregon, and Modoc and Siskiyou Counties, California) and Clear Lake (Modoc County, California); from the Klamath River above Keno (Klamath County, Oregon); and in one or more of the Klamath River reservoirs below Keno (Klamath County, Oregon, and Siskiyou County, California) (53 FR 27130). The known geographic range of these suckers has not substantially changed since listing.

Only one previously unreported Lost River sucker population has been found since listing. This population of a few hundred adults occurs in the Tule Lake sumps at the terminus of the Lost River (Siskiyou County, California) (Scoppettone *et al.* 1995, p. 37). Two previously unreported shortnose sucker populations have been found since listing. First, a population of a few hundred adults occurs in the Tule Lake sumps at the terminus of the Lost River (Siskiyou County, California) (Scoppettone *et al.* 1995, p. 37). Second, shortnose suckers are now known to occur in Gerber Reservoir (Klamath County Oregon), an area which was proposed as critical habitat in 1994 (59 FR 61744). New genetics information casts some doubt on whether these fish in Gerber Reservoir and Clear Lake are actually shortnose suckers (ISRP *in litt.* 2005, pp. 19–21; Tranah and May 2006, p. 312). Until that information can be further evaluated, we continue to assume that these fish are shortnose suckers.

Evaluation of the Petition

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to or removing species from the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated information presented in the petition, its supporting information, and other information available in our files in the context of the five factors listed above to determine whether the petition presented substantial information indicating that delisting the species under the Act may be warranted.

The petitioner requests that we remove the Lost River and shortnose suckers from the List. The information the petitioner cites to support his claim included: (1) The completed 5-year reviews (incorporated by reference); (2) comments of Dave Vogel, Natural Resource Scientists, Inc., for the 5-Year Status Review on the Endangered Lost River and Shortnose Suckers Independent Scientific Review Panel (incorporated by reference and included with the petition); (3) the administrative records for the status reviews (incorporated by reference); (4) the biological opinions on the Klamath Project operations (incorporated by reference); and (5) 2003 court proceedings and administrative records (incorporated by reference). Documents included in items 2–5 listed above were available in Service files at the time we conducted the 5-year reviews.

The petition relies on Mr. Vogel's document and other information available in Service files at the time we conducted the 5-year reviews. We considered this information in the course of the 5-year review analysis. The petition also relies on the 5-year reviews themselves, which recommend that neither the Lost River nor the shortnose sucker be delisted at this time. The 5-year review did recommend that the Lost River sucker be downlisted from endangered to threatened. However, the petition at issue here sought only complete delisting. It did not request downlisting, therefore the petitioned action for the purposes of section 4(b)(3)(A) of the Act is limited to the delisting of the two species. The recommendations contained in the 5-year reviews are based on an analysis of the five factors described in section 4(a)(1) of the Act. The petition does not include any discussion of how the 5-year reviews may be in error, nor does the petition provide any new information regarding the status of either species over all or a significant portion of their respective ranges.

The 2008 biological opinion for the effects of the Klamath Project on Lost River and shortnose suckers incorporated some new information regarding water quality and habitat conditions in Upper Klamath Lake that has become available since the 5-year reviews were completed in 2007. In that biological opinion, the Service concluded that lake levels in Upper Klamath Lake, as affected by Klamath Project operations, did not have a measurable effect on water quality. The Service found that the habitat conditions in Upper Klamath Lake had improved as a result of restoration efforts in the Upper Klamath Lake watershed, especially at the mouth of the Williamson River. However, the Service's analysis concluded that the Lost River and shortnose suckers in Upper Klamath Lake were still experiencing limited recruitment and adult survival rates. Therefore, the new information incorporated in the 2008 biological opinion does not present substantial information or analyses that are contrary to the conclusions reached in the 5-year reviews for each species (*e.g.*, a recommendation to downlist to threatened the Lost River sucker and no status change for the shortnose sucker).

Therefore, we find the petition and information readily available in our files does not present substantial information indicating that delisting the Lost River sucker or shortnose sucker across all or a significant portion of their ranges may be warranted at this time due to one or more of the five factors described in section 4(a)(1) of the Act.

Finding

We have reviewed the petition and supporting information provided with the petition under 50 CFR 424.14(b)(2) and the Act. Our review indicates that the fundamental argument for delisting presented in the petition is based on: (1) The completed 5-year reviews (incorporated by –-Year Status Review on the Endangered Lost River and Shortnose Suckers Independent Scientific Review Panel (incorporated by reference and included with the petition); (3) the administrative records for the status reviews (incorporated by

reference); (4) the biological opinions on the Klamath Project operations (incorporated by reference); and (5) 2003 court proceedings and administrative records (incorporated by reference).

The 5-year review for each species analyzed all scientific and commercial information available at the time, including the documents listed in items 2–5 above. The recommendations of the Service based on these analyses was that the Lost River sucker be downlisted from endangered to threatened and that the shortnose sucker remain listed as endangered. The petitioner claims that ''the original listing was a mistake, and these fish are not experiencing any risk of extinction sufficient to invoke the Endangered Species Act'' (Buchal 2009, p. 2). However, the petitioner does not provide any additional substantive discussion, data, citation, or other information or rationale to explain how the documents provided and incorporated by reference suggest that the listing was in error or that the Lost River sucker or shortnose sucker no longer meets the definition of endangered or the definition of threatened and therefore, should be removed from the List. The 2008 biological opinion on the Klamath Project operations incorporated new information regarding improved habitat conditions in Upper Klamath Lake. However, the biological opinion concluded that the Lost River and shortnose suckers were still experiencing limited recruitment and adult survival rates. This new information does not present substantial information or analyses that are contrary to the conclusions reached in the 5-year review for each species (*e.g.*, recommending downlisting to threatened for the Lost River sucker and no status change for the shortnose sucker).

Therefore, we find that the petition and available information readily available in our files do not present substantial information indicating that delisting the Lost River sucker or the shortnose sucker across all or a significant portion of their ranges may be warranted at this time. We do, however, intend to develop a proposed rule to downlist the Lost River sucker to threatened, pursuant to the recommendation in the 5-year review, once our limited resources and competing priorities allow. We encourage interested parties to continue to gather and provide data that will assist with the conservation of the Lost River sucker and shortnose sucker.

References Cited

A complete list of all references cited in this document is available, upon request, from the Klamath Falls Fish and Wildlife Office (*see* **ADDRESSES**).

Author

The primary authors of this notice are staff members of Klamath Falls Fish and Wildlife Office (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 18, 2009.

Marvin E. Moriarty,

Acting Director, Fish and Wildlife Service.

[FR Doc. E9–15364 Filed 6–26–09; 8:45 am]

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Notices

Federal Register

Vol. 74, No. 123

Monday, June 29, 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.

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Privacy Act of 1974; Systems of Records

AGENCY: Recovery Accountability and Transparency Board

ACTION: Notice of Privacy Act systems of records.

SUMMARY: The Recovery Accountability and Transparency Board (Board) proposes to establish systems of records that are subject to the Privacy Act of 1974 (Privacy Act or the Act). In this notice, the Board provides the required information on the systems of records.

FOR FURTHER INFORMATION CONTACT: Jennifer Dure, General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on any new routine use of a system of records. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the new systems. Therefore, please submit any comments by August 10, 2009. The public, OMB, and the Congress are invited to send written comment to Jennifer Dure, General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

In accordance with 5 U.S.C. 552a(r), the Board has provided a report to OMB and the Congress on the proposed systems of records.

Recovery Accountability and Transparency Board

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RATB–1

SYSTEM NAME:

Telephone Directory/Locator System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Board and vendors or other Federal employees located in the Board's office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, title, agency office address, agency mailing address, telephone number, standard administrative code, and social security number (SSN).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 40 U.S.C. 121(c).

PURPOSES:

The records are used to develop and maintain current employee locator and directory listings. The locator listings are used by the Board for the purpose of locating employees and for routing mail. The directory listings are used to produce agency telephone directories on an as-needed basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

A. In the event of litigation where the defendant is (1) the Board, any component of the Board, or any employee of the Board in his or her official capacity; (2) the United States where the Board determines that the claim, if successful, is likely to directly affect the operations of the Board or any of its components; or (3) any Board employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Board may disclose such records as it deems desirable or necessary to the Justice Department to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

B. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the Board but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Variously stored in card files, computer printouts, paper forms, magnetic tape.

RETRIEVABILITY:

Alphabetically by employee name in certain instances, also by agency and/or title.

SAFEGUARDS:

Only authorized personnel have access to master lists.

RETENTION AND DISPOSAL:

Retained as long as individual is employed by or associated with the Board, then information deleted from files by appropriate method.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Assistant, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

RECORDS ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information to be

contested and corrective action sought with supporting justification.

RECORD SOURCE CATEGORIES:

Individual employees.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

RATB–2

SYSTEM NAME:

Employee Credential System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains a record for each employee issued an agency credential with badge or medallion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The information is used to maintain a record of each individual issued an agency credential as well as the accountability of each badge and medallion.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a Member of Congress in response to an inquiry made at the request of an employee employed by the Board.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

D. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, *e.g.*, the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by the Board and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, *e.g.*, debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

E. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

F. Information permitted to be released to the news media and that may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. A record may be disclosed to the National Archives and Records Administration and the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored on a standalone computer system.

RETRIEVABILITY:

Information is retrieved by the name of the employee.

SAFEGUARDS:

Only authorized personnel have access to standalone computer system.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Assistant, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number or similar information). The address is the same as indicated in the notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information is provided by employees of the Board.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

RATB–3

SYSTEM NAME:

Budget System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains a record of each individual employed by the agency. Each record contains the name, SSN, position title, salary and benefits of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The information is used to make payroll projections for budget purposes and to track employees by organization within the Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a Member of Congress in response to an inquiry from that Member made at the request of the employee or contractor.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance, the execution of a security or suitability investigation or the classification of a job.

E. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

F. A record may be disclosed to the National Archives and Records Administration and the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored on a personal computer which is password protected.

RETRIEVABILITY:

The information can be retrieved by the name and/or personal identifier of the employee.

SAFEGUARDS:

The information is maintained on a server with limited access by user-ID and password.

RETENTION AND DISPOSAL:

The information is retained and disposed of in accordance with General Records Schedule 5.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Finance and Budget, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information is provided by current and former employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RATB–4

SYSTEM NAME:

Payroll and Leave Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the individual's name, SSN, age, sex, marital status, appointment, tenure, employment status and occupation series. These records also contain data as of the year to date and the most recent pay period with regard to leave earned, used and balances, withholdings and allotments to financial institutions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 5 CFR Part 550.

PURPOSE(S):

Document employee salary, tax and related information and to track and document employee leave transfers, reinstatements and other leave issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a Member of Congress from the record of an individual in response to an inquiry from that Member made at the request of the employee or contractor.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, *e.g.*, the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by the Board and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, *e.g.*, debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for

evaluation and oversight of Federal personnel management.

H. To provide a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the state, city or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517 or 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax their employee is based on a place of residence, place of employment or both.

I. To disclose information to the General Services Administration Agency Liaison Division to effect distribution of pay according to employee directions and other authorized purposes.

J. Release information to the Internal Revenue Service (IRS). Information contained in the system may be disclosed to the IRS to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

K. Information directly related to the identity of debtors and the history of claims contained in the system of records may be disclosed to consumer reporting agencies for the purpose of encouraging repayment of overdue debts. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt.

L. Information may be released about debtors to the U.S. Treasury or other Federal employers in order to effect salary or administrative offsets. Information contained in the system of records may be disclosed to an employer in order to effect salary or administrative offsets to satisfy a debt owed the United States by that person. Such disclosures will be made only when all procedural steps established by the Debt Collection Act have been taken.

M. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, services or job for the Board.

N. Information may be disclosed to the General Accountability Office (GAO) during a records management audit or inspection pursuant to GAO's audit authority.

O. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies under subsection (b)(12) of the Privacy Act. Disclosure may be made from this system to consumer reporting agencies as defined in the Debt Collection Act of 1982 (31 U.S.C. 3701(a)(3)) or the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is retrieved by the name or personal identifier of the individual.

SAFEGUARDS:

This information is maintained on either a password-protected computer or filed in a locked file cabinet in a private office.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Mission Support Services, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Individuals who are current or former employees of the agency; (2) General Services Administration Agency Liaison Division.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RATB–5

SYSTEM NAME:

Time and Attendance Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance reports, leave slips and audit reports which contain the name, SSN, grade, leave category, leave balances and organization code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR Part 630.

PURPOSE(S):

To provide control, reporting and accounting for employee leave.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a Member of Congress from the record of an individual in response to an inquiry from that Member made at the request of the employee or contractor.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, *e.g.*, the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by the Board and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, *e.g.*, debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of the Federal personnel management.

H. To disclose information to the General Services Administration Agency Liaison Division to effect maintenance of leave.

I. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored manually in individual folders. Electronic access to the information is maintained on a password protected computer.

RETRIEVABILITY:

Information is retrieved by the name of the individual employee.

SAFEGUARDS:

Information is either locked in a file cabinet or in offices that are locked.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Record Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Assistant, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, or similar information). The address is the same as indicated in the notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Current and former employees; (2) current and former Time and Attendance personnel; (3) current or former employers; (4) General Services Administration Agency Liaison Division staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RATB–6

SYSTEM NAME:

Training Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the type and dates of training programs for Board employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track individual employees and their training history, class schedules, attendance and to ensure prerequisites have been met.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Information is maintained to assist in performing the administrative functions of the Training Office and is used to prepare class directories, class rosters and statistical reports.

B. To provide information to a Member of Congress from the record of an individual in response to an inquiry from that Member made at the request of the employee or contractor.

C. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for the Board.

D. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in individual file folders and electronically.

RETRIEVABILITY:

Information is retrieved by the name of the individual.

SAFEGUARDS:

The manual records are maintained in locked file cabinets and the automated portion is maintained on a password-protected computer.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Records Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Recovery Accountability and Transparency Board,

1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, or similar information). The address is the same as indicated in the notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Current or former employees; (2) individuals from other Federal, state and local agencies; and (3) individuals from formally established training centers who may train agency employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RATB–7

SYSTEM NAME:

Freedom of Information-Privacy Act System.

SYSTEM LOCATION:

Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals or organizations who have requested access to information pursuant to the Freedom of Information Act or Privacy Act; (2) individuals who have made a request to access or correct records pertaining to themselves; and (3) persons who, on behalf of another individual, have made a request to access or correct that individual's records.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records contain Freedom of Information Act and Privacy Act requests for Board records requested and any other correspondence or internal memoranda related to the processing of these requests; records will also contain such data as the name of requester, address of requester, and subject of request; (2) documents relevant to appeals and litigation under the Freedom of Information Act and Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 552a.

PURPOSE(S):

To assist Board staff in carrying out their responsibilities under the Freedom of Information Act and the Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Public information permitted to be released to the news media and the public may be made available unless it is determined that release of the specific information in the context of a particular record would constitute an unwarranted invasion of personal privacy.

B. To provide information to a Member of Congress from the record of an individual in response to an inquiry from that Member made at the request of the employee or contractor.

C. Information may be disseminated to a Federal agency which furnished the record for the purpose of permitting a decision as to access or correction to be made by that agency or for the purpose of consulting with that agency as to the propriety of access or correction.

D. Records may be disseminated to any appropriate Federal, state, local or foreign agency for the purpose of verifying the accuracy of information submitted by an individual who has requested amendment or correction of records.

E. Release of information to the National Archives and Records Administration and the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual requests are stored in a locked file cabinet. Automated information is contained on a password-protected computer.

RETRIEVABILITY:

Requests are retrieved and filed under the name and/or personal identifier of the requester or subject of the request.

SAFEGUARDS:

Access to records is limited to Board staff who have a need for the records to perform their official duties. Request files are stored in a locked file cabinet.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the Freedom of Information Act Office, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, or similar information). The address is the same as indicated in the notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

Information is derived from the individuals and/or companies making requests, the system of records searched in the process of responding to requests, and other agencies referring requests for access to or correction of records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. Although no exemption has been claimed for this system of records, certain information may be duplicative of records contained in another system of records which may have an exemption. In those circumstances, the exemption will still apply.

RATB–8

SYSTEM NAME:

Applicants for Employment Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for Federal employment or are employed in the Federal service.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the education and training; employment history and earnings; appraisal of past performance; convictions and offenses against the law; results from written test; appraisal of potential; honors, awards or fellowships; military service; veterans preference, birthplace; date of birth; SSN; and home address of persons who have applied for Federal employment or are employed in the Federal services and correspondence related thereto. These records may also include information concerning the date of application, qualification status, employment consideration, priority grouping, and other information relating to the consideration of the individual for employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, Executive Order 10577.

PURPOSE(S):

Records in this system are used to determine individuals' eligibility and evaluate their qualifications for placement in positions within the Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To respond to requests for information from the Office of Personnel Management to the extent their request is compatible with the purpose for which the records are maintained.

B. To disclose information to a congressional office from the record of an individual in response to an inquiry from a Member of Congress made at the request of that individual.

C. In the event of litigation where the defendant is (1) the Board, or any employee of the Board in his or her official capacity; (2) the United States where the Board determines that the claim, if successful, is likely to directly affect the operations of the Board; or (3) any Board employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Board may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense provided such disclosure is compatible with the purpose for which the records were collected.

D. In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

E. Information may be disclosed as a ''routine use'' to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit. Information may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

F. Where Federal agencies have the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Board for records, the Board will make such records available.

G. Information may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the Board but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Variously stored in card files, discs, magnetic tape, forms and lists.

RETRIEVABILITY:

Records are indexed by any combination of name, date of birth, SSN, and identification number.

SAFEGUARD:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are retained until the applicant is selected for a position, or for two years. After the applicant is selected for a position, the records are filed in the Official Personnel Folder which is retained until the employee leaves the Board. If the applicant is not selected for a position within two years, the records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Mission Support Services, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, or similar information). The address is the same as indicated in the notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information is provided by current and former employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. E9–15278 Filed 6–26–09; 8:45 am]

BILLING CODE 6820–GA–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0008]

Availability of an Environmental Assessment and Finding of No Significant Impact for a Biological Control Agent for Russian Knapweed

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the release of a gall midge, *Jaapiella ivannikovi,* into the continental United States for use as a biological control agent to reduce the severity of Russian knapweed infestations. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Dr. L. Carmen Soileau, Senior Staff Entomologist, Permits, Registrations, Imports, and Manuals, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1237; (866) 524–5421.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of a gall midge, *Jaapiella ivannikovi,* into the continental United States for use as a biological control agent to reduce the severity of Russian knapweed (*Acroptilon repens*) infestations.

Russian knapweed is a long-lived perennial in the plant tribe Asteraceae (sunflower, aster, or daisy family). The highly invasive weed was first introduced into North America in 1898. By 1998, the weed had spread to 313 counties in 45 of the 48 contiguous States in the United States with 80 percent of the infestation occurring in the States of Colorado, Idaho, Washington, and Wyoming.

The proposed biological control agent, *J.ivannikovi,* is an insect measuring 1.6 to 2.5 mm in length with relatively large wings, long legs, and a long ovipositor (egg-laying organ) that can be extended from the tip of the abdomen. The female gall midge deposits its eggs on the surface of the buds situated on the tips of the main and side shoots of the Russian knapweed. Larval feeding causes stunted growth of the shoot and fusion of leaves, resulting in a so-called ''rosette gall.''

On March 12, 2009, we published in the **Federal Register** (74 FR 10707–10708, Docket No. APHIS–2009–0008) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed release of this biological control agent into the continental United States.

We solicited comments on the EA for 30 days ending April 14, 2009. We received one comment by that date, from the Tribal Historic Preservation Officer of the Bois Forte Band of Ojibwe in Minnesota. The commenter indicated her disagreement with biological control in general, but did not raise any specific issues regarding the content of the EA on the release of the particular organism under consideration.

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the release of the gall midge *J. ivannikovi* into the continental United States for use as a biological control agent to reduce the severity of Russian knapweed infestations. The finding, which is based on the EA, reflects our determination that release of this biological control agent will not have a significant impact on the quality of the human environment.

The EA and FONSI may be viewed on the Regulations.gov Web site (see footnote 1). Copies of the EA and FONSI are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 23rd day of June 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–15307 Filed 6–26–09; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, environmental assessment, finding of no significant impact, and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0008.*

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Manufacturing Extension Partnership (MEP) Management Information Reporting System.

OMB Control Number: 0693–0032.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 7,080.

Number of Respondents: 59.

Average Hours per Response: 120.

Needs and Uses: Sponsored by NIST, the Manufacturing Extension Partnership (MEP) is a national network of locally-based manufacturing extension centers working with small manufacturers to assist them in improving their productivity, profitability, and enhance their economic competitiveness. The information collected will provide the MEP with information regarding MEP Center performance regarding the delivery of technology, and business solutions to U.S.-based manufacturers. The collected information will assist in determining the performance of the MEP Centers at both local and national levels, provide information critical to monitoring and reporting on MEP programmatic performance, and assist management in policy decisions. Responses to the collection of information are mandatory per the regulations governing the operation of the MEP Program (15 CFR parts 290, 291, 292, and H.R. 1274—section 2). The information collected will include center inputs and activities including services delivered, clients served, center staff, quarterly expenses and revenues, partners and affiliates, strategic plan, operating plans, and client success stories. No confidentiality for information submitted is promised or provided.

Affected Public: Business or other for-profit organizations.

Frequency: Quarterly, annually, and biennially.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek,

Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: June 24, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–15320 Filed 6–26–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Summer Undergraduate Research Fellowship (SURF) Program Student Applicant Information.

OMB Control Number: 0693–0042.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 400.

Number of Respondents: 200.

Average Hours per Response: 2.

Needs and Uses: The SURF Program provides an opportunity for the NIST laboratories and the National Science Foundation (NSF) to join in a partnership to encourage outstanding undergraduate students to pursue careers in science and engineering. The Program also provides research opportunities for students to work with internationally known NIST scientists, to expose them to cutting-edge research, and promote the pursuit of graduate degrees in science and engineering.

The information is used for evaluation and selection, and includes: Student's name, host institution, e-mail address/contact information, home address, class standing, first- and second-choice NIST laboratories they wish to apply to, academic major (minor), current overall GPA, need for housing and gender (for housing purposes only), availability dates, resume, personal statement of commitment and research interests, two letters of recommendation, academic transcripts, verification of U.S. citizenship or permanent legal residency, and verification of health coverage.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167 via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: June 24, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–15335 Filed 6–26–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP52

Endangered and Threatened Species: Notice of Availability for Public Comment on Guidance for Monitoring the Recovery of Pacific Northwest Salmon and Steelhead Listed under the Federal Endangered Species Act

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

ACTION: Notice of availability.

SUMMARY: The National Marine Fisheries Service's (NMFS) Northwest Region has drafted guidance on monitoring the recovery of Pacific Northwest salmon and steelhead listed under the Endangered Species Act (ESA). This draft Pacific Northwest monitoring guidance is intended to assist NMFS' recovery partners in Oregon, Washington, and Idaho in understanding the recovery monitoring needs under the ESA. NMFS' Northwest Region is soliciting public review and comment on the draft Pacific Northwest monitoring guidance.

DATES: All comments must be received no later than 5 p.m. Pacific Standard Time on [*August 28, 2009.*

ADDRESSES: Copies of the draft Pacific Northwest monitoring guidance are available on the Internet at: *http://www.nwr.noaa.gov*, or upon request (see **FOR FURTHER INFORMATION CONTACT**, below). You may submit comments on the draft Pacific Northwest monitoring guidance by any of the following methods:

E-mail: The mailbox address for submitting e-mail comments on the draft monitoring guidance is *rme__guidance.nwr@noaa.gov*. Please include in the subject line of the e-mail comment the identifier ''Draft Pacific Northwest Monitoring Guidance.''

Mail: You may submit written comments and information to Dr. Scott Rumsey, NMFS, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. Please identify the comment as regarding the ''Draft Pacific Northwest Monitoring Guidance.''

Hand Delivery/Courier: You may hand deliver written comments and information to NMFS, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. Business hours are 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Please identify the comment as regarding the ''Draft Pacific Northwest Monitoring Guidance.''

Fax: (503) 230–6893. Please identify the fax comment as regarding the ''Draft Pacific Northwest Monitoring Guidance.''

FOR FURTHER INFORMATION CONTACT: Bruce Crawford, NMFS, Northwest Region, by phone at (360) 534–9348, or by e-mail at *bruce.crawford@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4(c)(2) of the ESA requires that, at least every 5 years, the Secretary shall conduct a review of all ESA-listed species and determine whether any species should: (1) Be removed from such list; (2) be changed in status from an endangered species to a threatened species; or (3) be changed in status from a threatened species to an endangered species. In the Pacific Northwest, NMFS' reviews of the status of listed salmon and steelhead populations, and the extent to which the threats and other factors limiting the species' recovery have been addressed, are largely dependent upon monitoring information collected by state, tribal, and Federal co-managers. In an effort to provide more direction to agencies monitoring the status of ESA-listed salmon and

steelhead and their habitats, NMFS' Northwest Region has drafted guidance on monitoring the recovery of listed salmonids in the Pacific Northwest. This draft Pacific Northwest monitoring guidance will assist NMFS' recovery partners in Oregon, Washington, and Idaho in understanding the recovery monitoring needs under the ESA, and the desired level of statistical certainty for the monitoring information they collect. The draft monitoring guidance includes recommended priorities for monitoring, data collection, and reporting of the viability of Pacific Northwest salmon and steelhead populations, threats to the species, and the ESA Section 4(a)(1) listing factors.

Information Solicited

NMFS' Northwest Region is soliciting public comment on the draft guidance for monitoring the recovery of ESA-listed salmon and steelhead in Idaho, Oregon, and Washington. Specifically, NMFS' Northwest Region requests comment on the recommendations and priorities proposed in the draft Pacific Northwest monitoring guidance. In particular, we would like input on the proposed confidence intervals for status and trends monitoring of adult and juveniles, as well as on the targets for the relative abundance of hatchery- and natural-origin fish in spawning populations.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 23, 2009.

Angela Somma,

Chief, Division of Endangered Species, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–15199 Filed 6–26–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP73

Endangered Species; File No. 14272

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Lawrence Wood, Marinelife Center of Juno Beach, 14200 U.S. Hwy. #1, Juno Beach, FL 33408, has been issued a permit to take hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

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;

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On March 9, 2009, notice was published in the **Federal Register** (74 FR 10034) that a request for a scientific research permit to take hawksbill sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The research will continue to describe the abundance and movements of an aggregation of hawksbill sea turtles found on the barrier reefs of Palm Beach County, Florida. Up to 75 animals will be captured, tagged, and sampled annually for 5 years. Up to ten animals will have satellite transmitters attached to their carapace.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 22, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–15196 Filed 6–26–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1609]

Grant of Authority, Establishment of a Foreign–Trade Zone, City and County of Butte–Silver Bow, Montana

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones (FTZ) Act provides for '' the establishment of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the City and County of Butte–Silver Bow (the Grantee) has made application to the Board (FTZ Docket 43–2008, filed 8/4/08), requesting the establishment of a foreign–trade zone at a site in Butte, Montana, adjacent to the Butte–Silver Bow Customs and Border Protection port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 46870, 8/12/08), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign–trade zone, designated on the records of the Board as Foreign–Trade Zone No. 274, at the site described in the application, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 4th day of June 2009.

FOREIGN–TRADE ZONES BOARD,Gary Locke, Secretary of Commerce, Chairman and Executive Officer.

Attest:

Andrew McGilvray,

Executive Secretary

[FR Doc. E9–15331 Filed 6–26–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP83

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Regional Administrator, Southwest Region, NMFS, has made a preliminary determination that an application for an Exempted Fishing Permit (EFP) warrants further consideration. The application was submitted by members of the Pacific sardine fishing industry and requests an exemption from commercial quotas in order to conduct a survey to obtain a estimate of the population of Pacific sardine. NMFS requests public comment on the application.

DATES: Comments must be received by July 14, 2009.

ADDRESSES: You may submit comments on this notice identified by 0648–XP83 by any one of the following methods:

- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- Fax: (562) 980–4047, Att: Joshua Lindsay

FOR FURTHER INFORMATION CONTACT: A copy of the application can viewed on the Pacific Fishery Management Council's website at *http://www.pcouncil.org/cps/cpsefp.html*; or contact Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: On February 20, 2009, NMFS published a final rule implementing the harvest guideline (HG) and annual specifications for the 2009 Pacific sardine fishing season off the U.S. West Coast (74 FR 7826). These specifications and associated management measures were based on recommendations adopted by the Pacific Fishery Management Council (Council) at their November 2008 public meeting in San Diego, California (73 FR 60680). As part of these management measures the Council recommended, and NMFS approved, that 1,200 metric tons (mt) of the available acceptable biological catch (ABC) be initially subtracted from the ABC and reserved for a potential industry-based research project. This 1,200 mt set-aside was intended to allow research fishing, that had been proposed for the second seasonal period (July 1–September 15, 2009), to continue if that period's allocation is reached and directed fishing is closed. Members of the Pacific sardine fishing industry requested this separate allocation so that they could conduct research fishing activities after fishing is closed because of foreseen difficulties in attempting to have vessels fish for the purposes of research during the normal fishing season.

At the March 2009 Council meeting, the Council reviewed two industry research/EFP proposals to allow access to the 1,200 mt set-aside. Both proposals went forward for public comment with the recommendation from the Council that the proposals be combined to create a single EFP application to be reviewed at the June 2009 Council meeting. After hearing the research proposals and public comment, the Council also recommended, and NMFS issued a **Federal Register** notice proposing, that the original 1200 mt set-aside be increased to 2400 mt (74 FR 20897).

Sardine industry representatives and scientists have since collaborated on a single proposal and on June 16, 2009, the Council made a final recommendation to NMFS to approve and implement this single EFP application. The goal set forth in the EFP application is the development of an index of biomass for Pacific sardine, with the desire that this index be included in the next Pacific sardine stock assessment. If NMFS decides not to issue this EFP, then the set-aside will be re-allocated to the third period's directed harvest allocation.

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

Dated: June 22, 2009.

Kristen C. Koch

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

[FR Doc. E9–15190 Filed 6–26–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ04

Marine Mammals; File No. 774–1714

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that NMFS, Southwest Fisheries Science Center (SWFSC) (Jeremy Rusin, Principal Investigator), Protected Resources Division, 8604 La Jolla Shores Dr., La Jolla, CA 92037 has been issued an amendment to scientific research Permit No. 774–1714–09.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Kristy Beard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 3, 2009, notice was published in the **Federal Register** (74 FR 9222) that an amendment to Permit No. 774–1714, issued June 30, 2004 (68 FR 57673), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 774–1714–10 authorizes the SWFSC to conduct research on seven pinniped species, 53 cetacean species, and five sea turtle species in the Pacific, Indian, Atlantic, Arctic and Southern Oceans. The permit authorizes Level B harassment during aerial and vessel surveys for photo-identification/photogrammetry, incidental harassment, collection of sloughed skin, and salvage of carcasses and parts; Level A harassment for capture, biopsy sampling, and tagging activities; and the import/export of specimens. This amendment increases the number of short-beaked and long-beaked common dolphins (*Delphinus* spp.) that may be harassed during vessel and aerial surveys. For each species, up to 60,000 dolphins may be harassed annually during aerial surveys, up to 10,000 approached by vessel for photo-identification, and 1,500 approached and biopsy sampled annually. During research up to 40,000 animals of each species may be incidentally harassed annually. The purposes of this research are to investigate the life history traits and assess the relative reproductive rates of these species off the coast of California and Baja California. This amendment also extends the duration of the permit to June 30, 2010.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

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;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941.

Dated: June 24, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–15344 Filed 6–26–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP94

Marine Mammals; File No. 984–1587–08

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that the Dr. Terrie Williams, Department of Biology, University of California at Santa Cruz, Santa Cruz, CA 95064 has been issued an amendment to scientific research Permit No. 984–1587–07.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office:

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.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 984–1587 authorized captive research activities on two bottlenose dolphins (*Tursiops truncatus*) and juvenile California sea lions (*Zalophus californianus*) undergoing rehabilitation at The Marine Mammal Center through June 7, 2009. The minor amendment (No. 984–1587–08) extends the duration of the permit through September 7, 2009, but does not change any other terms or conditions of the permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: June 23, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–15343 Filed 6–26–09; 8:45 am]

BILLING CODE 3510–22–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: July 20, 2009.

Time: 10:30 a.m.–3 p.m.

Location: U.S. Department of Commerce, Room 4832, 1401 Constitution Avenue, NW., Washington, DC 20230.

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 23, 2009.

J. Marc Chittum,

Executive Secretary, The Manufacturing Council.

[FR Doc. E9–15232 Filed 6–26–09; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP92

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea, Alaska

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to BP Exploration (Alaska), Inc. (BPXA) to take marine mammals incidental to the production of offshore oil and gas at the Northstar development in the Beaufort Sea off Alaska.

DATES: This Authorization is effective from July 7, 2009, through July 6, 2010.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Candace Nachman (301) 713–2289 or Brad Smith (907) 271–3023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notice and opportunity for public comment, that the taking will have a

negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) of marine mammals for subsistence uses. In addition, NMFS must prescribe regulations setting forth the permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to construction and operation of the offshore oil and gas facility at Northstar became effective on April 6, 2006 (71 FR 11314, March 7, 2006), and remain in effect until April 6, 2011. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements. The six species of marine mammals that BP may take in small numbers during construction and operation of the Northstar facility are bowhead whales, gray whales, beluga whales, ringed seals, spotted seals, and bearded seals.

Summary of Request

On May 5, 2009, NMFS received a request from BPXA for a renewal of an LOA issued on July 1, 2008, for the taking of small numbers of marine mammals incidental to oil production operations at Northstar, under the regulations issued on March 7, 2006 (71 FR 11314). This request (BPXA, 2009) contains information in compliance with 50 CFR 216.209, which updates information provided in BPXA's original application for takings incidental to construction and operations at Northstar. BPXA also submitted the required activity and monitoring report under the 2008–2009 LOA.

Summary of Activity and Monitoring Under the 2008–2009 LOA

One offshore ice road was built during the 2007–2008 ice-covered season. Helicopters made 222 round trips to Northstar during the 2007–2008 ice-covered season to transport crew and materials to and from the facility and recommended flight corridors and altitude restrictions were maintained. Tucker tracked vehicles made a total of 111.5 round trips between West Dock and Northstar Island, and the hovercraft made 426 round trips during the 2007–2008 ice-covered season.

Drilling activities were conducted over two well sites on Northstar Island from January 18, 2008, to May 12, 2008. Vibratory pile driving occurred from February 15 to 19, 2008, and from July 24 to August 10, 2008, to place thermosiphons as part of the new protections system. No impact pile driving activities took place during the present reporting period. The 2008 repair activities consisted of placement of boulders along the northeast corner of the island during the ice-covered season from March 7 to April 24, 2008 and some minor repair activities during the open-water season in August 2008.

Aerial overflights were conducted weekly to inspect the pipeline for leaks or spills. There were nine reportable Northstar-related spills during the 2007–2008 ice-covered season and the 2008 open-water season. Two of the nine reportable spills reach Beaufort Sea water or ice. The contaminated material was recovered completely. Materials that reached Beaufort Sea water or ice included power steering fluid and hydraulic fluid. Material from the seven remaining spills did not reach the Beaufort Sea or sea ice. Contaminated snow, ice, and gravel were removed with various types of equipment and sorbents. No clean-up activity was necessary after Northstar flare events during the reporting period.

During the 2008 open-water period, there were 119 helicopter round trips, 445.5 hovercraft round trips, 45 tug and barge trips, and 55 Alaska Clean Seas Bay-class boat round trips to Northstar. There were an additional six trips by Bay-class boats in association with acoustic monitoring of the bowhead whale migration.

Seal observations in 2008 were conducted during 54 days from May 15–July 15. A total of 415 seals were observed (including presumed repeat sightings of the same animal on different days), which is more than in previous years over the same period. Results of seal counts conducted from Northstar Island during the reporting period did not provide evidence, or reason to suspect, that any seals were killed or injured by Northstar-related activities during 2008. No Northstar activity capable of reaching 180 or 190 dB (rms) in the water occurred during the last year, and, therefore, no monitoring of these ''safety radii'' was implemented.

An array of 10 Directional Autonomous Seafloor Acoustic Recorders (DASARs) were installed in August 2008. The array was deployed for approximately 29 days between August 27 and September 25, 2008. In 2008, the scope of the bowhead whale acoustic monitoring study was augmented relative to that in 2005–2007 and was generally similar to that in 2001–2004, although the study design was somewhat modified from that in 2001–2004. The geometry of the DASAR array was changed, and new emphasis was placed on understanding how far Northstar sounds propagate offshore. DASARs were deployed at locations 8.5–38.5 km (5.3–24 mi) NNE of Northstar Island and recorded sounds continuously for approximately 29 days, until September 25, 2008. Simultaneously, near-island recordings were obtained from three DASARs placed approximately 450 m (1,476 ft) north of Northstar over the same period. In total, 85,669 bowhead whale calls were detected on the records of the 10 array DASARs combined from a total of 350,597 call detections. When expressed as a number of calls per day, the 2008 number (1,337 calls/day) is the highest since the beginning of the study in 2001, exceeding the previous record of 989 calls/day in 2004. The much higher call counts in 2008 compared to the lower counts in 2005 and 2006 are probably related to the absence of nearshore pack ice during the 2008 season, meaning there were probably more whales closer to shore.

Post-field analyses of the near-island DASARs revealed the presence of a previously undetected pulsed sound. As soon as possible after ice break-up in 2009, a hydrophone will be used to determine if this sound is still present. If present, attempts will be made to localize the source and to either remove it or reduce its sound output.

Subsistence hunters from Nuiqsut who traveled to Cross Island for the annual bowhead whale hunt did not report any negative effects from Northstar activities on their ability to conduct the hunt. In 2008, Nuiqsut whalers landed their full quota of four whales.

Authorization

BPXA complied with the requirements of the 2008 LOA, and NMFS has determined that the marine mammal take resulting from the 2008 construction and operation activities is within that analyzed in and anticipated by the associated regulations. Accordingly, NMFS has issued a 1-year LOA to BPXA, authorizing the taking of small numbers of marine mammals incidental to oil production construction and operations at the Northstar offshore facility in state and Federal waters in the U.S. Beaufort Sea. Issuance of this LOA is based on findings described in the preamble to the final rule (71 FR 11314, March 7, 2006) and supported by information contained in BPXA's 2008 annual report

that the activities described in the LOA will result in the taking of no more than small numbers of bowhead whales, beluga whales, ringed seals, and, possibly California gray whales, bearded seals, and spotted seals and that the total taking will have a negligible impact on these marine mammal stocks and would not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. This LOA will be renewed annually based on review of the annual monitoring report.

Dated: June 18, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–15188 Filed 6–26–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Open Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Chief of Naval Operations (CNO) Executive Panel will deliberate on the findings and proposed recommendations of the Subcommittee on Diversity. The matters to be discussed include: Female and minority male officer accessions, retention, development, command climate, evaluation and mentoring programs, and accountability.

DATES: The meeting will be held on Thursday, July 16, 2009, from 9:30 a.m. to 11:30 p.m.

ADDRESSES: The meeting will be held in the Boardroom, CNA, 4825 Mark Center Drive, Alexandria, VA 22311–1846. Some members of the Executive Panel may participate via teleconference.

FOR FURTHER INFORMATION CONTACT: CDR Catherine Masar, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311–1846, telephone: (703) 681–9633.

SUPPLEMENTARY INFORMATION: Individuals or interested groups may submit written statements for consideration by the CNO Executive Panel at any time or in response to the agenda of the scheduled meeting. All requests or statements must be submitted to the Designated Federal Officer at the address detailed below.

Statements submitted in response to the agenda mentioned in this meeting notice must be received by the CNO Executive Panel at least five days prior to the respective meeting to allow adequate time for consideration.

The Designated Federal Officer will review all timely submissions with the CNO Executive Panel Chairperson and will ensure they are provided to members of the CNO Executive Panel before the meeting that is the subject of this notice.

Individuals desiring to participate via teleconference must submit their contact information (to include e-mail address) to CDR Catherine Masar at the below address.

To contact the Designated Federal Officer, write to Executive Director, CNO Executive Panel (N00K), 4825 Mark Center Drive, 2nd Floor, Alexandria, VA 22311–1846.

Dated: June 23, 2009.

A. M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–15243 Filed 6–26–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Partially Closed Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Chief of Naval Operations (CNO) Executive Panel will report on the findings and recommendations to the Chief of Naval Operations of the Subcommittee on the Navy's Industrial Baseline in the Economic Downturn. The matters to be discussed during the meeting have been divided into Open and Closed matters.

Open matters to be discussed are: Current U.S. Navy budgets; Navy budget drivers; Navy's ability to plan, protect and optimize its future budgeting process; general anticipated effects on Navy's industrial base caused by the current state of the economy; related challenges facing this Administration and the U.S. Navy.

Closed matters to be discussed are: The current status of the U.S. Navy shipbuilding, aircraft, and science & technology industrial bases; near and far-term actions that the U.S. Navy can take to protect, provide visibility into the viability of second and third order suppliers, and optimize the Navy's industrial bases (quality, reliability, visibility, affectivity, flexibility, diversity, capacity, on-time delivery, and cost); and a conclusion/summary of the classified discussions. The executive session of this meeting will be closed to the public.

DATES: The open sessions of the meeting will be held on Monday, July 13, 2009, from 1 p.m. to 2 p.m. The closed Executive session will be held from 2:15 p.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in Conference Room 1A01, CNA, 4825 Mark Center Drive, Alexandria, VA 22311–1846.

FOR FURTHER INFORMATION CONTACT: Mr. Brian D. Shaw, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311–1846, (703) 681–4906.

SUPPLEMENTARY INFORMATION: The matters to be presented during the closed session of this meeting are of acquisition sensitive and/or business/proprietary nature and as such cannot be released to the public. Pursuant to title 5 of the United States Code, section 552b(c)(4), these matters are exempt from public disclosure.

Individuals or interested groups may submit written statements for consideration by the CNO Executive Panel at any time or in response to the agenda of the scheduled meeting. All requests or statements must be submitted to the Designated Federal Officer at the address detailed below.

Statements submitted in response to the agenda mentioned in this meeting notice must be received by the CNO Executive Panel at least five days prior to the respective meeting to allow adequate time for consideration.

The Designated Federal Officer will review all timely submissions with the CNO Executive Panel Chairperson and will ensure they are provided to members of the CNO Executive Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to Executive Director, CNO Executive Panel (N00K), 4825 Mark Center Drive, 2nd Floor, Alexandria, VA 22311–1846.

Dated: June 23, 2009.

A.M. Vallandingham,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–15244 Filed 6–26–09; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will

hold a meeting and public hearing on Wednesday, July 15, 2009. The hearing will be part of the Commission's regular business meeting, which is open to the public. The meeting will be held at the Northampton Community College's Fowler Family Southside Center, 511 East 3rd Street, 6th Floor, Room 605, Bethlehem, Pennsylvania.

No morning conference session is planned in connection with this meeting. The subjects of the public hearing to be held during the 1 p.m. business meeting include the dockets listed below:

1. *Borough of Ambler D–75–16 CP–3.* An application for the renewal of the Ambler Borough Wastewater Treatment Plant (WWTP). The existing WWTP will continue to discharge treated effluent at an annual average flow of 6.5 million gallons per day (mgd) and a maximum monthly flow of 8.0 mgd. The WWTP discharges to the Wissahickon Creek, a tributary to the Schuylkill River. The facility is located in Upper Dublin Township, Montgomery County, Pennsylvania in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Moon Nurseries D–88–28–3.* An application for the renewal of a ground water withdrawal project to continue the withdrawal of 8 million gallons per thirty days (mg/30 days) to supply the applicant's irrigation supply from existing Well No. 1 in the Stockton Formation. The project is located in the Core Creek Watershed in Lower Makefield Township, Bucks County, Pennsylvania, within the Southeastern Pennsylvania Ground Water Protected Area.

3. *Solvay Solexis D–69–84–3.* An application to renew the withdrawal of water from two existing groundwater wells (Wells Nos. 417 and 418) and four existing groundwater remediation wells (Wells Nos. RW–1, RW–2, RW–3, and RW–4). In addition, pump capacity for remediation Wells Nos. RW–1, RW–2, RW–3, and RW–4 will increase from 48 gallons per minute (gpm), 48 gpm, 141 gpm, and 98 gpm to 60 gpm, 60 gpm, 250 gpm, and 250 gpm, respectively. The increased pump capacities for the remediation wells accompany an increase in the 30 day average withdrawal from 14.91 million gallons (mg) to 18.84 mg for the four remediation wells. However, the overall 30 day average and yearly withdrawals will decrease from 74.91 mg and 476.68 mg to 60 mg and 301.13 mg, respectively. The project wells are located in the Upper and Lower Potomac-Raritan-Magothy (PRM) Formation, in the Delaware River Watershed, in West Deptford Township, Gloucester County, New Jersey.

4. *Waste Management Disposal Services of Pennsylvania, Inc. D–88–54–5.* An application to replace a 0.1 mgd landfill leachate treatment plant (LTP) with a 0.3 mgd treatment facility, which will discharge to the tidal Delaware River via a new outfall in Water Quality Zone 2 at River Mile 125.64. The LTP serves the GROWS and Tullytown Sanitary Landfills and is located off Bordentown Road in Falls Township, Bucks County, Pennsylvania.

5. *BP Oil Company D–91–32–5.* An application for renewal of a ground water withdrawal project that will decrease the total monthly average and yearly withdrawals of 30 million gallons per thirty days (mg/30 days) and 365 million gallons per year (mgy), respectively, to 21.6 mg/30 days and 207 mgy, respectively. Withdrawals will occur from existing Wells Nos. R–3, MW–R5, R–4A, R–5A, R–6A, R–8, R–9, R–10, R–11, and R–12. Additionally, this docket will approve the renewal of a discharge of treated remediation water from the docket holder's 1.0 mgd groundwater treatment plant (GWTP). The project wells are located in the Mantua Creek and the Delaware River Watersheds within the Potomac-Raritan-Magothy Formation, in Paulsboro Borough, Gloucester County, New Jersey. The contaminated groundwater is treated and discharged to the Delaware River, approximately 2,000 feet downstream of the Mantua Creek confluence, via Outfall No. 003A located at River Mile 89.3 in DRBC Water Quality Zone 4.

6. *Shoemakersville D–93–74 CP–2.* The purpose of this project is to recognize the increase in capacity of the Shoemakersville WWTP's hydraulic load from 0.60 mgd to 0.75 mgd. Additionally, a TDS determination was submitted, requesting approval of monthly average and instantaneous maximum concentration values of 3,300 mg/l and 4,000 mg/l, respectively. The project is located on the Schuylkill River at River Mile 92.47–92.3, in the Borough of Shoemakersville, Berks County, Pennsylvania.

7. *Bucks County Water and Sewer Authority D–93–76 CP–2.* An application for approval of a modification to the Bucks County Water and Sewer Authority (BCWSA) Upper Dublin WWTP. The application is for the addition of a ferric chloride chemical feed system. The project also includes the transfer of ownership from Upper Dublin Township to the BCWSA and the re-rate of the average annual daily flow rate of the existing WWTP from 0.85 mgd to 1.10 mgd. The WWTP will continue to discharge to Pine Run, a tributary to the Wissahickon Creek, which is a tributary to the Schuylkill River. The facility is located in Upper Dublin Township, Montgomery County, Pennsylvania.

8. *Richland Township Water Authority D–96–44 CP–3.* An application for approval of a ground water withdrawal project to supply up to 15 mg/30 days of water to the applicant's public water supply from new Well No. QCS–1 and to increase the maximum combined withdrawal from all wells from 31.55 mg/30 days to 46.55 mg/30 days. The project is located in the Brunswick Formation in the Morgan Creek Watershed in Richland Township, Bucks County, Pennsylvania, in the Southeastern Pennsylvania Ground Water Protected Area. This withdrawal project is located within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters.

9. *Borough of Portland D–2003–9 CP–3.* An application to modify the service area of the existing 0.105 mgd Portland WWTP. The project proposes to add the 12.4-acre ''Gary Gray parcel'' to the Portland Industrial Park. The Gary Gray parcel, located in Upper Mount Bethel Township, will be developed with the Voltaix Land Development project. This project does not propose an increase in allocation of flow due to the development, and all wastewater generated by the development discharged to the WWTP for treatment will be sanitary waste. The facility will discharge directly to the section of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters. The project is located in the Borough of Portland, Northampton County, Pennsylvania.

10. *Penn Estate Utilities, Inc. D–2003–36 CP–2.* An application for approval of a ground water withdrawal project to supply up to 1.642 mg/30 days of water to the applicant's public water supply system from new Well No. 8 and to increase the existing withdrawal from all wells from 10.80 mg/30 days to 12.025 mg/30 days. The increased allocation is requested in order to meet current needs in service area demand. The project is located in the Trimmers Rock Formation in the Brodhead Creek Watershed in Stroud Township, Monroe County, Pennsylvania. The site is located within the drainage area to the section of the non-tidal Delaware River known as the Middle Delaware, which is designated as Special Protection Waters.

11. *Diamond Sand and Gravel Inc. D–2007–27–2.* An application for a docket

modification to include surface water withdrawals from the on-site washing/ settling pond. Water withdrawals from the pond are used to process sand and gravel, and the closed loop operation allows the water to flow back to the pond for reuse. The applicant has requested a surface water withdrawal allocation consisting in part of 22.32 mg/30 days for withdrawals from the pond and in part of the existing 3.0 mg/ 30 days for withdrawals from on-site groundwater wells, for a combined total water withdrawal allocation of 23.47 mg/30 days. The project wells are constructed in the Hardyston Formation. The project is located in the Paulins Kill Watershed in Sparta Township, Sussex County, New Jersey. The site is located within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters.

12. *CBH20 LP D–2008–26–1.* An application for approval of a ground water withdrawal project to supply up to 5.71 mg/30 days of water to the applicant's public water supply system from existing Well No. PWS–4 and new Wells Nos. PWS–2 and PWS–3. The project is located in the Devonian-age, Long Run Member of the Catskill Formation in the Pocono Creek Watershed in Pocono Township, Monroe County, Pennsylvania. The site is located within the drainage area to the section of the non-tidal Delaware River known as the Middle Delaware, which is designated as Special Protection Waters.

13. *Sunny Side Farms, Inc. D–2008–31–1.* A ground water withdrawal project to supply a maximum of 61.7 mg/30 days of water for the irrigation of approximately 275 acres of vegetable crops from three wells—Pizzo Farm Well, Pipitone Toni Well and Tedesco Well. The wells are located in the Cohansey Formation in the Maurice River Watershed in Deerfield Township, Cumberland County, New Jersey.

14. *Exelon Generation Company, LLC D–2008–38–1.* An application for approval of an existing surface water withdrawal project to continue to supply up to 44,064 mg/30 days of water to the applicant's Eddystone Power Generating Station from existing Intakes Nos. 1, 2, 3, and 4. The project is located on the Delaware River at River Mile 84.42 in Water Quality Zone 4, in Eddystone Borough, Delaware County, Pennsylvania.

15. *Ag-Mart Produce D–2008–39–1.* A combined surface water and ground water withdrawal project to supply a maximum of 15.7 mg/30 days of water for the irrigation of approximately 70 acres of tomato plants. Water is withdrawn from an existing ground water fed pond (Fairton Pond) and an existing ground water well (Fairton Well). The project intake and well are located in the Cedar Creek Watershed, in the Kirkwood-Cohansey Aquifer in Fairfield Township, Cumberland County, New Jersey.

16. *City of Wildwood Water Utility D–2008–42 CP–1.* An application for approval of an existing ground water withdrawal project to supply up to 313.1 mg/30 days of water to the applicant's public water supply system from 13 of 17 total existing wells. Thirteen (13) of the 17 existing wells are located within the Delaware River Basin; the remaining wells are Aquifer Storage and Recovery wells (ASR) located in the Atlantic Basin. The applicant states that approximately 10.096 mgd (302.88 mg/30 days) of water is transferred from the Delaware River Basin into the Atlantic River Basin from the wells located in the Delaware River Basin. Consumptive loss of this water is 100% of the total water withdrawn as wastewater generated from the area served by these wells is discharged entirely to the Atlantic Basin. The existing water withdrawal and inter-basin transfer was not previously docketed by the Delaware River Basin Commission. The project withdrawals are located in the Estuarine Sand, Cohansey, Rio Grande, and Holly Beach Aquifers in the Cape May West Watershed in Middle Township, Cape May County, New Jersey.

17. *Buck Hill Falls Co. D–2009–1–1.* An application for renewed approval to discharge 0.20 mgd of treated effluent from the existing Buck Hill Falls WWTP, located at River Mile 213.00–21.11–0.50 (Delaware River—Brodhead Creek—Buck Hill Creek). The project is located within the drainage area to the section of the non-tidal Delaware River known as the Middle Delaware, which is designated Special Protection Waters with the classification Outstanding Basin Waters. The project is located in Barrett Township, Monroe County, Pennsylvania.

18. *Parkland School District D–2009–7 CP–1.* An application for approval of the existing 33,600 gpd WWTP serving the Orefield Middle School in South Whitehall Township, Lehigh County, Pennsylvania. The project discharges to Jordan Creek, a Migrating/ Trout Stocking Fishery (MF/TSF) that flows to the Lehigh River at River Mile 183.66–16.25–11.4 (Delaware River—Lehigh River—Jordan Creek). The WWTP is located within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters.

19. *Lower Milford Township D–2009–10 CP–1.* An application for approval to construct and operate a new 0.035 mgd WWTP. The WWTP is located in Lower Milford Township, Lehigh County, Pennsylvania within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters. The facility will discharge to Saucon Creek, a High Quality—Cold Water Fishery (HQ–CWF) that flows to the Lehigh River at River Mile 183.66–9.43–14.64 (Delaware River—Lehigh River—Saucon Creek).

20. *Chesapeake Appalachia, LLC D–2009–20–1.* A surface water withdrawal project to supply a maximum of 29.99 mg/30 days of water for the applicant's exploration and development of natural gas wells in the State of New York and the Commonwealth of Pennsylvania. Surface water will be withdrawn from the West Branch of the Delaware River at a location known as the Curtone site in Buckingham Township, Wayne County, Pennsylvania. This withdrawal project is located in the Delaware River Watershed within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is designated as Special Protection Waters.

The business meeting also will include adoption of the Minutes of the Commission's May 6, 2009 business meeting; announcements of upcoming advisory committee meetings and other events; a report on hydrologic conditions in the basin; a report by the Executive Director; and a report by the Commission's General Counsel. Additional business meeting items will include consideration by the Commission of a resolution authorizing the Executive Director to require point source monitoring to implement the Scenic Rivers Monitoring Program in the non-tidal river and a resolution authorizing the Executive Director to accept grant funds from the National Park Service for the Scenic Rivers Monitoring Program. An opportunity for public dialogue will be provided at the end of the meeting.

Draft dockets scheduled for public hearing on July 15, 2009 will be posted on the Commission's Web site, *http://www.drbc.net,* where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500, extension 221, with any docket-related questions.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the commission secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission can accommodate your needs.

Dated: June 24, 2009.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E9–15249 Filed 6–26–09; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice and Request for the Office of Management and Budget (OMB) Review and Comment.

SUMMARY: DOE has submitted to OMB for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will allow respondents to submit applications for a National Priority Project Designation (NPPD) as called for by Section 1405 of the Energy Policy Act of 2005 (EPAct 2005).

DATES: Comments regarding this collection must be received on or before July 29, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503. And to

Patrick Shipp, Office of Information and Business Management Systems (EE–3C), Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patrick Shipp, Office of Information and Business Management Systems (EE–3C), Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, (202) 586–7769; Jody Barringer, Office of Information and Business Management Systems (EE–3C), Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, (202) 586–5404; or by e-mail at *nppd@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* New; (2) *Information Collection Request Title:* National Priority Project Designation; (3) *Type of Request:* New collection; (4) *Purpose:* This collection of information is a form that DOE will make available electronically on the internet and which persons or organizations seeking NPPD under Section 1405 of EPAct 2005 (Pub. L. 109–58) must use in applying for such designation. The draft application is available at *http://www.eere.energy.gov/office_eere/docs/npp_application.doc.* DOE is publishing as an attachment to this notice the guidelines for requesting NPPD. The purpose of Presidential designation is to recognize energy projects that have advanced the field of renewable energy technology and contributed to North American energy independence; (5) *Type of Respondents:* Public and Private Sector; (6) *Estimated Number of Respondents:* 20; (7) *Estimated Number of Burden Hours:* 400 annually.

Statutory Authority: Energy Policy Act of 2005, Public Law 109–58.

Issued in Washington, DC, on June 16, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

Appendix

Department of Energy

Guidelines for National Priority Project Designation

Presidential National Priority Project Designation (NPPD) may be earned by organizations involved in projects that are leading the way in using energy efficiency and renewable energy technologies. This designation, established by Section 1405 of the Energy Policy Act of 2005 (Pub. L. 109–58) provides the President of the United States and the Secretary of Energy with a mechanism to recognize projects that are making the greatest strides in helping North America reduce its dependence on fossil fuels and promote domestic energy security.

Projects that receive NPPD will be highlighted by the Department of Energy (DOE) as transformational energy efficiency and renewable energy leaders. DOE will work with recipients and with national media sources to spotlight these projects as models for the rest of the country and the world.

I. Eligible Projects

A. Categories of Projects

DOE will accept applications for NPPD in the following project categories:

(1) *Grid-Scale Generation by Wind and Biomass Energy Projects.* To be eligible for NPPD, a wind or biomass project must provide electricity to the national power grid, rather than electricity designed to serve only specific end users.

A *wind energy project* is any installation of technologies that generates electricity, fuel or other usable energy by harnessing the power of wind.

A *biomass energy project* is any installation of technologies that generate electricity, fuel or other usable energy derived from biomass, and may include co-firing or co-gasification techniques if biomass is responsible for 51 percent or more of the energy produced. The term ''biomass'' means any lignin waste material that is segregated from other waste materials and is determined to be nonhazardous by the Administrator of the Environmental Protection Agency; and any solid, nonhazardous, cellulosic material that is derived from—

(A) Any of the following forest-related resources: mill residues, pre-commercial thinnings, slash, brush, or non-merchantable material;

(B) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically treated, or painted wood wastes), and landscape or right-of-way tree trimmings; but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled;

(C) agriculture wastes, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues; and livestock waste nutrients; or

(D) a plant that is grown exclusively as a fuel for the production of electricity.

(2) *Distributed Generation by Photovoltaic and Fuel Cell Energy Projects.* A photovoltaic or fuel cell project must produce distributed generation to be eligible for NPPD. DOE considers distributed generation to be any power source that is designed to power an end user within a radius of one mile from the source.

A *photovoltaic energy project* is any installation of technologies that converts light directly into electricity through a solid-state, semiconductor process.

A *fuel cell energy project* is any application of technologies that uses fuel cells to transport energy. The term ''fuel cell'' means a device that directly converts the chemical energy of a fuel and an oxidant into electricity by electrochemical processes occurring at separate electrodes in the device.

(3) *Building Energy Efficiency and Renewable Energy Projects.* This category of eligible projects consists of energy-efficient buildings and building-based renewable energy projects.

An *energy-efficient building project* is one that will retrofit an existing building or build a new building such that the building performs all of its intended roles while using significantly less energy than conventional building stock. DOE considers the term ''new building'' to mean a building that is completed to the point of being ready for occupancy not earlier than two years before the date of the application for NPPD.

A *renewable energy project* is one using technology that generates electricity or usable energy in the form of heat, steam, or fuel from any of the following sources: solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

(4) *First-in-Class Building Energy Efficiency and Renewable Energy Projects.* DOE considers a first-in-class project to be one that incorporates a new energy-related technology or technique not used before, not used in the same manner before, or not used on the same scale before.

B. Time of Construction

DOE will accept award applications both for projects that are being *planned* (are under construction or will begin construction within the next two years) and projects that are *complete* (were completed within the past two years).

II. Designation Criteria

To obtain NPPD, a project must:

- Utilize energy-efficient or renewable energy technologies and fit into one of the four categories of projects identified in Section I.A. of these guidelines;
- Be located within the United States; and
- Meet the following criteria (for applicable category):
  - *For wind and biomass*—the project must involve the installation of not less than 30 megawatts of renewable energy generation capacity.[1]
  - *For PV and fuel cells*—the project must involve the installation of not less than 3 megawatts of renewable energy generation capacity.
  - *For buildings*—the project must have all of the following attributes:
    - Meet guidelines for Leadership in Energy and Environmental Design (LEED) certification (any level);
    - Use whole-building integration of energy efficiency and environmental performance design and technology, including advanced building controls;
    - Use renewable energy for at least 50 percent of the energy consumption of the project;
    - Use ENERGY STAR®-labeled products wherever possible; and
    - Include at least 5 million square feet of enclosed space (not necessarily all in one building or at a single site). ''Enclosed'' means space closed off from the elements that is heated, cooled, or both.
- *For first-in-class building projects*—the project must represent a first-in-class use of renewable energy or a new paradigm of building-integrated renewable energy use or energy efficiency. Any project establishing a new paradigm would need to include techniques that fundamentally change the assumptions made about energy systems as they relate to building science. This category could potentially include innovative project-financing approaches. There are no scale parameters for first-in-class building projects.

III. DOE Review and Designation

A. Selection Process

After the close of the application period, DOE will review the applications and determine which projects have the potential to receive NPPD. DOE will ask the applicants of those projects to have a professional engineer inspect their project and certify that the information contained in their application is correct. The professional engineer may be an employee of the applicant organization. Once this is done, DOE will consider these projects to be ''certified projects.'' A certified project is one that is reasonably expected to meet the selection criteria set forth in these Guidelines.

DOE technical staff will then conduct an additional review of all certified projects. This review may involve follow-up questions for the applicant organization. At the conclusion of this review, the Secretary of Energy will select a maximum of three projects in each category to be recommended to the President for designation as that year's National Priority Projects (NPP). While DOE will accept award applications in all four project categories, the Secretary of Energy may not recommend NPPD for projects in all categories.

Any organization that applies for NPPD may remove its project from consideration at any time.

B. Promotion of Designated Projects

Organizations whose projects are designated by the President as NPP will receive recognition from DOE in the form of:

- Receipt of a NPPD medal at a national event;
- National news releases;
- Prominent recognition on the DOE Web site; and
- Other suitable forms of publicity and recognition

C. Additional Information

(1) Applicants may request confidentiality of information that they believe is exempt by law from public disclosure; this information must be clearly marked on the application by the applicant. DOE intends to honor requests for nondisclosure of information to the extent permitted by law, and it will make a final determination with regard to disclosure or nondisclosure of the information in accordance with DOE's Freedom of Information regulations (10 CFR 1004.11).

(2) Submission of an application for designation does not create any obligation on DOE to grant such designation.

(3) Questions or requests for additional information about NPPD should be directed to *nppd@ee.doe.gov.*

[FR Doc. E9–15194 Filed 6–26–09; 8:45 am]

BILLING CODE 6450–01–P

[1] For purposes of the National Priority Project Designation, the National Renewable Energy Laboratory has defined the term ''capacity'' to mean the maximum amount of energy that can be generated or stored by a device at any given time. For example, the capacity for a wind turbine would be the maximum electricity (Watts) it could generate given ideal wind speeds. The capacity of an energy storage device would be the total amount of energy that can be stored in the device under ideal conditions.

DEPARTMENT OF ENERGY

Notice of Cancellation of the Global Nuclear Energy Partnership (GNEP) Programmatic Environmental Impact Statement (PEIS)

AGENCY: Office of Nuclear Energy, U.S. Department of Energy.

ACTION: Notice of cancellation of Environmental Impact Statement process.

SUMMARY: The U.S. Department of Energy (DOE or Department) has decided to cancel the preparation of the *Global Nuclear Energy Partnership Programmatic Environmental Impact Statement* (DOE/EIS–0396). This notice briefly describes the history of the GNEP PEIS.

FOR FURTHER INFORMATION CONTACT: For further information or copies of the Draft GNEP PEIS, please contact Dr. Rajendra Sharma, National Environmental Policy Act (NEPA) Compliance Officer, Office of Nuclear Energy (NE–43), U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, Telephone: 301–903–2899 or electronic mail: *rajendra.sharma@nuclear.energy.gov.*

For general information regarding the DOE NEPA process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. Telephone: 202–586–4600, or leave a message at 1–800–472–2756. Additional information regarding DOE NEPA activities and access to many of DOE's NEPA documents are available on the DOE Web site at *http://www.gc.energy.gov/NEPA.*

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2006, DOE published an Advance Notice of Intent to Prepare an Environmental Impact Statement for the Global Nuclear Energy Partnership Technology Demonstration Program (71 FR 14505), soliciting comments on the proposed scope, alternatives and environmental issues to be analyzed. DOE stated that the technology demonstration program would demonstrate technologies needed to implement a closed fuel cycle that enables recycling and consumption of spent nuclear fuel in a proliferation-resistant manner.

The comments that DOE received included suggestions to prepare a programmatic environmental impact statement addressing the entire GNEP Program. DOE agreed and on January 4, 2007, published its Notice of Intent to prepare the *Global Nuclear Energy Partnership Programmatic Environmental Impact Statement* (GNEP PEIS) in the **Federal Register** (72 FR 331). The public scoping period for the GNEP PEIS was later extended (72 FR 15871, April 3, 2007) and concluded on June 4, 2007. DOE considered the scoping comments in preparing the Draft GNEP PEIS. The Draft GNEP PEIS analyzed the potential environmental impacts of expanding nuclear power in the U.S. using either the existing fuel cycle or various alternative closed and open fuel cycles. DOE's stated preference in the Draft was to close the fuel cycle, although it did not identify a specific preferred alternative.

Publication of the Notice of Availability of the Draft GNEP PEIS (73 FR 61858, October 17, 2008; also see 73 FR 61845, October 17, 2008) commenced a 60-day public comment period and provided a schedule for 13 public hearings to receive comments on the Draft GNEP PEIS. Consistent with the announced schedule, DOE conducted public hearings on the Draft GNEP PEIS during November and December 2008. In response to the public requests, on December 10, 2008, DOE announced an extension of the public comment period by 90 days, *i.e.,* through March 16, 2009 (73 FR 75087). On December 24, 2008, DOE announced (73 FR 79073) an additional public hearing which was held on January 12, 2009, in the town of Pahrump in Nye County, NV. At the close of the public comment period on March 16, 2009, DOE had received more than 14,500 comment documents on the Draft GNEP PEIS.

Via this notice, DOE announces that it has decided to cancel the GNEP PEIS because it is no longer pursuing domestic commercial reprocessing, which was the primary focus of the prior Administration's domestic GNEP program. The Omnibus Appropriations Act, 2009, provides $145 million for the continuation of research and development (R&D) on proliferation-resistant fuel cycles and waste management strategies. As described in the President's Fiscal Year 2010 budget request, the Department's fuel cycle R&D's focus is on ''long-term, science-based R&D of technologies with the potential to produce beneficial changes to the manner in which the nuclear fuel cycle and nuclear waste is managed.''

Issued in Washington, DC, on June 23, 2009.

R. Shane Johnson,

Acting Assistant Secretary, Office of Nuclear Energy.

[FR Doc. E9–15328 Filed 6–26–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, July 14, 2009, 8 a.m.–5 p.m.

Opportunities for public participation will be held on Tuesday, July 14, 2009, from 1:30 p.m. to 1:45 p.m. and from 3:30 p.m. to 3:45 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Hilton Garden Inn, 700 Lindsay Boulevard, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, ID 83415. Phone (208) 526–6518; Fax (208) 526–8789 or e-mail: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://www.inlemcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Progress to Cleanup;
- Snake River Plain Aquifer Briefing;
- Integrated Waste Treatment Unit Status;
- Integrated Approach to Dispositioning All Remote-Handled Transuranic Waste;
- Remedial Design Work Plan for Waste Area Group (WAG)–7;
- WAG–10 Record of Decision Update.

Public Participation: The EM SSAB, Idaho National Laboratory, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral

presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.inlemcab.org/meetings.html.*

Issued at Washington, DC on June 23, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–15325 Filed 6–26–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, July 16, 2009, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda;
- Deputy Designated Federal Officer's Comments;
- Federal Coordinator's Comments;
- Liaisons' Comments;
- Committee Chairs' Comments;
- Presentations;
- Administrative Issues:
  - Motions;
- Public Comments;
- Final Comments;
- Adjourn;

Breaks Taken As Appropriate.

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Reinhard Knerr at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.org/meetings.html.*

Issued at Washington, DC, on June 22, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–15327 Filed 6–26–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 29, 2009, 2 p.m.–8 p.m.

ADDRESSES: Holiday Inn Santa Fe, 4048 Cerrillos Road, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

2 p.m. Call to Order by Deputy Designated Federal Officer, Jeff Casalina;
Establishment of a Quorum, Lorelei Novak.
A. Roll Call.
B. Excused Absences.
Welcome and Introductions, J.D. Campbell.
Approval of Agenda.
Approval of May 13–14, 2009 Meeting Minutes.

2:15 p.m. Old Business.
- Written Reports
- Open Discussion from Board Members

2:30 p.m. New Business:
- Establishment of a Nominating Committee, Jenny Freeman

2:45 p.m. Ad Hoc Committee Reports.
- Community Outreach
- Board Processes

3:15 p.m. Standing Committee Reports.
- Fiscal Year 2010 Work Plan Progress

3:30 p.m. Break.

3:45 p.m. Update from the New Mexico Environment Department, James Bearzi.

4 p.m. Report from Liaison Members.
- George Rael, Department of Energy
- Rich Mayer, Environmental Protection Agency
- Michael Graham, Los Alamos National Security

5 p.m. Dinner Break.

6 p.m. Public Comment Period.

6:15 p.m. Consideration and Action on Recommendation(s).

6:30 p.m. Presentation by Eight Northern Indian Pueblos Environmental Office.

7:30 p.m. Round Robin Discussion.

8 p.m. Adjourn, Jeff Casalina.

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make

every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/minutes/board-minutes.htm.*

Issued at Washington, DC, on June 23, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–15324 Filed 6–26–09; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 03, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–369–001.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits Substitute Sixth Revised Sheet 374 *et al.* to FERC Electric Tariff, Sixth Revised Volume 1.
Filed Date: 06/01/2009.
Accession Number: 20090603–0043.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–412–005.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits revisions to the PJM Open Access Transmission Tariff to incorporate changes directed by the May 1 Order.
Filed Date: 06/01/2009.
Accession Number: 20090603–0098.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1007–001.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits Substitute Original Sheet 36, Rate Schedule FERC No 317 to be effective 6/15/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0099.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1075–002.
Applicants: Falcon Energy, LLC.
Description: Falcon Energy, LLC submits an Amended, Revised and Restated Application for Market-Based Rate Authorization and Request for Waivers and Blanket Authorizations and Request for Expedited Treatment.
Filed Date: 06/01/2009.
Accession Number: 20090603–0044.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1242–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an executed Large Generator Interconnection Agreement with Public Service Company of Oklahoma *etc.*
Filed Date: 06/01/2009.
Accession Number: 20090602–0089.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1244–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits Original Sheet 1 *et al.* to Fourth Revised Rate Schedule FERC 300 *et al.*
Filed Date: 06/01/2009.
Accession Number: 20090602–0083.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1245–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits Original Service Agreement 1808 to FERC Electric Tariff, Fifth Revised Volume 1.
Filed Date: 06/01/2009.
Accession Number: 20090602–0086.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1246–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to the Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Third Revised Volume No 1.
Filed Date: 06/01/2009.
Accession Number: 20090602–0092.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1247–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits proposed amendments to the CAISO tariff to implement acceleration of the CAISO's payment timeline.
Filed Date: 06/01/2009.
Accession Number: 20090602–0093.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1248–000.
Applicants: Midwest Independent Transmission System Operator, Inc., MidAmerican Energy Company.
Description: MidAmerican Energy Company *et al.* submit a proposed Attachment FF–MidAmerican Local Transmission Planning Process *etc.*
Filed Date: 06/01/2009.
Accession Number: 20090602–0094.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1249–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits Original Service Agreement 1819 to its FERC Electric Tariff, Fifth Revised Volume 1.
Filed Date: 06/01/2009.
Accession Number: 20090602–0090.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1250–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an executed Large Generator Interconnection Agreement between SPP as Transmission Provider, *et al.* as Interconnection Customer, and Elk Falls Wind, LLC *et al.*
Filed Date: 06/01/2009.
Accession Number: 20090602–0082.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1252–000.
Applicants: Midwest Independent Transmission System Operator Inc., MidAmerican Energy Company.
Description: Midwest Independent Transmission System Operator, Inc. *et al.* submits Second Revised Sheet 1854 *et al.* to FERC Electric Tariff, Fourth Revised Volume 1, to be effective 9/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090602–0085.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1253–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits revisions to Attachment P of their Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Third Revised Volume No 1.
Filed Date: 06/01/2009.
Accession Number: 20090602–0087.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1254–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits amendments to its Open Access Transmission Tariff to reform its generation interconnection procedures to increase the efficiency of the generation interconnection process, *etc.*
Filed Date: 06/01/2009.
Accession Number: 20090602–0091.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1255–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an unexecuted non-conforming Large Generator interconnection Agreement between SPP as Transmission Provider, *et al.* as Interconnection Customers.
Filed Date: 06/01/2009.
Accession Number: 20090602–0088.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1258–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an executed Large Generator Interconnection Agreement with Southwestern Public Service Company, a wholly owned subsidiary of Xcel Energy, Inc. *etc.*
Filed Date: 06/01/2009.
Accession Number: 20090603–0089.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1259–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits revised rate sheets for the Service Agreement for Wholesale Distribution Service dated 7/1/08 and the Added Facilities Agreement with City of Colton, CA.
Filed Date: 06/02/2009.
Accession Number: 20090603–0088.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 23, 2009.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM09–5–000.
Applicants: MidAmerican Energy Company.
Description: Application of MidAmerican Energy Company to Terminate PURPA Purchase Obligation.
Filed Date: 06/02/2009.
Accession Number: 20090602–5122.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 30, 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. E9–15259 Filed 6–26–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 22, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2416–007.
Applicants: El Paso Electric Company.
Description: Notice of Change in Status of El Paso Electric Company.
Filed Date: 06/19/2009.
Accession Number: 20090619–5108.
Comment Date: 5 p.m. Eastern Time on Friday, July 10, 2009.

Docket Numbers: ER08–1574–007.
Applicants: ORNI 18, LLC.
Description: Notice of Non-Material Change in Status of ORNI 18, LLC.
Filed Date: 06/19/2009.
Accession Number: 20090619–5105.
Comment Date: 5 p.m. Eastern Time on Friday, July 10, 2009.

Docket Numbers: ER09–1154–001.
Applicants: UNS Electric, Inc.
Description: UNS Electric, Inc submits Substitute Second Revised Sheet 90B *et al.* to FERC Electric Tariff, First Revised Volume 1.
Filed Date: 06/19/2009.
Accession Number: 20090622–0126.
Comment Date: 5 p.m. Eastern Time on Friday, July 10, 2009.

Docket Numbers: ER09–1218–001.
Applicants: Carolina Power & Light Company.
Description: Progress Energy Carolinas, Inc submits for filing a correction to the Attachment 2 cost support for its 5/29/09 filing, which concerns revisions to its cost of service formula rate etc.
Filed Date: 06/15/2009.
Accession Number: 20090619–0083.
Comment Date: 5 p.m. Eastern Time on Monday, July 06, 2009.

Docket Numbers: ER09–1269–001.
Applicants: Escondido Energy Center, LLC.
Description: Escondido Energy Center, LLC submits certain additional information regarding EEC's upstream owner, MMC Energy, Inc. Substitute Original Sheet 1 and 2.
Filed Date: 06/19/2009.
Accession Number: 20090622–0134.

Comment Date: 5 p.m. Eastern Time on Friday, July 10, 2009.

Docket Numbers: ER09–1270–001.
Applicants: Chula Vista Energy Center, LLC.
Description: Chula Vista Energy Center, LLC submits certain additional information regarding CVEC's upstream owner, MMC Energy, Inc, Substitute Original Sheet 1 and 2.
Filed Date: 06/19/2009.
Accession Number: 20090622–0135.
Comment Date: 5 p.m. Eastern Time on Friday, July 10, 2009.

Docket Numbers: ER09–1325–000.
Applicants: Virginia Electric and Power Company.
Description: Dominion Virginia Power submits Original Service Agreement 2190 to FERC Electric Tariff, Sixth Revised Volume 1.
Filed Date: 06/18/2009.
Accession Number: 20090619–0131.
Comment Date: 5 p.m. Eastern Time on Thursday, July 09, 2009.

Docket Numbers: ER09–1326–000.
Applicants: Southern Company Services, Inc.
Description: Southern Companies submits a network integration transmission service agreement under the Open Access Transmission Tariff of Southern Companies.
Filed Date: 06/19/2009.
Accession Number: 20090619–0130.
Comment Date: 5 p.m. Eastern Time on Friday, July 10, 2009.

Docket Numbers: ER09–1327–000.
Applicants: PJM Interconnection LLC.
Description: PJM Interconnection, LLC submits First Revised Service Agreement No 2020 to FERC Electric Tariff, Sixth Revised Volume 1.
Filed Date: 06/18/2009.
Accession Number: 20090619–0084.
Comment Date: 5 p.m. Eastern Time on Thursday, July 09, 2009.

Docket Numbers: ER09–1328–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits executed amended and restated large generator interconnection agreement among the Midwest ISO, Quilt Block, *et al.*
Filed Date: 06/18/2009.
Accession Number: 20090619–0136.
Comment Date: 5 p.m. Eastern Time on Thursday, July 09, 2009.

Docket Numbers: ER09–1331–000.
Applicants: Tucson Electric Power Company.
Description: Tucson Electric Power Company submits Third Revised Sheet No 96B et al to FERC Electric Tariff, Fourth Revised Volume 2, effective June 19, 2009.
Filed Date: 06/19/2009.
Accession Number: 20090622–0031.
Comment Date: 5 p.m. Eastern Time on Friday, July 10, 2009.

Docket Numbers: ER09–1332–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits an agreement governing joint ownership of facilities entitled joint Investment and Ownership Agreement for Grimes-Granger 161kV Projects etc.
Filed Date: 06/19/2009.
Accession Number: 20090622–0032.
Comment Date: 5 p.m. Eastern Time on Friday, July 10, 2009.

Docket Numbers: ER09–1333–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits a Large Generator Interconnection Agreement Facilities Maintenance Agreement dated 6/9/09 to be designated as Service Agreement 573, Seventh Revised Volume 11 etc with PacifiCorp Energy.
Filed Date: 06/19/2009.
Accession Number: 20090622–0133.
Comment Date: 5 p.m. Eastern Time on Friday, July 10, 2009.

Docket Numbers: ER09–1334–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits Third Revised Agreement No 1694 et al to FERC Electric Tariff, Fourth Revised Volume 1.
Filed Date: 06/19/2009.
Accession Number: 20090622–0101.
Comment Date: 5 p.m. Eastern Time on Friday, July 10, 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. E9–15260 Filed 6–26–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 19, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–407–006; ER08–1111–004; ER08–1227–003.
Applicants: High Prairie Wind Farm II, LLC; Pioneer Prairie Wind Farm I, LLC; Rail Splitter Wind Farm, LLC.
Description: High Prairie Wind Farm II, LLC *et al* submits Original Sheet 1 to FERC Electric Tariff, Second Revised Volume 1.
Filed Date: 06/17/2009.
Accession Number: 20090619–0043.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 08, 2009.

Docket Numbers: ER08–394–022.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed Revisions to its Open Access Transmission, Energy and

Operating Reserves Markets Tariff, to comply with the Commission's 4/16/09 directives.

Filed Date: 06/17/2009.

Accession Number: 20090619–0044.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 08, 2009.

Docket Numbers: ER09–1193–001.

Applicants: Palmco Power CT, LLC.

Description: Palmco Power CT, LLC informs the FERC of the withdrawal of ER09–1131 and Amendment for the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 06/09/2009.

Accession Number: 20090610–0105.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 30, 2009.

Docket Numbers: ER09–1194–001.

Applicants: Palmco Power NJ, LLC.

Description: Palmco Power NJ, LLC informs the FERC of the withdrawal of ER09–1132 and Amendment for the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 06/09/2009.

Accession Number: 20090610–0106.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 30, 2009.

Docket Numbers: ER09–1195–001.

Applicants: Palmco Power PA, LLC.

Description: Palmco Power PA, LLC submits notice of withdrawal of docket no. ER09–1133 and Amendment for the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 06/09/2009.

Accession Number: 20090610–0107.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 30, 2009.

Docket Numbers: ER09–1317–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent Operator, Inc. requests that the Commission defer the effective date of the tariff revisions pertaining to the enhanced credit requirements for Virtual Transaction from 7/17/09 until 9/17/09.

Filed Date: 06/16/2009.

Accession Number: 20090618–0128.

Comment Date: 5 p.m. Eastern Time on Friday, June 26, 2009.

Docket Numbers: ER09–1319–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits Notification of Tariff Implementation Error and Request for Limited Tariff Waivers *etc.*

Filed Date: 06/17/2009.

Accession Number: 20090618–0129.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 08, 2009.

Docket Numbers: ER09–1324–000.

Applicants: New York State Electric & Gas Corporation.

Description: New York State Electric & Gas Corporation submits an executed version of Original Service Agreement 1472 to FERC Electric Tariff, Original Volume 1 to be effective 6/21/09.

Filed Date: 06/18/2009.

Accession Number: 20090619–0082.

Comment Date: 5 p.m. Eastern Time on Thursday, July 09, 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. E9–15261 Filed 6–26–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

June 18, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP99–176–202.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits a negotiated rate transaction with the Board of Trustees of University of Illinois under Natural's Rate Schedule FTS service agreement.

Filed Date: 06/15/2009.

Accession Number: 20090616–0055.

Comment Date: 5 p.m. Eastern Time on Monday, June 29, 2009.

Docket Numbers: RP99–301–237. RP99–301–238.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits revised Rate Schedule FTS–3 negotiated rate service agreement with Wisconsin Power & Light Co., to be effective June 1, 2009.

Filed Date: 06/17/2009.

Accession Number: 20090618–0115.

Comment Date: 5 p.m. Eastern Time on Monday, June 29, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–15263 Filed 6–26–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No 1

June 18, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–766–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits Fifth Revised Sheet No 2400 et al to its FERC Gas Tariff, Sixth Revised Volume No 1.

Filed Date: 06/15/2009.

Accession Number: 20090616–0144.

Comment Date: 5 p.m. Eastern Time on Monday, June 29, 2009.

Docket Numbers: RP09–767–000.

Applicants: Chandeleur Pipe Line Company.

Description: Chandeleur Pipe Line Co submits Third Revised Sheet 74 et al to FERC Gas Tariff, Original Volume 1.

Filed Date: 06/16/2009.

Accession Number: 20090617–0023.

Comment Date: 5 p.m. Eastern Time on Monday, June 29, 2009.

Docket Numbers: RP09–768–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits Fifth Revised Sheet 147 et al to FERC Gas Tariff, Second Revised Volume 1 to be effective 7/16/09.

Filed Date: 06/16/2009.

Accession Number: 20090617–0164.

Comment Date: 5 p.m. Eastern Time on Monday, June 29, 2009.

Docket Numbers: RP09–769–000.

Applicants: Texas Gas Transmission. LLC.

Description: Texas Gas Transmission submits Third Revised Sheet 99A et al to FERC Gas Tariff, Third Revised Volume 1, to be effective 6/16/09.

Filed Date: 06/16/2009.

Accession Number: 20090617–0163.

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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–15265 Filed 6–26–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No 1

June 15, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–614–000.

Applicants: Cheniere Creole Trail Pipeline Company.

Description: Cheniere Creole Trail Pipeline Company Request for Limited Waiver of EDI/EDM and FF/EDM Requirements and Order No. 712 Electronic Capacity Release Requirements.

Filed Date: 05/27/2009.

Accession Number: 20090527–5144.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 17, 2009.

Docket Numbers: RP09–761–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Petition for Temporary Waiver of Tariff Provisions and Request for Expedited Action by Natural Gas Pipeline Company of America LLC.

Filed Date: 06/09/2009.

Accession Number: 20090610–0103.

Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: RP09–762–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Fourth Revised Sheet 322 et al to FERC Gas Tariff, Second Revised Volume 1A, to be effective 8/1/09.

Filed Date: 06/10/2009.

Accession Number: 20090610–0101.

Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: RP09–763–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipeline Company, LLC submits Second Revised Sheet 21 et al to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 7/12/09 .

Filed Date: 06/11/2009.

Accession Number: 20090612–0013.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 23, 2009.

Docket Numbers: RP09–764–000.

Applicants: WTG Hugoton, LP.

Description: WTG Hugoton, LP submits First revised Sheet 205 et al of its FERC Gas Tariff, to be effective 8/1/09.

Filed Date: 06/12/2009.

Accession Number: 20090615–0031.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, 2009.

Docket Numbers: RP09–765–000.
Applicants: Viking Gas Transmission Company.
Description: Viking Gas Transmission Company submits Sixth Revised Sheet 871 to Original Sheet 871.01 and 871.02 to FERC Gas Tariff, First Revised Volume 1, to be effective 6/12/09.
Filed Date: 06/12/2009.
Accession Number: 20090615–0042.
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. E9–15266 Filed 6–26–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

June 15, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–359–042.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Transcontinental Gas Pipe Line Company, LLC. submits First Revised Sheet 29 to its FERC Gas Tariff, Fourth Revised Volume 1, to be effective 5/1/09.
Filed Date: 06/11/2009.
Accession Number: 20090612–0021.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 23, 2009.

Docket Numbers: RP09–540–001.
Applicants: Northern Border Pipeline Company.
Description: Northern Border Pipeline Company submits Substitute Eighth Revised Sheet No. 276 *et al.,* to FERC Gas Tariff, First Revised Volume No. 1.
Filed Date: 06/12/2009.
Accession Number: 20090612–0050.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, 2009.

Docket Numbers: RP09–556–001.
Applicants: Texas Gas Transmission, LLC.
Description: Explanation of Texas Gas Transmission, LLC.
Filed Date: 06/12/2009.
Accession Number: 20090612–5074.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, 2009.

Docket Numbers: RP96–200–215.
Applicants: CenterPoint Energy Gas Transmission Co.
Description: CenterPoint Energy Gas Transmission Co., submits a negotiated rate agreement with Cross Timbers Energy Services.
Filed Date: 06/12/2009.
Accession Number: 20090612–0047.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–15264 Filed 6–26–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings #1

June 18, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–52–000.
Applicants: Escondido Energy Center, LLC.
Description: Notice of Self-Certification of EWG Status of Escondido Energy Center, LLC.
Filed Date: 06/15/2009.
Accession Number: 20090615–5111.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: EG09–53–000.
Applicants: Chula Vista Energy Center, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Chula Vista Energy Center, LLC.
Filed Date: 06/15/2009.
Accession Number: 20090615–5117.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: EG09–54–000.
Applicants: Northwest Wind Partners, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Northwest Wind Partners, LLC.
Filed Date: 06/15/2009.
Accession Number: 20090615–5138.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: EG09–55–000.
Applicants: GenConn Middletown LLC.
Description: GenConn Middletown LLC's Notice of Self Certification of Exempt Wholesale Generator Status.
Filed Date: 06/15/2009.
Accession Number: 20090615–5145.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: EG09–56–000.
Applicants: GenConn Devon LLC.
Description: GenConn Devon LLC's Notice of Self Certification of Exempt Wholesale Generator Status.
Filed Date: 06/15/2009.
Accession Number: 20090615–5146.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: EG09–57–000.
Applicants: NaturEner Glacier Wind Energy 2, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of NaturEner Glacier Wind Energy 2, LLC.
Filed Date: 06/17/2009.
Accession Number: 20090617–5124.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 8, 2009.

Docket Numbers: EG09–58–000.
Applicants: NaturEner Montana Wind Energy 2, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of NaturEner Montana Wind Energy 2, LLC.
Filed Date: 06/17/2009.
Accession Number: 20090617–5125.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 8, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–1355–003.
Applicants: Evergreen Wind Power, LLC.
Description: Evergreen Wind Power, LLC submits a revised market-based tariff that reflects the correct tariff sheet designations.
Filed Date: 06/11/2009.
Accession Number: 20090616–0135.
Comment Date: 5 p.m. Eastern Time on Thursday, July 2, 2009.

Docket Numbers: ER07–53–001.
Applicants: American Transmission Company, LLC.
Description: American Transmission Co, LLC submits an executed Large Generator Interconnection Agreement.
Filed Date: 06/15/2009.
Accession Number: 20090617–0051.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: ER08–1574–006.
Applicants: ORNI 18, LLC.
Description: Notice of Non-Material Change in Status of ORNI 18, LLC.
Filed Date: 06/17/2009.
Accession Number: 20090617–5155.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 8, 2009.

Docket Numbers: ER09–759–002.
Applicants: E. ON U.S. LLC.
Description: EON US LLC submits Network Integration Transmission Service Agreement and Network Operating Agreement for service to the Kentucky Municipal Power Agency.
Filed Date: 06/15/2009.
Accession Number: 20090617–0002.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: ER09–949–001.
Applicants: Central Illinois Light Company, Central Illinois Public Service Company, Illinois Power Company.
Description: Central Illinois Light Company et al. submit Original Sheet 1 *et al.* First Revised Rate Schedule FERC No 43.
Filed Date: 06/15/2009.
Accession Number: 20090615–0046.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: ER09–1142–001.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits Second Revised Sheet No 467.00A *et al.* to FERC Electric Tariff, Original Volume 2.
Filed Date: 06/17/2009.
Accession Number: 20090618–0089.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, 2009.

Docket Numbers: ER09–1210–001.
Applicants: Wells Fargo Commodities, LLC.
Description: Wells Fargo Commodities, LLC submits Original Sheets No 2 and No 4 to FERC Electric Tariff, Original Volume 1.
Filed Date: 06/17/2009.
Accession Number: 20090618–0088.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 8, 2009.

Docket Numbers: ER09–1295–000.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company Request for Waiver Authorization Pursuant to Section 205.
Filed Date: 06/12/2009.
Accession Number: 20090612–5047.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: ER09–1297–000.
Applicants: Northern Colorado Wind Energy, LLC.
Description: Northern Colorado Wind Energy, LLC's request for authorization to sell energy and capacity at market-based rates, and waiver of the 60-day notice requirements.
Filed Date: 06/12/2009.
Accession Number: 20090616–0054.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: ER09–1300–000.
Applicants: GenConn Devon, LLC.
Description: GenConn Devon, LLC submits for acceptance Original Sheet 1 to FERC Electric Tariff, Original Volume 1 to be effective 7/30/09.
Filed Date: 06/15/2009.
Accession Number: 20090616–0052.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: ER09–1301–000.
Applicants: GenConn Middletown, LLC.
Description: GenConn Middletown, LLC submits Original Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 1 to be effective 7/30/09.
Filed Date: 06/15/2009.
Accession Number: 20090616–0053.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: ER09–1302–000.
Applicants: Northwest Wind Partners, LLC.
Description: Northwest Wind Partners, LLC submits Petition requesting acceptance of FERC Electric Tariff, Original Volume 1.
Filed Date: 06/16/2009.
Accession Number: 20090617–0053.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 7, 2009.

Docket Numbers: ER09–1305–000.
Applicants: Maine Public Service Company.
Description: Maine Public Service Company submits informational filing setting forth the changes in open access transmission tariff charges effective 6/1/09 together with back-up material.
Filed Date: 06/15/2009.
Accession Number: 20090616–0146.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: ER09–1306–000.
Applicants: Kansas City Power & Light Company.
Description: Kansas City Power & Light Company submits Original Sheet 1, Rate Schedule FERC 132 to be effective 8/14/09.

Filed Date: 06/15/2009.
Accession Number: 20090616–0147.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 2009.

Docket Numbers: ER09–1307–000.
Applicants: EnergyConnect, Inc.
Description: EnergyConnect, Inc submits an application for authorization to sell energy, capacity and/or ancillary services through the provisions of demand response services in wholesale transactions *etc.*
Filed Date: 06/16/2009.
Accession Number: 20090618–0113.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 7, 2009.

Docket Numbers: ER09–1308–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits FERC Electric Rate Schedule 323, a Supplemental Generation Agreement with the City of Osage City, Kansas dated as of 6/15/09.
Filed Date: 06/16/2009.
Accession Number: 20090617–0026.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 7, 2009.

Docket Numbers: ER09–1315–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits First Revised Sheet 30A to an Agreement for Interconnection Service Agreement 2 with California Independent System Operator Corp *et al.*
Filed Date: 06/17/2009.
Accession Number: 20090618–0091.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 8, 2009.

Docket Numbers: ER09–1316–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits a Facilities Construction Agreement with Heartland Wind LLC *etc.*
Filed Date: 06/17/2009.
Accession Number: 20090618–0090.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 8, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–18–002.
Applicants: Black Hills Colorado Electric Utility Company, LP
Description: Black Hills Colorado Electric Utility Co, LP submits a revised version of Attachment K to its open access transmission tariff.
Filed Date: 06/15/2009.
Accession Number: 20090617–0004.
Comment Date: 5 p.m. Eastern Time on Monday, July 6, 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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–15262 Filed 6–26–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8423–9]

Access to Confidential Business Information by Electronic Data Systems Corporation's Identified Subcontractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized contractor, Electronic Data Systems Corporation's subcontractor Lumeta Corporation of Somerset, NJ, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than July 6, 2009.

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

For technical information contact: Scott Sherlock, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *Scott Sherlock@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to you if you are conducting, or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA). Since other entities may also 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 technical 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–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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. What Action is the Agency Taking?

Under Order Number EP08H000027, subcontractor Lumeta of 220 Davidson Avenue, Somerset, NJ will assist the Office of Pollution Prevention and Toxics (OPPT) in conducting a Risk Assessment of the CBI LAN network environment. They will also be specifically responsible for providing the testing hardware to perform a vulnerability test to identify security weakness that must be corrected before operational.

In accordance with 40 CFR 2.306(j), EPA has determined that under Order Number EP08H000027, the subcontractor will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. The subcontractor personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide the subcontractor access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

The subcontractor will be authorized access to TSCA CBI at EPA Headquarters under the EPA *TSCA CBI Protection Manual*.

Access to TSCA data, including CBI, will continue until September 30, 2009. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

The subcontractor personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: June 22, 2009.

Matthew Leopard, Acting

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–15283 Filed 6–26–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0911, FRL–8923–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Notification of Regulated Waste Activity (Renewal), EPA ICR Number 0261.16, OMB Control Number 2050–0028

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 29, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2008–0911, to (1) EPA, either online using *http://www.regulations.gov* (our preferred method), or by e-mail to *rcra-docket@epa.gov*, or by mail to: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB, by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Toshia King, Office of Solid Waste, mailcode 5303W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–7033; fax number: 703–308–8617; e-mail address: *king.toshia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 13, 2009 (74 FR 10909), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2008–0911, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential

business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Notification of Regulated Waste Activity (Renewal).

ICR Numbers: EPA ICR No. 0261.16, OMB Control No. 2050–0028.

ICR Status: This ICR is scheduled to expire on June 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 3010 of subtitle C of RCRA, as amended, requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal (TSD) of regulated waste to notify EPA of their activities, including the location and general description of activities and the regulated wastes handled. The facility is then issued an EPA Identification number. The facilities are required to use the Notification Form (EPA Form 8700–12) to notify EPA of their hazardous waste activities. EPA needs this information to determine the universe of persons who generate, handle, and manage these regulated wastes; assign EPA Identification Numbers; and ensure that these regulated wastes are managed in a way that protects human health and the environment, as required by RCRA, as amended.

EPA enters notification information submitted by respondents into the EPA National data base and assigns EPA Identification Numbers. EPA uses the information primarily for tracking purposes, and secondarily for a variety of enforcement and inspection purposes. In addition, EPA uses this information to identify the universe of regulated waste generators, handlers, and managers and their specific regulated waste activities. Finally, EPA uses this information to ensure that regulated waste is managed properly, that statutory provisions are upheld, and that regulations are adhered to by facility owners or operators.

This ICR will eventually be merged with the ICR for the Hazardous Waste Report (OMB Control No. 2050–0024), since this form (EPA Form No. 8700–12) is part of the Hazardous Waste Report (EPA Form No. 8700–13 A/B).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response for the initial notification, and 1 hour per response for any subsequent notifications. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are business or other for-profit as well as State, Local, or Tribal governments.

Estimated Number of Respondents: 55,965.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 139,656.

Estimated Total Annual Cost: $9,081,569, includes $255,830 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 39,349 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the inclusion of State burden hours that were not previously counted.

Dated: June 16, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–15310 Filed 6–26–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0225; FRL–8923–5]

Board of Scientific Counselors (BOSC), 2009 Clean Air Subcommittee Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Clean Air Subcommittee.

DATES: The meeting (a teleconference call) will be held on Monday, July 27, 2009 from 1 p.m. to 3 p.m. EST. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to one business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Heather Drumm, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0225, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2009–0225.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2009–0225.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC), 2009 Clean Air Subcommittee Meetings Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2009–0225.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2009–0225. **Note:** This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0225. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors (BOSC), 2009 Clean Air Subcommittee Meetings Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Heather Drumm, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–8239; via fax at: (202) 565–2911; or via e-mail at: *drumm.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at this meeting may contact Heather Drumm, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the teleconference include, but are not limited to: Reviewing the subcommittee's draft report and finalizing the report for BOSC Executive Committee review. The meetings are open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Heather Drumm at (202) 564–8239 or *drumm.heather@epa.gov.* To request accommodation of a disability, please contact Heather Drumm, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 18, 2009.

Mary Ellen Radzikowski,

Director, Office of Science Policy.

[FR Doc. E9–15315 Filed 6–26–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8924–1; Docket ID No. EPA–HQ–ORD–2009–0178]

Draft Toxicological Review of Pentachlorophenol: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of peer-review workshop.

SUMMARY: EPA is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document titled, ''Toxicological Review of Pentachlorophenol: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–09/004). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. EPA previously announced the 60-day public comment period (ending July 6, 2009) for the draft document in the **Federal Register** on May 7, 2009 (74 FR 21362). EPA will consider public comments and recommendations from the expert panel workshop as EPA finalizes the draft document.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments submitted in accordance with the May 7, 2009, **Federal Register** notice (74 FR 21362) to Versar, Inc., for consideration by the external peer-review panel prior to the workshop.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

Versar, Inc., invites the public to register to attend this workshop as observers. In addition, Versar, Inc., invites the public to give oral comments at the workshop regarding the draft document under review. Space is limited, and reservations will be accepted on a first-come, first-served basis. The draft document and EPA's peer-review charge are available primarily via the Internet on NCEA's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* In preparing a final report, EPA will consider Versar's report of the comments and recommendations from the external peer-review workshop and any public comments that EPA receives in accordance with 74 FR 21362, May 7, 2009.

DATES: The peer-review workshop will be held on Tuesday, August 4, 2009, beginning at approximately 8:30 a.m. and ending at approximately 5 p.m., Eastern Daylight Time. Observers must register by Tuesday, July 28, 2009. At the time of registration, please indicate

that you wish to make a brief oral comment at the workshop.

ADDRESSES: The peer-review workshop will be held at the Courtyard Arlington Crystal City/Reagan National Airport, 2899 Jefferson Davis Highway, Arlington, Virginia 22202. Versar, Inc. is organizing, convening, and conducting the peer-review workshop. To attend the workshop as an observer, register by Tuesday, July 28, 2009 via the Internet at *http://epa.versar.com/pentachlorophenol*. You may also register by e-mail at *ssarraino@versar.com* (subject line: Pentachlorophenol Peer-Review Workshop), by phone: 703–750–3000 x. 316, or by faxing a registration request to 703–642–6954 (please reference the ''Pentachlorophenol Peer-Review Workshop'' and include your name, title, affiliation, full address and contact information).

The draft ''Toxicological Review of Pentachlorophenol: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea*. A limited number of paper copies are available from the Information Management Team, NCEA, telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title, ''Toxicological Review of Pentachlorophenol: In Support of Summary Information on the Integrated Risk Information System (IRIS).'' Copies are not available from Versar, Inc.

Information on Services for Individuals With Disabilities: EPA welcomes the attendance of the public at the Pentachlorophenol Peer-Review Workshop and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Versar, Inc. (see below for contact information).

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, access or services for individuals with disabilities, or logistics for the external peer-review workshop should be directed to Versar, Inc., 6850 Versar Center, Springfield, VA 22151; telephone: 703–750–3000 x. 316; facsimile: 703–347–8691; or e-mail: *ssarraino@versar.com* (subject line: Pentachlorophenol Peer-Review Workshop). To request accommodation of a disability, please contact Versar, Inc., preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

If you need technical information about the document, please contact Catherine Gibbons, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–603–0704; facsimile: 703–347–8689; or e-mail: *gibbons.catherine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Integrated Risk Information System (IRIS)

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. Workshop Information

Members of the public may attend the workshop as observers, and there will be a limited time for oral comments from the public. The deadline for registration is July 28, 2009. Please let Versar, Inc. know if you wish to make oral comments during the workshop. Space is limited, and reservations will be accepted on a first-come, first-served basis.

Dated: June 22, 2009.

Rebecca Clark,

Director, National Center for Environmental Assessment.

[FR Doc. E9–15313 Filed 6–26–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8923–7]

Proposed CERCLA Administrative Cashout Settlement; Anderson-Calhoun Mine and Mill Site, Leadpoint, WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the Anderson-Calhoun Mine and Mill Site in Leadpoint, Washington, with settling parties: The Goldfield Corporation and Combustion Engineering, Inc. The settlement requires the settling parties to pay Three Hundred and Fifty Seven Thousand Dollars ($357,000) to the Hazardous Substance Superfund. The settlement includes a covenant not to sue or take administrative action against the settling party pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Region 10 offices, located at 1200 Sixth Avenue, Seattle, Washington 98101.

DATES: Comments must be submitted on or before July 29, 2009.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Region 10 offices, located at 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Carol Kennedy, Regional Hearing Clerk, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; (206) 553–0242. Comments should reference the Anderson-Calhoun Mine and Mill Site in Leadpoint, Washington, EPA Docket No. CERCLA–10–2009–0095 and should be addressed to Alexander Fidis, Assistant Regional Counsel, U.S. EPA

Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Alexander Fidis, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; (206) 553–4710.

SUPPLEMENTARY INFORMATION: The Anderson-Calhoun Mine and Mill site is located in Leadpoint, Stevens County, Washington (Site). Site operations conducted between 1910 and the early 1980s included the mining and milling of zinc ore, and the milling of barite ore. Waste-rock and mill tailings produced by these operations were disposed at the Site in areas around the mill building and in a raised tailings impoundment. The waste-rock and tailings at the Site contain hazardous substances including barium, cadmium, copper, lead, selenium and zinc at concentrations that exceed applicable cleanup levels. The Agency has selected a removal action to address potential or actual threats that these substances may present to public health, welfare, or the environment.

The Goldfield Corporation and Combustion Engineering, Inc., two prior owners and operators of the Site, have jointly spent approximately $465,000 to investigate and study the Site, assess cleanup alternatives, and to develop draft plans for the removal action. The Agency is proposing to enter into an administrative settlement with both parties for a payment of $357,000. These funds will be deposited in a site-specific account and will be used to reimburse the Agency for its past costs and for future response costs at the Site. The proposed settlement will provide the settling parties with a release of liability subject to certain rights reserved by the Agency.

Dated: June 22, 2009.

Linda Anderson-Carnahan,

Acting Director, Office of Environmental Cleanup.

[FR Doc. E9–15284 Filed 6–26–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8923–8]

Notice of a Regional Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the State of New Hampshire Department of Environmental Services' Winnipesaukee River Basin Bureau

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy America requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the State of New Hampshire Department of Environmental Services' Winnipesaukee River Basin Bureau (WRBB) for the purchase of air bearing turbo aeration blowers and an associated main blower control panel. These blowers and associated control panel are manufactured outside of the United States by APG-Neuros of South Korea, and meet the WRBB's technical design specifications. The Acting Regional Administrator is making this determination based on the review and recommendation of the Municipal Assistance Unit. The WRBB has provided sufficient documentation to support their request.

The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of the ARRA. This action permits the purchase of air bearing turbo aeration blowers and an associated main blower control panel by the WRBB, as specified in its May 11, 2009 waiver request, to upgrade its regional wastewater treatment facility in Franklin, New Hampshire as part of a project funded under the ARRA.

DATES: *Effective Date:* June 8, 2009

FOR FURTHER INFORMATION CONTACT: Katie Connors, Environmental Engineer, (617) 918–1658, or David Chin, Environmental Engineer, (617) 918–1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, One Congress Street, CMU, Boston, MA 02114.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the WRBB for the purchase of air bearing turbo aeration blowers and an associated main blower control panel manufactured outside of the United States by APG–Neuros of South Korea, which meet the WRBB's technical design specifications for its wastewater treatment plant upgrade project.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project is produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided if EPA determines under Section 1605(b) that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

In a letter dated May 11, 2009 to the EPA, the WRBB requested a waiver from the Buy American Provision for the purchase of air bearing turbo aeration blowers and an associated Main Blower Control Panel (MBCP), manufactured outside of the United States (US) by APG-Neuros, a South Korea based company.

Based on information provided to the EPA, the WRBB performed a pre-bid selection of the high efficiency, air bearing turbo aeration blowers with the help of a 12 member technical review committee that included WRBB operations, maintenance, electrical, electronics and management staff, WRBB's technical consultant, and the NHDES' Wastewater Engineering Bureau Design Review staff. This pre-bid selection committee determined critical specifications and manufacturer capabilities, and the development of a weighted scoring system to assess the submitted proposals. Three priority technical specifications were identified by the pre-bid committee:

(1) That the entire proposed blower package proposed had to be Underwriters Laboratories (UL) or CSA–US (NRTL) certified in order to be approved by the State Fire Marshall for installation at the facility;

(2) That the manufacturer demonstrated experience with installed

aeration blowers in US wastewater treatment plants; and

(3) That their process include site specific blower monitoring, control and automation using dissolved oxygen, air flow, and pressure sensing to achieve appropriate aerobic treatment levels.

A Request for Information (RFI) solicitation was published in the New Hampshire Union Leader newspaper and sent directly to four (4) known manufacturers of air-bearing turbo aeration blowers. Three of the four manufacturers responded to the RFI. According to the WRBB, the fourth manufacturer did not formally submit a RFI because its air-bearing turbo aeration blower was not yet in production and it would not be able to provide the required scope of supply.

One mandatory requirement identified by the pre-bid selection committee was that the entire blower package proposed had to be UL or CSA–US (NRTL) certified in order to be approved by the State Fire Marshall for installation at this state-operated wastewater treatment facility. The time for meeting required certifications was deemed critical by the WRBB pre-selection committee in order to incorporate the pre-selected blower into the construction contract documents so that the contract award could meet the ''ready to proceed'' ARRA requirements. APG–Neuros was the only manufacturer that met this requirement at the time of the RFI submittal. The other two manufacturers did not have this certification at the time of the RFI submittal nor did they indicate whether they would proceed to obtain the necessary certification.

One of the highest priority requirements identified by the pre-selection committee was demonstrated experience with numerous installed aeration blowers in wastewater treatment plants within the United States. According to the WRBB, wastewater aeration processes, as approved by the State through operational and design requirements, require the facility to include appropriate site specific blower monitoring, control and automation using dissolved oxygen, air flow, and pressure sensing to achieve appropriate aerobic treatment levels. Only one manufacturer, APG-Neuros, had a multiple year turbo aeration blower manufacturing history, including over sixty-five (65) aeration blower installations at US wastewater treatment plants, and provided additional verifiable documentation of their ability to automate the process using dissolved oxygen, air flow, and pressure sensing. The other two manufacturers that were evaluated, including the US-based manufacturer, did not cite or propose any experience with automated dissolved oxygen control as required in the specifications for this facility for aerobic wastewater treatment supplied with the RFI. Based upon conformance with identified mandatory and critical parameters, as well as the scoring for additional technical requirements, the twelve member pre-bid selection committee unanimously selected APG–Neuros, Inc. as the highest scoring respondent to the RFI.

APG–Neuros of South Korea was the only manufacturer that met the technical design specifications set forth in the RFI, and had a verifiable history of supplying air bearing turbo aeration blowers for US wastewater treatment plant applications. It was the only manufacturer that had current UL/CSA–US certifications for their proposed air bearing turbo aeration blowers package systems as required for installation at State of New Hampshire operated facilities. The other two responding manufacturers did not meet any of these critical requirements.

Based on the information provided to EPA from the WRBB, and to the best of our knowledge at the time of the review, there do not appear to be other air bearing turbo aeration blowers currently manufactured in the United States available to meet the WRBB's exact technical specifications and requirements.

In addition, the WRBB is highly ranked on New Hampshire's Intended Use Plan due in part to the highly energy efficient air bearing turbo aeration blower components in this project. The electric energy savings from using these turbo blowers is projected to result in an estimated 50–54% reduction in power compared to the existing blowers. This reduction will result in a savings of 548,000 kilowatt-hours of electricity use per year for an estimated 18–19% reduction in the total energy consumption required for the wastewater treatment plant operation.

Requiring a less efficient product would be contrary to Congress' explicit and specific intent to achieve greater energy efficiency as stated in the SRF-specific 20% Green Project Reserve requirements of Title VII of the ARRA. Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already ''shovel ready'' by requiring potentially eligible SRF recipients such as the WRBB to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements in this case would result in unreasonable delay for this project. To delay this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' '' (''Memorandum''), defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' The same Memorandum defines *satisfactory quality* as ''the quality of steel, iron or manufactured good specified in the project plans and designs.''

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the WRBB is sufficient to meet the criteria listed under Section 1605(b) and in the April 28, 2009, Implementation of Buy American provisions of Public Law 111–5, the ''American Recovery and Reinvestment Act of 2009'' Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The basis for this project waiver is the authorization provided in Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the WRBB's technical specifications, a waiver from the ARRA Buy American requirement is justified.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that this manufactured good was not available from a producer in the United States, the WRBB is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of air bearing turbo aeration blowers and an associated main blower control panel manufactured outside of the United States by APG-Neuros of South Korea. This supplementary information constitutes

the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Public Law 111–5, section 1605.

Dated: June 22, 2009.

Ira W. Leighton,

Acting Regional Administrator, Region I, New England.

[FR Doc. E9–15318 Filed 6–26–09; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 9, 2009, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- June 11, 2009

B. New Business

- Farm Credit System Compensation Committees—Proposed Bookletter;
- Determining Eligibility and Scope of Financing for Limited Liability Companies—Proposed Bookletter;
- Borrower Rights—Frequently Asked Questions.

C. Reports

- Office of Examination Quarterly Report

Closed Session*

- Update on Office of Examination Oversight Activities

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: June 24, 2009.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E9–15448 Filed 6–25–09; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, June 23, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in open session to consider the following matters:

Summary Agenda

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Interagency Interim Rule on Capital Maintenance: Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program of the U.S. Department of Treasury.

Memorandum and resolution re: Notice of Proposed Rulemaking regarding Proposed Interagency Guidance—Funding and Liquidity Risk Management.

Discussion Agenda

Memorandum and resolution re: Notice of Proposed Rulemaking on the Transaction Account Guarantee Program.

Memorandum and resolution re: Joint Notice of Proposed Rulemaking: Amendment to the Community Reinvestment Act Regulation.

Memorandum and resolution re: Final Rule on Annual Audit and Reporting Requirements (Part 363) and Related Technical Amendment to (Part 308, Subpart U).

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Director Thomas J. Curry (Appointive), and concurred in by Director John C. Dugan (Director, Comptroller of the Currency), Director John E. Bowman (Acting Director, Office of Thrift Supervision), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting than that previously provided on June 19, 2009, was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: June 23, 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E9–15375 Filed 6–25–09; 11:15 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:40 a.m. on Tuesday, June 23, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Director John E. Bowman (Acting Director, Office of Thrift Supervision), concurred in by Director John C. Dugan (Comptroller of the Currency), Director Thomas J. Curry (Appointive), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: June 23, 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E9–15376 Filed 6–25–09; 11:15 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 13, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Charles A. Adams, Mattoon, Illinois, to individually acquire 10 percent or more of the voting shares of First Mid-Illinois Bancshares, Inc., Mattoon, Illinois, and thereby indirectly acquire shares of First Mid-Illinois Bank and Trust, National Association, Mattoon, Illinois, and as part of a group acting in concert with Holly A. Bailey, Linda K. Adams, Howell Paving, Inc., and Howell Adams Foundation, all of Mattoon, Illinois, and Craig H. Adams, Woodside, California; to retain more than 10 percent of the voting shares of First Mid-Illinois Bancshares, Inc., and thereby indirectly retain shares of First Mid-Illinois Bank and Trust, National Association.

Board of Governors of the Federal Reserve System, June 24, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–15282 Filed 6–26–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0159]

Federal Acquisition Regulation; Submission for OMB Review; Central Contractor Registration

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Regulatory Secretariat (VPR) 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 Central Contractor Registration. A request for public comments was published in the **Federal Register** at 74 FR 18717, on 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 29, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: General Services Administration (GSA) Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0159, Central Contractor Registration, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Division, GSA, (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Central Contractor Registration (CCR) is the primary vendor database for the U.S. Federal Government. CCR collects, validates, stores, and disseminates data in support of agency acquisition missions.

Both current and potential Federal Government vendors are required to register in CCR in order to be awarded contracts by the Federal Government. Vendors are required to complete a one-time registration to provide basic information relevant to procurement and financial transactions. Vendors must update or renew their registration at least once per year to maintain an active status.

CCR validates the vendor information and electronically shares the secure and encrypted data with Federal agency finance offices to facilitate paperless payments through electronic funds transfer (EFT). Additionally, CCR shares the data with Federal Government procurement and electronic business systems.

B. Annual Reporting Burden

Respondents: 87,677.
Responses per Respondent: 1.
Annual Responses: 87,677.
Hours per Response: 1.
Total Burden Hours: 87,677.
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. 9000–0159, Central Contractor Registration, in all correspondence.

Dated: June 9, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–15341 Filed 6–26–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0169]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Extension)—OMB No. 0990–0169-Office of Grants, ASRT, OS.

Abstract: The information collection is for pre-award, post-award, and subsequent reporting and recordkeeping requirements for grants and cooperative agreements. The information collected is necessary to award, monitor, close out and manage grant programs, ensure minimum fiscal control and accountability for Federal funds and deter fraud, waste, and abuse. HHS needs this information to meet its Federal stewardship responsibilities. The authorization for the collection of information is under the Department of Health and Human Services regulation 45 CFR part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' The requested extension is for 3 years. Respondents are State, local and tribal governments.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State, Local and Tribal Governments	4,000	1	70	280,000

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–15366 Filed 6–26–09; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Data Collection Tool for Rural Hospital Flexibility Grant Program: (New)

The mission of the Office of Rural Health Policy (ORHP) is to sustain and improve access to quality care services for rural communities. In its authorizing language, Congress charged ORHP with administering grants, cooperative agreements, and contracts to provide technical assistance and other activities as necessary to support activities related to improving health care in rural areas. See Section 711 of the Social Security Act [42 U.S.C. 912].

ORHP seeks to expand the information gathered from grantees on their use of the grant funds. Specifically, Rural Hospital Flexibility Grant Program (Flex) grantees would be required to report on three areas. First, Flex grantees would be required to report on the number of Critical Access Hospitals (CAHs), other eligible hospitals, Emergency Medical Service (EMS) providers, or rural health networks they have worked with during the grant period. Areas they can work with the CAHs and eligible hospitals include: Strategic Planning, Board Training, Networking, Benchmarking/Quality Reporting, EMS-Training, Medical Direction, Transfers, and Health Information Technology (HIT) Adoption. During the grant period, the grantee can sponsor meetings, seminars, workshops, and/or use other means as appropriate to engage with the hospitals on any of the above subjects or others that are not listed. The Flex grantees would report information on the total number of hospitals or other organizations that participated in any sponsored activities, as well as provide the name of the hospitals and organizations and their addresses.

In addition, ORHP seeks further information on the use of grant funds. Many Flex grantees use sub-contractual agreements to provide direct aid to CAHs, eligible hospitals, rural health networks, EMS providers or other organizations. ORHP will ask each Flex grantee to list all sub-contractual awards made during the grant period, identify the organization which received Flex funding, the amount they received, and the purpose of award. Services provided to CAHs, other hospitals or providers, EMS providers or other entities will be quantified and the value of the service provided will be submitted.

Finally, ORHP also seeks information on the EMS activities undertaken with

Flex funding, such as the number of CAHs designated as Trauma Centers, the number of trained or recruited EMS medical directors, or the number of EMS recruitment/retention projects initiated. Submission may be made through the HRSA Electronic Handbook system, as part of the ORHP Performance Improvement Measurement System (PIMS).

The estimated average annual burden per year is as follows for the Annual Data Report:

Type of respondent	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
States	45	1	12.5	562.5
Total	45			562.5

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 19, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–15201 Filed 6–26–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–09BY]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960, send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Healthy Housing Lead Poisoning Surveillance System (HHLPSS)—New—National Center for Environmental Health (NCEH) and Agency for Toxic Substances and Disease Registry (ATSDR)/Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Healthy Housing Lead Poisoning Surveillance System (HHLPSS) builds upon previous efforts by the National Blood Lead Surveillance System (NBLSS) to characterize the home environment in terms of not only lead poisoning risk factors, but also other home-based risk factors. While the earlier NBLSS was focused on homes of children less than 6 years old, the new HHLPSS will enable flexibility to evaluate all homes, regardless of the presence of children < age 6 years. The overarching goal of this system is to establish Healthy Housing Surveillance Systems at the state and national levels. Currently, 40 state and local Childhood Lead Poisoning Prevention Programs (CLPPP) report information (*e.g.*, presence of lead paint, age of housing, and type of housing) to the NBLSS. The addition of a new panel of housing questions would help to provide a more comprehensive picture of housing stock in the United States and potentially modifiable risk factors.

The objectives for developing this system are two-fold. First, the program would like to use surveillance data to estimate the extent of housing-related injuries and asthma. This is important because it will allow the program to systematically track the management and follow-up of those residents with these health outcomes.

The next objective for the development of this system is to examine potential housing-related risk factors. Childhood lead poisoning is just one of many adverse health conditions that are related to common housing deficiencies. Multiple hazards in housing, *e.g.*, mold, vermin, radon and the lack of safety devices, continue to adversely affect the health of residents. It is in the interest of public health to expand from a single focus on lead poisoning prevention to a coordinated, comprehensive, and systematic approach to eliminating multiple housing-related health hazards. The current NBLSS system requires reporting of child blood lead levels and the new HLPSS will continue this effort.

There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State and Local Health Departments for Child Surveillance	40	4	4	640
Total				640

Dated: June 18, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–15254 Filed 6–26–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0271]

Draft Guidance for Industry on Measures to Address the Risk for Contamination by Salmonella Species in Food Containing a Pistachio-Derived Product as an Ingredient; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Guidance for Industry: Measures to Address the Risk for Contamination by *Salmonella* Species in Food Containing a Pistachio-Derived Product as an Ingredient'' (draft guidance). The draft guidance, when finalized, is intended to clarify for manufacturers who produce foods containing a pistachio-derived product as an ingredient that there is a risk that *Salmonella* species may be present in the incoming pistachio-derived product, and to recommend measures to address that risk.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments concerning the draft guidance by August 28, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the draft guidance to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2022.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Guidance for Industry: Measures to Address the Risk for Contamination by *Salmonella* Species in Food Containing a Pistachio-Derived Product as an Ingredient.'' This draft guidance is intended to clarify for manufacturers who produce foods containing a pistachio-derived product as an ingredient that there is a risk that *Salmonella* species (spp.) may be present in the incoming pistachio-derived product, and to recommend measures to address that risk. Pistachio-derived products include roasted in-shell pistachios and shelled pistachios (also called kernels) that are roasted or raw.

We are issuing this guidance in light of a recent investigation by FDA and the California Department of Public Health of *Salmonella* spp. contamination in pistachio-derived products (Ref. 1). The producer issued a voluntary recall involving a substantial quantity of its products. Because the recalled pistachio-derived products were used as ingredients in a variety of foods, this recall affected many products and resulted in additional recalls (Ref. 1).

FDA is issuing this draft guidance as level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on measures to address the risk for contamination by *Salmonella* spp. in food containing a pistachio-derived product as an ingredient. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov* or at *http://www.fda.gov/FoodGuidances*.

IV. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, 2009, Pistachio Product Recalls: *Salmonella*, updated April 16, 2009.

Dated: June 18, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–15202 Filed 6–26–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974, as Amended; Computer Matching Program

AGENCY: Office of Child Support Enforcement (OCSE).

ACTION: Notice of a new computer matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, OCSE is publishing notice of a new computer matching program between OCSE and State Agencies administering the Supplemental Nutrition Assistance Program (SNAP).

DATES: As required by the Privacy Act, the Department of Health and Human Services (HHS) will file a report of the matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as of the dates indicated below.

ADDRESSES: Interested parties may comment on this notice by writing to Linda Deimeke, Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant

Promenade, SW., 4th Floor East, Washington, DC 20447. Comments received will be available for public inspection at this address from 9 a.m. to 5 p.m. Monday through Friday. You may also transmit written comments electronically via the Internet at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Deimeke, Director, Division of Federal Systems, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447. Telephone Number (202) 401–5439.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 as amended (5 U.S.C. 552a), provides for certain protections for individuals applying for and receiving Federal benefits. The law governs the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State or local government records. The Privacy Act requires agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agency or agencies participating in the matching programs;
2. Provide notification to applicants and beneficiaries that their records are subject to matching;
3. Verify information produced by such matching program before reducing, making a final denial of, suspending, or terminating an individual's benefits or payments;
4. Publish notice of the computer matching program in the **Federal Register**;
5. Furnish reports about the matching program to Congress and OMB; and
6. Obtain the approval of the matching agreement by the Data Integrity Board of any Federal agency participating in a matching program.

This matching program meets the requirements of the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Dated: June 19, 2009.

Vicki Turetsky,

Commissioner, Office of Child Support Enforcement.

Notice of New Computer Matching Program

A. Participating Agencies

The participating agencies are OCSE, which is the ''recipient agency,'' and State Agencies administering the Supplemental Nutrition Assistance Program (SNAP), which are the ''source agencies.''

B. Purpose of the Matching Program

The purpose of the matching program is to provide new hire, quarterly wage (QW) and unemployment insurance (UI) information from OCSE's National Directory of New Hires (NDNH) database to State Agencies administering the Supplemental Nutrition Assistance Program for the purpose of determining the eligibility of Supplemental Nutrition Assistance applicants and recipients. The State Agencies administering the Supplemental Nutrition Assistance Program may also use the NDNH information for the purpose of updating the recipients' reported participation in work activities and updating recipients' and their employers' contact information maintained by the State Agencies administering the Supplemental Nutrition Assistance Program.

C. Authority for Conducting the Match

The authority for conducting the matching program is contained in section 453(j)(10) of the Social Security Act (42 U.S.C. § 653(j)(10)).

D. Categories of Individuals Involved and Identification of Records Used in the Matching Program

The categories of individuals involved in the matching program are adult members of households that receive or have applied for Supplemental Nutrition Assistance Program benefits. The system of records maintained by OCSE from which records will be disclosed for the purpose of this matching program is the ''Location and Collection System'' (LCS), No. 09–90–0074, last published in the **Federal Register** at 72 FR 51446 on September 7, 2007. The LCS contains the NDNH, which contains new hire, QW, and UI information. Disclosures of NDNH information to the State Agencies administering SNAP are a ''routine use'' under this system of records. Records resulting from the matching program and which are disclosed to State Agencies administering the Supplemental Nutrition Assistance Program include names, Social Security numbers, home addresses, and employment information.

E. Inclusive Dates of the Matching Program

The matching agreement will be effective and matching activity may commence the later of the following:

(1) 30 days after this Notice is published in the **Federal Register** or (2) at least 40 days after OCSE sends a report of a matching program to the Congressional committees of jurisdiction under 5 U.S.C. 552a(o)(2)(A); and to OMB, unless OMB disapproves the agreement within the 40-day review period or grants a waiver of 10 days of the 40-day review period. The matching agreement will remain in effect for 18 months from its effective date, unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement. The agreement is subject to renewal by the HHS Data Integrity Board for 12 additional months if the matching program will be conducted without any change and each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

[FR Doc. E9–15231 Filed 6–26–09; 8:45 am]

BILLING CODE; P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3301–EM; Docket ID FEMA–2008–0018]

Arkansas; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Arkansas (FEMA–3301–EM), dated January 28, 2009, and related determinations.

DATES: *Effective Date:* June 20, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gerard M. Stolar, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of W. Michael Moore as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA);

97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–15356 Filed 6–26–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1845–DR; Docket ID FEMA–2008–0018]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1845–DR), dated June 16, 2009, and related determinations.

DATES: *Effective Date:* June 16, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 16, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms, tornadoes, and flooding beginning on April 27, 2009, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gerard M. Stolar, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Arkansas have been designated as adversely affected by this major disaster:

Arkansas, Bradley, Calhoun, Chicot, Clark, Cleveland, Conway, Dallas, Drew, Fulton, Grant, Greene, Hempstead, Hot Spring, Howard, Jackson, Jefferson, Lafayette, Lee, Lincoln, Little River, Marion, Miller, Monroe, Nevada, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Prairie, Saint Francis, Saline, Searcy, Stone, and Union Counties for Public Assistance. Direct Federal Assistance is authorized.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–15360 Filed 6–26–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1843–DR; Docket ID FEMA–2008–0018]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1843–DR), dated June 11, 2009, and related determinations.

DATES: *Effective Date:* June 11, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 11, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from flooding and ice jams beginning on April 28, 2009, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that

pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Douglas G. Mayne, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

The Alaska Gateway Regional Educational Attendance Area (REAA), the Kuspuk REAA, the Yukon Flats REAA, and the Yukon-Koyukuk REAA for Individual Assistance.

The Alaska Gateway Regional Educational Attendance Area (REAA), the Kuspuk REAA, the Lower Kuskokwin REAA, the Matanuska-Susitna Borough, the Yukon Flats REAA, and the Yupiit REAA for Public Assistance.

All boroughs and Regional Education Attendance Areas within the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–15352 Filed 6–26–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1844–DR; Docket ID FEMA–2008–0018]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1844–DR), dated June 16, 2009, and related determinations.

DATES: *Effective Date:* June 16, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 16, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from severe storms and flooding beginning on March 11, 2009, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Brown, Butte, Campbell, Corson, Day, Dewey, Edmunds, Harding, Marshall, McPherson, Perkins, Roberts, Spink, and Ziebach Counties and the portions of the Cheyenne River Reservation and the Standing Rock Reservation that lie within the designated counties for Public Assistance.

All counties and Tribal Reservations within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–15348 Filed 6–26–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1838–DR; Docket ID FEMA–2008–0018]

West Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1838–DR), dated May 15, 2009, and related determinations.

DATES: *Effective Date:* June 8, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 8, 2009.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–15349 Filed 6–26–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1819–DR; Docket ID FEMA–2008–0018]

Arkansas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1819–DR), dated February 6, 2009, and related determinations.

DATES: *Effective Date:* June 20, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gerard M. Stolar of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of W. Michael Moore as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–15359 Filed 6–26–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1763–DR; Docket ID FEMA–2008–0018]

Iowa; Amendment No. 23 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–1763–DR), dated May 27, 2008, and related determinations.

DATES: *Effective Date:* June 11, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 11, 2009, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to W. Craig Fugate, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms, tornadoes, and flooding during the period of May 25 to August 13, 2008, is of sufficient severity and magnitude that special cost share arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I have amended the declarations of May 27, 2008, June 30, 2008, and September 8, 2008, made by President George W. Bush, to authorize Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, at 100 percent of total eligible costs for 14 consecutive days.

This adjustment to the cost share applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under applicable law. The Stafford Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–15353 Filed 6–26–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1838–DR; Docket ID FEMA–2008–0018]

West Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1838–DR), dated May 15, 2009, and related determinations.

DATES: *Effective Date:* June 12, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 15, 2009.

Calhoun County for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–15355 Filed 6–26–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1842–DR; Docket ID FEMA–2008–0018]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1842–DR), dated June 3, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 3, 2009.

Autauga, Elmore, and Montgomery Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–15361 Filed 6–26–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1834–DR; Docket ID FEMA–2008–0018]

Arkansas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1834–DR), dated April 27, 2009, and related determinations.

DATES: *Effective Date:* June 20, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gerard M. Stolar, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of W. Michael Moore as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–15357 Filed 6–26–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1840–DR; Docket ID FEMA–2008–0018]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1840–DR), dated May 27, 2009, and related determinations.

DATES: *Effective Date:* May 28, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 28, 2009.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–15354 Filed 6–26–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2009–N0101; 94300–1124–0000–T5]

Coastal Barrier Resources System Digital Mapping Pilot Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of the public comment period on report and draft maps; notice of public meetings via Web cast and teleconference.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), advise the public that we are extending the public review and comment period for the *Report to Congress: John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project* and draft maps. Also, we plan to host public meetings via Web cast and teleconference on the John H. Chafee Coastal Barrier Resources System (CBRS) Digital Mapping Pilot Project.

DATES: *Comment Period:* To ensure consideration, we must receive your written comments on the report and draft maps by August 5, 2009.

Public Meetings: We will hold public meetings via Web cast and teleconference; *see* ''Public Meetings'' and ''Meeting Participation Information'' under **SUPPLEMENTARY INFORMATION** for meeting dates, times, and registration information.

ADDRESSES: Mail or hand-deliver (during normal business hours) comments to Katie Niemi, Coastal Barriers Coordinator, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 860A, Arlington, VA 22203 or send comments by electronic mail (e-mail) to *CBRAcomments@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Katie Niemi, Coastal Barriers Coordinator, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

The Coastal Barrier Resources Act (CBRA) of 1982 (16 U.S.C. 3501 *et seq.*) established the CBRS, a defined set of geographic units located along the Atlantic, Gulf of Mexico, Great Lakes, Puerto Rico, and U.S. Virgin Island coasts. CBRA removes the Federal incentive for development in these high-risk and biologically important coastal barrier habitats by limiting Federal subsidies such as flood insurance within the CBRS. Development can still occur provided that private developers or other non-Federal parties bear the full cost.

The CBRS boundaries are depicted on U.S. Geological Survey topographic quadrangle maps, which are, on average, 30 years old. Because the maps are outdated technologically, the CBRS boundaries do not always align precisely with the geomorphic, cultural, or development features that they were intended to follow. As a result, some properties and projects intended to be eligible for Federal subsidies are not eligible and vice versa. Modernizing the CBRS maps using digital technology addresses the inaccuracies of the outdated maps; corrects errors that adversely affect private property owners; increases efficiencies and accessibility by allowing the integration of CBRS information into digital planning tools; conserves natural resources; and helps preserve the long-term integrity of the CBRS.

The pilot project creates draft revised maps for 70 CBRS units (representing approximately 10 percent of the entire CBRS) and establishes a framework for modernizing the remainder of the CBRS maps. The different types of proposed boundary changes reflected in the draft pilot project maps include:

- Alignment with geomorphic features (*e.g.,* shorelines), development features (*e.g.,* edge of a road, property parcel boundaries), and cultural features (*e.g.,* park boundaries);
- Adjustment to reflect geomorphic change;
- Adjustment to map channel boundaries consistently;
- Addition of associated aquatic habitat;
- Addition of conservation or recreation area to existing Otherwise Protected Areas (OPAs);
- Addition of new OPAs;
- Addition of undeveloped fastland (land above mean high tide) not currently within the CBRS;
- Removal of private land that was inadvertently included within an OPA; and
- Reclassification from System unit to OPA and vice versa.

In cases where we found no compelling evidence to propose a revised boundary, the existing boundary remains unchanged.

For more information on the pilot project, as well as how to get a copy of the report and draft maps, *see* our April 7, 2009, notice (74 FR 15743) or visit the Service's Internet site: *http://www.fws.gov/habitatconservation/coastal_barrier.html*.

Comment Period Extension

We are extending the public comment period on the *Report to Congress: John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project* and draft maps, which we originally opened on April 7, 2009 (74 FR 15743), to allow additional time for public meetings and submission of comments by the public. If you previously submitted comments, you need not resubmit them; we have already incorporated them into the public record and will fully consider them when we finalize the pilot project maps and submit the report to Congress, per the directives of the Coastal Barrier Resources Reauthorization Act of 2005 (CBRRA of 2005; Pub. L. 109–226).

Public Meetings

We will hold the following public meetings via Web cast and teleconference. The purpose of the meetings is to give the public an overview of the pilot project effort and to offer an opportunity for questions and answers regarding the draft maps contained in the pilot project. *See* Appendix A for specific units we will discuss for the involved States.

Date	Time (eastern time)	States
July 14, 2009	10 a.m.–12 p.m.	Delaware and Louisiana.
July 14, 2009	1–3 p.m.	North Carolina and South Carolina.
July 15, 2009	10 a.m.–12 p.m.	North Florida.
July 15, 2009	1–3 p.m.	South Florida.

Meeting Participation Information

These meetings are open to the public. Members of the public planning to participate must register at *http://www.fws.gov/habitatconservation/coastal_barrier.html* by close of business July 10, 2009. Registrants will be provided with instructions for participation via e-mail. If you require

additional accommodations, please notify the person listed under **FOR FURTHER INFORMATION CONTACT** at least one week prior to the meeting.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Appendix A—Pilot Project Units

Below we list the pilot project units for each State, by unit number, unit name, and county.

Number	Name	County
Delaware (1 Map)		
DE–07	Delaware Seashore	Sussex.
DE–07P	Delaware Seashore	Sussex.
H01	North Bethany Beach	Sussex.
North Carolina (9 Maps)		
NC–01	Pine Island Bay	Currituck, Dare.
NC–05P	Roosevelt Natural Area	Carteret.
NC–06	Hammocks Beach	Onslow.
NC–06P	Hammocks Beach	Onslow, Carteret.
L05	Onslow Beach Complex	Onslow.
L06	Topsail	Onslow.
L07	Lea Island Complex	Pender, New Hanover.
L08	Wrightsville Beach	New Hanover.
L09	Masonboro Island	New Hanover.
South Carolina (1 Map)		
M02	Litchfield Beach	Georgetown.
M03	Pawleys Inlet	Georgetown.
Florida (27 Maps)		
North Florida		
FL–01	Fort Clinch	Nassau.
FL–01P	Fort Clinch	Nassau.
P04A	Usinas Beach	St. Johns.
P05	Conch Island	St. Johns.
P05P	Conch Island	St. Johns.
P08	Ponce Inlet	Volusia.
P08P	Ponce Inlet	Volusia.
FL–13P	Spessard Holland Park	Brevard.
P09A	Coconut Point	Brevard.
P09AP	Coconut Point	Brevard.
FL–73P	De Soto	Manatee.
FL–78	Rattlesnake Key	Manatee.
FL–78P	Rattlesnake Key	Manatee.
FL–82	Bishop Harbor	Manatee.
FL–80P	Passage Key	Manatee.
FL–81	Egmont Key	Hillsborough.
FL–81P	Egmont Key	Hillsborough.
FL–83	Cockroach Bay	Hillsborough.
FL–85P	Sand Key	Pinellas.
P26	Pepperfish Keys	Dixie.
FL–89	Peninsula Point	Franklin.
FL–93	Phillips Inlet	Bay.
FL–93P	Phillips Inlet	Bay.
FL–94	Deer Lake Complex	Walton.
South Florida		
P10A	Blue Hole	Indian River, St. Lucie.
FL–14P	Pepper Beach	St. Lucie.
P11	Hutchinson Island	St. Lucie.
P11P	Hutchinson Island	St. Lucie.
FL–15	Blowing Rocks	Martin, Palm Beach.
FL–16P	Jupiter Beach	Palm Beach.
FL–17P	Carlin	Palm Beach.
FL–18P	MacArthur Beach	Palm Beach.
FL–19	Birch Park	Broward.

Number	Name	County
FL–19P	Birch Park	Broward.
FL–20P	Lloyd Beach	Broward.
P14A	North Beach	Broward.
FL–39	Tavernier Key	Monroe.
FL–40	Snake Creek	Monroe.
FL–43	Channel Key	Monroe.
FL–44	Toms Harbor Keys	Monroe.
FL–45	Deer/Long Point Keys	Monroe.
FL–46	Boot Key	Monroe.
FL–64P	Clam Pass	Collier.
P17A	Bowditch Point	Lee.
FL–67	Bunche Beach	Lee.
FL–67P	Bunche Beach	Lee.
P21	Bocilla Island	Charlotte.
P21P	Bocilla Island	Charlotte.
P22	Casey Key	Sarasota.
FL–72P	Lido Key	Sarasota.
Louisiana (13 Maps)		
LA–01	Isle Au Pitre	St. Bernard.
LA–02	Grand Island	St. Bernard.
S04	Timbalier Bay	Lafourche.
S05	Timbalier Islands	Terrebonne, Lafourche.
S06	Isle Dernieres	Terrebonne.
S07	Point au Fer	Terrebonne, St. Mary.

Dated: June 18, 2009.

Marvin E. Moriarty,

Acting Director, U.S. Fish & Wildlife Service.

[FR Doc. E9–15309 Filed 6–26–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2009–N109; 1265–0000–10137–S3]

Malheur National Wildlife Refuge, Harney County, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental impact statement; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) for Malheur National Wildlife Refuge (refuge). We will also prepare an environmental impact statement (EIS) to evaluate the potential effects of various CCP alternatives. We provide this notice in compliance with our CCP policy to advise the public, other Federal and State agencies, and Tribes of our intentions, and to obtain suggestions and information on the scope of issues to consider during the planning process.

DATES: To ensure consideration, we must receive your written comments by October 15, 2009. We will hold public meetings and will announce meeting details on the refuge's Web site (see **ADDRESSES**).

ADDRESSES: Additional information about the CCP planning process is available on the Internet at: *http://www.fws.gov/malheur*. Send your comments or requests for information by any of the following methods.

E-mail: *FW1PlanningComments@fws.gov*. Include ''Malheur CCP'' in the subject line of the message.

Fax: Attn: Tim Bodeen, (541) 493–2405.

U.S. Mail: Tim Bodeen, Project Leader, Malheur National Wildlife Refuge, 36391 Sodhouse Lane, Princeton, OR 97221.

FOR FURTHER INFORMATION CONTACT: Tim Bodeen, Project Leader, Malheur National Wildlife Refuge, phone (541) 493–2612.

SUPPLEMENTARY INFORMATION:

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP planning process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this

time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Malheur Refuge. The Service will manage the refuge's CCP process to maximize opportunities for public involvement and dialogue to help inform our decision-making. The Service will contract with the Oregon Consensus Program (OCP), a State-funded agency that assists public agencies and others in convening collaborative processes. The OCP will work with interested organizations, including the High Desert Partnership, a neutral, non-profit, and non-partisan organization that addresses challenges in Harney County, Oregon, to engage government agencies, non-profit groups, and interested individuals throughout the planning process to provide expertise, information, and feedback to the Service. Our intent is to develop a CCP that is consistent with refuge system law and policy and supported by the diverse parties with interests in the refuge.

We will conduct the environmental review of this project and develop an EIS in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Malheur National Wildlife Refuge

Malheur National Wildlife Refuge was established on August 18, 1908, by President Theodore Roosevelt as the Lake Malheur Bird Reservation. The refuge was originally set aside to prevent plume hunters from decimating colonial nesting bird populations. It protected unclaimed lands encompassed by Malheur, Mud, and Harney Lakes ''as a preserve and breeding ground for native birds.'' The refuge was expanded to include the Blitzen Valley in 1935 and the Double-0 Unit in 1941.

The refuge consists of over 187,000 acres of open water (marsh, river, and stream), wetlands, springs, riparian areas, irrigated meadows and grain fields, and uplands. The uplands are dominated by big sagebrush, rabbitbrush, and greasewood interspersed with grasses, including basin wild rye and desert saltgrass.

Practices to manage and improve habitat on the refuge include vegetation manipulation through haying, burning, flooding, irrigation, farming, and grazing; and water management through flooding and drainage. Wetland and meadow habitat management is accomplished by pooling water behind a series of dams; the water is then diverted via canals into numerous meadows and wetlands. In the Blitzen River Unit, some of the water returns to the Blitzen River by surface sheet flow, return flow pipes or ditches, or subsurface seepage.

Malheur Lake is one of the largest freshwater marshes in the country. The floor of the lake is only 8 feet below the surface at its deepest point. Together with the adjacent water bodies of Harney and Mud Lakes, Malheur Lake is the endpoint of an inland basin fed by waters from the Blitzen River, Silvies River, and Silver Creek. With its abundance of water in an otherwise arid landscape, the refuge attracts a significant portion of the Pacific Flyway's bird population during spring migration. The Audubon Society designated the refuge an Important Bird Area. Breeding season highlights include:

- Up to 20 percent of the world's population of White-faced Ibis;
- The highest known densities of Willow Flycatcher;
- One of the highest Breeding Bird Survey counts for the Brewer's Sparrow;
- Breeding populations of Western Snowy Plover (400 individuals), Long-billed Curlew, Franklin's Gull, Short-eared Owl, Greater Sage-Grouse, Bobolink, and Trumpeter Swan;
- Significant populations of American White Pelican, Cinnamon Teal, Redhead, and Greater Sandhill Crane (the latter being 20 percent of Oregon's breeding population);
- Up to 1,300 pairs of nesting Franklin's Gulls;
- Breeding Forster's Terns, up to 350 pairs of nesting Caspian Terns, and up to 6,000 nesting Black Terns;
- 100–600 pairs of nesting Great Blue Herons and similar numbers of Great Egrets, and more than 200 pairs of nesting Snowy Egrets; and
- Post-breeding concentrations of Ring-billed Gulls sometimes reaching 25,000 in August.

Migrant bird species highlights include:

- Passage of up to half of the world's population of Ross' geese;
- A significant proportion of the total populations of green-winged teal, American wigeon, northern shoveler, northern pintail, canvasback, and ruddy duck;
- Hundreds of thousands of waterfowl (including up to 100,000 snow geese; 15,000 green-winged teal; 15,000 mallards; 250,000 northern pintail; 250,000 northern shovelers; 4,000 canvasbacks; 2,000 ring-necked ducks; 5,000 lesser scaup; and 50,000 ruddy ducks); and
- Concentrations of up to 25,000 western sandpipers; 350 pectoral sandpipers; 35,000 long-billed dowitchers; 15,000 Wilson's phalaropes; 15,000 American avocets; and 200 black-necked stilts.

The refuge provides hunting, fishing, wildlife viewing and photography, interpretation, and limited environmental education. Because there are a limited number of trails, most viewing and interpretation occurs from the refuge's auto tour route. An unsigned portion of the National Desert Scenic Trail crosses the refuge. Waterfowl hunting is available on approximately half of Malheur Lake. Upland bird hunting is available on approximately one quarter of the refuge's acreage. Fishing is allowed on Krumbo Reservoir, the Blitzen River, Bridge Creek, and the East Canal.

Preliminary Issues, Concerns, and Opportunities

We identified the following preliminary wildlife and habitat issues for consideration during the planning process: Decreased populations of colonial nesting birds and waterfowl compared to historic levels; carp infestation in the lakes, wetlands, and rivers adversely affecting habitat for colonial nesting waterbirds, waterfowl, native fish, and invertebrates; degraded water quality and quantity in the Blitzen River; degraded stream and riparian condition of the Blitzen River and tributaries; the presence and spread of aggressive noxious weeds such as perennial pepperweed and reed canary grass; achieving desired plant composition and structure in meadow habitats for target wildlife species; maintaining redband trout and other native fishes; and the potential effect of climate change on refuge habitats and species.

We identified the following preliminary public use issues for consideration during the planning process: Adequacy of access and facilities for all of the wildlife-dependent uses; opportunities to expand programs; impacts of public use programs on natural and cultural resources and refuge visitors; management of commercial outfitters or guides; and management of non-wildlife dependent uses.

In addition to wildlife, habitat, and public use issues, we will conduct a new wilderness review as part of this CCP/EIS. In 1973 we made a recommendation to designate 30,000 acres around Harney Lake as wilderness. In the new review we will

identify whether some or all of the areas proposed in 1973 still meet wilderness recommendation criteria, and if there are other refuge areas could meet the criteria.

Proper conservation, management, and interpretation of the refuge's cultural resources, including archaeological sites and historic buildings, constitute an additional management issue. Additional issues may be identified during public scoping.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold it from public review, we cannot guarantee we will be able to do so.

Dated: May 22, 2009.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. E9–15271 Filed 6–26–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Residential Lead-Based Paint Hazard Reduction Act

Notice is hereby given that on June 18, 2009 a proposed Consent Decree in *United States* v. *Carmen Neapolitan*, Civil Action No. 4:09CV1396 was lodged with the United States District Court for the Northern District of Ohio.

The consent decree settles claims against the owner of twenty-five residential properties located in or near Youngstown, Ohio. The claims were brought on behalf of the Environmental Protection Agency (''U.S. EPA'') and the Department of Housing and Urban Development (''HUD'') under the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. 4851 *et seq.* (''Lead Hazard Reduction Act''). The United States alleged in the complaint that the Defendant failed to make one or more of the disclosures or to complete one or more of the disclosure activities required by the Lead Hazard Reduction Act.

Under the Consent Decree, the Defendant will certify that it is complying with residential lead paint notification requirements. The Defendant will submit a plan for window replacement work and will replace all windows known to or believed to contain lead-based paint in all residential properties owned by Defendant that are not certified lead-based paint free. In addition, Defendant will pay an administrative penalty of $2,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to U.S. Department of Justice, Washington, DC 20044–7611, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Carmen Neapolitan*, D.J. Ref. #90–5–1–1–09432.

The Proposed Consent Decree may be examined at the Department of Housing and Urban Development, Office of General Counsel, 451 7th St., NW., Room 9262, Washington, DC 20410; at the office of the United States Attorney for the Northern District of Ohio, 801 West Superior Avenue, Suite 400, Cleveland, Ohio 44113 (Attn: Assistant United States Attorney Michelle L. Heyer); and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–15257 Filed 6–26–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment to Consent Decree Under the Clean Water Act

Notice is hereby given that on June 23, 2009, a proposed Consent Decree, pertaining to *United States and State of Minnesota* v. *City of Duluth, Minnesota and the Western Lake Superior Sanitary District*, Civ. No. 09–cv–1590, was lodged with the United States District Court for the District of Minnesota.

In this action, the United States and the State seek civil penalties and injunctive relief for alleged violations of the Federal Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. 1251, *et seq.*, applicable provisions of Minn. Stat. section 115 and Minnesota Rules, and certain terms and conditions of a National Pollution Discharge Elimination System/State Disposal System permit that MPCA issued jointly to Duluth and WLSSD, in connection with alleged wastewater discharges, into waters of the United States and the State, from a sanitary sewer system which is jointly owned and operated by Duluth and WLSSD.

The proposed Consent Decree would require the Defendants, by 2016, to complete a variety of programs and capital improvements, which are expected to cost a total of approximately $130 million, and are intended to eliminate sanitary sewer overflows. The Decree also would require WLSSD and the City each to pay the United States $106,000 and the State $94,000 in civil penalties (total civil penalty is $400,000).

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Minnesota* v. *City of Duluth, Minnesota and the Western Lake Superior Sanitary Commission*, D.J. Ref. 90–5–1–1–08428. The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Minnesota, 600 U. S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415 (contact Asst. U.S. Attorney Fred Siekert (612–664–5697)), and at U.S. EPA Region 5, 7th Floor Records Center, 77 West Jackson Blvd., Chicago, Illinois 60604 (contact Assoc. Regional Counsel

Charles Mikalian (312–886–2242)). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $20.50 (25 cents per page reproduction cost), for the consent decree alone, or in the amount of $158.00 (for the consent decree and all appendices) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–15306 Filed 6–26–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Proposed Administrative Settlement Agreement and Order on Consent Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on June 15, 2009, a proposed Settlement Agreement regarding the Asarco Hayden Plant Site in Hayden, Arizona was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Asarco LLC*, No. 05–21207 (Bankr. S.D. Tex.). The proposed Agreement, entered into by the United States and Asarco LLC, provides the U.S. Environmental Protection Agency an allowed general unsecured claim of $3.0 million for response costs incurred by EPA on or before May 27, 2008 at the Asarco Hayden Plant Site.

The Department of Justice will receive comments relating to the proposed Agreement for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Asarco LLC,* DJ Ref. No. 90–11–3–08633.

The proposed Agreement may be examined at the Region 9 Office of the United States Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice website: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–15272 Filed 6–26–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21, Code of Federal Regulations (CFR), 1301.34(a), this is notice that on May 22, 2009, Noramco, Inc., Division of Ortho-McNeil, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Tapentadol (9780), a basic class of controlled substance listed in schedule II.

The company plans to import an intermediate of the basic class listed for the bulk manufacture of Tapentadol which it will distribute to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, VA 22152; and must be filed no later than July 29, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: June 22, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–15234 Filed 6–26–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Brookwood-Sago Mine Safety Grants

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of funding and priorities for fiscal year 2009.

SUMMARY: The U.S. Department of Labor, Mine Safety and Health Administration (MSHA), is making $500,000 available in grant funds in FY 2009 for educational and training programs to help identify, avoid, and prevent unsafe working conditions in and around mines. The focus of these grants for FY 2009 will be on training and training materials for mine emergency preparedness and haulage safety for mines. MSHA is expanding this grant opportunity to cover all mines, both surface and underground metal and nonmetal and coal mines. Applicants for the grants may be States

and nonprofit (private or public) entities. MSHA could award as many as 10 separate grants with a 12-month period of performance. The amount of each individual grant will be at least $50,000.00. MSHA provides background information on these grants at *http://www.msha.gov*. MSHA will post the actual solicitation for grant applications (SGA) at *http://www.grants.gov*. Applications should not be submitted at this time.

DATES: MSHA expects to post its SGA by June 30, 2009, on *http://www.grants.gov* and the closing date for applications will be July 31, 2009. MSHA will award grants on or before September 30, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Glatter at *Glatter.Robert@dol.gov*, at 202–693–9570 (voice), or 202–693–9571 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

1. Funding Opportunity Description

A. Overview of the Brookwood-Sago Mine Safety Grant Program

Responding to several coal mine disasters, Congress enacted the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). Section 14 of the MINER Act requires the Secretary of Labor (Secretary) to establish a discretionary competitive grant program called the Brookwood-Sago Mine Safety Grants (Brookwood-Sago grants). This program provides funding to educate and train miners to better identify, avoid, and prevent unsafe working conditions in and around mines. This program will use grant funds to establish and implement education and training programs or to create training materials and programs. The MINER Act requires the Secretary to give priority to mine safety demonstrations and pilot projects with broad applicability. It also mandates that the Secretary shall emphasize programs and materials that target workers in smaller mines, to include training on new MSHA standards, high-risk activities, and other identified health and safety priorities.

B. Educational and Training Program Priorities

MSHA priorities for the FY 2009 funding of the Brookwood-Sago grants will focus on training and training materials for mine emergency preparedness and haulage safety. MSHA is expanding this grant opportunity to cover all mines, surface and underground metal and nonmetal and coal mines. MSHA expects Brookwood-Sago grantees to develop training materials or to develop and provide mine safety and health training and/or educational programs, recruit miners and mine operators for the training, and conduct and evaluate the training on one of the MSHA-selected priorities. Grantees are also required to conduct follow-up evaluations of persons trained under the grantee's program. If the Brookwood-Sago applicant is not the entity operating an MSHA-approved State training grant, MSHA expects the applicant to contact the State grantee(s) and coordinate any proposed training or educational program with the applicable State(s) in order not to duplicate any training or educational program offered. An applicant's proposed area for the grant may cover more than one State.

II. Award Information

A. Award Amount for FY 2009

MSHA is providing $500,000 total for the FY 2009 Brookwood-Sago grants, which could be divided into as many as 10 separate grants. The amount of each individual grant will be at least $50,000.00.

B. Period of Performance

The period of performance will be 12 months from the date of execution of the grant documents. This performance period must include all necessary implementation and start-up activities as well as follow-up for the grantee to provide information on how it met the Brookwood-Sago grant performance outcomes. MSHA may approve a request for a no-cost extension to grantees for an additional period of time based on the success of the project and other relevant factors.

III. Eligibility Information

Applicants for the grants may be States and nonprofit (private or public) entities. Eligible entities may apply for funding independently or in partnership with other eligible organizations. For partnerships, a lead organization must be identified.

IV. Other Program Provisions

The following are selected provisions for interested parties considering applying for the Brookwood-Sago grants:

A. Educational Materials

MSHA will review all grantee-produced educational and training materials for technical accuracy and suitability of content during development and before final publication.

When grantees produce training materials, they must provide copies of completed materials to MSHA in hard copy and a digital format (CD–ROM/DVD) for posting on the Agency's internet. All grantees must acknowledge the Department of Labor (DOL) funding with a standard statement, which will be provided in the SGA.

B. Matching and Cost-Sharing

Matching and cost-sharing funds are not required in this grant program. The leveraging of public and private resources to achieve project sustainability, however, is highly encouraged and will be awarded points in the evaluation criteria. Any funds leveraged must be from non-Federal resources. Applicants must include a description of any non-Federal resource contribution, including the source of funds and the estimated amount.

C. Administrative and National Policy Requirements

All grantees, including faith-based organizations, will be subject to applicable Federal laws and regulations (including provisions of appropriations law) and applicable Office of Management and Budget (OMB) Circulars. The grants awarded under this competitive grant program will be subject to the following administrative standards and provisions, if applicable:

- 29 CFR part 2, subpart D, *Equal Treatment for Religious Organizations.*
- 29 CFR parts 31, 32, 35 and 36, *Nondiscrimination.*
- 29 CFR part 93, *Restrictions on Lobbying.*
- 29 CFR part 94, *Drug-free workplace.*
- 29 CFR part 95, *Uniform Grant Requirements for Nonprofit organizations.*
- 29 CFR parts 96 and 99, *Audits.*
- 29 CFR part 97, *Uniform Grant Requirements for States.*
- 29 CFR part 98, *Debarment and suspension.*
- 2 CFR part 220, *Cost Principles for Educational Institutions.*
- 2 CFR part 225, *Cost Principles for State and Local Governments.*
- 2 CFR part 230, *Cost Principles for Other Nonprofit Organizations.*

Administrative costs for these grants may not exceed 15%.

V. Overview of the Grant Process

Below is a general synopsis of MSHA's competitive grant process.

A. Pre-Award Process

MSHA will post the SGA at *http://www.grants.gov* and *http://www.msha.gov* providing detailed information about how to apply for MSHA's grant program. For this Brookwood-Sago grant, applicants will

be given 30 days to apply. The SGA will provide a description of the projects, proposed scope of work and performance periods, eligibility requirements and the dollar amounts of the awards, and the estimated number of grants to be awarded. The SGA also will describe what is required in the grant application, the closing date for receipt of the applications, any special reporting requirements, and the rating criteria that will be used in reviewing grant applications. The SGA will provide all of the necessary information for interested parties to participate in this competitive grant process.

B. Award

Grant applications submitted in response to the SGA will be reviewed by a technical panel for consistency with the SGA requirements. Awards are subject to availability of funds and evaluation of the applicant's technical proposal. Funding decisions are made at the discretion of the Assistant Secretary of Labor for Mine Safety and Health.

A technical panel will advise the Grant Officer during the review and rating process. Panel members will be selected based on their knowledge of the subject matter. Each panel member will perform an independent evaluation of the application based solely upon the criteria announced in the SGA.

After the review, the Grant Officer may ask an applicant to provide supplemental information that may be necessary to clarify issues within the application. Negotiations are not a guarantee of funding.

Once selections are made, awardees are notified. If the applicant accepts the terms and conditions outlined in the award package, the Grant Officer will execute the grant award and funds will be allocated.

C. Post-Award Process

MSHA anticipates that it will meet with all successful applicants before the grants are started. MSHA will provide this meeting information in the award package.

The selected applicant must submit financial and activity reports on a quarterly basis, beginning ninety days from the award of the grant. MSHA will work with the grantee to establish report contents, which, among other things, will include performance measures to encourage continuous improvement. The report must be submitted within 30 days after the close of the quarter.

D. Completion of the Grant

After completion of the grant, the grantee must complete a Final Project Report, which will include an assessment of project performance and outcomes achieved. MSHA also will arrange for an independent evaluation of each funded project. All grantees must agree to cooperate with this evaluation and must make records available for all project activities.

VI. Special Procedures for Applying

MSHA will be accepting grant applications through the Grants.gov Web site only. A downloadable application package for the Brookwood-Sago grant program will be available through this Web site.

In order for interested parties to participate, they must have a Dun and Bradstreet number (DUNS) and must register with the Grants.gov Web site.

A. Dun and Bradstreet Number

Since October 1, 2003, all applicants for Federal grant funding opportunities are required to include a DUNS number with their application. The DUNS number is a nine-digit identification number that identifies business entities uniquely. There is no charge for obtaining a DUNS number. To obtain a DUNS number, call 1–866–705–5711 or access the following Web site: *http://dnb.com/us/*.

B. Grants.gov Site Registration

Applicants must register on the Grants.gov Web site at *http://www.grants.gov/applicants/get_registered.isp*. Details regarding registration are outlined in the Grants.gov 3-Step Registration Guide at *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*.

Please note that the registration process may take three to five business days to complete, and an interested party must have completed all registration steps to submit an application via Grants.gov.

Authority: 30 U.S.C. 965.

Michael A. Davis,

Deputy Assistant Secretary for Operations, Mine Safety and Health.

[FR Doc. E9–15258 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,891]

Springs Global US, Inc., Sardis, MS; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 6, 2009 in response to a petition filed by a company official on behalf of workers of Springs Global US, Inc., Sardis, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15210 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,907]

Tecumseh Products, Verona, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 11, 2009 in response to a petition filed on behalf of workers at Tecumseh Products, Verona, Mississippi. The workers at the subject facility produce compressors and small motors.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 20th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15215 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,898]

American and Efird, Inc., Mt. Holly, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 7, 2009 in response to a petition filed on behalf of workers of American and Efird, Inc., Mt. Holly, North Carolina.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of May 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15211 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,878]

BCF Industries, Altavista, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 4, 2009, in response to a petition filed on behalf of workers of BCF Industries, Altavista, Virginia.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 19th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15302 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,875]

Eastern Display, a Division of Art Guild, Inc., Providence, RI; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 1, 2009 in response to a petition filed by a company official on behalf of workers of Eastern Display, a Division of Art Guild, Inc., Providence, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of June 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15301 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,845]

Broyhill Furniture, Inc., Broyhill Rutherford Distribution Center, Rutherfordton, NC; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 24, 2009 in response to a petition filed on behalf of workers of Broyhill Furniture, Inc., Broyhill Rutherfordton Distribution Center, Rutherfordton, North Carolina.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 20th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15298 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,807]

Leech Industries, Inc., Meadville, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 16, 2009 in response to a petition filed by a company official on behalf of workers at Leech Industries, Inc., Meadville, Pennsylvania. The workers at the subject facility produce plastics, electrical conductors and injection molds.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15296 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,870]

Samuel Aaron International, Long Island City, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 30, 2009 in response to a petition filed on behalf of workers of Samuel Aaron International, Long Island City, New York.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 21st day of May 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15300 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,853]

Faurecia Exhaust Systems, Incorporated, Troy, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 27, 2009 in response to a petition filed by a company official on behalf of workers of Faurecia Exhaust Systems, Troy, Ohio.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 18th day of May 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15299 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,825]

Castec, Inc., North Hollywood, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 21, 2009 in response to a worker petition filed by workers of Castec, Inc., North Hollywood, California.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15297 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,791]

Commercial Vehicle Group/Trim Systems, Dublin, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 14, 2009 in response to a petition filed by a company official on behalf of workers at Commercial Vehicle Group/Trim Systems, Dublin, Virginia. The workers at the subject facility produce truck interiors.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 20th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15295 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,776]

Mercedes-Benz United States International, Inc., Vance, AL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 8, 2009 in response to a petition filed on behalf of workers at Mercedes-Benz United States International, Inc., Vance, Alabama. The workers at the subject facility produce GL class, M class and R class vehicles.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15294 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,747]

Parker Hannifin Corporation, Nichols Portland Division, Portland, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 3, 2009 in response to a petition filed on behalf of workers at Parker Hannifin Corporation, Nichols Portland Division, Portland, Maine. The workers at the subject facility produce gerotors.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15293 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,718]

Weyerhaeuser Company, iLevel Dallas Sawmill, Dallas, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 31, 2009 in response to a petition filed by a company official on behalf of workers at Weyerhaeuser Company, iLevel Dallas Sawmill, Dallas, Oregon. The workers at the subject facility produced rough planed lumber.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15292 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,692]

Tricon Timber, LLC, Superior, MT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 27, 2009 in response to a petition filed by a company official on behalf of workers of Tricon Timber, LLC, Superior, Montana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of April 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15291 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,690]

Tube Fabrication Industries, Inc., Logansport, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 27, 2009 in response to a petition filed by a company official on behalf of workers at Tube Fabrication Industries, Inc., Logansport, Indiana. The workers at the subject facility produce steel tube components.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of May 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15290 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,662]

Leed's, Warren, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 23, 2009 in response to a worker petition filed by workers of Leed's, Warren, Ohio.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 19th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15289 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,632]

Duct Sox Corporation, a Subsidiary of Rite Hite, Dubuque, IA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 18, 2009 in response to a worker petition filed by workers of Duct Sox Corporation, a subsidiary of Rite Hite, Dubuque, Iowa.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 19th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15288 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,547]

Arvin Meritor, Mullins, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 10, 2009 in response to a worker petition filed by workers of Arvin Meritor, Mullins, South Carolina.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15287 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,482]

Northeast Pellets, LLC; a Subsidiary of Fulghum Fibres, Ashland, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 4, 2009, in response to a worker petition filed by a company official on behalf of workers at Northeast Pellets, LLC, a subsidiary of Fulghum Fibres, Ashland, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 22nd day of May 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15286 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,795]

Caye Upholstery, Amory, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 15, 2009 in response to a worker petition filed by workers of Caye Upholstery, Amory, Mississippi.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 19th day of May 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–15285 Filed 6–26–09; 8:45 am]

BILLING CODE 4510–FN–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 09–12]

Notice of Quarterly Report (January 1, 2009–March 31, 2009)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the

quarter January 1, 2009 through March 31, 2009 with respect to both assistance provided under Section 605 of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D (the Act)), and transfers or allocations of funds to other Federal agencies pursuant to Section 619(b) of the Act. The following report shall be made available to the public by means of publication in the **Federal Register** and on the Internet Web site of the MCC (*http://www.mcc.gov*) in accordance with Section 612(b) of the Act.

Dated: June 23, 2009.

James Mazzarella,

Managing Director, Acting Vice President, Congressional & Public Affairs, Millennium Challenge Corporation.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Madagascar Year: 2009 Quarter 2 Total Obligation: $109,773,000 Entity to which the assistance is provided: MCA Madagascar Total Quarterly Disbursement: $7,953,259				
Land Tenure Project	$36,028,000	Increase Land Titling and Security.	$19,548,883	Area secured with land certificates or titles in the Zones. Proportion of the population informed about land tenure reforms in the Zones. Legal and Regulatory Reforms adopted. Number of land documents inventoried in the Zones and Antananarivo. Number of land documents restored in the Zones and Antananarivo. Number of land documents digitized in the Zones and Antananarivo. Average time for Land Services Offices to issue a duplicate copy of a title. Average cost to a user to obtain a duplicate copy of a title from the Land Services Offices. Number of land certificates delivered in the Zones during the period. Number of new *guichets fonciers* operating in the Zones. The 256 PLOFs are completed.
Finance Project	32,445,000	Increase Competition in the Financial Sector.	17,343,117	Volume of funds processed annually by the national payment system. The components necessary to implement the national payment system are operational: Network equipment and integrator, Real time gross settlement system (RTGS), Retail payment clearing system, Telecommunication facilities. Number of accountants and financial experts registered to become CP. Percent of MFI loans recorded in the Central Bank database.
Agricultural Business Investment Project.	17,683,000	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	11,610,625	Number of farmers that adopt new technologies or engage in higher value production. Number of enterprises that adopt new technologies or engage in higher value production. Number of farmers receiving technical assistance. Number of farmers employing technical assistance. Number of businesses receiving technical assistance. Number of MAEP agents trained in Marketing and Investment Promotion. Zones identified and description of beneficiaries within each zone submitted. Number of people receiving information from ABCs on business opportunities. Zonal Investment strategies for the Zones are developed. Number of ABC clients who register as formal enterprises, cooperatives, or associations. Number of marketing contracts of ABC client.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Program Administration* and Control, Monitoring and Evaluation.	23,617,000	.....	15,327,816	
Pending subsequent reports**	.....	.....	389,882	

* Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.
** These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Honduras Year: 2009 Quarter 2 Total Obligation: $215,000,000 Entity to which the assistance is provided: MCA Honduras Total Quarterly Disbursement: $13,084,657				
Rural Development Project	$74,557,000	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees.	$27,990,386	Number of Program farmers harvesting high-value horticulture crops. Number of hectares harvesting high-value horticulture crops. Number of business plans prepared by program farmers with assistance from Implementing Entity. Total Value of net sales. Total number of recruited farmers receiving technical assistance. Value of Loans Disbursed (disaggregated by Trust Fund, Leveraged from Trust Fund, and institutions receiving T.A. from ACDI–VOCA). Number of Loans Disbursed (disaggregated by Trust Fund, Leveraged from Trust Fund, and institutions receiving T.A. from ACDI–VOCA). Percentage of Loan Portfolio At Risk (disaggregated by Trust Fund and institutions receiving T.A. from ACDI–VOCA). Funds lent from the Trust Fund to financial intermediaries trough lines of credit. Number of hectares under irrigation. Number of beneficial biological control agents developed for use by Programs Farmers or other farmers for pilot testing. Number of improved coffee hybrids available for cloning. Number of farmers connected to the community irrigation system. Number of certified deliverables across all Agricultural Public Goods Grant.
Transportation Project	123,621,876	Reduce transportation costs between targeted production centers and national, regional and global markets.	28,428,516	Freight shipment cost from Tegucigalpa to Puerto Cortes. Average Annual Daily Traffic Volume—CA–5. International Roughness Index (IRI)—CA–5. Kilometers of Road Upgraded—CA–5. % of contracted road works disbursed—CA–5. Average Annual Daily Traffic Volume—Secondary Roads. International Roughness Index (IRI)—Secondary Roads. Kilometers of Road Upgraded—Secondary Roads. % of contracted road works disbursed—Secondary Roads. Average Annual Daily Traffic Volume—Rural Roads. Average Speed—Rural Roads. Kilometers of Road Upgraded—Rural Roads. % of contracted road works disbursed—Rural Roads. Signed contracts for feasibility and/or design studies. % of contracted studies disbursed. Kilometers (km) of roads under design. Signed contracts for roads works. Kilometers (km) of roads under works contracts.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Program Administration* and Control, Monitoring and Evaluation.	16,821,124	.....	5,374,010	
Pending subsequent reports**.	.....	.....	1,534,179	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Cape Verde Year: 2009 Quarter 2 Total Obligation: $110,078,488 Entity to which the assistance is provided: MCA Cape Verde Total Quarterly Disbursement: $8,714,912				
Watershed and Agricultural Support.	$11,001,130	Increase agricultural production in three targeted watershed areas on three islands.	$5,141,987	Productivity: Horticulture, Paul. Productivity: Horticulture, Faja. Productivity: Horticulture, Mosteiros. Number of farmers adopting drip irrigation. Area irrigated with drip irrigation. Percent of contracted irrigation works disbursed (cumulative). Reservoirs constructed. Number of farmers that have completed training in at least 3 of 5 core agricultural disciplines.
Infrastructure Improvement	83,160,208	Increase integration of the internal market and reduce transportation costs.	29,832,605	Travel time ratio: Percentage of beneficiary population further than 30 minutes from nearest market. Kilometers of roads rehabilitated. Percent of contracted Santiago Roads works disbursed (cumulative). Percent of contracted Santo Antao Bridge works disbursed (cumulative). Kilometers (km) of roads under design. Signed contracts for roads works. Kilometers (km) of roads under works contracts. Port of Praia: percent of contracted Port works disbursed (cumulative). Cargo Village: percent of works completed. Quay 2 improvements: percent of works completed. Access Road: percent of works completed.
Private Sector Development.	2,081,223	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	759,634	MFI Recovery Rate, Adjusted. MFI Portfolio At Risk, Adjusted. Ratio of MFIs Operationally Self-Sufficient.
Program Administration* and Control, Monitoring and Evaluation.	13,835,927	.....	7,480,720	
Pending subsequent reports**.	.....	.....	333,611	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Nicaragua Year: 2009 Quarter 2 Total Obligation: $174,710,890 Entity to which the assistance is provided: MCA Nicaragua Total Quarterly Disbursement: $9,834,608				
Property Regularization Project.	$22,000,000	Increase investment by strengthening property rights.	$7,220,395	Automated database of registry and cadastre installed in the 10 municipalities of Leon. Value of land, urban. Value of land, rural. Time to conduct a land transaction. Number of additional parcels with a registered title, urban. Number of additional parcels with a registered title, urban. Number of protected areas demarcated. Area covered by cadastral mapping. Cost to conduct a land transaction.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Transportation Project	105,193,200	*Reduce transportation costs between Leon and Chinandega and national, regional and global markets.*	17,997,299	Annual Average daily traffic volume: N1 Section R1. Annual Average daily traffic volume: N1 Section R2. Annual Average daily traffic volume: Port Sandino (S13). Annual Average daily traffic volume: Villanueva—GuasauleAnnual. Average daily traffic volume: Somotillo-Cinco Pinos (S1). Annual Average daily traffic volume: León-Poneloya-Las Peñitas. International Roughness Index: N–I Section R1. International Roughness Index: N–I Section R2. International Roughness Index: Port Sandino (S13). International Roughness Index: Villanueva—Guasaule. International Roughness Index: Somotillo-Cinco Pinos. International Roughness Index: León-Poneloya-Las Peñitas. Kilometers of NI upgraded: R1 and R2 and S13. Kilometers of NI upgraded: Villanueva—Guasaule. Kilometers of S1 road upgraded. Kilometers of S9 road upgraded. Kilometers of designed primary roads (Including N–I/Puerto Sandino and V–G). Kilometers of designed secondary roads.
Rural Development Project	32,897,500	*Increase the value added of farms and enterprises in the region.*	15,436,133	Number of beneficiaries with business plans prepared with assistance from the Rural Development Business Project. Numbers of manzanas, by sector, harvesting higher-value crops. Number of manzanas of beneficiaries of the program that harvest higher-value crops with irrigation or commercial reforestation under Improvement of Water Supply Activities. Number of beneficiaries implementing Business Plans. Average increase in income of beneficiaries due to program.
Program Administration*, Due Diligence, Monitoring and Evaluation.	14,909,300	.....	8,500,146	
Pending subsequent reports**.	.....	.....	596,662	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Georgia Year: 2009 Quarter 2 Total Obligation: $395,300,000 Entity to which the assistance is provided: MCA Georgia Total Quarterly Disbursement: $12,089,670				
Regional Infrastructure Rehabilitation.	315,600,000	Key Regional Infrastructure Rehabilitated.	51,156,750	Household Savings from Infrastructure Rehabilitation Activities. Savings in Vehicle Operating Costs (VOC). International Roughness Index (IRI). Annual Average Daily Traffic (AADT). Travel Time. Kilometers of Road Paved. % of Contracted Works Disbursed. Signed contracts for feasibility and/or design studies. % of contracted studies disbursed. Kilometers of Roads Under Design. Signed contracts for road works. Kilometers of Roads Under Works Contracts. Sites Rehabilitated (Phases I, II, III)—Pipeline. Construction Works Completed (Phase II)—Pipeline. Savings in Household Expenditures for all RID Sub-projects. Population Served by all RID Sub-projects.

Projects	Obligated	Objective	Cumulative disbursements	Measures
				RID Sub-projects Completed. Value of Grant Agreements Signed—RID. Value of Works and Goods Contracts Signed—RID. RID Sub-projects with Works Initiated.
Regional Enterprise Development	47,350,000	Enterprises in Regions Developed.	26,044,666	Jobs Created—ADA and GRDF. Household Net Income—ADA and GRDF. Jobs Created—ADA. Firm Income—ADA. Household Net Income—ADA. Beneficiaries (Direct and Indirect)—ADA. Grant Agreements Signed—ADA. Increase in Gross Revenues of Portfolio Companies (PC). Increase in Portfolio Company Employees. Increase in Wages Paid to the Portfolio Company Employees. Portfolio Companies. Funds Disbursed to the Portfolio Companies.
Program Administration,* Due Diligence, Monitoring and Evaluation.	32,350,000	.....	13,002,625	
Pending subsequent reports**	.....	.....	0	

* November 2008, MCC and the Georgian government signed a Compact Amendment making up to $100 million of additional funds available to the Millennium Challenge Georgia Fund. These funds will be used to complete works in the Roads, Regional Infrastructure Development, and Energy Rehabilitation Projects contemplated by the original Compact. The Amendment has been ratified by the Georgian Parliament and will enter into force on January 30.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Vanuatu Year: 2009 Quarter 2 Total Obligation: $65,690,000 Entity to which the assistance is provided: MCA Vanuatu Total Quarterly Disbursement: $1,309,891				
Transportation Infrastructure Project.	$60,248,079	Facilitate transportation to increase tourism and business development.	$24,792,084	Number of International Tourists—Efate. Number of International Tourists—Santo. Number of Room Nights Occupied—Efate. Number of Room Nights Occupied—Santo. Average Annual Daily Traffic—Efate. Average Annual Daily Traffic—Santo. Kilometers of Road Upgraded—Efate. Kilometers of Roads Upgraded—Santo. Signed contracts for feasibility and/or design studies. % of contracted studies disbursed. Kilometers (km) of roads under design. Signed contracts for roads works. Kilometers (km) of roads under works contracts. % of contracted roads works disbursed.
Program Administration *, Due Diligence, Monitoring and Evaluation.	5,441,921	.....	2,454,062	
Pending subsequent reports **.	.....	.....	0	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Armenia Year: 2009 Quarter 2 Total Obligation: $235,650,000 Entity to which the assistance is provided: MCA Armenia Total Quarterly Disbursement: $2,449,637				
Irrigated Agriculture Project (Agriculture and Water).	$145,080,000	Increase agricultural productivity. Improve and Quality of Irrigation.	$16,645,565	Recovery of WUA operations and maintenance cost by water charges. Primary canals rehabilitated. Tertiary canals rehabilitated.

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Percent of contracted irrigation works disbursed. Value of signed contracts for irrigaiton works. Number of farmers using better on-farm water management. Number of farmers trained. Number of agribusinesses assisted. Value of agricultural loans to farmers/agribusinesses.
Rural Road Rehabilitation Project.	67,100,000	Better access to economic and social infrastructure.	6,947,791	Average annual daily traffic. International Roughness Index. Kilometers of roads rehabilitated. Percent of contracted roads works disbursed. Signed contracts for roads works. % of contracted studies disbursed. Kilometers (km) of roads under design. Signed contracts for feasibility and/or design studies. Kilometers (km) of roads under works contracts.
Program Administration *, Due Diligence, Monitoring and Evaluation.	23,470,000	.....	6,382,491	
Pending subsequent reports **.	.....	.....	905,268	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Benin Year: 2009 Quarter 2 Total Obligation: $307,298,040 Entity to which the assistance is provided: MCA Benin Total Quarterly Disbursement: $3,810,108				
Access to Financial Services.	$19,650,000	Expand Access to Financial Services.	$1,691,431	Volume of credits granted by the MFI Institutions. Volume of saving collected by the MFI Institutions. Average portfolio at risk >90 days of microfinance institutions at the national level. Operational self-sufficiency of MFIs at the national level. Average time required by CSSFD in treating MFI applications. Number of institutions receiving grants through the Facility. Second call for proposal for grants launched. Number of MFIs inspected by CSSFD.
Access to Justice	34,270,000	Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.	1,268,954	Average time to enforce a contract. % of firms reporting confidence in the judicial system. Number of cases processed at Arbitration Center per year. Number of IEC sessions hosted by CAMeC. Passage of new legal codes. Average time required for TPI to reach a final decision on a case. Average time required for Court of Appeals to reach a final decision on a case. % of cases resolved in TPI per year. % of cases resolved in Court of Appeals per year. Number of Court Inspections per year. Number of Court Employees trained. Number of beneficiaries of legal aid services. Complete construction on 9 new courthouses. Average time required to register a business (societe). Average time required to register a business (sole proprietorship). Number of businesses accessing CAMEC service. CFE Information and Outreach campaign executed throughout Benin.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Access to Land	36,020,000	Strengthen property rights and increase investment in rural and urban land.	8,134,864	Total value of investment in targeted urban land parcels. Total value of investment in targeted rural land parcels. Average cost required to obtain a new land title through on demand process. Average cost required to convert occupancy permit to land title through systematic process. Percentage of respondents perceiving land security in the PH–TF or PFR areas. Number of new land disputes reported by commune heads. Seven Studies complete. Land code texts adopted (laws, decrees and land code). $s of Equipment purchased. Number of land certificates issued within MCA-Benin implementation. Number of habitation permits converted to land titles. Number of CORS stations installed. Number of public and private surveyors trained. Number of Communes with new cadastres. Land market information system established.
Access to Markets	169,447,000	Improve Access to Markets Through Improvements to the Port of Cotonou.	5,154,597	Volume of merchandise traffic through the Port Autonome de Cotonou. Bulk ship carrier waiting times at the port. Container ship waiting times at the port. Port design-build contract awarded. Port crime levels (number of thefts). Internal port circulation time. Average time to clear customs. Execution rate of Training Plan. Port meets ISPS standards. Public Consultation completed (3). Environmental permits issued.
Program Administration *, Due Diligence, Monitoring and Evaluation.	47,911,040	.....	13,177,211	
Pending subsequent reports **.	.....	.....	283,061	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Ghana Year: 2009 Quarter 2 Total Obligation: $547,009,000 Entity to which the assistance is provided: MCA Ghana Total Quarterly Disbursement: $17,629,302				
Agriculture Project	$240,984,001	Enhance Profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.	$28,550,079	Number of Farmers Trained. # of agribusinesses assisted. # of hectares under production with MCC support. Value of agricultural loans to farmers/agribusinesses. Value of signed contracts for feasibility and/or design studies (irrigation). Percent of contracted (design/feasibility) studies complete (irrigation). Value of signed contracts for irrigation works (irrigation). Percent of contracted irrigation works dispersed. Percent of people aware of their land rights. Total number of parcels surveyed in the Pilot Land Registration Areas (PLRAs). Volume of products passing through post-harvest treatment.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Rural Development Project	101,288,000	Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.	3,426,652	Number of students enrolled in schools affected by Education Facilities Sub-Activity. # of Schools Rehabilitated. # of Basic school blocks constructed to MOE construction standards. # of Schools designed and diligenced. Distance to collect water. Time to collect water. Incidence of guinea worm. Average number of days lost due to guinea worm. Number of people affected by Water and Sanitation Facilities Sub-Activity. # of Stand-alone boreholes/wells/non-conventional water systems constructed/rehabilitated. # Small Town Water systems constructed. # of Pipe extension projects constructed. # of Stand-alone boreholes/wells/non-conventional water systems identified and diligenced for rehabilitation/construction. # of small town water systems designed and diligenced for construction. # of Pipe Extension Projects designed and diligenced for construction. Number of agricultural processing plants in target districts with electricity due to Rural Electrification Sub-Activity. # of electricity projects identified and diligenced.
Transportation	143,104,000	Reduce the transportation costs affecting agriculture commerce at sub-regional levels.	9,437,323	International Roughness Index. Annualized Average Daily Traffic. Kilometers of road completed. Percent of contracted road works disbursed. Value of signed contracts for road works. Kilometers of road designed. Percent of contracted design/feasibility studies completed. Value of signed contracts for feasibility and/or design studies. Travel time for walk-on passengers. Travel time for small vehicles. Travel time for trucks. Annual average daily traffic (vehicles). Annual average daily traffic (passengers). Landing stages rehabilitated. Ferry terminal upgraded. Rehabilitation of Akosombo Floating Dock completed. Percent of contracted work disbursed: landings and terminals. Value of signed contracts for works: ferry and floating dock. Value of signed contracts for works: landings and terminals.
Program Administration *, Due Diligence, Monitoring and Evaluation.	61,632,999	.....	13,126,304	
Pending subsequent reports **.	.....	.....	523,220	

Projects	Obligated	Objectives	Cumulative Disbursements	Measures
Country: El Salvador Year: 2009 Quarter 2 Total Obligation: $460,940,000 Entity to which the assistance is provided: MCA El Salvador Total Quarterly Disbursement: $5,561,591				
Human Development Project.	$95,073,000	Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities.	$4,195,718	Employment Rate of Graduates of Middle Technical Schools. Graduation Rates of Middle Technical Schools. Middle Technical Schools Remodeled and Equipped. Scholarships Granted to Students of Middle Technical Schools. Students of Non-formal Training. Cost of Water. Time Collecting Water. Households Benefiting with Water Solutions Built. Potable Water and Basic Sanitation Systems with Construction Contracts Signed. Cost of Electricity. Electricity Consumption. Households Benefiting with a Connection to the Electricity Network. Household Benefiting with the Installation of Isolated Solar Systems. Kilometers of New Electrical Lines with Construction Contracts Signed. Population Benefiting from Strategic Infrastructure. Community Infrastructure Works with Construction Contracts Signed.
Productive Development Project.	87,466,000	Increase production and employment in the Northern Zone.	9,251,628	Number of Hectares under Production with MCC Support. Number of Farmers Trained. Value of Agricultural Loans to Farmers/Agribusinesses. Number of Agribusinesses Assisted.
Connectivity Project	233,560,000	Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.	898,352	Average Annual Daily Traffic. International Roughness Index. Kilometers of Roads Rehabilitated. Kilometers of Roads under Works Contract. Signed contracts for roads works. Percent of contracted roads works disbursed.
Program Administration * and Control, Monitoring and Evaluation.	44,841,000	.....	8,283,746	
Pending Subsequent Report **.	.....	.....	0	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Mali Year: 2009 Quarter 2 Total Obligation: $460,811,164 Entity to which the assistance is provided: MCA Mali Total Quarterly Disbursement: $6,508,081				
Bamako Sénou Airport Improvement Project.	181,254,264	Establish an independent and secure link to the regional and global economy.	4,988,908	Total wage bill of tourism industry. Freight volume. Employment at Airport. Signature of Design Contract. Average Number of weekly flights (arrivals). Passenger traffic (annual average). Percent works complete. AIR A01 is launched. Time required for passenger processing at departures and arrivals. Passenger Satisfaction Level. Percent works complete. Percent of Airport Management and Maintenance Plan implemented. Airport meets FAA and ICAO security standards. Technical assistance delivered to project.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Alatona Irrigation Project ...	234,884,675	Increase the agricultural production and productivity in the Alatona zone of the ON.	5,802,873	Number of agricultural jobs created in Alatona zone. Main Season Rice yields. IRI index on the Niono-Goma Coura Route. Average Daily Vehicle Count. Percentage Works complete. Total irrigated land in the Alatona zone. Irrigation system efficiency on Alatona Canal. Kilometers of road under design/feasibility study. Value of signed constrates for road works. Kilometers of road under works contract. Percent Works complete on Main System construction. Percent of contracted irrigation works disbursed for tranche 1. Value of signed contracts for irrigation works. Value of signed contracts for feasibility and/or design studies. Percent of contracted (design/feasibility) studies disbursed. Area planted by New Settlers (wet season). Titles registered in the land registration office of the Alatona zone (for 5 or 10 hectare farms). Total Land payments made. Total market gardens allocated in Alatona zones (for PAPs). Decree transferring legal control of the project impact area is passed. Selection criteria for new settlers approved. Contractor implementing the ''Mapping of Agricultural and Communal Land Parcels'' contract is mobilized.
				School Enrollment Rate. Percent of Alatona population with access to drinking water. Number of schools available in the Alatona. Number of health centers available in the Alatona. Number of concessions that have been compensated. Resettlement Census verified. Adoption rate of improved agriculture techniques among PAPs. Number of operational mixed cooperatives. Area planted by PAPs (wet season rice). Area planted with Shallots during dry season. Number of farmers completing literacy training. Number of people completing the rice and shallot production techniques module. Number of farmers completing land titling training. Water Management System Design and Capacity Building Strategy implemented. Call for proposals for the Applied Research grants launched. Average portfolio at risk among Alatona Microfinance institutions. Average loan repayment rate of Alatona clients (Farmers organizations or individual farmers). Amount of credit extended to Alatona farmers. Number of Farmers accessing grant assistance for first loan from financial institutions. Financial Institution Partners Identified (Report on Assessment of the Financial Institutions in the ON zone).
Program Administration * and Control, Monitoring and Evaluation.	42,028,793	.....	9,676,913	
Pending Subsequent Report **.	.....	.....	201,395	

Projects	Obligated	Objectives	Cumulative Disbursements	Measures
Country: Mongolia Year: 2009 Quarter 2 Total Obligation: $284,911,363 Entity to which the assistance is provided: MCA Mongolia Total Quarterly Disbursement: $1,125,722				
Property Rights Project	$188,378,000	Increase security and capitalization of land assets held by lower-income Mongolians, and increased peri-urban herder productivity and incomes.	$63,280	Number of Studies Complete. Legal and Regulatory Reforms Adopted. Number of Landholders Reached by. Public Outreach Efforts. Personnel Trained. Number of Buildings. Rehabilitated/Constructed. Value of Equipment Purchased. Rural Hectares Mapped. Urban Parcels Mapped. Rural Hectares Formalized. Urban Parcels Formalized.
Rail Project	23,062,286	Increase rail traffic and shipping efficiency.	135,995	Increase in GDP due to rail improvements. Freight turnover. Mine traffic. Percent of wagons leased by private firms. Railway operating ratio. Customer satisfaction. Wagon time to destination. Average locomotive availability.
Vocational Education Project.	25,512,856	Increase employment and income among unemployed and under-employed Mongolians.	91,552	Rate of employment. Students completing newly designed long-term programs. Percent of active teachers receiving certification training. TVET Legislation Passed.
Health Project	17,027,119	Increase the adoption of behaviors that reduce non-communicable diseases (NCDIs) among target populations and improved medical treatment and control of NCDIs.	120,973	Diabetes and hypertension controlled. Percentage of cancer cases diagnosed in early stages. Road and Traffic Safety Activity Finalized and Key Interventions Developed.
Program Administration * and Control, Monitoring and Evaluation.	30,931,102	.....	3,330,223	
Pending subsequent reports **.	.....	.....	0	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Mozambique Year: 2009 Quarter 2 Total Obligation: $506,924,053 Entity to which the assistance is provided: MCA Mozambique Total Quarterly Disbursement: $2,239,252				
Water and Sanitation Project.	$203,585,393	Increase access to reliable and quality water and sanitation facilities.	$0	Number of productive days lost due to diarrhea illness (and other water-borne diseases). Time to get to non-private water source. Percent of urban population with improved water sources. Percent of urban population with improved sanitation facilities.

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Number of private household water connections in urban areas. Number of private household sanitation connections in urban areas. Number of standpipes in urban areas. Final Detailed Design for 5 towns submitted. Final Detailed Design for 3 cities submitted. Percent of rural population with access to improved water sources. Number of Rural Water points constructed. Final Design Report 1 (400 WP) submitted. Final Design Report II (200 Water points) submitted. IEA signed with AIAS.
Road Rehabilitation Project	176,307,480	Increase access to productive resources and markets.	16,946	Change in International Roughness Index (IRI). Average annual daily traffic volume. Kilometers of road rehabilitated. Kilometers of road under design. Percent of Namialo—Rio Lúrio Road—Metoro feasibility, design, & supervision contract disbursed. Percent of Rio Ligonha-Nampula feasibility, design, & supervision contract disbursed. Percent of Chimuara-Nicoadala feasibility, design, & supervision contract disbursed. Kilometers of roads under works contract. Percent of Namialo—Rio Lúrio Road construction contract disbursed. Percent of Rio Lúrio—Metoro Road construction contract disbursed. Percent of Rio Ligonha—Nampula Road construction contract disbursed. Percent of Chimuara-Nicoadala Road construction contract disbursed. Feasibility/ESA Studies, Design, Supervision, & Construction Contract for Namialo-Rio Lúrio-Metoro Road segment Signed. Feasibility/ESA Studies, Design, Supervision, & Construction Contract for Rio Ligonha-Nampula Road segment Signed. Feasibility/ESA Studies, Design, Supervision, & Construction Contract for Chimuara—Nicoadala Road signed. Time to get land usage rights (DUAT).
				Cost to get land usage rights (DUAT).
Land Tenure Services Project.	39,068,307	Establish efficient, secure land access for households and investors.	225,572	Total number of officials and residents reached with land strategy and policy awareness and outreach messages. Land Strategy Approved. Number of buildings rehabilitated or built. Total value of procured equipment and materials. Number of people trained. Rural hectares mapped in Site Specific Activity. Rural hectares mapped in Community Land Fund Initiative. Urban parcels mapped. Rural hectares formalized through Site Specific Activity. Rural hectares formalized through Community Land Fund Initiative. Urban parcels formalized. Number of communities delimited. Number of households having land formalized. Income from coconuts and coconut products. Survival rate of Coconut seedling.
Farmer Income Support Project.	17,432,211	Improve coconut productivity and diversification into cash crop.	543,018	Number of diseased or dead palm trees cleared. Number of coconut seedlings planted. Hectares under production. Number of farmers trained in pest and disease control.

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Number of farmers trained in crop diversification technologies. Contract for FISP implementation signed.
Program Administration * and Control, Monitoring and Evaluation.	70,530,662	.....	4,989,937	
Pending Subsequent Report **.		.....		
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Lesotho Year: 2009 Quarter 2 Total Obligation: $362,551,000 Entity to which the assistance is provided: MCA Lesotho Total Quarterly Disbursement: $3,656,687				
Water Project	$164,027,584	Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.	$2,738,852	School days lost due to water borne diseases. Diarrhea Notification at health centers. Time saved due to access to water source. Rural HH provided with access to improved water supply. Rural HH provided with access to improved ventilated latrines. Rural water points constructed. Number of new latrines built. Urban HH with access to potable water supply. Number of Enterprises connected to water network. Households connected to improved water network. Cubic meters of treated water from Metolong dam delivered through a conveyance system to WASA. Value of Water Treatment Contract Works Award. Value of Conveyance System Contract Work Award. Species population. Livestock grazing per area. Area put under conservation.
Health Project	122,398,000	Increase access to life-extending ART and essential health services by providing a sustainable delivery platform.	873,806	People with HIV still alive 12 months after initiation of treatment. TB notification (per 100,000 pop.). Proportion of blood units collected annually. Deliveries conducted in the Health Centers. Immunization coverage rate. Number of H/C Constructed and fully equipped. Value of Contract works for Health Center Construction. Percentage of Contract works for Health Center Construction disbursed. Percentage of Contract works for Botshalo Complex disbursed. Percentage of Contract works for OPD Centers disbursed. Percentage of HSS Contract disbursed. Proportion of PLWA receiving ARV treatment (by age & sex). Referred tests from Central laboratory per year by types (number).
Private Sector Development Project.	36,105,000	Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.	892,810	Average time (days) required to enforce a contract. Pending commercial cases. Cases filed at the commercial court. Value of commercial cases. Judicial staff trained. Administrative and clerical staff trained. Awareness campaigns. Portfolio of loans. Loan Processing time. Bank accounts. Paper based payments. Electronic payments. Value of Contract Service signed.

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Debit/Smart cards issued. Mortgage bonds registered. Value of registered mortgage bonds. New land disputes brought to the Land Tribunal and Courts of Law. Time to complete a land transaction. Time to complete transfer of land rights. Land transactions recorded. Land parcels formalized. Number of land administration personnel trained. Land Act adopted. People Trained on gender equality and economic rights. ID Cards Issued. Population registered in the National database.
Program Administration * and Control, Monitoring and Evaluation.	40,020,416	.....	5,827,255	
Pending Subsequent Report **.	.....	.....	160,485	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Morocco Year: 2009 Quarter 2 Total Obligation: $697,500,000 Entity to which the assistance is provided: MCA Lesotho Total Quarterly Disbursement: $1,762,214				
Fruit Tree Productivity	$300,898,445	Reduce volatility of agricultural production and increase volume of fruit agricultural production.	$2,261,026	Total annual volume of production of dates and olives. Cropped area covered by olive trees. Survival rate of newly planted olive trees after 2 years project-supported establishment period. Yield of rehabilitated olive trees. Cropped area covered by date trees. Yield of rehabilitated date palms.
Small Scale Fisheries	121,562,396	Improve quality of fish moving through domestic channels and assure the sustainable use of fishing resources.	0	State of fish stock. Domestic fish consumption level. Fisherman net revenue. Average fisherman sales price at PDA. Volume sold at wholesale markets. Fish sale price Average sales price. Volume of sales among mobile fish vendors.
Artisan and Fez Medina	111,873,858	Increase value added to tourism and artisan sectors.	0	Average revenue of potters receiving Artisan Production Activity. Employment and wages among Project graduates. Tourist arrivals. Artisan profits (artisans engaged in product finishing and points of sale). Employment created. SME value added.
Financial Services	46,200,000	Increase supply and decrease costs of financial services available to microenterprises.	65,657	Gross loan portfolio outstanding of microcredit associations. Portfolio at risk >30 days ratio. Operating Expense Ratio.
Enterprise Support	33,850,000	Improved survival rate of new SMEs and INDH-funded income generating activities; increased revenue for new SMEs and INDH-funded income generating activities.	0	Average annual sales of participating businesses. Survival rate of participating businesses.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Program Administration* and Control, Monitoring and Evaluation.	83,115,301		1,535,441	
Pending Subsequent Report**.	0		347,182	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Tanzania Year: 2009 Quarter 2 Total Obligation: $698,136,000 Entity to which the assistance is provided: MCA Tanzania Total Quarterly Disbursement: $367,342				
Energy Sector	$206,471,000	Increase value added to businesses.	$228,158	New Power Customers. Energy generation-Kigoma. Transmission capacity. Percentage disbursed for design and supervision contract (CE) year 1 budgeted.
Transport Sector	372,776,000	Increase cash crop revenue and aggregate visitor spending.	0	International Roughness Index (Tunduma, Tanga, Nantumbo, Peramiho). Average Annual Daily Traffic (Tunduma, Tanga, Nantumbo, Peramiho). Kilometers Upgraded/Completed (Tunduma, Tanga, Nantumbo, Peramiho). Percent Disbursed on Construction Works (Tunduma, Tanga, Nantumbo, Peramiho). Signed Contracts for Construction Works (Tunduma, Tanga, Nantumbo, Peramiho). Percent Disbursed for Feasibility and/or Design Studies (Tunduma, Tanga, Nantumbo, Peramiho). Signed Contracts for Feasibility and/or Design Studies (Tunduma, Tanga, Nantumbo, Peramiho). Kilometers of Roads Under Design (Tunduma, Tanga, Nantumbo, Peramiho). International Roughness Index (Zanzibar Rural Roads). Average Annual Daily Traffic (Zanzibar Rural Roads). Kilometers Upgraded/Completed(Zanzibar Rural Roads). Percent Disbursed on Construction Works (Zanzibar Rural Roads). Signed Contracts for Construction Works (Zanzibar Rural Roads). Percent Disbursed for Feasibility and/or Design Studies (Zanzibar Rural Roads). Signed Contracts for Feasibility and/or Design Studies (Zanzibar Rural Roads). Kilometers of Roads Under Design (Zanzibar Rural Roads). Passenger Arrivals. Percentage of upgrade complete (airport). Percent disbursed on Construction Works (airport). Signed contracts for Construction Works (airport).

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Water Sector Project	66,335,000	Increase investment in human and physical capital and to reduce the prevalence of water-related disease.	0	Prevalence of diarrhea (Dar es Salaam). Prevalence of diarrhea (Morogoro). Prevalence of cholera (Dar es Salaam). Prevalence of cholera (Morogoro). Volume of individual water consumption (Dar es Salaam). Volume of individual water consumption (Morogoro). Number of households using improved source for drinking water (Dar es Salaam). Number of households using improved source for drinking water (Morogoro). Number of businesses using improved water source (Dar es Salaam). Number of businesses using improved water source (Morogoro). Volume of water produced (Lower Ruvu). Volume of water produced (Morogoro). Volume of non-revenue water (Dar es Salaam). Operations and maintenance cost recovery ratio (Dar es Salaam). Operations and maintenance cost recovery ratio (Morogoro). Percent disbursed on Construction Works. Signed contracts for Construction Works.
Program Administration* and Control, Monitoring and Evaluation.	52,554,000	.....	667,690	
Pending Subsequent Report **.	0	.....	206,197	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Burkina Faso (CIF ONLY) Year: 2009 Quarter 2 Total Obligation: $16,101,065 Entity to which the assistance is provided: MCA Burkina Faso Total Quarterly Disbursement: $792,263				
Roads Project	$337,983	Enhance access to markets through investments in the road network.	$0	TBD
Rural Land Governance Project.	1,105,412	Increase investment in land and rural productivity through improved land tenure security and land management.	0	TBD
Agriculture Development Project.	4,771,602	Expand the productive use of land in order to increase the volume and value of agricultural production in project zones.	0	TBD
Bright 2 Schools Project	3,000,000	Increase primary school completion rates.	1,000,000	TBD
Program Administration* and Control, Monitoring and Evaluation.	6,886,068	.....	1,271,881	
Pending Subsequent Report**.	.....	.....	65,145	

For Quarterly Disbursements, the Bright 2 Schools Project has a negative value due to new OMB guidance to transfer this amount to USAID. This adjustment resulted in a $2 million decrease in cumulative disbursements for this country.

MCC has concluded a Compact with Burkina Faso providing up to $480,943,569 in development assistance which includes the CIF funding. At such time the Compact enters into force, the balance of the funds will be obligated and become available to Burkina Faso.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Namibia (CIF ONLY) Year: 2009 Quarter 2 Total Obligation: $19,543,175 Entity to which the assistance is provided: MCA Namibia Total Quarterly Disbursement: $0				
Education Project	$8,976,296	Improve the education sector's effectiveness, efficiency and quality.	$0	TBD
Tourism Project	2,475,145	Increase incomes and create employment opportunities by improving the marketing, management and infrastructure of Etosha National Park.	0	TBD
Agriculture Project	1,369,139	Sustainably improve the economic performance and profitability of the livestock sector and increase the volume of the indigenous natural products for export.	0	TBD
Program Administration* and Control, Monitoring and Evaluation.	6,722,595		0	
Pending Subsequent Report**.			0	

MCC has concluded a Compact with Namibia providing up to $304,477,816 in development assistance which includes the CIF funding. At such time the Compact enters into force, the balance of the funds will be obligated and become available to Namibia.

*Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.

**These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (09–059)]

National Environmental Policy Act (NEPA): Nuclear Spectroscopic Telescope Array (NuSTAR) Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 43321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has made a Finding of No Significant Impact (FONSI) with respect to the proposed NuSTAR mission. The proposed action would be the launch of the NuSTAR mission on a Pegasus XL launch vehicle from the Reagan Test Site (RTS) at U.S. Army Kwajalein Atoll (USAKA), the Republic of the Marshall Islands (RMI) in August 2011. The only other alternative that was considered in detail was No Action.

DATES: Written comments on this FONSI should be submitted to Mark Sistilli at the address provided below and must be postmarked no later than 30 days from publication of this FONSI. While hard copy comments are preferred, NASA will accept e-mail addressed to Mark Sistilli at the address provided below so long as the e-mail is sent no later than 30 days from publication of this FONSI.

ADDRESSES: The environmental documentation that supports and serves as a basis for this FONSI may be reviewed at the locations listed under the **SUPPLEMENTARY INFORMATION** in this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sistilli, NASA Headquarters, Science Mission Directorate, Astrophysics Division, NASA Headquarters, 300 E St., SW., Mail Suite 3Y33, Washington, DC 20546–0001, Phone: 202–358–2242, E-mail: *mark.j.sistilli@nasa.gov.*

SUPPLEMENTARY INFORMATION: The proposed NuSTAR spacecraft has been reviewed in accordance with the Routine Payload criteria established by the ''Final Environmental Assessment for Launch of NASA Routine Payloads on Expendable Launch Vehicles from Cape Canaveral Air Force Station Florida and Vandenberg Air Force Base California,'' (NRP EA) dated June 2002 and FONSI dated June 18, 2002. This review shows that the NuSTAR spacecraft meets all of the Routine Payload Criteria, with the exception of criteria 3 which specifies the launch vehicle and launch site conditions. The baseline launch vehicle for NuSTAR is the Pegasus XL, which is also covered under the Routine Payload criteria. However, the launch site proposed is USAKA, in the RMI. Council of Environmental Quality (CEQ) regulations encourages adoption of existing documents where applicable (''* * * an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3)''). In addition, NASA Procedural Requirements (NPR) 8580.1, section K.2.17 encourages the adoption of other agency existing NEPA documents. The environmental impacts of the launch of spacecraft from USAKA have been reported in previous NEPA documentation, therefore these NEPA documents are hereby incorporated by reference in this FONSI. This FONSI formally adopts existing FAA and DOD environmental documentation for Pegasus launches from USAKA.

At a minimum, NASA will take no final action prior to 30 days following the publication of this FONSI. Public comments on the environmental aspects of the proposed NuSTAR mission are hereby solicited and will be considered before NASA makes its final decision.

The NuSTAR mission was proposed and selected in response to NASA's Announcement of Opportunity for the Explorer Program in 2003. The Explorer program provides frequent, low-cost access to space missions for small-to mid-sized spacecraft. The Explorer program enables the definition, development and implementation of mission concepts through a variety of modes to meet the need of the scientific community and the NASA space science enterprise. NuSTAR's scientific goals include helping scientists answer fundamental questions about the universe, such as:

1. How black holes are distributed throughout the cosmos?
2. How the elements of the universe were created?
3. What powers the most extreme active galaxies?

With answers to these and other questions, NuSTAR would expand NASA's understanding of the origins and destinies of stars and galaxies.

NuSTAR would study the sky through the use of high energy x-rays. It consists of a single spacecraft which would be placed into an equatorial orbit around the Earth. The objective of the NuSTAR mission is to conduct a census for black holes on all scales, achieved through deep, wide-field surveys of extragalactic fields and the Galactic center, map radioactive material in young supernova remnants in order to study the birth of the elements and to understand how stars explode, to expose relativistic jets of particles from the most extreme active galaxies in order to understand what powers giant cosmic accelerators, to study cosmic ray origins and the extreme physics around collapsed stars and would respond to targets of opportunity including supernovae and gamma-ray bursts.

NuSTAR would achieve its science objectives with a combination of surveys and pointed observations. It would consist of a single instrument containing two identical grazing incidence hard X-ray telescopes that would effectively enlarge the X-ray collecting area. The grazing incidence mirrors would focus onto two shielded solid-state pixel detectors, separated by a mast that would extend the focal length to ten meters (33 feet) after launch. A laser metrology system (class 3B) would monitor the mast alignment and remove mast flexure that would ease mast stability requirements. The optics would extend the frequency range and field of view over that achievable with standard metal surfaces. Cadmium Zinc Telluride (CdZnTe) detectors would provide excellent spectral resolution and high quantum efficiency without requiring cryogenic operation. There would be a single mechanical interface to the 3-axis stabilized spacecraft bus provided by Orbital Sciences Corporation, who also manufactures the Pegasus launch vehicle. NuSTAR would launch from United States Army Kwajalein Atoll, Republic of the Marshall Islands, aboard a single Pegasus XL launch vehicle in August 2011.

NuSTAR Adoption of Existing Environmental Documentation Applicability

The Pegasus XL launch vehicle would be processed and the NuSTAR spacecraft would be integrated to the launch vehicle at Vandenberg Air Force Base (VAFB), California. The Pegasus would be attached to its dedicated L–1011 aircraft at VAFB, and then ferried to RTS for launch. Limited testing operations on the spacecraft would be conducted at RTS. On the day of launch, the L–1011/Pegasus would depart from RTS and then the Pegasus would be released from the L–1011 aircraft at an altitude of approximately 35,000 to 45,000 feet over the Pacific Ocean, at a point southwest of the Kwajalein Atoll.

RTS is located on the USAKA, a subordinate command of the U.S. Army Space and Missile Defense Command, located in the RMI, approximately 3,700 kilometers (2,000 nautical miles) southwest of Hawaii. USAKA consists of all or portions of 11 of the 100 islands that enclose a 2,850 square kilometer (1,100 square mile) lagoon, the largest lagoon in the world. Kwajalein is one of 11 islands in the Marshall Islands leased by the U.S. government.

The U.S. Department of Transportation (DOT) Federal Aviation Administration (FAA) has analyzed the potential impacts of Pegasus launches at RTS in previous documents (FAA, 1994, OSC, 1999, and FAA, 2004) and has determined that the activities associated with the Pegasus operations at RTS will not individually or cumulatively significantly impact the quality of the human or natural environment.

NASA has analyzed the potential impacts of missions with spacecraft that are considered routine payloads in an environmental assessment (NRP EA). Spacecraft defined as routine payloads utilize materials, quantities of materials, launch vehicles and operation characteristics that are consistent with normal and routine spacecraft preparation and flight activities. The environmental impacts of launching routine payloads fall within the range of routine, ongoing and previously documented impacts that have been determined not to be significant. Spacecraft covered by the NRP EA meet specific criteria ensuring that the spacecraft and its operation and decommissioning do not present any new or substantial environmental or safety concerns. The NuSTAR mission meets the criteria for a NASA routine payload (NASA, 2009) with the exception of criteria 3 concerning launch site conditions that are covered in DOT environmental documentation (FAA, 1994, OSC, 1999, and FAA, 2004). The mission does not present any unique or unusual circumstances that could result in new or substantial environmental impacts.

Based on the analyses set forth in the NRP EA and previous FAA documents, NASA has determined that the environmental impacts associated with the NuSTAR mission will not individually or cumulatively have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement is not required. In making this determination, NASA not only considered that the NuSTAR mission satisfies the criteria set forth in the NRP EA for spacecraft impacts, but it considered the potential site specific impacts of the NuSTAR mission set forth and detailed in the DOT documentation identified above.

The environmental documentation that supports and serves as a basis for this FONSI may be reviewed at the following locations:

Alele Public Library, P.O. Box 629, Majuro, Republic of the Marshall Islands 96960.

Grace Sherwood and Roi-Namur Libraries, P.O. Box 23, Kwajalein, Marshall Islands APO, A.P. 96555.

The environmental documentation may also be examined at the following locations by contacting the pertinent Freedom of Information Act Office:

(a) NASA, John F. Kennedy Space Center, FL 32899 (321–867–2745);

(b) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–3273);

(c) NASA, Dryden Flight Research Center, Edwards, CA 93523 (661–276–2704);

(d) NASA, Glenn Research Center at Lewis Field, Cleveland, OH 44135 (1–866–404–3642);

(e) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–4721);

(f) NASA, John C. Stennis Space Center, MS 39529 (228–688–2118);

(g) NASA, Lyndon B. Johnson Space Center, Houston, TX 77058 (281–483–8612);

(h) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497);

(i) NASA, Michoud Assembly Facility, New Orleans, LA 70189 (504–257–2629); and

(j) NASA, White Sands Test Facility, Las Cruces, NM 88004 (505–524–5024);

(k) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109.

Limited hard copies of the specific environmental documentation named below that supports this FONSI are available on a first-request basis by contacting Mark Sistilli at the address, telephone number, and e-mail address indicated wherein.

References

A complete list of all references cited in this rule is available on the Internet at *http://oim.hq.nasa.gov/oia/emd/ep.html* or by e-mailing a request to *nepa@hq.nasa.gov.*

Edward J. Weiler,

Associate Administrator for Science Mission Directorate.

[FR Doc. E9–15203 Filed 6–26–09; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0262]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–3037.

FOR FURTHER INFORMATION CONTACT: Margie Kotzalas, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 492–3202, e-mail *Margie.Kotzalas@nrc.gov,* or, R.A. Jervey, telephone (301) 251–7404, e-mail *Richard.Jervey@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information and methods that are acceptable to the NRC staff for implementing specific parts of the NRC'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.

The draft regulatory guide (DG), entitled, ''Guidance for Fuel Cycle Facility Change Processes,'' is temporarily identified by its task number, DG–3037, which should be mentioned in all related correspondence. DG–3037 will be a new regulatory guide.

Title 10 of the *Code of Federal Regulations,* Part 70, ''Domestic Licensing of Special Nuclear Material'' (10 CFR Part 70) contains the regulations for fuel cycle facility licensees that possess greater than a critical mass of special nuclear material and are engaged in enriched uranium processing, fabrication of uranium fuel or fuel assemblies, uranium enrichment, enriched uranium hexafluoride conversion, plutonium processing, and fabrication of mixed-oxide fuel or fuel assemblies.

Subsection (a) of 10 CFR 70.72, ''Facility changes and change process,'' requires that fuel cycle facility licensees establish a configuration management system to evaluate, implement, and track each change to the site, structures, processes, systems, equipment, components, computer programs, and activities of personnel. Such changes may be made by the licensee without prior approval of the NRC, provided that the changes meet the criteria of 10 CFR 70.72(c). DG–3037 provides guidance on how to meet the requirements of 10 CFR 70.72(c).

II. Further Information

The NRC staff is soliciting comments on DG–3037. Comments may be accompanied by relevant information or supporting data and should reference DG–3037 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. Mail comments to: Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. E-mail comments to: *nrcrep.resource@nrc.gov*.

Requests for technical information about DG–3037 may be directed to the NRC contact, Margie Kotzalas at (301) 492–3202 or e-mail to *Margie.Kotzalas@nrc.gov*.

Comments would be most helpful if received by August 17, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–3037 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML091200493.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is 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, Maryland, this 22nd day of June, 2009. For the Nuclear Regulatory Commission.

M.P. Orr,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–15279 Filed 6–26–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28769; File No. 812–13633]

Embarcadero Funds, Inc., et al.; Notice of Application

June 22, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'' or ''1940 Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them

to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Embarcadero Funds, Inc. (the ''Company'') and Van Wagoner Capital Management, Inc. (the ''Adviser'').

FILING DATES: The application was filed on February 18, 2009, and amended on June 15, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 17, 2009 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, Three Embarcadero Center, Suite 1100, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Attorney, at (202) 551–6990, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company, a Maryland corporation organized as a series investment company, is registered under the Act as an open-end management investment company and currently consists of five series: The All-Cap Growth Fund, Small-Cap Growth Fund, Alternative Strategies Fund, Absolute Return Fund and Market Neutral Fund (each a ''Fund'' and collectively, the ''Funds'').[1] Each series has separate investment objectives, policies and restrictions. The Adviser, a Delaware corporation, is an investment adviser registered under the Investment Advisers Act of 1940, as amended (''Advisers Act''). The Adviser serves as investment adviser to all five series of the Company under investment advisory agreements with the Company (''Advisory Agreements''). The Advisory Agreements have been approved by the shareholders of each Fund and by the board of directors of the Company (''Board''), including a majority of those directors who are not ''interested persons'' of the Company or the Adviser as defined in section 2(a)(19) of the Act (''Independent Directors'').

2. Under the terms of the Advisory Agreements, the Adviser shall, subject to and in accordance with the investment objective and policies of a Fund and any directions which the Board may issue to the Adviser, have overall responsibility for the general management and investment of the assets and securities portfolios of the Fund. For the investment management services it provides to each Fund, the Adviser receives from that Fund the fee specified in the Advisory Agreements, payable monthly at an annual rate based the average daily net assets of the Fund. The Advisory Agreements permit the Adviser, to delegate certain asset management responsibilities to one or more subadvisers (''Subadvisers''). The Adviser has entered or intends to enter into investment subadvisory agreements (''Subadvisory Agreements'') with various Subadvisers to provide investment advisory services to four of the Funds.[2] Each Subadviser is, and any future Subadviser will be, registered as an investment adviser under the Advisers Act. The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, retention or termination. Subadvisers recommended to the Board by the Adviser are selected and approved by the Board, including a majority of the Independent Directors. Subadvisers have discretionary authority to invest the assets or a portion of the assets of a particular Fund. The Adviser will compensate each Subadviser out of the fees paid to the Adviser under the Advisory Agreements.

3. Applicants request an order to permit the Adviser, subject to Board approval, to select certain Subadvisers and materially amend an existing Subadvisory Agreement without obtaining shareholder approval. The requested relief will not extend to any Subadviser who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Company or of the Adviser, other than by reason of serving as a Subadviser to one or more Funds (''Affiliated Subadviser'').

4. Applicants also request an exemption from the various disclosure provisions described below that may require the Funds to disclose fees paid by the Adviser to each Subadviser. An exemption is requested to permit the Company to disclose for each Subadvised Fund (as both a dollar amount and as a percentage of the Subadvised Fund's net assets): (i) The aggregate fees paid to the Adviser and any Affiliated Subadviser, if any; and (ii) the aggregate fees paid to Subadvisers other than Affiliated Subadvisers (collectively, the ''Aggregate Fee Disclosure''). Any Subadvised Fund that employs an Affiliated Subadviser will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and

[1] Applicants also request relief with respect to existing and future series of the Company and any other existing or future registered open-end management investment company or series thereof that: (i) Is advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser or its successors; (ii) uses the management structure described in this application; and (iii) complies with the terms and conditions of this application (together with the Funds that use Subadvisers, as defined below, the ''Subadvised Funds''). For purposes of the requested order, ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. If the name of any Subadvised Fund contains the name of a Subadviser, the name of the Adviser or the name of the entity controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to the Subadvised Fund will precede the name of the Subadviser.

[2] The Adviser may enter into Subadvisory Agreements in the future to provide investment advisory services to the fifth fund, the Alternative Strategies Fund.

amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders rely on the Adviser's experience to select one or more Subadvisers best suited to achieve the Subadvised Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Subadvised Funds, and may preclude the Fund from acting promptly in a manner considered advisable by the Adviser and the Board. Applicants note that each Subadvised Fund's Advisory Agreements and Subadvisory Agreements with Affiliated Subadvisers (if any) will continue to be subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that many investment advisers use a ''posted'' rate schedule to set their fees. Applicants state that while investment advisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the relief requested to use Aggregate Fee Disclosure will encourage potential Subadvisers to negotiate lower subadvisory fees with the Adviser.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Fund may rely on the order requested in the application, the operation of the Subadvised Fund in the manner described in the application will be approved by a majority of the Subadvised Fund's outstanding voting securities, as defined in the Act, or, in the case of a Subadvised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Subadvised Fund's shares to the public.

2. The prospectus for each Subadvised Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Subadvised Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Subadviser, the affected Subadvised Fund's shareholders will be furnished all information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Subadviser. To meet this obligation, a Subadvised Fund will provide shareholders within 90 days of the hiring of a new Subadviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Fund.

5. At all times, at least a majority of the Board will be Independent Directors, and the nomination of new or additional Independent Directors will be placed within the discretion of the then-existing Independent Directors.

6. When a Subadviser change is proposed for a Subadvised Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Subadvised Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Directors. The selection of such counsel will be within the discretion of the then existing Independent Directors.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per-Subadvised Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

9. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets and, subject to review and approval of the Board, will: (i) Set each Subadvised Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisers to manage all or part of a Subadvised Fund's assets; (iii) when appropriate, allocate and reallocate a Subadvised Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of Subadvisers; and (v) implement procedures reasonably designed to

ensure that the Subadvisers comply with each Subadvised Fund's investment objective, policies and restrictions.

11. No director or officer of the Company, or director or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for: (i) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

12. Each Subadvised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. In the event the Commission adopts a rule under the 1940 Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–15225 Filed 6–26–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60154; File No. SR–CTA–2008–01]

Consolidated Tape Association; Notice of Filing of the Eleventh Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan To Waive the Automatic Annual Increase in the Enterprise Cap for 2008

June 19, 2009.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on June 7, 2009, the Consolidated Tape Association (''CTA'') Plan Participants (''Participants'')[3] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Second Restatement of the CTA Plan (the ''CTA Plan'').[4] The proposal represents the eleventh charges amendment to the Plan (''Eleventh Charges Amendment'') and reflects changes unanimously adopted by the Participants. The Eleventh Charges Amendment would waive the Automatic Annual Increase for 2008 in the maximum monthly charge that a broker-dealer is required to pay in respect of the aggregate amount of Network A display-device charges and per-quote-packet charges that a broker-dealer pays in respect of nonprofessional subscribers that maintain brokerage accounts with the broker-dealers (the ''Enterprise Cap''). The Commission is publishing this notice to solicit comments from interested persons on the proposed Eleventh Charges Amendment to the CTA Plan.

I. Rule 608(a)

A. Description and Purpose of the Amendment

The Plan currently caps the maximum monthly charge that a broker-dealer is required to pay in respect of the aggregate amount of: (1) Network A display-device charges for devices that the broker-dealer's officers, partners and employees use; plus (2) Network A display-device and per-quote-packet charges that the broker-dealer pays in respect of services that it provides to nonprofessional subscribers that are brokerage account customers of the broker-dealer.[5]

Footnote 5 to Schedule A–1 of Exhibit E to the CTA Plan subjects the Enterprise Cap to an automatic annual increase. The automatic annual increase is equal to ''the percentage increase in the annual composite share volume for the preceding calendar year, subject to a maximum annual increase of five percent.''

Through this amendment, the Participants propose to amend the CTA Plan to waive the automatic annual increase in the Enterprise Cap for 2008. As a result, the monthly fee will remain at $660,000 for 2008, the same amount as for 2007. The waiver applies to the Enterprise Cap only, and not to the ''Television Ticker Maximum,'' also set forth in Footnote 6 to Schedule A–1 of Exhibit E to the CTA Plan. The amendment also proposes to update Footnote 6 by applying the automatic annual increase to the ''Television Ticker Maximum,'' by bringing that monthly fee to $157,000 for 2008.

The text of the proposed Amendment is available on the CTA's Web site (*http://www.nysedata.com/cta*), at the principal office of the CTA, and at the Commission's Public Reference Room.

B. Additional Information Required by Rule 608(a)

1. Governing or Constituent Documents

Not applicable.

2. Implementation of the Amendment

The Participants propose to implement the change upon receipt of Commission approval of the Amendment.

3. Development and Implementation Phases

See Item I(B)(2) above.

4. Analysis of Impact on Competition

The amendment will impose no burden on competition.

5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the CTA Plan as a result of the amendment.

6. Approval by Sponsors in Accordance With Plan

Under Section IV(b) of the CTA Plan, each Plan Participant must execute a written amendment to the CTA Plan before the amendment can become effective. The amendment is so executed.

7. Description of Operation of Facility Contemplated by the Proposed Amendment

a. Terms and Conditions of Access

Not applicable.

b. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

c. Method of Frequency of Processor Evaluation

Not applicable.

d. Dispute Resolution

Not applicable.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each Participant executed the proposed amendment. The Participants are the American Stock Exchange LLC (n/k/a NYSE Amex LLC); Boston Stock Exchange, Inc. (n/k/a NASDAQ OMX BX, Inc.); Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC (''NYSE''); NYSE Arca, Inc.; and Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.).

[4] The proposal was originally submitted on June 19, 2008. However, it was refiled on June 7, 2009 with appropriate exhibits.

[5] Enterprise Cap found in Schedule A–1 of Exhibit E to the CTA Plan.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall be Required by the Plan.

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Eleventh Charges Amendment 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–CTA–2008–01 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–CTA–2008–01. 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 Plan amendment that are filed with the Commission, and all written communications relating to the Plan amendment 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 CTA Plan amendment also will be available for inspection and copying at the principal office of the CTA. 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–CTA–2008–01 and should be submitted on or before July 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–15223 Filed 6–26–09; 8:45 am]

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[6] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60156; File No. SR–Phlx–2009–46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to $1 Strikes for Reduced Value Nasdaq 100 Options (MNX)

June 22, 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 12, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rules 1012 (Series of Options Open for Trading) and 1101A (Terms of Options Contracts) to allow the Exchange to list options that are based on 1/10th the value of the Nasdaq-100 Index and are known as Reduced Value Nasdaq 100 Options, at $1 strike price intervals.

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 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 the proposed rule change is to amend Phlx Rules 1012 (Series of Options Open for Trading) and 1101A (Terms of Options Contracts) by adding a new interpretation that would allow the Exchange to list options that are based on 1/10th the value of the Nasdaq-100 Index (''NDX'') and are known as Reduced Value Nasdaq 100 Options (''MNX'' or ''Mini-NDX''), at $1 or greater strike price intervals.[4]

Specifically, the Exchange proposes that the minimum strike price interval Mini-NDX options will be $1 or greater. The Exchange believes that $1 strike price intervals in Mini-NDX option series will provide investors with greater flexibility by allowing them to

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Currently, under subsection (a)(xxxiv) to Rule 1001A, the Exchange has authority to list Mini-NDX options at $2.50 strike price intervals.

establish positions that are better tailored to meet their investment objectives. The rule changes proposed herein are consistent with existing rules and practices that allow other options exchanges to list and trade Mini-NDX options at $1 or greater strike price intervals.[5]

For initial series, the Exchange would list at least two strike prices above and two strike prices below the current value of the MNX at or about the time a series is opened for trading on the Exchange. As part of this initial listing, the Exchange would list strike prices that are within five (5) points from the closing value of the MNX on the preceding day.

As for additional series, the Exchange would be permitted to add additional series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the underlying MNX moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing value of the MNX. The Exchange would also be permitted to open additional strike prices that are more than 30% above or below the current MNX value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account would not be considered when determining customer interest. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series in Mini-NDX options. In addition, the Exchange confirms that it shall not list LEAPS on Reduced Value Nasdaq 100 Options at intervals less than $2.50.[6]

The Exchange is also proposing to set forth a delisting policy with respect to Mini-NDX options. Specifically, the Exchange would, on a monthly basis, review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of the MNX and delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in Mini-NDX options in series eligible for delisting shall be granted.

Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed Mini-NDX options.

It is expected that the proposed delisting policy for Mini-NDX options will be adopted by other options exchanges that list and trade Mini-NDX options.

The Exchange also proposes to add new Commentary .09 to Rule 1012, which would be an internal cross reference stating that the intervals between strike prices for Mini-NDX option series would be determined in accordance with proposed new Commentary .02 to Rule 1101A.

Phlx has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes or greater for Mini-NDX options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing the Exchange to list Reduced Value Nasdaq 100 Options at $1 strike price intervals.

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 solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative, so that the Exchange may, for competitive reasons, list Reduced Value Nasdaq 100 Options at the same $1 strike price intervals currently listed by other option exchanges. The Commission believes such waiver is consistent with the protection of investors and the public interest.[11] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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,

[5] *See* Securities Exchange Act Release Nos. 58924 (November 10, 2008), 73 FR 68464 (November 18, 2008) (SR–CBOE–2008–96) (approval order); 58997 (November 21, 2008), 73 FR 72887 (December 1, 2008) (SR–ISE–2008–88) (notice of filing and immediate effectiveness); and 59129 (December 22, 2008), 73 FR 79945 (December 30, 2008) (SR–BSE–2008–57) (notice of filing and immediate effectiveness).

[6] This is consistent with Rule 1101A(a)(xxxv).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2009–46 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–2009–46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–Phlx–2009–46 and should be submitted on or before July 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–15224 Filed 6–26–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60144; File No. SR–OCC–2009–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Ancillary Fee Changes

June 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 28, 2009, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act[2] and Rule 19b–4(f)(2)[3] thereunder so that the proposal was 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 proposed rule change would (i) reduce ancillary service fees charged to Tier I, II, III, and IV clearing members and (ii) reduce leased line charges for subscribing clearing members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of this rule change is to effect certain fee changes with respect to OCC's ancillary services program.

In addition to clearing and settlement services, OCC provides its clearing members with a number of ancillary services, which range from on-line access to OCC systems to report and data distribution offerings. Hardware and communication lines support these ancillary service offerings. In August 2002, OCC implemented a four-tiered fee structure for its ancillary services with a different bundle of services offered at a fixed cost for each tier and revised its leased line charges for subscribing clearing members.[5] OCC periodically reviews these fees based on changes in costs, infrastructure, and operational changes.[6]

Pursuant to such a review, effective June 1, 2009, OCC will reduce the fixed monthly ancillary fees charged to Tier I, II, III, and IV clearing members and the leased line charges for subscribing clearing members. The following chart summarizes the ancillary services associated with each tier and the related fee changes:

Tier	Ancillary services	Cost	
		Previous	June 2009
I	ENCORE Access MyOCC Access Data Service—proprietary position and trade data (includes transmission to service bureau) Report Bundle Series File Open Interest File	$2,100/month	$1,500/month.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s–1(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

[4] The Commission has modified parts of these statements.

[5] Securities Exchange Act Release No. 46339 (August 12, 2002), 67 FR 53828 (August 19, 2002) (File No. SR–OCC–2002–17).

[6] For example, in 2006 OCC reduced the tiered fee structure to reflect changes in infrastructure and disaster recovery protocols. Securities Exchange Act Release No. 53812 (May 16, 2006), 71 FR 29699 (May 23, 2006) (SR–OCC–2006–03).

Tier	Ancillary services	Cost	
		Previous	June 2009
	Prices File		
	Stock Loan File		
	Theoretical Profit and Loss Values		
	Leased line charges are additional		
	Additional clearing numbers	$850/clearing number/month.	No Additional Charge.
II	ENCORE Access	$1,650/month	$1,000/month.
	MyOCC Access		
	Data Service—proprietary position and trade data (includes transmission to service bureau)		
	Report Bundle		
	Leased line charges are additional		
III	ENCORE Access	$950/month	$650/month.
	MyOCC Access		
IV (Stock Loan Only)	ENCORE Access	$400/month	$300/month.
	MyOCC Access		

Monthly leased line charges	Previous	June 2009
T1 line to a Midwest clearing member	$1,500	$1,000
T1 line to an East Coast clearing member	2,500	1,500
T1 line to a West Coast clearing member	3,500	2,000

OCC's Schedule of Fees as of June, 2009, which reflects the foregoing changes, is attached as Exhibit 5 to Filing No. OCC–2009–11.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been 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 [7] and Rule 19b–4(f)(2) [8] promulgated thereunder because the proposal changes a due, fee, or other charge applicable only to a member. At any time within sixty 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.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

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–OCC–2009–11 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–OCC–2009–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. 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–OCC–2009–11 and should be submitted on or before July 20, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–15226 Filed 6–26–09; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 60163; File No. SR–BX–2009–025]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change To Retroactively Amend the Fee Schedule To Clarify and Correct References to the Volume Discount Given to Market Makers

June 23, 2009.

On May 8, 2009, NASDAQ OMX BX, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Fee Schedule of the Boston Options Exchange Group, LLC (''BOX'') on a retroactive basis to clarify and correct references relating to the volume discount (''Volume Discount'') given to Market Makers. The proposed rule change was published for comment in the **Federal Register** on May 21, 2009.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

The Exchange proposes to amend Section 3 of the BOX Fee Schedule, dealing with Market Maker Trading Fees, on a retroactive basis. BOX currently applies, and historically has applied, a Volume Discount to the fees charged to BOX Market Makers who engage in particularly active trading volume on BOX. The proposed changes will clarify and correct the Fee Schedule to reflect that trading volume in options classes included within the Liquidity Make or Take Pricing Structure (''Make or Take''), as set forth in Section 7 of the BOX Fee Schedule, is excluded when determining a Market Maker's Volume Discount.[4] The text explicitly stating this used to be included in the BOX Fee Schedule, but was inadvertently removed in a prior filing, SR–BSE–2007–52.[5] The Exchange requests that the proposed rule change be made effective retroactive to November 30, 2007, which is the date of filing and effectiveness of SR–BSE–2007–52.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission believes that the proposal to retroactively modify the Exchange's fee schedule such that trading volume in options classes included within the Make or Take is excluded when determining a Market Maker's Volume Discount it is consistent with and Section 6(b)(4) of the Act,[7] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that the Exchange has represented that the inadvertent elimination of the language in question from the BOX Fee Schedule on November 30, 2007 did not alter BOX Market Makers' understanding that Make or Take volume was excluded from the calculation of the Volume Discount. The Commission also notes that the proposed change is intended to eliminate any gap in the actual treatment of Make or Take volume when calculating the Volume Discount. Accordingly, the Commission believes that the proposed changes to Section 3 of the BOX Fee Schedule do not raise any new or novel issues and merely are designed to accurately reflect the fee structure the Exchange and its participants understood to be in effect.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–BX–2009–025), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–15268 Filed 6–26–09; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59919 (May 14, 2009), 74 FR 23915 (May 21, 2009).

[4] Make or Take volume is excluded when determining a Market Maker's monthly trading volume for purposes of the Volume Discount and is not eligible to have a Volume Discount applied to it.

[5] *See* Securities Exchange Act Release No. 56948 (December 12, 2007), 72 FR 72426 (December 20, 2007) (SR–BSE–2007–52).

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60158; File No. SR–BX–2009–028]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Adopt Rules To Implement the Options Order Protection and Locked/Crossed Market Plan

June 22, 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 16, 2009, the NASDAQ OMX BX, Inc. (''BX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rules of the Boston Options Exchange Group, LLC (''BOX'') to reflect the Exchange's filing to become a participant in the proposed Options Order Protection and Locked/Crossed Market Plan (''Decentralized Plan''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt certain rules and definitions necessary to implement the proposed Decentralized Plan. The proposed definitions and rules will replace current Chapter XII of the BOX Rules in its entirety. The proposed rule changes will also amend various other BOX Rules to accommodate the Decentralized Plan.

Background of the Decentralized Plan and Implementing Rules

The Exchange is presently a party to the Plan for the Purpose of Creating and Operating an InterMarket Option Linkage (''Linkage Plan'').[3] The purpose of the Linkage Plan is to enable the options exchanges to act jointly in planning, developing, operating and regulating the systems and data communications network that electronically links the options exchanges to one another.[4] Accordingly, current Chapter XII of the BOX Rules contains rule text adopted specifically to achieve the purpose of the Linkage Plan.

The Exchange proposes to amend Chapter XII of the BOX Rules, as necessary, to reflect the Exchange's filing to become a plan participant (''Plan Participant'') in the proposed Decentralized Plan.[5] Unlike the Linkage Plan which exclusively required use of the OCC Hub, the purpose of the Decentralized Plan is to enable the Plan Participants thereto to act jointly in establishing a framework for a non-exclusive method of providing and achieving order protection and addressing Locked and Crossed Markets in Eligible Options Classes. If approved, the Decentralized Plan would completely replace the current Linkage Plan.

Operation of the Decentralized Plan

The Decentralized Plan essentially would apply the Regulation NMS[6] price-protection provisions to the options markets. Similar to Regulation NMS, the Decentralized Plan would require Plan Participants to adopt rules ''reasonably designed to prevent Trade-Throughs'', while exempting Intermarket Sweep Orders (''ISOs'') from that prohibition.[7] The proposed definition of an ISO is essentially the same as under Regulation NMS.[8] The remaining exceptions to the trade-through prohibition, discussed more specifically below, either track those under Regulation NMS or correspond to unique aspects of the options market, or both.

Description of the Implementing Rules

The proposal seeks to include rule text and definitions for certain terms within Chapter XII designed to accomplish the purpose of the new Decentralized Plan. As proposed, current Chapter XII rule text will be removed and replaced completely with new Chapter XII rule text titled ''Order Protection; Locked and Crossed Markets''. The proposed 'new' Chapter XII will contain the following rules:

Chapter XII, Section 1—Definitions

The proposed rule change incorporates all the operative definitions from the Decentralized Plan into the BOX Rules. With one exception, the parties to the Decentralized Plan derived all such definitions either from the Linkage Plan[9] or Regulation NMS.[10] The one exception is the definition of ''Complex Trade'' in Section 1(d). A ''Complex Trade'' is exempt from trade-through liability. The exemption in the Linkage Plan simply refers to complex trades ''as that term may be defined by the [Linkage] Operating Committee from time to time.'' Based on that provision, the Exchange adopted current Chapter XII, Section 1(c) of the BOX Rules, which is substantially identical to the rules of the other options exchanges. The Exchange proposes to carry forward that definition unchanged into the new proposed Chapter XII.

Chapter XII, Section 2—Order Protection

Proposed Chapter XII, Section 2(a) provides that, subject to certain specified exceptions, Options Participants shall not effect trade-throughs. Proposed paragraph (b) provides for the following trade-through exceptions:

- *System Issues:* Section 5(b)(i) of the proposed Decentralized Plan corresponds to the system-failure exception in Regulation NMS[11] for equity securities and permits trading through an Eligible Exchange that is experiencing system problems.
- *Trading Rotations:* Section 5(b)(ii) of the proposed Decentralized Plan carries forward the current Trade-Through exception in the Linkage Plan[12] and is the options equivalent to the single price opening exception in Regulation NMS for equity securities.[13] Options exchanges use a trading rotation to open an option for trading, or to reopen an option after a trading halt. The rotation is effectively a single price auction to price the option and there are no practical means to include prices on other exchanges in that auction.
- *Crossed Markets:* Section 5(b)(iii) corresponds to the crossed quote exception in Regulation NMS for equity securities.[14] If a Protected Bid is higher than a Protected Offer, it indicates that there is some form of market dislocation or inaccurate quoting. Permitting transactions to be executed without regard to Trade-Throughs in a Crossed Market will allow the market to quickly return to equilibrium.
- *Intermarket Sweep Orders (''ISOs''):* These two exceptions correspond to the ISO exceptions in Regulation NMS for

[3] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (File No. 4–429) (Order approving the Linkage Plan and the original parties thereto). The Exchange became a party to the Linkage Plan on January 14, 2004 by executing a copy of said Linkage Plan with the Commission as well as completing the other steps required. Terms not otherwise defined herein shall have the meaning assigned to them in the BOX Rules, the Decentralized Plan, or the Linkage Plan, respectively.

[4] The systems and data communications network that link electronically the Eligible Exchanges for the purposes specified in the former Linkage Plan shall be referred to as the ''OCC Hub''. *See* proposed Chapter XII, Section 4(g)(3) of the BOX Rules. *See also* proposed Chapter I, Section 1(a)(35) of the BOX Rules.

[5] *See* Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4–546) (Joint Industry Plan; Notice of Filing of Proposed Options Order Protection and Locked/Crossed Market Plan). The Exchange will also seek, upon approval of the Exchange's participation in the Decentralized Plan, the Commission's approval to contemporaneously withdraw from the Linkage Plan. This proposed rule change, if approved, will become effective upon the Exchange's withdrawal from the current Linkage Plan and the effectiveness of the new Decentralized Plan.

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[7] *See* Sections 5(a)(i) and 5(b)(iv) of the proposed Decentralized Plan. *See also* proposed Chapter XII, Section 2(b)(4) of the BOX Rules.

[8] *See* Section 2(9) of the proposed Decentralized Plan. *See also* proposed Chapter XII, Section 1(g) of the BOX Rules which, as proposed, defines the term ISO as ''a Limit Order for an options series that, simultaneously with the routing of the ISO, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a Limit order to sell, or any Protected Offer, in the case of a Limit order to buy, for the options series with a price that is superior to the limit price of the ISO''.

[9] *See e.g.* the definitions of ''Broker/Dealer'' in Section 1(c), ''NBBO'' in Section 1(i), ''Non-Firm'' in Section 1(j), and ''OPRA Plan'' in Section 1(k).

[10] *See e.g.* the definitions of ''Best Bid'' and ''Best Offer'' in Section 1(a), ''Bid'' or ''Offer'' in Section 1(b), ''Intermarket Sweep Order (''ISO'')'' in Section 1(g), and ''Quotation'' in Section 1(p).

[11] *See* Rule 611(b)(l) under the Exchange Act.

[12] *See* Section 8(c)(iii)(E) of the Linkage Plan.

[13] *See* Rule 611(b)(3) under the Exchange Act.

[14] *See* Rule 611(b)(4) under the Exchange Act.

equity securities.[15] Section 5(b)(iv) of the proposed Decentralized Plan permits a Plan Participant to execute orders it receives from other Plan Participants or members that are marked as ISO even when it is not at the NBBO. Section 5(b)(v) of the proposed Decentralized Plan allows a Plan Participant to execute inbound orders when it is not at the NBBO, provided it simultaneously ''sweeps'' all better-priced interest displayed by Eligible Exchanges.

• *Quote Flickering:* Section 5(b)(vi) of the proposed Decentralized Plan corresponds to the flickering quote exception in Regulation NMS for equity securities.[16] Options quotations change as rapidly, if not more rapidly, than equity quotations. Indeed, they track the price of the underlying security and thus change when the price of the underlying security changes. This exception provides a form of ''safe harbor'' to market participants to allow them to trade through prices that have changed within a second of the transaction causing a nominal Trade-Through.

• *Non-Firm Quotes:* Section 5(b)(vii) of the proposed Decentralized Plan carries forward the current non-firm quote Trade-Through exception in the Linkage Plan.[17] By definition, an Eligible Exchange's quotations may not be firm for automatic execution during this trading state and thus should not be protected from Trade-Throughs. In effect, these quotations are akin to ''manual quotations'' under Regulation NMS.

• *Complex Trades:* Section 5(b)(viii) of the proposed Decentralized Plan carries forward the current complex trade exception in the Linkage Plan [18] and will be implemented through rules adopted by the Plan Participants and approved by the Commission. Complex trades consist of multiple transactions (''legs'') effected at a net price, and it is not practical to price each leg at a price that does not constitute a Trade-Through. Narrowly-crafted implementing rules will ensure that this exception does not undercut Trade-Through protections.

• *Customer Stopped Orders:* Section 5(b)(ix) of the proposed Decentralized Plan corresponds to the customer stopped order exception in Regulation NMS for equity securities.[19] It permits broker dealers to execute large orders over time at a price agreed upon by a customer, even though the price of the option may change before the order is executed in its entirety.[20]

• *Stopped Orders and Price Improvement:* Section 5(b)(x) of the proposed Decentralized Plan would apply if an order is stopped at price that did not constitute a Trade-Through at the time of the stop. In this case, an exchange could seek price improvement for that order, even if the market moves in the interim, and the transaction ultimately is effected at a price that would trade through the then currently-displayed market. This exception would be particularly useful for executions effected pursuant to such mechanisms as BOX's Price Improvement Period (''PIP'').[21]

• *Benchmark Trades:* Section 5(b)(xi) of the proposed Decentralized Plan would cover trades executed at a price not tied to the price of an option at the time of execution, and for which the material terms were not reasonably determinable at the time of the commitment to make the trade. An example would be a volume-weighted average price trade, or ''VWAP''. This corresponds to a Trade-Through exemption in Regulation NMS for equity trades.[22] BOX does not currently permit these types of options trades, and any transaction-type relying on this exemption would require the Plan Participant to adopt implementing rules, subject to Commission review and approval.

Chapter XII, Section 3—Locked and Crossed Markets

The proposed Decentralized Plan also addresses locked and crossed markets.[23] Similar to Regulation NMS, the proposed Decentralized Plan requires the Plan Participants to adopt, maintain and enforce rules requiring exchange Options Participants: to reasonably avoid displaying locked and crossed markets; to reconcile such markets; and to prohibit Options Participants from engaging in a pattern or practice of displaying locked and crossed markets. However, the Plan Participants in the proposed Decentralized Plan, including the Exchange, have proposed certain exceptions, as detailed below, from the aforementioned prohibition. The Exchange's proposed exceptions are as follows:

• The locking or crossing Quotation was displayed at a time when BOX was experiencing a failure, material delay, or malfunction of its systems or equipment;

• The locking or crossing Quotation was displayed at a time when there is a Crossed Market;

• The BOX Options Participant simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer; or

• With respect to a locking Quotation, the order entered on the Eligible Exchange that will lock a Protected Bid or Protected Offer, is:

○ Not a Public Customer order, and the Eligible Exchange can determine via identification available pursuant to the Options Price Reporting Authority (''OPRA'') Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a Public Customer order; or

○ A Public Customer order, and the Eligible Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a Public Customer order, and, on a case-by-case basis, the Public Customer specifically authorizes the Participant to lock such Protected Bid or Protected Offer.

Chapter XII, Temporary Sec. 4—Temporary Rules Governing P and P/A Orders

If this proposal is approved, the current text within Chapter XII corresponding to the Linkage Plan will be completely removed and replaced with the new proposed rule text corresponding to the proposed Decentralized Plan. Included within the proposed rule changes is certain rule text from current Chapter XII which the Exchange proposes to retain and continue to enforce regarding the sending and receipt of P and P/A orders.[24] BOX and BOX Options Participants currently utilize the sending of P and P/A orders to fulfill their obligations to seek the best price available for their customers and to prevent Trade-Throughs. Although ISOs will be accepted and executed on the BOX market as of the Decentralized Plan's implementation date, the BOX facility itself will not send ISOs or route orders through private routing

[15] *See* Rule 611(b)(5) and (6) under the Exchange Act.

[16] *See* Rule 611(b)(8) under the Exchange Act.

[17] *See* Section 8(c)(iii)(C) of the Linkage Plan.

[18] *See* Section 8(c)(iii)(G) of the Linkage Plan.

[19] *See* Rule 611(b)(9) under the Exchange Act.

[20] For a further discussion on how this exemption operates refer to the Regulation NMS Adopting Release. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) at notes 322–325.

[21] *See* Chapter V, Section 18 of the BOX Rules.

[22] *See* Rule 611(b)(7) under the Exchange Act.

[23] *See* Section 6 of the proposed Decentralized Plan. *See also* proposed Chapter XII, Section 3 of the BOX Rules.

[24] These rules are within proposed Chapter XII, Temporary Section 4.

arrangements to away exchanges until some time after such implementation.[25]

In connection with approval of this proposal the Exchange will also request, under separate cover, that the Commission grant a temporary limited exemption from Section 5(a) of the proposed Decentralized Plan to permit BOX Options Participants to send P and P/A Orders to prevent Trade-Throughs on the BOX market. Subject to the Commission's approval of the aforementioned request for exemption from Section 5(a) of the Decentralized Plan, BOX and its Options Participants will continue to utilize the sending of P and P/A orders to away markets in order to fulfill their obligations to seek the best available price for customers.

BOX has negotiated with the OCC to arrange for the continued maintenance, operation and functionality of the OCC Hub during this period of time to accommodate BOX. Additionally, the other options exchanges which have similarly filed proposals to become Plan Participants in the proposed Decentralized Plan have agreed to accept and execute P and P/A Orders, and maintain and enforce pertinent rule text, for so long as BOX shall continue to send them through the OCC Hub. The Exchange proposes to include Temporary Section 4 within Chapter XII until BOX no longer sends or receives P and P/A Orders and such rules are no longer deemed necessary, at which point, upon approval of the Commission, they will be removed from Chapter XII.[26]

When BOX develops the ability to send ISOs, or a similar order type to accomplish the same end result, and the ability to route orders through private routing arrangements,[27] the Exchange will submit a proposal to remove Temporary Section 4 of Chapter XII, at which point, if approved by the Commission, this requested exemption shall lapse and the Exchange will no longer utilize P and P/A Orders to prevent Trade-Throughs on the BOX market.

Other Proposed Amendments to BOX Rules To Accommodate Decentralized Plan

The Exchange additionally proposes to amend several sections of the BOX Rules other than within Chapter XII. These changes are as follows:

- *Chapter I, Section 1:* Section 1 defines certain terms which are referenced throughout the BOX Rules. The Exchange proposes to include ''OCC Hub'' as a defined term, not only within Chapter XII, but within the entirety of the BOX Rules.
- *Chapter V, Section 14:* Section 14 governs order entry on BOX and the types of orders permissible for entry. The Exchange proposes to include ''ISO'' as a permissible order type for entry on BOX.
- *Chapter V, Section 16:* Section 16 governs execution and price/time priority and, in particular, the circumstances under which inbound orders will be 'filtered' against the NBBO. The Exchange proposes to exclude ISOs from those orders that are filtered against NBBO. The Exchange also proposes to remove references to ''Intermarket Linkage'', as such a term will not exist upon implementation of the Decentralized Plan, and, where appropriate, replace such term with ''OCC Hub''. The Exchange also proposes to correct cross-references to certain sections of Chapter XII, as the referenced text within Chapter [sic] will continue to exist, but will be located in updated subsections. The Exchange also proposes to remove references to ''Firm Principal Quote Size'' and replace such references with the term ''Displayed Size'', as this term is defined in proposed Chapter XII, Section 4(g).
- *Chapter V, Section 20:* Section 20 governs Obvious and Catastrophic Errors. The Exchange proposes to revise a cross-reference to the defined term, ''primary market,'' resulting from the renumbering of certain defined terms in Chapter I, Section 1.
- *Chapter V, Section 29:* Section 29 governs the Universal Price Improvement Period (''UPIP'') and, in particular, when BOX, upon satisfaction of certain conditions, will automatically initiate a UPIP auction. The Exchange proposes to add to the list of conditions that the eligible order *not* (emphasis added) be an ISO. Section 29 also includes rule text describing the filtering of UPIP Orders to prevent trade throughs. The Exchange proposes to replace specific circumstances upon which UPIP Orders will be filtered with a general reference to the trade through exceptions in proposed Chapter XII, Section 2(b).
- *Chapter VI, Section 5:* Section 5 governs the obligations of BOX Market Makers and certain of these obligations with respect to P and P/A Orders. As described above, the Exchange proposes to remove references to Intermarket Linkage and replace them with OCC Hub where appropriate.
- *Chapter X, Section 2:* Section 2 governs penalties for violations of the BOX Minor Rule Violation Plan and such penalties as they pertain to violations of the respective rules governing locked and crossed markets and trade throughs on BOX. As described above, the Exchange proposes to correct cross-references to the locked and crossed markets and trade through rules, as the respective subsection numbering is modified in proposed Chapter XII.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[28] in general, and Section 6(b)(5) of the Act,[29] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposed rule change will allow the Exchange to implement and enforce the rules as made necessary by its filing to become a Plan Participant in the proposed Decentralized Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

[25] This period of delay is anticipated to last approximately 2–8 weeks past the prospective implementation date. Although the BOX facility does not contemplate sending ISOs itself immediately upon implementation of the Decentralized Plan, BOX Options Participants that have developed the systems capability to send ISOs will immediately be able to do so via their own order routing arrangements, separate and independent from BOX, on the prospective implementation date. *See* Supplementary Material .01 to proposed Chapter XII, Section 2.

[26] The Exchange will submit a proposed rule change seeking Commission approval for such rule change.

[27] The Exchange will submit a separate filing with the Commission discussing the details of the BOX private routing arrangements and certain proposed rule text pertaining to such routing.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BX–2009–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–028. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–028 and should be submitted on or before July 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–15267 Filed 6–26–09; 8:45 am]

BILLING CODE 8010–01–P

[30] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6684]

Postponement of the United States-Chile Environment Affairs Council and Joint Commission for Environmental Cooperation Meetings

ACTION: Notice of meetings; postponement.

SUMMARY: The Department of State (DOS) and the Office of the United States Trade Representative (USTR) are hereby providing notice that the fifth meeting of the United States-Chile Environment Affairs Council (the ''Council'') and the third meeting of the Joint Commission for Environmental Cooperation (the ''Commission''), which were previously scheduled for July 1, 2009, have been postponed. The meetings have not yet been rescheduled. DOS and USTR will publish notice in the **Federal Register** of the date, time and agenda for the rescheduled meetings, and will invite interested agencies, organizations, and members of the public to submit written comments or suggestions regarding agenda items when arrangements for the meetings are complete. The Department of State and USTR originally provided notice of the meetings on June 11, 2009, at 74 FR 27858 (2009).

Dated: June 24, 2009.

Robert A. Sorenson,

Acting Director, Office of Environmental Policy, Department of State.

[FR Doc. E9–15334 Filed 6–26–09; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2009–31]

Notice of Request for Approval of an Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the following new information collection:

Over-the-Road Bus (OTRB) Accessibility Program.

DATES: Comments must be submitted before August 28, 2009.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (*Note:* The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *http://www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.
2. *Fax:* 202–493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *http://www.regulations.gov.* You may review DOT's complete Privacy Act Statement

in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *http://www.regulations.gov.*

Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12-140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Blenda Younger, FTA Office of Program Management, (202) 366–2053, or e-mail: *Blenda.Younger@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Over-the-Road Bus Accessibility Program (OMB Number: 2132–NEW).

Background: The Over-the-Road Bus (OTRB) Accessibility Program is authorized under section 3038 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–85, as amended by the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–059, August 10, 2005. OTRBs are used in intercity fixed route service as well as other services, such as commuter, charter and tour bus services. These services are an important element of the U.S. transportation system. TEA–21 authorized FTA's OTRB Accessibility Program to assist OTRB operators in complying with the Department's OTRB Accessibility regulation, ''Transportation for Individuals with Disabilities'' (49 CFR part 37, subpart H). The legislative intent of this grant program is to increase the number of wheelchair accessible OTRBs available to persons with disabilities throughout the country.

Respondents: Charter/tour service operators, fixed route companies, small mixed service operators.

Estimated Annual Burden on Respondents: 40 hours for each of the 120 respondents.

Estimated Total Annual Burden: 4,800 hours.

Frequency: Annual.

Issued June 19, 2009.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. E9–14918 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Proposed Release and Closure of Michael Airfield, Cicero, NY From Its Grant Assurance Obligations, Request for Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The Federal Aviation Administration is requesting public comment on Michael Airfield (1G6), Cicero, New York notice of proposed closure and release from aeronautical use of the entire airport. The airport consists of approximately 34.19 acres of airport property, including runway 10–28, taxiways, aprons, airside and landside facilities to allow for possible non-aeronautical development. It has been determined, by closing Michael Airfield, the flying public would best benefit from using Syracuse Suburban Airport (6NK), Syracuse, New York. The sponsor who owns and operates both Michael Airfield and Syracuse Suburban Airport, plans to close 1G6 airport and dispose of the property. Michael Airfield, a privately owned public use reliever airport last accepted an airport capital development grant in 1991 for a runway rehabilitation project, thus, not obligated under the 1996 revenue use policy. The revenue generated from the sale of the closed airport would not be reinvested into 6NK. Proposals from the sponsor determined that land constituting Michael Airfield has no aeronautical use and should be closed. Documents reflecting the sponsor's request are available, by appointment only, for inspection at the Airport Sponsor's office and the FAA Airports District Office.

DATES: Comments must be received by July 29, 2009.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Steven M. Urlass, Manager, FAA New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530. In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Pizio, Member, Gildner Road Associates, LLC, at the following address: 2063 Jamesville Terrace, Jamesville, New York 13078.

FOR FURTHER INFORMATION CONTACT: Steven M. Urlass, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530; telephone (516) 227–3803; FAX (516) 227–3813; e-mail *steve.urlass@faa.gov.*

SUPPLEMENTARY INFORMATION: Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 1st Century (AIR21) requires the FAA to provide an opportunity for public notice and comment before the Secretary may waive a sponsor's Federal obligation to use certain airport land for aeronautical use.

Issued in Garden City, New York on June 22, 2009.

Steven M. Urlass,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. E9–15317 Filed 6–26–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind Notice of Intent To Prepare an Environmental Impact Statement; Jefferson County, MO

AGENCY: Federal Highway Administration (FHWA), DOT and the Missouri Department of Transportation.

ACTION: Rescind Notice of Intent to prepare an environmental impact statement.

SUMMARY: The FHWA is issuing this notice to advise the public that we are rescinding the Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for improvements that were proposed to the transportation system in Jefferson County, Missouri.

FOR FURTHER INFORMATION CONTACT: Peggy J. Casey, Environmental Projects Team Leader, FHWA Division Office, 3220 West Edgewood, Suite H, Jefferson City, Missouri 65109, Telephone: (573) 638–2620 or Kathy Harvey, State Design Engineer, Missouri Department of Transportation, P.O. Box 270, Jefferson City, Missouri 65102, Telephone: (573) 526–5678.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), is rescinding the NOI to prepare an EIS for a project that had been proposed to improve the transportation system in Jefferson County, Missouri. The NOI is being rescinded because locally elected officials and members of the local community expressed the need to find more immediate and localized improvements to address safety and congestion problems, and do not support this project.

(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.)

Issued on: June 24, 2009.

Peggy J. Casey,

Environmental Projects Team Leader, Jefferson City.

[FR Doc. E9–15269 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–255–82]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulations, FI–255–82 (TD 7852), Registration Requirements With Respect to Debt Obligations (§ 5f.103–1(c)).

DATES: Written comments should be received on or before August 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to Evelyn J. Mack, (202)–622–7381, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Evelyn.J.Mack@IRS.gov.*

SUPPLEMENTARY INFORMATION:

Title: Registration Requirements With Respect to Debt Obligations.

OMB Number: 1545–0945.

Regulation Project Number: FI–255–82.

Abstract: These regulations require an issuer of a registration-required obligation and any person holding the obligation as a nominee or custodian on behalf of another to maintain ownership records in a manner which will permit examination by the Internal Revenue Service in connection with enforcement of the Internal Revenue laws.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations and, State, local or tribal governments.

Estimated Number of Recordkeepers: 50,000.

Estimated Time per Recordkeeper: 1 hour.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 10, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–15237 Filed 6–26–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5306

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5306, Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

DATES: Written comments should be received on or before August 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–7381, or through the Internet at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

OMB Number: 1545–0390.

Form Number: 5306.

Abstract: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by banks and

insurance companies that want to establish approved prototype individual retirement accounts or annuities. The data collected are used to determine if the individual retirement account trust or annuity contract meets the requirements of Code section 408(a), 408(b), or 408(c) so that the IRS may issue an approval letter.

Current Actions: We added 1 line item. This results in a burden increase of 120 hours.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 600.

Estimated Time per Respondent: 13 hours, 20 minutes.

Estimated Total Annual Burden Hours: 7,998.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 2009.

R. Joseph Durbala,

IRS Reports Clearance Office.

[FR Doc. E9–15238 Filed 6–26–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13441

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13441, Health Coverage Tax Credit Registration Form.

DATES: Written comments should be received on or before August 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–7381, or through the Internet at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Health Coverage Tax Credit Registration Form.

OMB Number: 1545–1842.

Form Number: 13441.

Abstract: Coverage Tax Credit Registration Form, will be directly mailed to all individuals who are potentially eligible for the HCTC. Potentially eligible individuals will use this form to determine if they are eligible for the Health Coverage Tax Credit and to register for the HCTC program. Participation in this program is voluntary. This form will be submitted by the individual to the HCTC program office in a postage-paid, return envelope. We will accept faxed forms, if necessary. Additionally, recipients may call the HCTC call center for help in completing this form.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,800.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 2009.

R. Joseph Durbala,

IRS Reports Clearance Office.

[FR Doc. E9–15239 Filed 6–26–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8613

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8613, Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

DATES: Written comments should be received on or before August 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–7381, or through the Internet at *Evelyn.J.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

OMB Number: 1545–1016.

Form Number: 18613.

Abstract: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under Internal Revenue Code section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time per Respondent: 11 hours, 53 minutes.

Estimated Total Annual Burden Hours: 17,820.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 2009.

R. Joseph Durbala,

IRS Reports Clearance Office.

[FR Doc. E9–15240 Filed 6–26–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1099–PATR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–PATR, Taxable Distributions Received From Cooperatives.

DATES: Written comments should be received on or before August 28, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack at (202) 622–7381, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxable Distributions Received From Cooperatives.

OMB Number: 1545–0118.

Form Number: 1099–PATR.

Abstract: Form 1099–PATR is used to report patronage dividends paid by cooperatives in accordance with Internal Revenue Code section 6044. The information is used by IRS to verify reporting compliance on the part of the recipient. Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for profit organizations.

Estimated Number of Responses: 1,961,131.

Estimated Time per Response: 15 min.

Estimated Total Annual Burden Hours: 509,895.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–15241 Filed 6–26–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Bureau of Engraving and Printing, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Bureau of Engraving and Printing is publishing its inventory of Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, Bureau of Engraving and Printing (BEP) has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records.

On May 22, 2007, the Office of Management and Budget (OMB) issued Memorandum M–07–16 entitled ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information.'' It required agencies to publish the routine use recommended by the President's Identity Theft Task Force. As part of that effort, the Department published the notice of the proposed routine use on October 3, 2007, at 72 FR 56434 and was effective on November 13, 2007. The new routine use has been added to each BEP system of records below. Other changes throughout the document are editorial in nature and consist principally of minor editorial changes and editing of headings for consistency, and to add a ''purposes'' statement to each system of records notice.

Department of the Treasury regulations require the Department to publish the existence and character of all systems of records every three years (31 CFR 1.23(a)(1)). The BEP has leveraged this requirement to incorporate the review of its current holding of personally identifiable information required by M–07–16. With respect to its inventory of Privacy Act systems of records, the BEP has determined that the information contained in its systems of records is accurate, timely, relevant, complete, and is the minimum necessary to maintain the proper performance of a documented agency function.

Systems Covered by This Notice

This notice covers all systems of records adopted by the Bureau of Engraving and Printing up to September 2, 2008. The systems notices are reprinted in their entirety following the Table of Contents.

Dated: June 23, 2009.

Elizabeth Cuffe,

Deputy Assistant Secretary for Privacy and Treasury Records.

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TREASURY/BEP .002

SYSTEM NAME:

Personal Property Claim File—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and the Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian officers and employees of the Bureau of Engraving and Printing, former employees and their survivors having claim for damage to or loss of personal property incident to their service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains investigative and adjudication documents relative to personal property damage claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C.S. 3721, as amended, Public Law 110–195.

PURPOSE(S):

The purpose of this system is to permit the Bureau to more effectively and efficiently process and manage claims, and to provide statistics that allow us to focus our resources in order to continually improve the safety of our workforce, work environment, and equipment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; and

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, and

(8) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department

has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to Office of Chief Counsel staff.

RETENTION AND DISPOSAL:

Retained three years after case is closed, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and the Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individuals having claim for damage to or loss of personal property.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .004

SYSTEM NAME:

Counseling Records—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees whose actions or conduct warrants counseling.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence relative to counseling information and follow-up reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

To provide a history and record of the employee counseling session.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains, contingent upon that individual signing a release of information form;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide general educational information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, and

(8) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Locked in file cabinets; access is limited to Managers and Supervisors and, in the event of disciplinary action, the Employee and Labor Relations staff.

RETENTION AND DISPOSAL:

Retained for one year after close of file, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Human Resources, 14th and C Streets, SW., Washington, DC 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1,

subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individual employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

TREASURY/BEP .005

SYSTEM NAME:

Compensation Claims—Treasury/BEP.

SYSTEM LOCATION:

Compensation Staff, Personnel Services Division, Office of Human Resources, Employee Labor Management Relations Division, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Human Resource Management Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Engraving and Printing employees incurring work-connected injuries or illnesses, who make claims under Federal Employee Compensation Act for medical expenses, lost wages, leave buy-back, scheduled awards continuation of pay or disability.

CATEGORIES OF RECORDS IN THE SYSTEM:

All pertinent documentation, including investigative reports, medical reports, forms, letters, DOL–OWCP letters, etc. relative to work-connected injuries or illnesses of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Employees Compensation Act, as amended, and in 20 CFR Part 10.

PURPOSE(S):

The purpose of this system is to permit the Bureau to more effectively and efficiently process and manage claims, and to provide statistics and information to the DOL–OWCP. It also allows us to focus our resources in order to continually improve the safety of our workforce and work environment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; and

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(9) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder, magnetic media and computer disks.

RETRIEVABILITY:

Name and date of injury.

SAFEGUARDS:

Locked file cabinets, locked computers, passwords. Access is limited to Compensation Claims staff and Safety managers.

RETENTION AND DISPOSAL:

Records are retained for three years after DOL–OWCP closes the case and no further medical expenses are being paid, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Manager, Human Resource Division, Office of Human Resources, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228. (2) Manager, Human Resource Management Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Occupational Health Unit Daily Report, medical providers, employee's supervisor's report, and information provided by the employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .006

SYSTEM NAME:

Debt Files (Employees)—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Bureau of Engraving and Printing employees against whom garnishment proceedings or debt complaints have been filed.

CATEGORIES OF RECORDS IN THE SYSTEM:

May contain correspondence; complaint information, including counseling efforts and final disposition of complaints; court judgments; writs, orders, summons, or other legal process in the nature of garnishment; child support account numbers; names and addresses of current employers of former agency employees; and records on current or former employees to include name, social security number, address, phone number, position, wages, and employment benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5 U.S.C. 5520a, 31 U.S.C. 321, 42 U.S.C. 659, 44 U.S.C. 3101, and E.O. 9397.

PURPOSE(S):

The purpose of this system is to maintain records about individuals who owe debt(s) to the United States, through one or more of its departments and agencies, and/or to individuals, including past due support enforced by states. The information contained in the records is maintained for the purpose of taking action to facilitate the collection and resolution of the debt(s) using various collection methods, including, but not limited to, offset, levy, administrative wage garnishment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(9) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Maintained in locked cabinets; access is limited to Employee and Management Relations Division, Human Resources Division and the Office of the Chief Counsel personnel.

RETENTION AND DISPOSAL:

Debt files are temporary records and are destroyed 3 years after termination of the garnishment or final disposition of the debt complaint.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Chief, Office of Human Resources and the Office of the Chief Counsel, Bureau of Engraving and Printing; 14th and C Streets, SW., Washington, DC 20228. (2) Manager, Human Resources Division, and the Office of Chief Counsel, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Employees, complainants, creditors, court judgments, garnishment orders, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP.014

SYSTEM NAME:

Employee's Production Record—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current Washington, DC and Fort Worth, TX Bureau of Engraving and Printing employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains employee's name, dates, work hours, record of production,

history of work assignments, training, work performance, and progress reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 4103, and 4302.

PURPOSE(S):

The purpose of this system is to permit the Bureau to maintain performance records used to support awards, promotions, performance-based actions, training and other personnel actions, and to track and evaluate performance based upon the accomplishments of each employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(8) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in data entry diskettes, file folders and production books and reports.

RETRIEVABILITY:

Indexed by name, work code number and cross-referenced by project number.

SAFEGUARDS:

Maintained in locked cabinets or desks; access is limited to personnel having a ''need-to-know.''

RETENTION AND DISPOSAL:

Retained three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel; Chief, BEP Resolution Center; Chief, Office of Human Resources; Chief, Office of Security Printing Operations, Chief, Office of Engraving; Chief, Office of Procurement; Chief, Office of Production Management; Chief, Office of External Relations; Chief, Office of Facilities Support; Chief, Office of Compliance; Chief, Office of Environment and Safety; Chief, Office of Critical Infrastructure & IT Security; Chief, Office of IT Operations; Chief, Office of Quality; Chief, Securities Technology and Chief, Office of Security.

Address: Bureau of Engraving and Printing; 14th and C Streets, SW., Washington, DC 20228. Associate Director, Western Currency Facility, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information furnished by employee, developed by supervisor or by referral document.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .016

SYSTEM NAME:

Employee Suggestions—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Bureau of Engraving and Printing employees submitting suggestions under the incentive award program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains employee's suggestion, reviewer evaluation and final disposition information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C., 4502(c).

PURPOSE(S):

The purpose of this system is to permit the Bureau to maintain records on the suggestions submitted by employees and are used to support awards if the suggestions are adopted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or

implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(8) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, as well as on computer disks.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in locked file cabinets; access is limited to the Suggestion Program Coordinator and the designated OHR and HRM Division staff.

RETENTION AND DISPOSAL:

Retained for three years following date of submission, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Human Resources, Bureau of Engraving and Printing; 14th and C Streets, SW., Washington, DC 20228, and the Manager, Human Resource Management Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individual employee, employee's supervisor and review committee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .020

SYSTEM NAME:

Industrial Truck Licensing Records—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Engraving and Printing employees designated to operate self-propelled material and/or machinery handling equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of employee physical examination, testing, license number and issue date for purpose of operating one or more types of material handling equipment used within the Bureau of Engraving and Printing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

This system of records is used to document who is authorized to operate self-propelled material and/or machinery handling equipment. In addition, it keeps track of the expiration dates of the licenses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder and Card file.

RETRIEVABILITY:

By Name.

SAFEGUARDS:

Locked file cabinet, access is limited to Office of Environment Safety and Health, and the General Stores, Receiving and Mail Section personnel.

RETENTION AND DISPOSAL:

Destroyed three years after license revocation.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Environment Health and Safety, Bureau of Engraving and Printing; 14th and C Streets, SW., Washington, DC 20228 and the Associate Director, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Supervisor's request, results of physical examination, and data obtained during training or practical tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .021

SYSTEM NAME:

Investigative Files—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, Separated Bureau Employees, Employee Applicants, Visitors to the Bureau, News-Media Correspondents, Contractor and Service Company Employees (Current and Separated).

CATEGORIES OF RECORDS IN THE SYSTEM:

Category: Security Files, Personnel Clearance Requests, Case Files, Bank Shortage Letters, Contractor Files, Currency Discrepancy Reports, Intelligence Files, Stamp Discrepancy Reports, Case Records, Correspondence from the Public concerning Security Matters, Security Files Reference Record, Employee Indebtedness Record, Type of Information: Character references, Police force reports, Previous employment verifications, Newspaper articles, Social Security numbers, Laboratory reports to include handwriting results and latent fingerprint examinations, Law enforcement criminal and subversive record checks, Court records, Security registers, Residency information, Reports of shortages or thefts of Bureau products including subsequent investigations, Personnel records of various types, Fingerprint card, Photograph, Names of individuals including those at contractor plants who worked on a shortage involving Bureau products, Credit checks, Background investigation reports conducted by Office of Personnel Management, Bureau of Engraving and Printing, the Internal Revenue Service and other Federal Investigative Agencies, Disciplinary action recommended and/or received, Military record forms and extracted information, List of Bureau employees granted security clearances, Processes served, *i.e.,* summons, subpoenas, warrants, etc., Personnel security case numbers, dates—case opened and closed, and recommendations, Certificate of Security Clearance, Reports of violations of Bureau regulations and procedures, Bureau visitor control documents, Correspondence relating to individuals, Claims of indebtedness from firms and collection agencies and other sources, and assorted documents, recorded audio or video testimony, Bureau investigation reports, information supplied by Law Enforcement agencies, Applicant interview record, Anonymous tips concerning Bureau employees, Official investigative statements, Names of those requesting security assistance and report of the assistance rendered, other pertinent Governmental records, education records and information, Date of Birth and physical description of individual in the files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321, Executive Order 10450 and implementing Treasury and Bureau Regulations.

PURPOSE(S):

This system is to permit the Bureau to collect and maintain background investigation records on potential applicants, and current Bureau employees and contractors for issuance of security clearances, access to Bureau facilities or other administrative reasons. Information is also collected as part of investigations conducted by the Bureaus' Office of Security.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(9) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the

Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folders, 3 x 5 Index Cards, 5 x 8 Index Cards, Loose-leaf Binders, Ledgers, Recordings on tape, magnetic, electronic or optical media, Computer Database Programs, and Microfiche.

RETRIEVABILITY:

Numerically by case number and year, alphabetically by name and social security number, and alphabetically by Company name.

SAFEGUARDS:

Access is limited to Office of Security and Western Currency Facility Security Division personnel. Records are maintained in locked file cabinets and secured computers.

RETENTION AND DISPOSAL:

Destroyed within 90 days following notification of an employee's death, or, within five years after separation or transfer of incumbent employee; or, five years after expiration of contractual relationship. Product Discrepancy Investigative Reports and Bank Letter Investigative Reports are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Security, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Security Division personnel, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The sources of the information are the individual concerned and information supplied by Federal, State and local investigative agencies, credit bureaus, financial institutions, court records, educational institutions, and individuals contacted concerning the person being investigated.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

TREASURY/BEP .027

SYSTEM NAME:

Access Control and Alarm Monitoring Systems (ACAMS)—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Engraving and Printing Employees (Washington, DC and Fort Worth, Texas); employees of other U.S. Government agencies, contractors and service company employees who have been cleared for access to the Bureau of Engraving and Printing and issued BEP Access Badges, and escorted visitors; *i.e.*, contractors and service company employees who have not undergone the formal clearance to enter the Bureau of Engraving and Printing.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) The following information is maintained concerning all individuals who are issued BEP access badges with photographs: Photograph; Full name; Social Security number; date of birth; badge number; supervisory status, work telephone; work area number; BEP access clearance level; date BEP access level granted; date last security background investigation was completed; BEP access level; BEP access time zone; date access badge issued; date access badge voided; and time, date and location of each passage through a security control point, (B) In the case of BEP employees and contractors issued ''Temporary Access'' badges and contractors and others issued ''No Escort'' badges, in lieu of his/her BEP access badge with photograph, the same information as in paragraph A (above) is kept, and (C) Official visitors, contractors, and others issued ''Escort Visitor'' badges: full name, date of issue, and date, time and location of each passage through a security control point is maintained in the BEP ACAMS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 321, 5 U.S.C. 301 and 5 U.S.C. 6106.

PURPOSE:

The purpose of this system is to maintain a record of those persons who entered the Bureau premises and the time and areas visited for internal security use. This system of records is used to assist in maintaining the security of the Bureau premises and to permit the identification of individuals on the premises at particular times.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service

Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(9) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media and computer printouts.

RETRIEVABILITY:

Numerical by PASS/badge number, alphabetically by last name, and appropriate index by subject.

SAFEGUARDS:

Records are maintained in locked cabinets in a locked room; access is limited to Technical Security Division, Office of Security, senior management staff, Office of Security, the staff of the Internal Review Division, Office of Management Control and the Security Division personnel at the Fort Worth, Texas facility. On-line terminals are installed in a locked 24-hour manned Central Police Operations Center and the Security Systems Operations Center (SSOC) at the Washington, DC facility. These terminals are on lines that can be manually activated and deactivated in the Security Systems Operations Center (SSOC).

RETENTION AND DISPOSAL:

The retention period is for two (2) years.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Technical Security Division, Office of Security, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Manager, Security and Police Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The individual concerned, his/her supervisor, or an official of the individual's firm or agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .035

SYSTEM NAME:

Tort Claims (Against the United States)—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and the Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and/or organizations making claim for money damage against the United States for injury to or loss of property or personal injury or death caused by neglect, wrongful act, or omission of a Bureau of Engraving and Printing employee while acting within the scope of his office or employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains investigative and adjudication documents relative to personal injury and/or property damage claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, Title 28 U.S.C. 2672, Public Law 110–197.

PURPOSE:

This system of records is used by the Bureau to track the Claims submitted, including the progress and adjudication, and the final disposition thereof.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(7) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in

connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to Office of Chief Counsel staff.

RETENTION AND DISPOSAL:

Retained three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel, Bureau of Engraving and Printing; 14th and C Streets, SW., Washington, DC 20228, and the Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individual or organization's claim and/or investigative reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .038

SYSTEM NAME:

Unscheduled Absence Record—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Bureau of Engraving and Printing employees who have had unscheduled absences.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains chronological documentation of unscheduled absences.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

To provide a history and a record of the employee's unscheduled absences.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; and

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(7) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Kept in locked file cabinets; access to these records is restricted to Supervisor and authorized timekeeping personnel.

RETENTION AND DISPOSAL:

Retained for one year following separation or transfer, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Human Resources, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Human Resources Division, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individual employee's time and attendance records, and his/her supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .041

SYSTEM NAME:

Record of Discrimination Complaints—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have initiated discrimination complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data developed as a result of inquiry by the person making the allegation of discrimination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11478.

PURPOSE(S):

To provide a history and record of the employee counseling session. Documentation of all statements made will be kept for use in the resolution of the case and forwarded, if need be, to the EEOC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose to EEOC to adjudicate discrimination complaints;

(2) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; and

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(8) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders. Locked in combination safe.

RETRIEVABILITY:

By name and case number.

SAFEGUARDS:

Access is limited to Complainants and Bureau Resolution Center; maintained in locked combination safe.

RETENTION AND DISPOSAL:

Retained four years after resolution, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Bureau Resolution Center, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and the Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Ft. Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individual employees who have discrimination complaints.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .045

SYSTEM NAME:

Mail Order Sales Customer Files-Treasury/BEP

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers ordering engraved prints and numismatic products from the Bureau of Engraving and Printing through the mail, and those individuals who have requested that their names be placed on the BEP mailing list.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mail order customer's names, addresses, company names, credit card numbers and expiration dates; history of customer sales; and inventory data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The purpose of this system is to permit the Bureau to: Maintain a mailing list of customers and interested parties to provide continuous communication and/or promotional materials about existing and upcoming product offerings, record and maintain records of customer, interested party and order information and requests for promotional materials, and to capture orders through each stage of the order life cycle; research and resolve orders that were not successfully delivered to customers and interested parties; and maintain a list of its products and to monitor and maintain product and promotional material inventory levels to meet customer and interested party demand.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) These records and information from these records may be used to electronically transmit credit card information to obtain approval or disapproval from the issuing financial institution. Categories of users include personnel involved in credit card approval, and

(2) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debt information concerning a Government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and Section 3 of the Debt Collection Act of 1982 (Pub. L. 97–365), to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records consist of paper records maintained in file folders and in electronic media.

RETRIEVABILITY:

By customer name, order number or customer number.

SAFEGUARDS:

Access is limited to those authorized individuals who process orders, research customer orders or maintain the computer system. In addition, files and computer data are maintained in a secured area. Access to electronic records is by password.

RETENTION AND DISPOSAL:

Files on customers who have not purchased any products are kept for two years, after which they are taken out of the active system and placed in a separate storage file. This file generates two additional annual mailings after which time they are purged from the system. (Should a customer reorder after being placed on this file, they will be assigned a new customer number and placed back in the main system).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of External Relations, Bureau of Engraving and Printing, 14th and C Streets, SW., Room 107–M, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORDS ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORDS PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Customers, BEP employees, financial institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .046

SYSTEM NAME:

Automated Mutilated Currency Tracking System—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and financial institutions sending in mutilated paper currency claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mutilated currency claimants' names, addresses, company names, amount of claims, amount paid, types of currency and condition of currency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 12 U.S.C. 413, and 31 U.S.C. 321.

PURPOSE(S):

The purpose of the Automated Mutilated Currency Tracking System is to maintain historical information and to respond to claimants' inquiries, *e.g.*, non-receipt of reimbursement, status of case, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(6) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, and

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent o the investigation.

(8) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems

or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records consist of paper records maintained in file folders and records in electronic media.

RETRIEVABILITY:

By claimant name, case number, address or registered mail number.

SAFEGUARDS:

Access is limited to those specific employees who process the mutilated currency cases, prepare payment, research inquiries or maintain the computer system. In addition, files and computer data are maintained in a secured area. Access to electronic records is by password.

RETENTION AND DISPOSAL:

Active claimant files are maintained for two years. Inactive files are maintained for seven years. After seven years, the files are purged from the system and then destroyed. (Inactive files are those for which final payments have been made.)

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Financial Management and Manager, Mutilated Currency Redemption Division, Bureau of Engraving and Printing, 14th and C Streets, SW., Room 344A, Washington, DC 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individuals, banking institutions and BEP employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/BEP .047

SYSTEM NAME:

Employee Emergency Notification System—Treasury/BEP.

SYSTEM LOCATION:

Records are maintained at the following Bureau of Engraving and Printing locations: (1) 14th and C Streets, SW., Washington, DC 20228; and (2) 9000 Blue Mound Road, Ft. Worth, Texas 76131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records cover those Bureau employees who have voluntarily provided personal information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The types of personal information collected by this system are necessary to ensure the timely emergency notification to individuals that employees have identified. The types of personal information presently include or potentially could include the following:

(a) Personal identifiers (name; home, work and electronic addresses; telephone, fax, and pager numbers);

(b) Emergency notification (name of person to be notified; address; telephone number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system of records is to provide emergency notification to those person(s) as voluntarily provided by employees, emergency service providers and law enforcement officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained on manual locator cards and electronic media.

RETRIEVABILITY:

Records may be retrieved by name, or other unique identifier.

SAFEGUARDS:

BEP has sophisticated Internet firewall security via hardware and software configurations as well as specific monitoring tools. Records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords, sign-on protocols, and user authentication that are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records.

RETENTION AND DISPOSAL:

Records will be updated by the employees on a voluntary basis and kept for the duration of the individual's employment. Records can be destroyed at any time at the direction of the employee. Paper records that are ready for disposal are destroyed by shredding or burning. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Human Relations, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228, and Facilities Division Manager, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, Texas 76131.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may submit inquiries in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–15229 Filed 6–26–09; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Privacy Act of 1974, as Amended; System of Records

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Office of Thrift Supervision (OTS), Treasury, is publishing its inventory of Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, the OTS has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records. This publication also incorporates the alterations to six OTS systems of records published on April 18, 2007, at 72 FR 19580.

Other changes throughout the document are editorial in nature and consist principally of changes to system locations (Appendix A) and system manager addresses and or titles in several systems of records. In addition, OTS no longer retrieves records contained in OTS .008—Employee Training Database by social security number. The systems of records notices were last published in their entirety on July 15, 2005, at 70 FR 41085.

On May 22, 2007, the Office of Management and Budget (OMB) issued Memorandum M–07–16 entitled ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information.'' It required agencies to publish the routine use recommended by the President's Identity Theft Task Force. As part of that effort, the Department of the Treasury (Department) published the notice of the proposed routine use on October 3, 2007, at 72 FR 56434, and it was effective on November 13, 2007. The new routine use has been added to each OTS system of records below.

Department of the Treasury regulations require the Department to publish the existence and character of all systems of records every three years (31 CFR 1.23(a)(1)). OTS has leveraged this requirement to incorporate the review of its current holding of personally identifiable information required by M–07–16. With respect to its inventory of Privacy Act systems of records, OTS has determined that the information contained in its systems of records is accurate, timely, relevant, complete, and is the minimum necessary to maintain the proper performance of a documented agency function.

Systems Covered by this Notice

This notice covers all systems of records adopted by the Office of Thrift Supervision up to October 24, 2008. The systems notices are reprinted in their entirety following the Table of Contents.

Dated: June 23, 2009.

Elizabeth Cuffe,

Deputy Assistant Secretary for Privacy and Treasury Records.

Office of Thrift Supervision

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TREASURY/OTS .001

SYSTEM NAME:

Confidential Individual Information System—Treasury/OTS.

SYSTEM LOCATION:

Enforcement Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Computerized records of Suspicious Activity Reports (SAR), with status updates, are managed by FinCEN pursuant to a contractual agreement, and are stored at the Internal Revenue Service's Computing Center in Detroit, Michigan. Authorized personnel at the Federal financial regulatory agencies have on-line access to the computerized database managed by FinCEN through individual work stations that are linked to the database central computer.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Directors, officers, employees, agents, borrowers, and persons participating in the conduct of the affairs of entities regulated by OTS who have been involved in suspected criminal activity or suspicious financial transactions and referred to law enforcement officials; and other individuals who have been involved in irregularities, violations of law, or unsafe or unsound practices referenced in documents received by OTS in the exercising of its supervisory functions.

These records also contain information concerning individuals who have filed notices of intention to acquire control of a savings association, controlling persons of companies that have applications to acquire control of a savings association, and organizers of savings associations who have sought Federal Savings and Loan Insurance Corporation (FSLIC) or Saving Association Insurance Fund (SAIF) insurance of accounts or Federal charters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application information and inter-agency and intra-agency correspondence, memoranda, and reports. The SAR contains information identifying the financial institution involved, the suspected person, the type of suspicious activity involved, the amount of loss known, and any witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1464; 44 U.S.C. 3101.

PURPOSE(S):

The overall system serves as a central historical OTS repository for investigatory or enforcement information related to the responsibility of OTS to examine and supervise savings associations. It also serves to store information on applicants to acquire, control, or insure a savings association in connection with OTS's regulatory responsibilities.

The system maintained by FinCEN serves as the database for the cooperative storage, retrieval, analysis, and use of information relating to Suspicious Activity Reports made to or by the Federal financial regulatory agencies and FinCEN to various law enforcement agencies for possible criminal, civil or administrative proceedings based on known or suspected violations affecting or involving persons, financial institutions, or other entities under the supervision or jurisdiction of such Federal financial regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

INFORMATION IN THESE RECORDS MAY BE USED TO:

(1) Provide the Department of Justice with periodic reports on the number, amount, individual identity and other details concerning outstanding potential criminal violations of the law that have been referred to the Department;

(2) Provide the Federal financial regulatory agencies and FinCEN with information relevant to their operations;

(3) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(4) Provide information or records to any appropriate governmental agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order, policy, or license;

(5) Disclose, when considered appropriate, information to a bar association, or other professional organizations performing similar functions, for possible disciplinary action;

(6) Disclose information, when appropriate, to international and foreign governmental authorities in accordance with law and formal or informal international agreements;

(7) Provide information to any person with whom OTS contracts to reproduce, by typing, photocopying or other means, any record within this system for use by OTS and its staff in connection with their official duties, or to any person who is utilized by OTS to perform clerical or stenographic functions relating to the official business of OTS;

(8) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media and in paper files.

RETRIEVABILITY:

Computer output and file folders are retrievable by indexes of data fields, including name of financial institution and individual's name.

SAFEGUARDS:

Paper files are stored in lockable metal file cabinets with access limited to authorized individuals. Computer disks maintained at OTS are accessed only by authorized personnel. The database maintained by FinCEN complies with applicable security requirements of the Department of the Treasury. On-line access to the information in the database is limited to authorized individuals, and each individual has been issued a non-transferable identifier or password.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed. Records are eligible to be destroyed after 15 years.

SYSTEM MANAGER(S) AND ADDRESSES:

Deputy Chief Counsel, Enforcement, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

The system is exempt from notification and record-access requirements and requirements that an individual be permitted to contest its contents under 5 U.S.C. 552a(j)(2) and (k)(2) as relating to investigatory material compiled for law enforcement purposes.

RECORD ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Suspicious activity reports and related historical information and updating forms compiled by financial institutions, OTS, and other Federal financial regulatory agencies for law enforcement purposes. OTS will also include information from applicants, inter-agency and intra-agency correspondence, memoranda, and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* 31 CFR 1.36.

TREASURY/OTS .002

SYSTEM NAME:

Correspondence/Correspondence Tracking.

SYSTEM LOCATION:

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

White House and Executive Office of the President officials, Members of Congress, Treasury Department officials, the general public, and businesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence addressed to the Director of OTS, letters from members of Congress transmitting letters from constituents or making inquiries, OTS responses, OTS memoranda and notes used to prepare responses, and information concerning internal office assignments, processing, and responses to the correspondence.

PURPOSE(S):

To maintain written records of correspondence addressed to the Director of OTS and congressional correspondence; to track the progress of the response; and to document the completion of the response to the incoming correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

INFORMATION IN THESE RECORDS MAY BE USED TO:

(1) Make disclosures to a congressional office from the records of an individual in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Disclose information to the appropriate governmental agency charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order, or license;

(3) Disclose information in civil, criminal, administrative or arbitration proceedings before a court, magistrate, administrative or arbitration tribunal, in the course of pre-trial discovery, motions, trial, appellate review, or in settlement negotiations, when OTS, the

Director of OTS, an OTS employee, the Department of the Treasury, the Secretary of the Treasury, or the United States is a party or has an interest in or is likely to be affected by such proceeding and an OTS attorney determines that the information is arguably relevant to that proceeding;

(4) Disclose relevant information to the Department of Justice, private counsel, or an insurance carrier for the purpose of defending an action or seeking legal advice, to assure that the agency and its employees receive appropriate representation in legal proceedings;

(5) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic media and in paper files.

RETRIEVABILITY:

Records are maintained by name of individual; assignment control number.

SAFEGUARDS:

Access to paper records is limited to authorized personnel with a direct need to know. Some paper records are maintained in locked file cabinets in a secured office with access limited to those personnel whose official duties require access. Access to computerized records is limited, through the use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Computerized records relating to non-congressional correspondence are retained for two (2) years after the Director's term. Computerized records relating to congressional correspondence are kept permanently. Paper records are retained for two (2) years after the Director's or member of Congress' term, then transferred directly to the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, External Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or to gain access to records maintained in the system must submit a written request that (1) identifies the record system; (2) identifies the category and type of records sought; and (3) provides (i) a signature, (ii) an address, and (iii) one other item of identification such as a photocopy of a driver's license or other official document bearing the individual's signature. *See* 31 CFR part 1, subpart C, Appendix L. Address inquiries to FOIA Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORDS ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Congressional letters and responses from a Member of Congress and/or a constituent.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/OTS .003

SYSTEM NAME:

Consumer Complaint System.

SYSTEM LOCATION:

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. *See* Appendix A for appropriate local addresses of OTS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who submit inquiries or complaints concerning Federally insured depository institutions, service corporations, and subsidiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consumer's name, savings association's docket number, case number as designated by a Consumer Complaint Case number. Within these categories of records, the following information may be obtained: consumer's address, source of inquiry or complaint, nature of the inquiry or complaint, nature of the inquiry or complaint designated by instrument and complaint code, information on the investigation and resolution of inquiries and complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 57a(f), 5 U.S.C. 301.

PURPOSE(S):

OTS uses this system to track individual complaints and to provide additional information about each institution's compliance with regulatory requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

INFORMATION IN THESE RECORDS MAY BE USED TO:

(1) Disclose information to officials of regulated savings associations in connection with the investigation and resolution of complaints and inquiries;

(2) Make relevant information available to appropriate law enforcement agencies or authorities in connection with the investigation and/or prosecution of alleged civil, criminal, and administrative violations;

(3) Disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to other Federal and nonfederal governmental supervisory or regulatory authorities when the subject matter is within such other agency's jurisdiction;

(5) Disclose information in civil, criminal, administrative or arbitration proceedings before a court, magistrate, administrative or arbitration tribunal, in the course of pre-trial discovery, motions, trial, appellate review, or in settlement negotiations, when OTS, the Director of OTS, an OTS employee, the Department of the Treasury, the Secretary of the Treasury, or the United States is a party or has an interest in or is likely to be affected by such proceeding and an OTS attorney determines that the information is arguably relevant to that proceeding;

(6) Disclose relevant information to the Department of Justice, private counsel, or an insurance carrier for the purpose of defending an action or seeking legal advice, to assure that the agency and its employees receive appropriate representation in legal proceedings;

(7) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department

has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and on electronic media.

RETRIEVABILITY:

By name of individual, complaint case number, savings association name, docket number, region complaint code, instrument code, source code, or by some combination thereof.

SAFEGUARDS:

Paper records are maintained in locked file cabinets with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of the system passwords, to those whose official duties require access.

RETENTION AND DISPOSAL:

Active paper files are maintained until the case is closed. Closed files are retained six (6) years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Consumer and Community Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or to gain access to records maintained in the system must submit a written request that (1) identifies the record system; (2) identifies the category and type of records sought; and (3) provides (i) a signature, (ii) an address, and (iii) one other item of identification such as a photocopy of a driver's license or other official document bearing the individual's signature. *See* 31 CFR part 1, subpart C, Appendix L. Address inquiries to FOIA Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Inquirer or complainant (or his or her representative which may include a member of Congress or an attorney); savings association officials and employees; compliance/safety and soundness examiner(s); and other supervisory records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/OTS .004

SYSTEM NAME:

Criminal Referral Database.

SYSTEM LOCATION:

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. *See* Appendix A for appropriate local addresses of OTS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals suspected of having committed crime(s) and individuals indicted or convicted of crime(s) against or involving savings associations prior to 1996.

CATEGORIES OF RECORDS IN THE SYSTEM:

Criminal referrals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1464; 44 U.S.C. 3101.

PURPOSE(S):

This system lists matters referred to the Department of Justice for possible criminal proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

INFORMATION IN THESE RECORDS MAY BE USED TO:

(1) Disclose information to the appropriate governmental agency charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order or license;

(2) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and on electronic media.

RETRIEVABILITY:

Records are filed by name of individual, savings institution or referral control number.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a job-related purpose.

RETENTION AND DISPOSAL:

Records are maintained in paper form as long as needed for the purpose for which the information was collected. Records will then be disposed of in accordance with applicable law.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief Counsel, Enforcement, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

This system is exempt from notification and record-access requirements and requirements that an individual be permitted to contest its contents under 5 U.S.C. 552a(j)(2) and (k)(2) as relating to investigatory material compiled for law enforcement purposes.

RECORDS ACCESS PROCEDURE:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Criminal Referral forms compiled for law enforcement purposes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* 31 CFR 1.36.

TREASURY/OTS .005

SYSTEM NAME:

Employee Counseling Services.

SYSTEM LOCATION:

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. *See* Appendix A for appropriate local addresses of OTS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who seek counseling services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Counseling records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE(S):

To provide a history and record of the employee counseling session(s) and to assist the counselor in identifying and resolving employee problem(s).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) This system will have minimal effect on individual privacy because access is limited to the employee counseling program counselor. Under special and emergency circumstances records may be released to medical personnel, research personnel, and as a result of a court order.

(2) Information in these records may be used to disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files.

RETRIEVABILITY:

Records are retrieved by a number assigned to employee.

SAFEGUARDS:

Records are maintained in locked file cabinet. Access is limited to the employee counselor.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

EAP Counselor, 1849 C Street, NW., Room 2453, Washington, DC 20240.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or to gain access to records maintained in the system must submit a written request that (1) identifies the record system; (2) identifies the category and type of records sought; and (3) provides (i) a signature, (ii) an address, and (iii) one other item of identification such as a photocopy of a driver's license or other official document bearing the individual's signature. *See* 31 CFR part 1, subpart C, Appendix L. Address inquiries to FOIA Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Employees and counselors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/OTS .006

SYSTEM NAME:

Employee Locator File.

SYSTEM LOCATION:

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. *See* Appendix A for appropriate local addresses of OTS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current employees of the OTS and persons whose employment have been terminated within the last six months.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, present address, telephone number, and the name, address, and telephone number of another person to notify in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE(S):

This system provides current information on employee's address and emergency contact person.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

INFORMATION IN THESE RECORDS MAY BE USED TO:

(1) Disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Provide information to medical personnel in case of an emergency;

(3) Disclose information in civil, criminal, administrative or arbitration proceedings before a court, magistrate, administrative or arbitration tribunal, in the course of pre-trial discovery, motions, trial, appellate review, or in settlement negotiations, when OTS, the Director of OTS, an OTS employee, the Department of the Treasury, the Secretary of the Treasury, or the United States is a party or has an interest in or is likely to be affected by such proceeding and an OTS attorney determines that the information is arguably relevant to that proceeding;

(4) Disclose relevant information to the Department of Justice, private counsel, or an insurance carrier for the purpose of defending an action or seeking legal advice, to assure that the agency and its employees receive appropriate representation in legal proceedings;

(5) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

System access is limited to those personnel whose official duties require such access and who have a need to know information in a record for a particular job-related purpose. Access to computerized records is limited, through use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are maintained until termination of employee's employment with OTS. After termination, records are retained for six months then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Managing Director, HR Programs and Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or to gain access to records maintained in the system must submit a written request that (1) identifies the record system; (2) identifies the category and type of records sought; and (3) provides (i) a signature, (ii) an address, and (iii) one other item of identification such as a photocopy of a driver's license or other official document bearing the individual's signature. *See* 31 CFR part 1, subpart C, Appendix L. Address inquiries to FOIA Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The individual whose record is being maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/OTS .008

SYSTEM NAME:

Employee Training Database.

SYSTEM LOCATION:

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Office of Thrift Supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual employee records are maintained by name, course taken, employee identification number, social security number, position, division, and manager name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE(S):

To maintain necessary information on training taken by employees through internal and external sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

INFORMATION IN THESE RECORDS MAY BE USED TO:

(1) Disclose information in civil, criminal, administrative or arbitration proceedings before a court, magistrate, administrative or arbitration tribunal, in the course of pre-trial discovery, motions, trial, appellate review, or in settlement negotiations, when OTS, the Director of OTS, an OTS employee, the Department of the Treasury, the Secretary of the Treasury, or the United States is a party or has an interest in or is likely to be affected by such proceeding and an OTS attorney determines that the information is arguably relevant to that proceeding;

(2) Disclose relevant information to the Department of Justice, private counsel, or an insurance carrier for the purpose of defending an action or seeking legal advice, to assure that the agency and its employees receive appropriate representation in legal proceedings;

(3) Disclose to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media.

RETRIEVABILITY:

Records are filed by individual name, course completed, employee identification number, job code, and office code.

SAFEGUARDS:

Access to computerized records is limited, through use of a password, to those persons whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Professional Development, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or to gain access to records maintained in the system must submit a written request that (1) identifies the record system; (2) identifies the category and type of records sought; and (3) provides (i) a signature, (ii) an address, and (iii) one other item of identification such as a photocopy of a driver's license or other official document bearing the individual's signature. *See* 31 CFR part 1, subpart C, Appendix L. Address inquiries to FOIA Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Personnel records and individual development plans completed by employee and supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/OTS .011

SYSTEM NAME:

Positions/Budget.

SYSTEM LOCATION:

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. *See*

Appendix A for appropriate local addresses of OTS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current employees of the Office of Thrift Supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual employee records are kept by office and agency as follows: Name, title, entered on duty date, service computation date, occupation series, social security number, grade, current salary, location of employee, date of last promotion, and eligibility for promotion. Records are kept for each office (and, where appropriate, for the agency) on number of vacancies, authorized position ceilings, and number of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE(S):

The system allows the OTS Budget Division the ability to track positions by Office to assure that assigned Full-Time Equivalent ceilings are not exceeded and remain within the limits set by the Director of OTS. The system also provides information to each office which can be used in developing their calendar year compensation budget.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

INFORMATION IN THESE RECORDS MAY BE USED TO:

(1) Disclose information to the appropriate governmental agency charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order, or license;

(2) Disclose information in civil, criminal, administrative or arbitration proceedings before a court, magistrate, administrative or arbitration tribunal, in the course of pre-trial discovery, motions, trial, appellate review, or in settlement negotiations, when OTS, the Director of OTS, an OTS employee, the Department of the Treasury, the Secretary of the Treasury, or the United States is a party or has an interest in or is likely to be affected by such proceeding and an OTS attorney determines that the information is arguably relevant to that proceeding;

(3) Disclose relevant information to the Department of Justice, private counsel, or an insurance carrier for the purpose of defending an action or seeking legal advice, to assure that the agency and its employees receive appropriate representation in legal proceedings;

(4) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and on electronic media.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Paper records are maintained in file folders in secured areas. Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose. Access to computerized records is limited, through use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief Finance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or to gain access to records maintained in the system must submit a written request that (1) identifies the record system; (2) identifies the category and type of records sought; and (3) provides (i) a signature, (ii) an address, and (iii) one other item of identification such as a photocopy of a driver's license or other official document bearing the individual's signature. *See* 31 CFR part 1, subpart C, Appendix L. Address inquiries to FOIA Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/OTS .012

SYSTEM NAME:

Payroll/Personnel System & Payroll Records.

SYSTEM LOCATION:

Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. See Appendix A for appropriate local addresses of OTS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current OTS employees and all former employees of OTS, within the past three years.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to (1) employee status, grade, salary, pay plan, hours worked, hours of leave taken and earned, hourly rate, gross pay, taxes, deductions, net pay, location, and payroll history; (2) employee's residence, office, social security number, and address; (3) Personnel actions (SF–50), State employees' withholding exemption certificates, Federal employees' withholding allowance certificates (W4), Bond Allotment File (SF–1192), Federal Employee's Group Life Insurance (SF–2810 and 2811), Savings Allotment-Financial Institutions, Address File (OTS Form 108), Union Dues Allotment, time and attendance reports, individual retirement records (SF–2806), Combined Federal Campaign allotment, direct deposit, health benefits, and thrift investment elections to either the Federal Thrift Savings Plan (TSP–1) or OTS's Financial Institutions Thrift Plan (FITP–107 and K 1–2).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

PURPOSE(S):

Provides all the key personnel and payroll data for each employee which is

required for a variety of payroll and personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) In the event that records maintained in this system of records indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of implementing the statute, or rule or regulation or order issued pursuant thereto.

(2) A record from this system may be disclosed to other Federal agencies and the Office of Personnel Management if necessary for or regarding the payment of salaries and expenses incident to employment at the Office of Thrift Supervision or other Federal employment, or the vesting, computation, and payment of retirement or disability benefits.

(3) A record from this system may be disclosed if necessary to support the assessment, computation, and collection of Federal, State, and local taxes, in accordance with established procedures.

(4) Disclosure of information may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(5) Records from this system may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193).

(6) Information from these records may be disclosed in civil, criminal, administrative or arbitration proceedings before a court, magistrate, administrative or arbitration tribunal, in the course of pre-trial discovery, motions, trial, appellate review, or in settlement negotiations, when OTS, the Director of OTS, an OTS employee, the Department of the Treasury, the Secretary of the Treasury, or the United States is a party or has an interest in or is likely to be affected by such proceeding and an OTS attorney determines that the information is arguably relevant to that proceeding.

(7) Relevant information may be disclosed to the Department of Justice, private counsel, or an insurance carrier for the purpose of defending an action or seeking legal advice, to assure that the agency and its employees receive appropriate representation in legal proceedings.

(8) Information may be disclosed to respond to State and local authorities in connection with garnishment proceedings;

(9) Information may be disclosed to private creditors for the purpose of garnishment of wages of an employee if the debt has been reduced to a judgment.

(10) Information may be disclosed to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media, microfiche, and in paper files.

RETRIEVABILITY:

Records are filed by individual name, social security number and by office.

SAFEGUARDS:

Paper and microfiche records are maintained in secured offices and access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose. Access to computerized records is limited, through the use of a password, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with National Archives and Records Administration Approved Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief Finance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or to gain access to records maintained in the system must submit a written request that (1) identifies the record system; (2) identifies the category and type of records sought; and (3) provides (i) a signature, (ii) an address, and (iii) one other item of identification such as a photocopy of a driver's license or other official document bearing the individual's signature. See 31 CFR part 1, subpart C, Appendix L. Address inquiries to FOIA Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Personnel and payroll records of current and former employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OTS APPENDIX A—Addresses of Office of Thrift Supervision Regional Offices

(1) Northeast Region: Harborside Financial Center Plaza Five, Suite 1600, Jersey City, NJ 07311.

(2) Southeast Region: 1475 Peachtree Street, NE., Atlanta, GA 30309.

(3) Central Region: 1 South Wacker Drive, Suite 2000, Chicago, IL 60606.

(4) Midwest Region: 225 E. John Carpenter Freeway, Suite 500, Irving, TX 75062–2326.

(5) West Region: Office of Thrift Supervision, Pacific Plaza, 2001 Junipero Serra Boulevard, Suite 650, Daly City, CA 94014–3897.

[FR Doc. E9–15230 Filed 6–26–09; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0427]

Proposed Information Collection (Former POW Medical History); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to assess the health care disability compensation or rehabilitation needs of Former Prisoners of War (FPOW) veteran.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 28, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov*. Please refer to ''OMB Control No. 2900–0427'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Former POW Medical History, VA Form 10–0048.

OMB Control Number: 2900–0427.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 10–0048 is completed by a VA physician during a medical examination of a Former Prisoner of War veteran. VA will use the data collected as a guide and reference for treatment planning for the FPOW veteran.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 113 hours.

Estimated Average Burden per Respondent: 90 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 75.

Dated: June 24, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–15273 Filed 6–26–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0017]

Proposed Information Collection (Annual-Final Report and Account) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to ensure that fiduciaries are properly administering VA beneficiaries' compensation and pension payments.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 28, 2009.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0017'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Annual-Final Report and Account, VA Form 21–4706.

b. Federal Fiduciary's Account, VA Form 21–4706b.

c. Court Appointed Fiduciary's Account, VA Form 21–4706c.

d. Account Book, VA Form 21–4718.

e. Certificate of Balance on Deposit and Authorization to Disclose Financial Records (Pursuant to Title 38, U.S.C., Chapter 55 and Title 12, U.S.C., Chapter 35), VA Form 27–4718a.

OMB Control Number: 2900–0017.

Type of Review: Extension of a currently approved collection.

Abstract: VA maintains supervision of the distribution and use of VA benefits paid to fiduciaries on behalf of VA claimants who are incompetent, a minor, or under legal disability. The forms are used to verify beneficiaries' deposit remaining at a financial institution against a fiduciary's accounting. The following forms will be used to ensure claimants' benefits payments are administered properly.

a. VA Forms 21–4706, 4706b and 4706c are used by estate to determine

proper usage of benefits paid to fiduciaries. The 21–4706 and 21–4706b are both necessary to conform to requirement of various state courts.

b. VA Form 21–4718 is provided to VA fiduciaries to submit accountings to either State courts or the VA. It is not a reporting form per se, but a vehicle to assist the fiduciary in accurately maintaining records of monies received and spent.

c. VA Form 21–4718a—Fiduciaries are required to obtain certifications that the balances remaining on deposit in financial institutions as shown on accountings are correct. Certifying official at a financial institution completing the form must affix the institution's official seal or stamp. The data collected is used to appoint an appropriate fiduciary for a VA beneficiary and to prevent fiduciaries from supplying false certification, embezzling funds, and possibly prevent and/or identify fraud, waste and abuse of government funds paid to fiduciaries on behalf of VA beneficiaries.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Annual-Final Report and Account, VA Form 21–4706—1,100.

b. Federal Fiduciary's Account, VA Form 21–4706b—6,300.

c. Court Appointed Fiduciary's Account, VA Form 21–4706c—2,000.

d. Account Book, VA Form 21–4718—20,000.

e. Certificate of Balance on Deposit and Authorization to Disclose Financial Records, VA Form 27–4718a—166.

Estimated Average Burden per Respondent:

a. Annual-Final Report and Account, VA Form 21–4706—30 minutes.

b. Federal Fiduciary's Accounts, VA Form 21–4706b—27 minutes.

c. Court Appointed Fiduciary's Account, VA Form 21–4706c—30 minutes.

d. Account Book, VA Form 21–4718—2½ hours.

e. Certificate of Balance on Deposit and Authorization to Disclose Financial Records, VA Form 27–4718a—3 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents:

a. Annual-Final Report and Account, VA Form 21–4706—2,200.

b. Federal Fiduciary's Accounts, VA Form 21–4706b—14,000.

c. Court Appointed Fiduciary's Account, VA Form 21–4706c—4,000.

d. Account Book, VA Form 21–4718—8,000.

e. Certificate of Balance on Deposit and Authorization to Disclose Financial Records, VA Form 27–4718a—3,312.

Dated: June 24, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–15274 Filed 6–26–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0319]

Proposed Information Collection (Fiduciary Agreement) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to establish a legal contract between VA and a Federally appointed fiduciary.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 28, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0319'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Fiduciary Agreement, VA Form 21–4703.

OMB Control Number: 2900–0319.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4703 is a legal binding contract between VA and Federally appointed fiduciaries receiving VA funds on behalf of beneficiaries who were determined to be incompetent or under legal disability by reason of minority or court action. The form outlines the fiduciary's responsibility regarding the use of VA funds.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,467 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 17,600.

Dated: June 24, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–15275 Filed 6–26–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
June 29, 2009

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail with Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2008–0104; MO 9221050083]

RIN 1018–AU88

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*), as endangered species under the Endangered Species Act of 1973, as amended (Act). The Georgia pigtoe, interrupted rocksnail, and rough hornsnail are endemic to the Coosa River drainage within the Mobile River Basin of Alabama, Tennessee, and Georgia. These three species have disappeared from large portions of their natural ranges due to extensive construction of dams that eliminated or reduced water currents and caused changes in habitat and water quality. The surviving populations are small, localized, and highly vulnerable to water quality and habitat deterioration.

We are also proposing to designate critical habitat concurrently for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail under the Act. In total, approximately 258 kilometers (km) (160 miles (mi)) of stream and river channels fall within the boundaries of the proposed critical habitat designation for the three species: 153 km (95 mi) for the Georgia pigtoe, 101 km (63 mi) for the interrupted rocksnail, and 27.4 km (17 mi) for the rough hornsnail. The proposed critical habitat is located in Cherokee, Clay, Coosa, Elmore, and Shelby Counties, Alabama; Gordon, Floyd, Murray, and Whitfield Counties, Georgia; and Bradley and Polk Counties, Tennessee.

These proposals, if made final, would implement Federal protection provided by the Act.

DATES: We will accept comments received on or before August 28, 2009. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by August 13, 2009.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018–AU88; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Cary Norquist, Acting Field Supervisor, Mississippi Fish and Wildlife Office at 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213 (telephone 601–321–1122; facsimile 601–965–4340). If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Any biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail;

(2) Any additional information concerning the ranges, distributions, and population sizes of the species;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on these species or proposed critical habitats;

(4) The reasons why any area should or should not be designated as critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by designation such that the designation of critical habitat is prudent;

(5) Specific information on the amount and distribution of habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, including areas occupied at the time of listing and containing the features essential to the conservation of the species, and areas not occupied at the time of listing that are essential to the conservation of the species and why;

(6) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and information about the benefits of including or excluding any areas that exhibit those impacts; and

(7) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Georgia Pigtoe Mussel

The Georgia pigtoe (*Pleurobema hanleyianum*) is a freshwater mussel in the family Unionidae. It was described in 1852 by I. Lea as *Unio hanleyianum* from the Coosawattee River in Georgia. It was placed in the genus *Pleurobema* by Simpson in 1900. The uniqueness of the Georgia pigtoe has been verified both morphologically (Williams *et al.* 2008, p. 533) and genetically (Campbell *et al.* 2008, pp. 719–721).

The shell of the Georgia pigtoe reaches about 50 to 65 millimeters (mm) (2 to 2.5 inches (in)) in length. It is oval to elliptical and somewhat inflated. The posterior ridge is low and evenly

rounded when evident. The anterior end is rounded, while the posterior margin is bluntly pointed below. Dorsal and ventral margins are curved, and the beaks rise slightly above the hinge line. The periostracum (membrane on the surface of the shell) is yellowish-tan to reddish-brown and may have concentric green rings. The beak cavity is shallow, and the shell interior is white to dull bluish-white (Parmalee and Bogan 1998, p. 185; Williams *et al.* 2008, p. 533).

Little is known about the habitat requirements or life history of the Georgia pigtoe; however, it is found in shallow runs and riffles with strong to moderate current and coarse sand–gravel–cobble bottoms. Unionid mussels, such as the Georgia pigtoe, filter-feed on algae, detritus, and bacteria from the water column. The larvae of most unionid mussels are parasitic, requiring a period of encystment on a fish host before they can develop into juvenile mussels. The fish host and glochidia (parasitic larvae) of Georgia pigtoe are currently unknown.

The Georgia pigtoe was historically found in large creeks and rivers of the Coosa River drainage of Alabama, Georgia, and Tennessee (Johnson and Evans 2000, p. 106; Williams *et al.*, 2008, p. 534). There are historical reports or museum records of the Georgia pigtoe from Tennessee (Conasauga River in Polk and Bradley Counties), Georgia (Conasauga River in Murray and Whitfield Counties, Chatooga River in Chatooga County; Coosa River in Floyd County, Etowah River in Floyd County), and Alabama (Coosa River in Cherokee County, Terrapin Creek in Cherokee County, Little Canoe and Shoal Creeks in St. Clair County, Morgan Creek in Shelby County, and Hatchet Creek in Coosa County) (Florida Museum of Natural History Malacology Database (FLMNH) 2006; Gangloff 2003, p. 45). Based on these historical records, the range of the Georgia pigtoe included more than 480 km (300 mi) of river and stream channels. Additional historical Coosa River tributary records credited to Hurd (1974, p. 64) (for example, Big Wills, Little Wills, Big Canoe, Oothcalooga, Holly Creeks) have been found to be misidentifications of other species (M. Gangloff in litt. 2006).

In 1990, the Service initiated a status survey and review of the molluscan fauna of the Mobile River Basin (Hartfield 1991, p. 1). This led to extensive mollusk surveys and collections throughout the Coosa River drainage (Bogan and Pierson 1993a, pp. 1–27; P. Hartfield in litt. 1990–2001). At all localities surveyed in the Coosa River drainage, the freshwater mussel fauna had declined from historical levels, and at all but a few localized areas, the fauna proved to be completely eliminated or severely reduced due to a variety of impacts, including point and non-point source pollution, and channel modifications such as impoundment. Following a review of these efforts and observations, the Service reported 14 species of mussels in the genus *Pleurobema*, including the Georgia pigtoe, as presumed extinct, based on their absence from collection records, technical reports, or museum collections for a period of 20 years or more (Hartfield 1994, p. 1).

The Service and others continued to conduct surveys in the Coosa River drainage for mollusks (P. Hartfield in litt. 1990–2001; Williams and Hughes 1998, pp. 2–6; Johnson and Evans 2000, p. 106; Herod *et al.* 2001, pp i–ii; Gangloff 2003, pp. 11–12; McGregor and Garner 2004, pp. 1–18; Johnson *et al.* 2005, p. 1). Several freshly dead and live individuals of the Georgia pigtoe were collected during these mussel surveys in the Upper Conasauga River, Murray and Whitfield Counties, Georgia (Williams and Hughes 1998, p. 10; Johnson and Evans 2000, p. 106). Gangloff (2003, pp. 11–12, 45) conducted mussel surveys of Coosa River tributaries in Alabama, including all known historical collection sites for the Georgia pigtoe, without relocating the species. McGregor and Garner (2004, p. 8) surveyed the Coosa River dam tailraces for mollusks without encountering the Georgia pigtoe.

The Georgia pigtoe is currently known from a few isolated shoals in the Upper Conasauga River in Murray and Whitfield Counties, Georgia, and in Polk County, Tennessee (Johnson and Evans 2000, p. 106; Evans 2001, pp. 33–34). All recent collection sites occur within a 43-km (27-mi) reach of the river. Within this reach, the Georgia pigtoe is very rare (Johnson and Evans 2000, p. 106), and no population estimates are available.

Interrupted Rocksnail

The interrupted rocksnail (*Leptoxis foremani*) is a small-to-medium-sized freshwater snail that historically occurred in the Coosa River drainage of Alabama and Georgia. The shell grows to approximately 22 mm (1 in) in length and may be plicate (folds in the surface) with obscure striations (fine longitudinal ridges), subglobose (not quite spherical), thick, dark, brown to olive in color, and occasionally spotted. The spire (apex) of the shell is very low, and the aperture (opening) is large and subrotund (not quite round).

The interrupted rocksnail, a member of the aquatic snail family Pleuroceridae, was described from the Coosa River, Alabama, by Lea in 1843. Goodrich (1922, p. 13) placed the species in the ''*Anculosa* (=*Leptoxis) picta* (Conrad 1834) group,'' which also included the Georgia rocksnail (*Leptoxis downei* (Lea 1868)). *L. foremani* was considered to inhabit the Lower Coosa River, with *L. downei* inhabiting the Upper Coosa drainage (Goodrich 1922, pp. 18–19, 21–23). When a rocksnail population was rediscovered surviving in the Oostanaula River, Georgia, in 1997, it was initially identified as *L. downei* (Williams and Hughes 1998, p. 9; Johnson and Evans 2000, pp. 45–46); however, Burch (1989, p. 155) had previously placed *L. downei* within *L. foremani* as an ecological variation. Therefore, *L. downei* is currently considered an upstream phenotype of the interrupted rocksnail, and *L. foremani* is recognized as the valid name for the interrupted rocksnail (Turgeon *et al.* 1998, p. 67; Johnson 2004, p. 116).

Rocksnails live in shoals, riffles, and reefs (bedrock outcrops) of small to large rivers. Their habitats are generally subject to moderate currents during low flows and strong currents during high flows. These snails live attached to bedrocks, boulders, cobbles, and gravel and tend to move little, except in response to changes in water level. They lay their adhesive eggs within the same habitat (Johnson 2004, p. 116). Interrupted rocksnails are currently found in shoal habitats with sand-boulder substrate, at water depths less than 50 centimeters (cm) (20 in), and in water currents less than 40 cm/second (sec) (16 in/sec) (Johnson 2004, p. 116). We know little of the life history of pleurocerid snails; however, they generally feed by ingesting periphyton (algae attached to hard surfaces) and biofilm detritus scraped off of the substrate by the snail's radula (a horny band with minute teeth used to pull food into the mouth) (Morales and Ward 2000, p. 1). Interrupted rocksnails have been observed grazing on silt-free gravel, cobble, and boulders (Johnson 2004, p. 116). They have survived as long as 5 years in captivity (Johnson in litt. 2006b).

The interrupted rocksnail was historically found in colonies on reefs and shoals of the Coosa River and several of its tributaries in Alabama and Georgia. The range of the rocksnail formerly encompassed more than 800 km (500 mi) of river and stream channels, including the Coosa River (Coosa, Calhoun, Cherokee, Elmore, Etowah, Shelby, St. Clair, and Talladega

Counties), Lower Big Canoe Creek (St. Clair County), and Terrapin Creek (Cherokee County) in Alabama; and the Coosa and Lower Etowah Rivers (Floyd County), the Oostanaula River (Floyd and Gordon Counties), the Coosawattee River (Gordon County), and the Conasauga River (Gordon, Whitfield, and Murray Counties) in Georgia (Goodrich 1922, pp. 19, 21; Johnson 2004, p. 116; FLMNH 2006).

Snail surveys conducted within the historical range of the interrupted rocksnail (Bogan and Pierson 1993a, pp. 1–27; Williams and Hughes 1998, pp. 1–21) resulted in the collection of only a single live specimen from the Oostanaula River, Floyd County, Georgia, during 1997 (Williams and Hughes 1998, p. 9). Intensive surveys of the Oostanaula, Coosa, Coosawattee, Etowah, and Conasauga Rivers since 1999 have located the species in about 12 km (7.5 mi) of the Oostanaula River upstream of the Gordon–Floyd County line (Johnson and Evans 2000, pp. 45–46; Johnson and Evans 2001, pp. 2, 25). A captive colony was maintained at the Tennessee Aquarium Research Institute (TNARI) from 2000 through 2005 for study and propagation. In coordination with TNARI and the Service, the Alabama Department of Conservation and Natural Resources (ADCNR) developed a plan and strategy to reintroduce interrupted rocksnails from the TNARI colony into the Coosa River above Wetumpka, Elmore County, Alabama (ADCNR 2003, pp. 1–4). In 2003, 2004, and 2005, approximately 3,200, 1,200, and 3,000 juvenile snails, respectively, from the TNARI culture were released into the Lower Coosa River (ADCNR 2004, p. 33; P. Johnson in litt. 2005a). In 2005, ADCNR established the Alabama Aquatic Biodiversity Center (AABC) at the Marion State Fish Hatchery for the culture of imperiled mollusk species, and the interrupted rocksnail TNARI colony was transferred to that facility.

Following its rediscovery, the interrupted rocksnail population size on shoals in the Oostanaula River declined from a high of 10 to 45 snails per square meter (m^2) (1.2 square yards (yd^2) in 1999 (Johnson and Evans 2001, p. 22) to only 20 snails found during 6 search-hours in 2004 (P. Johnson in litt. 2003, 2004). The cause of decline was suspected to be some form of water contamination (P. Johnson in litt. 2003, 2004; P. Hartfield in litt. 2006). A July 2006 search for adults to use as hatchery stock failed to locate any rocksnails in more than 2 search-hours (P. Hartfield in litt. 2006). However, a subsequent search in August 2006 under lower flow conditions resulted in the location of 89 snails in 4 search-hours at one shoal, and 2 rocksnails in 4 search-hours at another shoal (P. Johnson in litt. 2007a).

Since their reintroduction into the Lower Coosa River of Alabama, a few of the 2003 hatchery-cultured interrupted rocksnails were observed in the vicinity of the release site in 2004 (Johnson in litt. 2005c). An alternative site was selected for release in August 2005, and 18 snails were located 3 months following release (M. Pierson in litt. 2005). During a 40–minute search of this release area in 2006, two interrupted rocksnails were found (P. Johnson in litt. 2007b). Observations of only small numbers of reintroduced snails may be due to habitat size and dispersal, low fecundity of the species, predation, reproductive failure due to dispersal, or habitat disturbance (Johnson in litt. 2005b).

Rough Hornsnail

The rough hornsnail's (*Pleurocera foremani*) shell is elongated, pyramidal, and thick. Growing to about 33 mm (1.3 in) in length, the shell has as many as nine yellowish-brown whorls. The aperture is elongated, angular, channeled at the base, and usually white inside. The presence of prominent nodules or tubercles on the lower whorls above the aperture is the most distinctive feature that separates it from other hornsnails (Tryon 1873, p. 53). These tubercles, along with the size and shape of the shell, distinguish the species from all other pleurocerid snails (*Elimia* spp., *Leptoxis* spp., *Pleurocera* spp.) in the Mobile River Basin.

The rough hornsnail is a member of the aquatic snail family of Pleuroceridae. The species was described in 1843 by Lea as *Melania foremanii* (=*foremani*) (Tryon 1873, p. 52). It was later placed in the genus *Pleurocera* by Tryon (1873, p. 52), who noted that *P. foremani* closely resembled species of that genus. Goodrich (1935, p. 3) reported a variation of a species of *Pleurocera* in the Cahaba River that resembled *foremani*, but later identified that variant as a ''mutation'' or form of brook hornsnail (*P. vestitum*) (Goodrich 1941, p. 12). This variant, however, is no longer extant in the Cahaba River (Bogan and Pierson 1993b, p. 12; Sides 2005, pp. 21–22, 28). Goodrich (1944, p. 43) considered that the Coosa River *P. foremani* might also be eventually found to be simply a variant of smooth hornsnail (*P. prasinatum*), another more widely distributed species in the Coosa River.

In a recent dissertation on the systematics of the Mobile River Basin *Pleurocera*, the rough hornsnail was found to be both morphologically and genetically distinct from other species in the genus (Sides 2005, pp. 26, 127). This analysis also found that the rough hornsnail was genetically more closely allied to a co-occurring species in the genus *Elimia*, and concluded that it should be recognized as *Elimia foremani* (Sides 2005, pp. 26–27). Although the Sides (2005, pp. 26–27) study provides some evidence that this species should be placed in the genus *Elimia*, this taxonomic change has not been formally peer-reviewed and published. Therefore, for the purposes of this action, we will continue to use currently recognized nomenclature for the rough hornsnail (*Pleurocera foremani*).

Rough hornsnails are primarily found on gravel, cobble, and bedrock in moderate currents. They have been collected at depths of 1 m (3.3 ft) to 3 m (9.8 ft) (Hartfield 2004, p. 132). The species appears to tolerate low-to-moderate levels of silt deposition (Sides 2005, p. 127). Little is known regarding the life history characteristics of this species. Snails in the genus *Pleurocera* generally lay their eggs in a spiral arrangement on smooth surfaces (Sides 2005, pp. 26–27), whereas *Elimia* snails generally lay eggs in short strings (P. Johnson 2006). Attempts to induce rough hornsnails to lay eggs in captivity have been unsuccessful (Sides 2005, p. 27).

The rough hornsnail is endemic to the Coosa River system in Alabama. Goodrich (1944, p. 43) described the historical range as the Coosa River downstream of the Etowah River and at the mouths of a few tributaries. The Etowah River enters the Coosa River in Floyd County, Georgia; however, there are no known museum or site-specific records of the rough hornsnail that validate its range into the State of Georgia (P. Johnson in litt. 2006a). Historical museum records of the rough hornsnail in the Coosa River (FLMNH 2006, and elsewhere) indicate that they occurred from Etowah, St. Clair, Shelby, Talladega, and Elmore Counties, Alabama, a historical range of approximately 322 river km (200 river mi). There are also historical museum records of this species from nine Coosa River tributaries in Alabama, including Big Wills Creek in Etowah County; Kelly, Big Canoe, and Beaver Creeks in St. Clair County; Ohatchee Creek, Calhoun County; Choccolocco and Peckerwood Creeks in Talladega County; Yellowleaf Creek, Shelby County; and Yellow Leaf Creek in Chilton County (FLMNH 2006).

The rough hornsnail is currently known to occur at two locations: Lower

Yellowleaf Creek in Shelby County, Alabama; and the Lower Coosa River below Wetumpka Shoals in Elmore County, Alabama (Sides 2005, p. 40). There are also museum records of the species from Wetumka Shoals in the early 1990s (FLMNH 2006); however, the species has not been collected from the shoal reach in recent surveys (Johnson 2002, pp. 5–9). Yellowleaf Creek is a moderately sized stream where rough hornsnails have been collected from about a 50-m (55-yd) length of the stream. At this location, rough hornsnails occur at densities of 8 to 32 m^2 (1.2 yd^2) (Pierson in litt. 2006). The Lower Coosa River is a large river channel where rough hornsnails have been found in an area of about 100 m^2 (120 yd^2) (P. Hartfield 2001). No quantitative estimates have been made at this site. Searches of unimpounded reaches of the Coosa River and the lower portions of tributaries to the Coosa have failed to locate the species elsewhere (Bogan and Pierson 1993a, pp. 1–27; Garner, pers. com. 2005; Hartfield in litt. 2006). The two known surviving populations are separated by three impoundments and about 113 km (70 mi) of impounded channel habitat.

Previous Federal Action

The interrupted rocksnail and rough hornsnail were first identified as candidates for protection under the Act in the November 21, 1991, **Federal Register** (56 FR 58804). They were assigned a category 2 status designation, which was given to those species for which there was some evidence of vulnerability, but for which additional biological information was needed to support a proposed rule to list as endangered or threatened. In the November 15, 1994, notice of candidate review (59 FR 58982), the rough hornsnail was again assigned a category 2 status, while the status category for the interrupted rocksnail (*Leptoxis foremani*) was changed to 3A (taxa for which the Service has persuasive evidence of extinction).

Assigning categories to candidate species was discontinued in 1996 (Notice of Candidate Review; February 28, 1996; 61 FR 7596), and only species for which the Service has sufficient information on biological vulnerability and threats to support issuance of a proposed rule are now regarded as candidate species. Candidate species were also assigned listing priority numbers based on immediacy and the magnitude of threat, as well as their taxonomic status (48 FR 43098; Sept. 21, 1983). Due to a need for taxonomic clarification, the rough hornsnail was dropped as a candidate species in 1996.

In 1997, we received reports of a small population of the interrupted rocksnail surviving in the Ostanaula River, Georgia, along with reports of Georgia pigtoe collections in the Conasauga River of Georgia and Tennessee, and their status as candidates was reevaluated. In the 1999 (64 FR 57533), 2001 (66 FR 54808), 2002 (67 FR 40657), and 2004 (69 FR 24876) **Federal Register** notices of candidate review, both the Georgia pigtoe and interrupted rocksnail (as Georgia rocksnail, *Leptoxis downei*) were identified as listing priority 5 candidate species. In the May 11, 2005, **Federal Register** notice of candidate review (70 FR 24870) the nomenclature was corrected for the interrupted rocksnail, and the listing priority for both species was changed from 5 to 2, based on the continued rarity of the Georgia pigtoe and a decline in abundance of the interrupted rocksnail. The rough hornsnail was recognized as a listing priority 2 candidate in the September 12, 2006, **Federal Register** notice of candidate review (71 FR 53756), following clarification of its taxonomy, along with the interrupted rocksnail and Georgia pigtoe.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a) of the Act, we may list a species on the basis of any of five factors, as follows: (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. In making this finding, information regarding the status and trends of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail are considered in relation to the five factors provided in section 4(a)(1) of the Act.

Under section 3 of the Act, a species is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The word ''range'' refers to the range in which the species currently exists. Range is discussed further below in the Conclusion section of this proposed rule.

Foreseeable future is determined by the Service on a case-by-case basis, taking into consideration a variety of species-specific factors such as lifespan, genetics, breeding behavior, demography, threat projection timeframes, and environmental variability.

The average lifespan of the interrupted rocksnail in the wild is unknown; however, interrupted rocksnails have survived in captivity for as long as 5 years (Johnson in litt. 2006b). Heavy-shelled mussels are known to have long life spans, with many species living from 30 to 70 years (Williams *et al.* 2008, p. 68). For the purposes of this analysis, we estimate a life span of 30 years for the Georgia pigtoe.

Some percentage of rocksnails cultured in captivity have been observed ovipositing in their first year, but all are believed to become sexually mature in their second year. Less is known about the rough hornsnail; however, some pleurocerid snails in the genus *Elimia* may live up to 5 years (Dillon 1988, p. 113). It is also believed that most pleurocerid snails may begin reproducing within 1 year post-hatch, depending upon habitat and productivity (Johnson 2008).

The age of sexual maturity for the Georgia pigtoe is unknown and varies widely among the genera of freshwater mussels. In general, thin-shelled species reach sexual maturity earlier and have shorter lifespans than heavier-shelled species. In the Mobile River Basin, age at sexual maturity for mussels has been shown to vary from 1 to 2 years for the thin-shelled southern pocketbook (*Lampsilis ornata*), and 3 to 9 years for the heavy-shelled Alabama orb (*Quadrula asperata)* (Haag and Staton 2003, pp. 2122–2123). The Georgia pigtoe is similar in shell size and thickness to the Alabama orb, so we are estimating sexual maturity for the Georgia pigtoe at age 5 years, and a generational time span of 5 years. Heavy-shelled mussels are also known to have long life spans, with many species living from 30 to 70 years (Williams *et al.* 2008, p. 68).

Threat projection timeframes for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail include specific activities that can arise at any time (such as permitted discharges, construction activities, channel modifications, or random accidents and spills of toxic substances) and periodic weather events (such as droughts and floods).

The following analysis examines all five factors currently affecting or that are likely to affect Georgia pigtoe,

interrupted rocksnail, and rough hornsnail snail. The five factors listed under section 4(a)(1) of the Act and their application to the Georgia pigtoe mussel (*Pleurobema hanleyianum* (Lea 1852)), interrupted rocksnail (*Leptoxis foremani* (Lea 1843)), and rough hornsnail (*Pleurocera foremani* (Lea 1843)) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

All three species have experienced significant curtailment of their occupied habitats (see ''Background'' above). The Georgia pigtoe has been eliminated from about 90 percent of its historical range of 480 river km (298 river mi). It now inhabits only 43 river km (27 river mi). Interrupted rocksnail has been eliminated from 99 percent of a historical range of 800 river km (497 river mi), and is now known from 12 river km (7 river mi). The rough hornsnail has disappeared from more than 99 percent of a historical range of 321 river km (199 river mi) and now occurs in less than 1 river km (0.6 river mi). The primary cause of range curtailment for all three species has been modification and destruction of river and stream habitats, primarily by the construction of large hydropower dams on the Coosa River. This was compounded by fragmentation and isolation of the remaining free-flowing portions of the Coosa River and its tributaries, as well as their increased vulnerability to local historical events of water quality and habitat degradation.

Dams and Impoundments

Dams eliminate or reduce river flow within impounded areas, trap silts and cause sediment deposition, alter water temperature and dissolved oxygen levels, change downstream water flow and quality, affect normal flood patterns, and block upstream and downstream movement of species (Watters 1999, pp. 261–264; McAllister *et al.* 2000, p. iii; Marcinek *et al.* 2005, pp. 20–21). Within impounded waters, decline of freshwater mollusks has been attributed to sedimentation, decreased dissolved oxygen, and alteration in resident fish populations (Neves *et al.* 1997, pp. 63–64; Watters 1999, pp. 261–264; Marcinek *et al.* 2005, pp. 9–10). Below dams, mollusk declines are associated with changes and fluctuation in flow regime, scouring and erosion, reduced dissolved oxygen levels and water temperatures, and changes in resident fish assemblages (Williams *et al.* 1992b, p. 7; Neves *et al.* 1997, pp. 63–64; Watters 1999, pp. 261–264; Marcinek *et al.* 2005, pp. 20–21). The decline and extinction of freshwater snails and mussels in the Mobile River Basin has been directly attributed to construction of numerous large impoundments in the major river systems (Williams *et al.* 1992b, pp. 1–8; Bogan *et al.* 1995, pp. 250–251; Lydeard and Mayden 1995, pp. 803–804; Neves *et al.* 1997, pp. 62, 64; Marcinek *et al.* 2005, p. 9).

The Georgia pigtoe, interrupted rocksnail, and rough hornsnail are all endemic to the Coosa River system. The Coosa River was impounded by six major dams constructed between 1928 and 1966. Today, more than 60 percent of the Coosa River and its 19 largest tributaries are inundated or affected by flow regulation (Marcinek *et al.* 2005, pp. 12–16).

Dam construction on the Coosa River had a secondary effect of fragmenting the ranges of aquatic mollusk species, leaving relict habitats and populations isolated by the structures as well as by extensive areas of uninhabitable, impounded waters. These isolated populations were left more vulnerable to, and affected by, natural events (such as droughts), runoff from common land-use practices (such as agriculture, mining, urbanization), discharges (such as municipal and industrial wastes), and accidents (such as chemical spills) that reduced population levels or eliminated habitat (Neves *et al.* 1997, pp. 64–71; U.S. Fish and Wildlife Service 2000, pp. 14–15). As a result, many relict populations became locally extirpated, and many mollusk species were driven to extinction (Bogan *et al.* 1995, pp. 250–251; Lydeard and Mayden 1995, pp. 803–804; Neves *et al.* 1997, pp. 54, 62; U.S. Fish and Wildlife Service 2000, pp. 6–9). If conditions subsequently improved, the surviving mollusk species were unable to naturally recolonize suitable areas, due to impediments created by the dams and impounded waters.

The only known natural population of the interrupted rocksnail occurs in the free-flowing Oostanaula River (Williams and Hughes 1998, p. 9; Johnson and Evans 2001, p. 25). The Oostanaula River is formed by the confluence of the Conasauga and Coosawatee Rivers. The Upper Coosawatee is impounded by Carters Dam, a hydropower dam which discharges into Carters Re-regulation Dam and from there into the Coosawatee River. Hydropower discharges from Carters Dam are believed to be implicated in the disappearance of the interrupted rocksnail from the Coosawattee River (Johnson and Evans 2001, p. 26). The effects of power generation discharges from Carters Dam, along with cold water temperatures are evident downstream (Williams and Hughes 1998, p. 11), even to the shoals on the Oostanaula River where the interrupted rocksnail is found (Johnson and Evans 2001, p. 26; Marcinek *et al.* 2005, p. 15). A Federal Energy Regulatory Commission (FERC) license was issued to construct a hydroelectric facility on the Carters Re-regulation Dam (FERC 2001, pp. 1–2). A notice of probable termination of license has been issued due to failure to commence construction in a timely manner (FERC 2005a, pp. 1–2). An appeal to the termination order was made (FERC 2005b, p. 1) but denied (FERC 2006a, pp. 1–3). However, the applicant has since applied for a preliminary permit to proceed with the hydroelectric facility (FERC 2006b, pp. 1–3).

Rough hornsnails currently survive in Lower Yellowleaf Creek, at the transitional area between the flowing stream and the embayment created by Lay Dam, and in a small area of the Coosa River below the shoals along the Fall Line near Wetumpka, Alabama. Known from the main channel of the Coosa River and the mouths of some of the larger tributaries, all historical habitats, including those two where the rough hornsnail currently survives, are affected to some degree by impounded waters and hydropower releases.

The Georgia pigtoe historically occurred in the Coosa River and many of its major tributaries. As noted above, the Coosa is impounded throughout most of its length by major hydropower dams. In addition, all historically occupied tributaries are isolated from each other by one or more of these dams and extensive reaches of impounded waters. The species is currently known to survive only in the Upper Conasauga River, far above the influence of the Coosa River impoundments.

Water and Habitat Quality

The disappearance of shoal populations of rough hornsnail, interrupted rocksnail, and Georgia pigtoe from unimpounded relict habitats in the Coosa River drainage is likely due to historical pollution problems. Pleurocerid snails and freshwater mussels are highly sensitive to water and habitat quality (Havlik and Marking 1987, pp 1–15; Neves *et al.* 1997, pp. 64–69). Historical causes of water and habitat degradation in the Coosa River and its tributaries included drainage from gold mining activities, industrial and municipal pollution events, and construction and agricultural runoff (for example, Hurd 1974, pp. 38–40; Lydeard and Mayden 1995, pp. 803–804; Freeman *et al.* 2005, pp. 560–562).

Prior to the passage of the Federal Clean Water Act (33 U.S.C. 1251 *et seq.*, 1972) and the adoption of State water quality regulations and criteria, water pollution was a significant factor in the disappearance of mollusks from unimpounded river and stream channels in the Mobile River Basin (Baldwin 1973, p. 23; Hurd 1974, pp. 38–40, 144–151). Hurd (1974, pp. 147–149), for example, noted the extirpation of freshwater mussel communities from the Conasauga River below Dalton, Georgia, apparently as a result of textile and carpet mill waste discharges. He also attributed the disappearance of the mussel fauna from the Etowah River and other tributaries of the Coosa River to organic pollution and siltation. Baldwin (1973, p. 23) documented the loss of mussel diversity in the Cahaba River and identified the primary causes as pollution from coalfields and industrial and urban wastes.

Although Federal and State water quality laws and regulations have generally reduced the impacts of point source discharges, nonpoint source pollution continues to affect and possibly threaten the remaining populations of each of these mollusk species. Nonpoint source pollution has been identified as a concern in the Yellowleaf Creek and Lower Coosa River watersheds (Alabama Clean Water Partnership (ACWP) 2005 Chapter 12). These drainages encompass historical habitat for the interrupted rocksnail and Georgia pigtoe, currently occupied habitat for the rough hornsnail, and a recent reintroduction of the interrupted rocksnail. Both Yellowleaf Creek and the eastern watershed of the Lower Coosa River have been designated as High Priority Watersheds by the ACWP (2005 Chap. 12), due to the high potential of nonpoint source pollution associated with expanding human population growth rates and urbanization. The headwaters of Yellowleaf Creek are about 5 km (3 mi) southeast of the greater metropolitan area surrounding Birmingham, and the watershed is highly dissected by county roads. The Lower Coosa River is about 16 km (10 mi) north of the Montgomery greater metropolitan area and is accessible by a four-lane highway. Both general areas are experiencing growth due to their proximity to major metropolitan areas.

Nonpoint source pollution and habitat deterioration are also problems in the Upper Coosa River Basin, including the Conasauga and Oostanaula rivers (Georgia Department of Natural Resources (GDNR) 1998, pp. 4.27–4.42). In the reaches of the Conasauga River where the Georgia pigtoe continues to survive, overall molluscan abundance and diversity have experienced a general decline over the past two decades that has been primarily attributed to water or sediment toxicity and channel instability (Johnson and Evans 2000, pp. 171–173; Sharpe and Nichols 2005, pp. 81–88). Sedimentation has been identified as a potential limiting factor for the interrupted rocksnails in the Oostanaula River (Johnson and Evans 2001, p. 26). Following its rediscovery, the interrupted rocksnail population size in the Oostanaula River has declined from a high of 10 to 45 snails per square meter (10.7 sq ft) in 1999 (Johnson and Evans 2001, p. 22) to only 20 snails found during 6 search-hours in 2004 (P. Johnson in litt. 2003, 2004). The cause of decline is suspected to be some form of water contamination (P. Johnson in litt. 2003, 2004; P. Hartfield in litt. 2006).

Nonpoint source pollution from land surface runoff originates from virtually all land use activities and includes sediments; fertilizer, herbicide, and pesticide residues; animal or human wastes; septic tank leakage and gray water discharge; and oils and greases (GDNR 1998, pp. 4.27–4.42; ACWP 2005, Chap. 9). Nonpoint source pollution can cause excess sedimentation, nutrification, decreased dissolved oxygen concentration, increased acidity and conductivity, and other changes in water chemistry that can seriously impact aquatic mollusks. Land use types around the Georgia pigtoe, interrupted rocksnail, and rough hornsnail populations include pastures, row crops, timber, and urban and rural communities.

Excessive sediments are believed to impact riverine mollusks requiring clean, stable streams (Ellis 1936, pp. 39–40; Brim Box and Mossa 1999, p. 99). Impacts resulting from sediments have been noted for many components of aquatic communities. For example, sediments have been shown to abrade or suffocate periphyton (organisms attached to underwater surfaces, upon which snails may feed); affect respiration, growth, reproductive success, and behavior of aquatic insects and mussels; and affect fish growth, survival, and reproduction (Waters 1995, pp. 173–175). Potential sediment sources within a watershed include virtually all activities that disturb the land surface, and all localities currently occupied by these mollusks are affected to varying degrees by sedimentation.

Land surface runoff also contributes nutrients to rivers and streams. Excessive nutrient input (for example, nitrogen and phosphorus from fertilizers, sewage, and animal manure) can result in effects that are detrimental to aquatic species. High levels of nutrients in surface runoff can promote excessive filamentous algal growth. Dense algal growth covers gravel, cobble, or bedrock substrates and interstices (spaces between bottom particles), and can seriously reduce dissolved oxygen in waters during dark hours due to algal respiration (Shepard *et al.* 1994, pp. 61–64), which affects feeding, reproduction, and respiration in adult and juvenile mussels and snails, and limits access to substrate interstices important to juvenile and adult mussels. Algal mats also provide cover for invertebrate predators of juvenile mollusks (such as flatworms, hydra, and chironomids) and increase their vulnerability to such predators. Filamentous algae may also displace certain species of fish, or otherwise affect fish–mussel interactions essential to recruitment (for example, Hartfield and Hartfield 1996, p. 373). In hatcheries, filamentous algal growth reduces juvenile mussel survival by reducing flow, increasing sedimentation, and causing competition with and reduction of the unicellular algal community on which the mussels feed (R. Neves 2002). Nutrient and sediment pollution may have synergistic effects (when the toxic effect of two or more pollutants operating together is greater than the sum of the effects of the pollutants operating individually) on freshwater mollusks, as has been suggested for aquatic insects (Waters 1995, p. 67).

Land surface runoff contributes the majority of human-induced sediments and nutrients to water bodies throughout the United States. The human population is expanding within the areas currently occupied by the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, increasing the sediment and nutrient input to their riverine habitats, and leaving these mollusks vulnerable to progressive water and habitat degradation from land surface runoff.

Accidental spills that may affect water or habitat quality also threaten surviving populations of each species. For example, on September 12, 2006, a train derailment spilled four tank cars of soybeans into a tributary of Yellowleaf Creek (Birmingham News in litt. 2006). A large rain event flushed the decomposing soybeans into Yellowleaf Creek, resulting in a serious decline in dissolved oxygen in the stream, killing fishes, mussels (including two endangered species, southern pigtoe and triangular kidneyshell), and snails (including the endangered cylindrical

lioplax) (Johnson 2006). Fortunately, the location of the largest surviving population of rough hornsnail is in the lowest reaches of Yellowleaf Creek, remote from the spill, and no mortality was observed in this population as a result of the spill (Johnson 2006).

In summary, the historical loss of habitat and range is currently, and projected to continue to be, a significant threat to the rough hornsnail, interrupted rocksnail, and Georgia pigtoe. Curtailment of habitat and range also amplifies threats from nonpoint source water and habitat quality degradation, accidental spills, or violation of permitted discharges. Due to the extremely limited extent of habitat currently occupied by each species, and the severity and magnitude of this threat, we have determined that the present or threatened destruction, modification, or curtailment of habitat and range represents an ongoing and significant threat to the rough hornsnail, interrupted rocksnail, and Georgia pigtoe.

B. Overutilization for commercial, recreational, scientific, or educational purposes.

The Georgia pigtoe, interrupted rocksnail, and rough hornsnail are not commercially utilized. Each species has been taken for scientific and private collections in the past, yet collecting is not considered a factor in the decline of these species. While collection is not considered a current threat, the desirability of these species in scientific and commercial collections may increase as their existence and rarity becomes known, and their localized distributions and small population sizes leaves them vulnerable to overzealous recreational or scientific collecting.

C. Disease or predation.

Diseases of freshwater mollusks are poorly known and are not currently considered to be a threat to the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, or a factor in their decline. Aquatic snails and mussels are consumed by various vertebrate predators, including fishes, mammals, and possibly birds. Although predation by naturally occurring predators is a normal aspect of the population dynamics of a species and is not known to be a threat to any of these species, changes in water flows, depths, temperatures, and other environmental factors within some portions of their ranges may have led to increased numbers of native mollusk-eating fish, such as freshwater drum (Johnson in litt. 2005b). In addition, the potential now exists for the black carp (*Mylopharyngodon piceus*), a mollusk-eating Asian fish recently introduced into the waters of the United States (U.S. Fish and Wildlife Service 2002), to eventually enter and disperse through the Mobile River Basin via the Tennessee–Tombigbee Waterway, or by their accidental release from catfish farms or other aquaculture facilities.

In summary, disease in freshwater mollusks is poorly known and not currently considered a threat. Although there is no direct evidence at this time that predation is detrimentally affecting the Georgia pigtoe, interrupted rocksnail, or rough hornsnail, their small populations and limited ranges leaves them vulnerable to threats of predation from natural or introduced predators. Therefore, we have concluded that predation currently represents a threat of low magnitude, but it could potentially become a significant future threat to the Georgia pigtoe, interrupted rocksnail, or rough hornsnail due to their small population sizes.

D. The inadequacy of existing regulatory mechanisms.

The Alabama Department of Conservation and Natural Resources currently recognizes the rough hornsnail as a ''Priority 1'' species (Highest Conservation Concern) (Mirarchi *et al.* 2004, p. 117; ADCNR 2005, p. 302). The interrupted rocksnail is considered ''Extirpated (in Alabama) – Conservation Action Underway'' (Mirarchi *et al.* 2004, p. 114), and the Georgia pigtoe is listed as ''extinct'' (Mirarchi *et al.* 2004, p. 13). While these classifications identify the status of imperiled species in the State of Alabama, they convey no legal protection. Interrupted rocksnail and Georgia pigtoe currently lack any official status recognition by the State of Georgia, but they have been nominated for inclusion on the State Protected Species List. The Georgia pigtoe is identified as a species of the Greatest Conservation Need by the State of Tennessee. NatureServe (2006) identifies the Georgia pigtoe, interrupted rocksnail, and rough hornsnail as G1 critically imperiled species; however, no State or Federal protection is conveyed by these classifications. Without State or Federal protection, these three species are not currently given any specific special consideration under environmental laws when project impacts are reviewed, other than those provided for water quality.

The mollusk fauna (including the Georgia pigtoe) of the Conasauga River and the interrupted rocksnail in the Oostanaula River have experienced significant declines in recent years, apparently due to water quality or sediment toxicity (Evans 2001, p. 3; Johnson in litt. 2004; Sharpe and Nichols 2005, pp. 1–4; Konwick *et al.* 2008, pp. 2016–2017). There is no specific scientific information on the sensitivity of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail or their host fish species to common industrial and municipal pollutants, and little information on other freshwater mollusks. Current State and Federal regulations regarding pollutants are assumed to be protective of freshwater mollusks; however, these species may be more susceptible to some pollutants than test organisms commonly used in bioassays. For example, several recent studies have suggested that U.S. Environmental Protection Agency's (EPA) criteria for ammonia may not be protective of freshwater mussels (Augspurger *et al.* 2003, p. 2571; Augspurger *et al.* 2007, p. 2026; Newton *et al.* 2003, pp. 2559–2560; Newton and Bartsch 2007, p 2057; Ward *et al.* 2007, p. 2075).

In a review of the effects of eutrophication on mussels, Patzner and Muller (2001, p. 329) noted that stenoecious (narrowly tolerant) species disappear as waters become more eutrophic. They also refer to studies that associate increased levels of nitrate with the decline and absence of juvenile mussels (Patzner and Muller 2001, pp. 330–333). Other studies have also suggested that early life stages of mussels are more sensitive to metals and such inorganic chemicals as chlorine and ammonia than are common bioassay test organisms (Keller and Zam 1991, pp. 543–545; Goudreau *et al.* 1993, p. 221; Naimo 1995, pp. 354–355). Therefore, it appears that inadequate research and data prevent existing regulations, such as the Clean Water Act (administered by the EPA and the U.S. Army Corps of Engineers), from being fully utilized or effective in the management and protection of these species.

Rough hornsnails currently survive at localized sites in Yellowleaf Creek and in the Lower Coosa River below Wetumpka Shoals in Alabama. In addition, the interrupted rocksnail was recently reintroduced into Wetumpka Shoals. The Alabama Department of Environmental Management (ADEM) has designated the water use classification for some portions of Yellowleaf Creek as ''Swimming'' (S) and others as ''Fish and Wildlife'' (F&W). The F&W designation establishes minimum water quality standards that are believed to protect

existing species and water uses (for example, fishing, recreation, irrigation) within the designated area, while the S classification establishes higher water quality standards that are protective of human contact with the water. The Lower Coosa River below Wetumpka is currently designated as F&W by ADEM, and adjacent tributaries are classified as S. Both water bodies are currently believed to support their designated uses. However, Yellowleaf Creek and the eastern watershed of the Lower Coosa have been designated as High Priority Watersheds by the ACWP (2005, Chap. 12) due to a lack of monitoring data and the high potential of nonpoint source pollution in these drainages associated with expanding human population growth rates and urbanization.

The reach of the Conasauga River at and below the Tennessee–Georgia State Line supports the only known surviving population of the Georgia pigtoe. This river reach is identified on Georgia's 303(d) list as partially supporting its designated use of Fishing–Drinking Water (GDNR 2006, p. 35). The Georgia 303(d) list identifies high levels of fecal coliform bacteria and Fish Consumption Guidance (FCG) due to polychlorinated biphenyls (PCBs) as the reasons for this river reach's inclusion on the list, and nonpoint pollution is identified as the source of pollutants (GDNR 2006, p. 35). Recent studies have also implicated sediment and water toxicity in the decline of mollusks in the Conasauga River (Sharpe and Nichols 2005, pp. 81–88; Konwick *et al.* 2008, pp. 2016–2017).

States maintain water-use classifications through issuance of National Pollutant Discharge Elimination System (NPDES) permits to industries, municipalities, and others that set maximum limits on certain pollutants or pollutant parameters. For water bodies on the 303(d) list, States are required under the Clean Water Act to establish a total maximum daily load (TMDL) for the pollutants of concern that will bring water quality into the applicable standard. The Georgia Department of Natural Resources has identified TMDLs for the Oostanaula River to address existing problems of PCBs and fecal coliform loads from nonpoint source and urban runoff sources.

In summary, recent declines in mollusk communities within the ranges of each of these species has been attributed to poor water or sediment quality. Although regulatory mechanisms are in place to protect aquatic species, a lack of specific information on the sensitivity of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail and their host fish to common industrial and municipal pollutants limits their application. Water and sediment quality is believed to currently affect (and is expected to continue to affect) the Georgia pigtoe and interrupted rocksnail and has been identified as a concern for the rough hornsnail in Yellowleaf Creek. Therefore, we have determined that the threat of inadequate existing regulatory mechanisms is an imminent threat of high magnitude to the Georgia pigtoe, interrupted rocksnail, and rough hornsnail.

E. Other natural or manmade factors affecting its continued existence.

As noted under Factor A, above, the Georgia pigtoe, interrupted rocksnail, and rough hornsnail have been eliminated from 90 percent or more of their historical ranges. Surviving populations of each species are small, extremely localized, isolated, and vulnerable to habitat modification, toxic spills, and progressive degradation from land surface runoff (non-point source runoff) (see Factor A: Dams and Impoundments, Water and Habitat Quality; and Factor D: The inadequacy of existing regulatory mechanisms). These conditions also leave each species vulnerable to catastrophic changes to their habitats that may result from natural events such as flood scour and drought.

There is a growing concern that climate change may lead to increased frequency of severe storms and droughts (for example, Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015). During 2007–2008, a severe drought affected the Coosa River watershed in Alabama and Georgia. Streamflow for the Conasauga River at Tilton, Georgia, during September 2007, was the lowest recorded for any month in 69 years (U.S. Geological Survey 2007). Although the effects of the drought on the Georgia pigtoe, interrupted rocksnail, and rough hornsnail have not been quantified, mollusk declines as a direct result of drought have been documented (for example, Golladay *et al.* 2004, p. 494; Haag and Warren 2008, p. 1165). Reduction in local water supplies due to drought is also compounded by increased human demand and competition for surface and ground water resources for power production, irrigation, and consumption (Golladay *et al.* 2004, p. 504).

Freshwater mussels and snails are capable of moving only short distances. As noted previously (see discussion under Factor A: Dams and Impoundments), there are numerous obstacles in the Coosa River drainage to long distance movement of snails, mussels, or the fish hosts of mussels, between relict patches of historically occupied and potentially suitable riverine habitats. Therefore, even if habitat conditions improve for the survival of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail in historically occupied stream and river habitats, they will be unable to recolonize those areas without human assistance. Low numbers of individuals within these isolated populations also increases the risks and consequences of inbreeding and reduced genetic diversity (Lynch 1996, pp. 493–494).

The Georgia pigtoe may be adversely affected by the loss or reduction in numbers of the fish host(s) essential to its parasitic glochidial stages. The specific fish host(s) for the glochidia of the Georgia pigtoe is unknown; therefore, specific impacts on this aspect of the mussels' life cycle cannot be evaluated. However, other species of mussels in the genus *Pleurobema* are known to parasitize various species of chubs, minnows, stonerollers, and other stream fish species.

In summary, a variety of natural or manmade factors, such as droughts, storms, and toxic spills, threaten surviving populations of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail due to the highly restricted and fragmented nature of their habitats and their small population sizes. Other factors, such as inbreeding, reduced genetic diversity, and loss or reduction of fish hosts for the Georgia pigtoe, may threaten each of the three species; however, the severity and magnitude of these threats are not currently known. Therefore, we have determined that other natural and manmade factors, such as accidental spills, floods, and droughts, currently pose an imminent and high degree of threat to the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, and the levels of these threats are projected to continue or increase in the future.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Georgia pigtoe, interrupted rocksnail, and rough hornsnail. Section 3(6) of the Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' Based on the severity and magnitude of the threats currently affecting each of these species, we

propose to list them as endangered species under the Act.

The most significant historical factor affecting the current status of the interrupted rocksnail, rough hornsnail, and Georgia pigtoe was the extreme curtailment of their habitat and range, as discussed in Factor A (above). Curtailment of habitat and range, along with small population sizes, amplifies existing or impending threats from nonpoint source water and habitat quality degradation, accidental spills, violation of permitted discharges, inadequate knowledge to implement existing regulatory measures, floods, or droughts (described under Factors A, D, and E). These threats are imminent and high in magnitude (applicable to the entire range) for each species. As described in Factor C and E above, small populations are also at increased threat due to predation from natural or introduced predators, genetic isolation, and inbreeding depression; however, these threats are not currently known to be imminent.

Only single, localized populations are known to exist of the interrupted rocksnail and Georgia pigtoe, and only two extremely localized populations of the rough hornsnail are known. Each species is faced with a tenuous future even with only the random variation of natural environmental factors. However, the additional threats of water and habitat quality degradation or destruction further threaten each species and this trend is expected to continue or increase.

We believe that, when combining the effects of historical, current, and projected habitat loss and degradation, historical and ongoing drought, and the exacerbating effects of small population sizes and isolation, the interrupted rocksnail, rough hornsnail, and Georgia pigtoe are in danger of extinction throughout all of their ranges, as defined in the ''Summary of Factors Affecting the Species'' above. We believe these threats, particularly the threats resulting from habitat loss and fragmentation, small population sizes, and random natural or human induced events, are current and are projected to continue. We have determined that these threats are operating on each species and their respective habitats with a high degree of imminence, magnitude, and severity (rangewide), as discussed above.

Based on the best available scientific and commercial information, we propose to list the Georgia pigtoe, interrupted rocksnail, and rough hornsnail as endangered species under the Act. Without the protection of the Act, these species are in danger of extinction throughout all of their ranges. This could occur within a few years, given recurring drought conditions, accidents, or other existing threats. Furthermore, because of their curtailed ranges, and immediate and ongoing significant threats to each species throughout their entire respective ranges, as described above in the five-factor analysis, we find that it is unnecessary to analyze whether there are any significant portions of ranges for each species that may warrant a different determination of status.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species and

(b) which may require special management considerations or protection; and

(2) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of Section 7(a)(2) may apply. However, even in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. The Service must identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the Primary Constituent Elements (PCEs), as defined at 50 CFR 424.12(b)). To be included in the designation, the features at issue must also be ones that may require special management considerations or protection.

Under the Act, we can designate unoccupied areas as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation needs of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Furthermore, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas we should as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the

Service, are necessary for the recovery of the species. For these reasons, a critical habitat designations does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Prudency Determination

Section 4 of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) the designation of critical habitat would not be beneficial to the species. There is currently no imminent threat of take attributed to collection or vandalism under Factor B for each of these species, and identification of critical habitat is not expected to initiate such a threat to each of the species. Critical habitat designation identifies the physical and biological features of the habitat essential to the conservation of the interrupted rocksnail, rough hornsnail, and Georgia pigtoe, which may require special management and protection. As such, these designations will provide information to individuals, local and State governments, and other entities engaged in activities or long-range planning in areas essential to the conservation of the species. Conservation of the interrupted rocksnail, rough hornsnail, and Georgia pigtoe and essential features of their habitats will require habitat management, protection and restoration, which will be facilitated by knowledge of habitat locations and the physical and biological features of those habitats. Based on this information, we believe critical habitat would be beneficial to each of the species. Therefore, we have determined that the designation of critical habitat for the interrupted rocksnail, rough hornsnail, and Georgia pigtoe is prudent.

We have reviewed the available information pertaining to historical distribution of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, and the habitat characteristics where they currently survive. This and other information represent the best scientific and commercial data available and lead us to conclude that we have sufficient information necessary to identify specific areas that meet the definition of critical habitat. Therefore, we have determined that the designation of critical habitat is both prudent and determinable for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining occupied areas that contain the features that are essential to the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, and unoccupied areas that are essential to the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail.

We have reviewed the available information pertaining to historical and current distributions, life histories, and habitat requirements of these species. Our sources included: peer reviewed scientific publications; unpublished survey reports; unpublished field observations by the Service, State, and other experienced biologists; and notes and communications from qualified biologists or experts.

Primary Constituent Elements (PCEs)

In accordance with sections 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we identify the specific PCEs required for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail based on their biological needs. We consider the physical and biological features that are essential to the conservation of each species to be the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distribution of a species.

The PCEs required for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail are derived from biological needs of the species as described in the Background section of this proposal. Unfortunately, little is known of the specific habitat requirements of any of these mollusk species other than all three require flowing water, stable stream or river channels, and adequate water quality. Georgia pigtoe mussel larvae also require a currently unknown fish host for development to juvenile mussels. To identify the physical and biological needs of the species, we have relied on current conditions at locations where each of the species survive, the limited information available on these three species and their close relatives, and factors associated with the decline and extirpation of these and other aquatic mollusks from extensive portions of the Mobile River Basin.

Space for Individual and Population Growth and for Normal Behavior

The Georgia pigtoe, interrupted rocksnail, and rough hornsnail were all historically associated with stream and river shoals of the Coosa River drainage (Goodrich 1922, p. 5; Johnson and Evans 2001, p. 21; Williams *et al.* 2008). The decline of the aquatic mollusk fauna of the Mobile River Basin is directly associated with the loss of shoal habitats, primarily due to inundation by impounded waters (Bogan *et al.* 1995, pp. 250–251; Lydeard and Mayden 1995, pp. 803–804; Neves *et al.* 1997, pp. 63–64; Marcinek *et al.* 2005, pp. 7–10, 20–21). Shoals are defined as discrete areas that are of lower depth, greater slope, higher velocity flows, and coarser bed materials relative to other channel segments. Shoals include areas that are also referred to as riffles, gravel bars, and reefs. Shoals generally have substrates composed of bedrock, cobble, boulder, and gravel interspersed with

sands, and sufficient current velocities to remove finer sediments and maintain interstitial habitats (Marcinek *et al.* 2005, p. 4). The interrupted rocksnail and rough hornsnail are found clinging to gravel, cobble, and boulders in moderate to strong currents in shoals, while Georgia pigtoe mussels are found imbedded in sand–gravel substrates within shoals. Rough hornsnails are also found in pools below shoals. Shoals and associated pools not only provide space for these three mollusks, but also provide cover and shelter and sites for breeding, reproduction, and growth of offspring.

Shoal–pool habitats are formed and maintained by water quantity, channel slope, and sediment input to the system. Changes in one or more of these parameters can result in channel degradation or channel aggradation, with serious effects to mollusks. Therefore, we believe that stream channel stability is essential to the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail.

Food

The interrupted rocksnail and rough hornsnail generally feed by ingesting periphyton and biofilm detritus scraped off the substrate by the snail's radula (Morales and Ward 2000, p. 1). Unionid mussels, such as the Georgia pigtoe, filter algae, detritus, and bacteria from the water column (Williams *et al.* 2008, p. 67). Food availability and quality for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail in shoal habitats is affected by habitat stability, flow, and water quality.

Water

The Georgia pigtoe, interrupted rocksnail, and rough hornsnail are riverine-adapted species that depend upon adequate water flow (Williams *et al.* 2008, p. 534; Goodrich 1922, p. 5) and are not found in ponds or lakes. Continuously flowing water is a habitat feature associated with all surviving populations of the three species. Flowing water maintains the stream bottom and shoal habitats where these species are found, transports food items to the sedentary juvenile and adult life stages of the Georgia pigtoe, supports the periphyton and biofilm ingested by the interrupted rocksnail and rough hornsnail, removes wastes, and provides oxygen for respiration for each of the three species.

The ranges of standard physical and chemical water quality parameters (such as temperature, dissolved oxygen, pH, conductivity) that define suitable habitat conditions for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail have not been investigated. However, as relatively sedentary animals, aquatic snails and mussels must tolerate the full range of such parameters that occur naturally within the streams where they persist. Both the amount (flow) and the physical and chemical conditions (water quality) where each of the three species currently exist vary widely according to season, precipitation events, and seasonal human activities within the watershed. Conditions across their historical ranges vary even more due to watershed size, geology, geography, and differences in human population densities and land uses. In general, each of the species survives in areas where the magnitude, frequency, duration, and seasonality of water flow are adequate to maintain stable shoal habitats (for example, sufficient flow to remove fine particles and sediments without causing degradation), and where water quality is adequate for year-round survival (for example, moderate to high levels of dissolved oxygen, low to moderate input of nutrients, and relatively unpolluted water and sediments). Therefore, adequate water flow and water quality (as defined below) are essential to the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail. We currently believe that most numeric standards for pollutants and water quality parameters (for example, dissolved oxygen, pH, heavy metals) that have been adopted by the States under the Clean Water Act represent levels that are essential to the conservation of each of these three mollusks. However, some States' standards may not adequately protect mollusks, or are not being appropriately measured, monitored, or achieved in some reaches (see Factor A: The present or threatened destruction, modification, or curtailment of its habitat or range, Water and Habitat Quality; and Factor D: Inadequacy of existing regulatory mechanisms, above). The Service is currently in consultation with the EPA to evaluate the protectiveness of criteria approved in EPA's water quality standards for threatened and endangered species and their critical habitats as described in the Memorandum of Agreement that our agencies signed in 2001 (66 FR 11201). Other factors that can potentially alter water quality are droughts and periods of low flow, non-point source runoff from adjacent land surfaces (for example, excessive amounts of nutrients, pesticides, and sediment), and random spills or unregulated discharge events. This could be particularly harmful during drought conditions when flows are depressed and pollutants are more concentrated. Therefore, adequate water quality is essential for normal behavior, growth, and viability during all life stages of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail.

Sites for Breeding, Reproduction, or Rearing

Pleurocerid snails require clean hard surfaces, such as gravel, cobble, boulder, or bedrock, for laying eggs and for survival of juveniles (Bogan *et al.* 1995, p. 251). Excessive fine sediments or dense growth of filamentous algae can restrict or eliminate spawning sites and expose juveniles to entrainment (being swept away) or predation. Geomorphic instability may result in entrainment and loss of eggs by scouring currents or burial of eggs by excessive deposition. Therefore, stable shoals with low amounts of filamentous algae are essential to the conservation of the interrupted rocksnail and rough hornsnail.

Freshwater mussels require a host fish for transformation of larval mussels (glochidia) to juvenile mussels (Williams *et al.* 2008, p. 68), and presence of the appropriate host fish is essential to the conservation of the Georgia pigtoe. The specific fish host(s) for the Georgia pigtoe is currently unknown, However, other species of mussels in the genus *Pleurobema* are known to parasitize various species of chubs, minnows, stonerollers, and other stream adapted fish species (Haag and Warren 2003).

Juvenile Georgia pigtoe mussels require interstitial shoal habitats for growth and survival. Excessive sediments or dense growth of filamentous algae can expose juvenile mussels to entrainment or predation and be detrimental to the survival of juvenile mussels (Hartfield and Hartfield 1996). Geomorphic instability can result in the loss of interstitial habitats and juvenile mussels due to scouring or deposition (Hartfield 1993). Therefore, stable shoals with low to moderate amounts of filamentous algae growth are essential to the conservation of the Georgia pigtoe.

PCEs for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we have determined that the Georgia pigtoe's PCEs are:

(1) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions,

longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(2) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found. Unless other information becomes available, existing conditions at locations where the species occur will be considered as minimal flow requirements for survival.

(3) Water quality (including temperature, pH, hardness, turbidity, oxygen content, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (33 U.S.C. 1251–1387).

(4) Sand, gravel, cobble, boulder, or bedrock substrates with low to moderate amounts of fine sediment and attached filamentous algae.

(5) The presence of fish host(s) for the Georgia pigtoe (currently unknown). Diverse assemblages of native chubs, minnows, stonerollers, and other stream adapted fish species will serve as a potential indication of presence of host fish.

The PCEs required for the interrupted rocksnail are:

(1) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(2) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found. Unless other information becomes available, existing conditions at locations where the species occur will be considered as minimal flow requirements for survival.

(3)Water quality (including temperature, pH, hardness, turbidity, oxygen content, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (33 U.S.C. 1251–1387).

(4) Sand, gravel, cobble, boulder, or bedrock substrates with low to moderate amounts of fine sediment and attached filamentous algae.

The PCEs required for the rough hornsnail are:

(1) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(2) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found. Unless other information becomes available, existing conditions at locations where the species occur will be considered as minimal flow requirements for survival.

(3) Water quality (including temperature, pH, hardness, turbidity, oxygen content, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (33 U.S.C. 1251–1387).

(4) Sand, gravel, cobble, boulder, or bedrock substrates with low to moderate amounts of fine sediment and attached filamentous algae.

This proposed designation is designed for the conservation of the physical and biological features essential to the life history functions that were the basis for the proposal and the areas containing those features (that is, the PCEs in the appropriate spatial arrangement and quantity). Because not all life history functions require all the PCEs, not all PCEs may be present throughout the proposed critical habitat units.

Units are designated based on sufficient PCEs being present to support at least one of the species' life history functions. Some areas contain all PCEs and support multiple life processes, while some areas may contain only a portion of the PCEs necessary to support the species' particular use of that habitat.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and whether those features may require special management considerations or protections. All of the critical habitat units proposed for these three species below, with the exception of a portion of Unit RH 1, have been designated as critical habitat for other mollusk species that are already listed under the Act. None of the areas proposed are presently under special management or protection provided by a legally operative management plan or agreement for the conservation of either the interrupted rocksnail, rough hornsnail, or Georgia pigtoe. Various activities in or adjacent to each of the critical habitat units described in this proposed rule may affect one or more of the PCEs. Some of these activities include, but are not limited to, those discussed in the ''Summary of Factors Affecting the Species,'' above. For example, three of the units described below (Units IR 1, IR 2, and RH 1 (which includes IR 3)) may require special management considerations due to detrimental effects of hydropower generation or lack of minimum flow releases from dams (see ''Factor A: Dams and Impoundments'' above). Features in all of the proposed critical habitat units may require special management due to threats posed by land-use runoff and point- and nonpoint-source water pollution (see ''Factor A: ''Water and Habitat Quality,'' and ''Factor D: Inadequacy of existing regulatory mechanisms,'' above). Other activities that may affect PCEs in the proposed critical habitat units include those listed in the ''Effects of Critical Habitat'' section as ''Federal Activities that May Affect Critical Habitat and Require Consultation,'' below.

Criteria Used to Identify Proposed Critical Habitat

We are proposing to designate as critical habitat all stream channels that are currently occupied by the species, as well as some specific areas not currently occupied but that were historically occupied, because we have determined that these additional areas are essential for the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, and that designating only occupied habitat is not sufficient to conserve each of these species.

When identifying proposed critical habitat boundaries, we make every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands usually lack PCEs for endangered or threatened species. Areas proposed for critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, below, include only stream channels within the ordinary high water line and do not contain any developed areas or structures.

Occupied Stream Reaches Proposed as Critical Habitat

We have defined occupied habitat as those stream reaches known to be currently occupied by the Georgia pigtoe, interrupted rocksnail, or rough hornsnail. We used information from surveys and reports prepared by the U.S. Geological Survey, the Alabama Department of Conservation and Natural Resources, the Tennessee Aquarium, Alabama Geological Survey, Auburn University, University of Alabama, and Service field records to identify the specific locations occupied by the Georgia pigtoe, interrupted rocksnail, or rough hornsnail.

Currently, occupied habitat for each of the three species is extremely limited and isolated. The Georgia pigtoe persists only in a restricted series of shoals in the Conasauga River (Johnson and Evans 2000, p. 106). The interrupted rocksnail naturally survives in a short reach of the Oostanaula River in Gordon and Floyd Counties, Georgia, and population reintroductions have been attempted into a shoal of the Lower Coosa River, Elmore County, Alabama (ADCNR 2004, p. 33). The rough hornsnail is known from two small, localized, and isolated populations: Yellowleaf Creek, Shelby County, Alabama, and a short reach of the Lower Coosa River, Elmore County, Alabama (Sides 2005, p. 40). We believe that all currently occupied areas contain features essential to the conservation of these species. With such limited distribution, each of these species are at a high risk of extinction and highly susceptible to stochastic events.

Unoccupied Stream Reaches Proposed as Critical Habitat

The streams not currently occupied that we are proposing as critical habitat were all historically occupied. We believe that the designation of additional areas not known to be currently occupied by the Georgia pigtoe, interrupted rocksnail, or rough hornsnail is essential for their conservation because:

(1) The range of each species has been severely curtailed, occupied habitats are limited and isolated, and population sizes are extremely small for each species. While occupied units provide habitat for current populations, they are at high risk of extirpation and extinction from stochastic events, whether periodic natural events or existing or potential human-induced events (see ''Summary of Factors Affecting the Species''). The inclusion of essential unoccupied areas will provide habitat for population reintroduction and will decrease the risk of extinction for each species.

(2) The essential unoccupied areas may offer habitat that is superior to that in the occupied units (the potential viability of the mollusks in unoccupied units may be higher) because the essential unoccupied areas may be faced with fewer and more easily treated threats than the occupied units (see discussion under ''Factor A: Dams and Impoundments'').

(3) The protection of PCEs in currently occupied areas is directly related to conditions in adjacent unoccupied stream reaches (such as the Oostanaula and Lower Coosa Rivers).

Based on the best scientific data available, we believe that areas that are not currently occupied by the Georgia pigtoe, interrupted rocksnail, or rough hornsnail are essential for their conservation.

Length of Occupied Stream Reaches

Following the identification of occupied stream reaches, the next step was to delineate the length of upstream and downstream reaches of known occupied areas to determine the length of stream reaches that are needed for the conservation of the populations for each species. All known occurrences for each species are extremely localized, and rare aquatic snails and mussels can be difficult to locate. In addition, creek and river habitats are highly dependent upon upstream and downstream channel habitat conditions for their maintenance. Therefore, where more than one occurrence record of a particular species was found within a stream reach, we considered the entire reach between the uppermost and lowermost locations as occupied habitat, as discussed below.

Georgia pigtoe

The Georgia pigtoe is currently known to survive only in a 52-km (32-mi) reach of the Upper Conasauga River extending from Polk County, Tennessee, downstream into Murray and Whitfield Counties, Georgia (Johnson and Evans 2000, p. 106; Evans 2001, pp. 33–34). The Georgia pigtoe has been recently collected from three shoals within this reach: one located at each end of the reach, and one additional site in the lower third of the reach. Other shoals within the reach continue to be inhabited by a diverse mussel community, including the federally endangered triangular kidneyshell and southern pigtoe and the threatened fine-lined pocketbook. These species historically co-occurred in the same shoal habitats with the Georgia pigtoe, and their persistence indicates the presence of PCEs for the pigtoe throughout the reach. Therefore, we consider the entire 52-km (32-mi) reach between the uppermost and lowermost recent collection sites for the Georgia pigtoe as occupied habitat. In the area proposed for critical habitat below, boundaries extend from the nearest downstream landmark at both of ends of the reach.

Interrupted rocksnail

The interrupted rocksnail is known to survive in several shoals along a 12-km (7.4-mi) reach of the Oostanaula River between Ship Island and the confluence of Armuchee Creek, Gordon–Floyd County, Georgia (Johnson and Evans 2000, pp. 45–46; Johnson and Evans 2001, pp. 2, 25). Although rocksnails live attached to the stream bottom, they are small and often difficult to locate when their population numbers are low. Therefore, we consider the reach of the Oostanaula River between Ship Island and the confluence of Armuchee Creek as habitat occupied by interrupted rocksnail. Attempts to reintroduce the species into the Lower Coosa River, Elmore County, Alabama, have also been made by the ADCNR. Although we do not yet know if this population is viable, it is within the range of the interrupted rocksnail as proposed in this listing; therefore, we are considering the 1-km (0.6-mi) localized area in the Lower Coosa River, where the species was reintroduced, as occupied habitat. ADCNR attempted to reintroduce the interrupted rocksnail into Gray Island Shoals in the Lower Coosa River, about 3.2 km (2 mi) below Jordan Dam, Elmore County, Alabama. Although we do not yet know if this reintroduced population is viable, it is within the historical range of the interrupted rocksnail as proposed in this listing, and we are considering the 1-km (0.6-mi) reach encompassing Gray Island Shoals in the Lower Coosa River as occupied habitat.

Rough hornsnail

The rough hornsnail is known to survive at only two locations. One of these consists of a population known from only a few hundred meters of stream in Yellowleaf Creek near Alabama Highway 25, Shelby County, Alabama, and we consider Yellowleaf Creek 1.6 km (1.0 mi) above and 1.6 km (1.0 mi) below Alabama Highway 25 as habitat occupied by the rough hornsnail. In addition, collections in the 1990s in the Lower Coosa River, Elmore County, Alabama, show the rough hornsnail extended from the shoals below Jordan Dam, downstream to just below the Fall Line at Wetumpka, Alabama (FLMNH 2006). Therefore, we consider this 14-km (8-mi) reach as habitat occupied by the rough hornsnail.

Stream Reaches Not Currently Occupied

In identifying unoccupied stream reaches that are essential to the conservation of each species (Georgia pigtoe, interrupted rocksnail, and rough hornsnail), we first considered the availability of potential habitat throughout their historical ranges that may be suitable for the survival and persistence of each species. A large proportion of the streams that formerly supported each species have been modified by dams and their impounded waters, and we eliminated these areas from consideration, because none of these species can survive under the

modified conditions (see ''Primary Constituent Elements'' section, above). We also eliminated from consideration free-flowing streams without any historical records of occurrence. We eliminated from consideration other streams with historical occurrence records because of limited habitat availability, isolation, degraded habitat, or low management value or potential (such as Coosawattee River and Etowah River).

All of the areas proposed as critical habitat that are currently not known to be occupied meet one or more of the following criteria:

(1 The stream habitat contains sufficient PCEs (for example, such characteristics as geomorphically stable channels, perennial water flows, adequate water quality, and appropriate benthic substrates) to support life history functions of the mollusks (all proposed unoccupied critical habitat units);

(2) The stream supports diverse aquatic molluscan communities, including the presence of closely related species requiring PCEs similar to the Georgia pigtoe, interrupted rocksnail, and rough hornsnail (all proposed unoccupied critical habitat units);

(3) The stream reaches are adjacent to currently occupied areas where there is potential for natural dispersal and reoccupation by the Georgia pigtoe, interrupted rocksnail, or rough hornsnail (Oostanaula River, Lower Coosa River, and Yellowleaf Creek);

(4) The stream reaches lack major anthropogenic disturbance (Hatchet Creek);

(5) Areas are remote from currently occupied areas and have experienced improvements in water quality or quantity during the past decades due to implementation of minimum flows below dams, changes in adjacent land uses, or implementation of the Clean Water Act (Coosa River below Weiss Dam and Jordan Dam, Terrapin Creek, and Hatchet Creek); and

(6) The stream reaches have potential for reoccupation by the species through future reintroduction efforts (all proposed unoccupied critical habitat units).

Based on the above factors, all unoccupied stream reaches included in the proposed designations for each of these three species are essential to their conservation.

Georgia pigtoe

We have identified 101 km (63 mi) of habitat in two stream reaches that are currently unoccupied by the Georgia pigtoe and that meet several of the criteria for designation as critical habitat. Historical records of Georgia pigtoe occur from the Coosa River near the present location of Weiss Dam and from Terrapin Creek, from its confluence with the Coosa River upstream to the vicinity of Alabama Highway 9. Terrapin Creek flows into the Coosa River approximately 11 km (7 mi) below Weiss Dam in Cherokee County, Alabama. Together these two confluent stream reaches encompass 35 km (22 mi) of stream habitat that meet Criteria 1, 2, 5, 6, and 7 listed above in this section. Terrapin Creek and this short reach of the Coosa River support diverse mollusk and fish communities. Water quality in Terrapin Creek meets current State criteria for Fish and Wildlife. The Mobile River Basin Mollusk Restoration Committee (2008, p. 36) recognizes this reach of the Coosa River and Terrapin Creek as an appropriate reintroduction site for the Georgia pigtoe. Based on the information we have to date, which does not necessarily suggest there is an increased probability of Georgia pigtoe conservation in specific areas within the reach, we propose to designate the entire reach of Terrapin Creek and the Coosa River as critical habitat.

Historical records of Georgia pigtoe occur from an approximately 66-km (41-mi) reach of Hatchet Creek between Clay County Road 4 downstream to the confluence with Swamp Creek in Coosa County, Alabama. This stream reach meets Criteria 1, 2, 4, 5, 6, and 7 listed above in this section and has been identified by the Mobile River Basin Mollusk Restoration Committee (2008, p. 40) as having high conservation potential for the reintroduction of imperiled mollusks. Hatchet Creek supports diverse mollusk and fish communities and has been designated as an Outstanding Alabama Water, the highest protective classification assigned by the State. Based on the information we have to date, which does not necessarily suggest there is an increased probability of Georgia pigtoe conservation in specific areas within the reach, we propose to designate the entire reach of Hatchet Creek as critical habitat.

Interrupted rocksnail

We have identified 88 km (55 mi) of habitat in three stream reaches that are currently unoccupied by the interrupted rocksnail and that meet several of the criteria for designation as unoccupied habitat. The Coosa River from Weiss Dam to just below the confluence of Terrapin Creek (11 km (7 mi)) is within the historical range of the interrupted rocksnail, and meets Criteria 1, 2, 5, 6, and 7 listed above in this section. Several mollusk species requiring similar PCEs currently inhabit a portion of the reach. Projected minimum flows (Weiss Bypass Working Group 2005, pp. 6–8) will improve PCEs in the remainder of the reach, and reservoir-stored water will provide protection from nonpoint source pollution and reduce the potential of stochastic threats. The Mobile River Basin Mollusk Restoration Committee (2008, p. 53) recognizes this reach of the Coosa River as an appropriate reintroduction sites for interrupted rocksnail.

The interrupted rocksnail is currently known to inhabit shoals along a 12-km (7.4-mi) reach of the Oostanaula River between Ship Island and the Confluence of Armuchee Creek, Gordon and Floyd Counties, Georgia. However, appropriate habitat extends approximately 49 km (30 mi) above Ship Island to the Conasuaga-Coosawattee confluence in Gordon County, Georgia, and approximately 16 km (10 mi) below the confluence of Armuchee Creek to the Georgia Highway 1 Loop in Floyd County, Georgia. This unoccupied area encompasses an additional 65 km (40 mi) of river habitat that meets Criteria 1, 2, 3, 6, and 7 listed above in this section. The unoccupied upstream and downstream reaches of the Oostanaula River contain one or more of the PCEs required by the species, including geomorphically stable channels and natural flows. They are adjacent to areas currently occupied by interrupted rocksnail, and there is potential for natural dispersal and re-occupation by the Georgia pigtoe. These areas are also currently occupied by other mollusk species with similar habitat requirements.

The Lower Coosa River below Jordan Dam is within the historical range of the interrupted rocksnail, and a small population of the species has been reintroduced into a shoal there (ADCNR, p. 33). Apparently suitable habitat extends approximately 13 km (8 mi) from the tailwaters of Jordan Dam to Alabama Highway 111 in Elmore County, Alabama. This reach meets Criteria 1, 2, 3, 5, 6, and 7 listed above in this section. The steep river gradient below the dam to the Fall Line at Alabama Highway 111 in Wetumpka results in the presence of numerous high-quality and stable shoals and pools characteristic of habitats formerly inhabited by the rocksnail. The reach is occupied by other species of pleurocerid snails, as well as a diverse mussel fauna, indicating the presence of PCEs in this reach. Minimum flows that have been established from Jordan Dam have eliminated historical threats, such as seasonal loss of flow and low dissolved

oxygen levels. The Mobile River Basin Mollusk Restoration Committee (2008, p. 53) recognizes this reach of the Coosa River as an appropriate reintroduction site for interrupted rocksnail, and the ADCNR has initiated attempts to reintroduce the species to the reach.

Rough hornsnail

We have identified 8.5 km (7 mi) of habitat in two stream reaches that are unoccupied by the rough hornsnail but that meet Criteria 1, 2, 3, 6, and 7 listed above in this section. The species inhabits a 14-km (8-mi) reach of the Lower Coosa River below Jordan Dam; however, appropriate habitat extends an additional 7 km (5 mi) downstream of currently occupied areas. This stream reach is available for natural recolonization and contains one or more of the PCEs required by the rough hornsnail, including a geomorphically stable channel and adequate water quality and substrate, as indicated by the presence of closely related pleurocerids and other mollusk species with similar habitat requirements.

The rough hornsnail currently inhabits a small area in Yellowleaf Creek near Alabama Highway 25 in Shelby County, Alabama. A 3.5-km (2-mi) reach upstream of this area is available for natural recolonization. This reach is currently inhabited by closely related pleurocerids and other mollusk species with similar habitat requirements and contains one or more of the PCEs required by the rough hornsnail, including a geomorphically stable channel, a natural hydrograph, and adequate water quality and substrate.

Proposed Critical Habitat Designation

We are proposing three units as critical habitat for the Georgia pigtoe (GP 1, 2, and 3), three units for interrupted rocksnail (IR 1, 2, and 3), and two units for rough hornsnail (RH 1 and 2). The critical habitat areas described below constitute our best assessment of areas that currently meet the definition of critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail. Table 1 identifies the proposed units for each species; shows the occupancy of the units, the approximate extent proposed as critical habitat for the Georgia pigtoe (GP), interrupted rocksnail (IR), and rough hornsnail (RH); and provides information on the ownership of lands within the proposed unit. Critical habitat is proposed for the stream channel within the ordinary high water line only. In Alabama and Georgia, the State owns navigable stream bottoms within the ordinary high water line, and all proposed units in Alabama and Georgia are considered navigable. In Tennessee, the riparian landowner owns the stream bottom to the middle of the channel.

TABLE 1. OCCUPANCY AND OWNERSHIP OF PROPOSED CRITICAL HABITAT UNITS FOR GEORGIA PIGTOE (GP), INTERRUPTED ROCKSNAIL (IR), AND ROUGH HORNSNAIL (RH)

Unit	Location	Occupancy	Private Ownership River Kilometers (Miles)	State Ownership River Kilometers (Miles)
GP 1	Conasauga River	Occupied	5 (3)	47 (29)
GP 2	Terrapin Creek and Coosa River	Unoccupied	0	35 (22)[1]
GP 3	Hatchet Creek	Unoccupied	0	66 (41)
Total			5 (3)	148 (92)
IR 1	Coosa River	Unoccupied	0	11 (7)[1]
IR 2	Oostanaula River	Occupied	0	12 (7.4)
		Unoccupied	0	65 (40.6)
IR 3	Lower Coosa River	Occupied	0	1 (0.6)[2]
		Unoccupied	0	12 (7.4)2
Total			0	101 (63)
RH 1	Lower Coosa River	Occupied	0	14 (9)2
		Unoccupied	0	7 (4)
RH 2	Yellowleaf Creek	Occupied	0	3.2 (2)
		Unoccupied	0	3.2 (2)
Total			0	27.4 (17)

[1] IR 1 overlaps in part with GP 2.
[2] IR 3 overlaps in part with RH 1. See Unit descriptions, below.

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for each species below. The proposed critical habitat units include the creek and river channels within the ordinary high water line. For this purpose, we have applied the definition found at 33 CFR 329.11, and consider the ordinary high water line on nontidal rivers to be the line on the shore established by the fluctuations of water and indicated by physical characteristics, such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. For each stream reach proposed as a critical habitat unit, the upstream and

downstream boundaries are described generally below; more precise estimates are provided in the Proposed Regulation Promulgation section at the end of this proposed rule.

Unit GP 1: Conasauga River, Bradley and Polk Counties, Tennessee, and Murray and Whitfield Counties, Georgia

Unit 1 for the Georgia pigtoe includes 52 km (32 mi) of the Upper Conasauga River from the confluence of Minnewaga Creek near Willis Springs, Polk County, Tennessee, downstream to U.S. Highway 76 in Murray and Whitfield Counties, Georgia. Critical habitat is proposed for the stream channel within the ordinary high water line only. In Tennessee, the riparian landowner owns the stream bottom to the middle of the channel. Therefore, 5 km (3 mi) of GP 1 in Tennessee is privately owned. In Georgia, the State owns navigable stream bottoms within the ordinary high water line, and the Conasauga is considered navigable. Therefore, the State of Georgia owns 47 km (29 mi) of Unit GP 1.

The Georgia pigtoe has been collected from three shoals within the reach of the Conasauga River proposed as GP 1, one located at each end of the reach and one site in between (Johnson and Evans 2000, p. 106; Evans 2001, pp. 33–34). Therefore, we consider the entire reach of the Conasauga River that composes GP 1 as occupied. Other shoals within the reach continue to be inhabited by a diverse mussel community, including the endangered triangular kidneyshell and southern pigtoe and the threatened fine-lined pocketbook. These species historically co-occurred in the same shoal habitats with the Georgia pigtoe, they have similar habitat requirements, and their persistence indicates the presence of PCEs 1, 2, 3, and 4 for the pigtoe. The persistence of the Georgia pigtoe within three shoals of this reach also indicates the presence of an appropriate fish host (PCE 5). This small population of Georgia pigtoe is at a high risk of extinction due to changes in flow, habitat or water quality, and stochastic events such as drought. Threats to the Georgia pigtoe and its habitat that may require special management of the PCEs include the potential of anthropogenic activities (such as channelization, impoundment, and channel excavation) that could cause aggradation or degradation of the channel bed elevation or significant bank erosion; the potential of significant changes in the existing flow regime due to such activities as impoundment, water diversion, or water withdrawal; the potential of significant alteration of water chemistry or water quality; and the potential of significant changes in stream bed material composition and quality by activities such as construction projects, livestock grazing, timber harvesting, off-road vehicle use, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit GP 2: Terrapin Creek and Coosa River, Cherokee County, Alabama

Unit 2 for the Georgia pigtoe includes 24 km (15 mi) of Terrapin Creek from Alabama Highway 9 downstream to its confluence with the Coosa River, and 11 km (7 mi) of the Coosa River from Weiss Dam downstream to approximately 1.6 km (1 mi) below the confluence of Terrapin Creek in Cherokee County, Alabama. The State of Alabama owns navigable stream bottoms within the ordinary high water line, and both Lower Terrapin Creek and the Coosa River are considered navigable streams.

The Georgia pigtoe is not currently known to occur in Terrapin Creek or the Coosa River. However, Unit 2 is essential to the conservation of the Georgia pigtoe due to the high degree of stochastic threats to the single surviving population in the Conasauga River, and the need to re-establish the species within other portions of its historical range in order to reduce threats from stochastic events.

Lower Terrapin Creek and the Coosa River are within the species' historical range, and we consider them to be essential to the conservation of the Georgia pigtoe. Terrapin Creek flows into the Coosa River below Weiss Dam. Terrapin Creek continues to support a diverse mollusk assemblage, including the endangered southern pigtoe, a closely related species that co-occurs with the Georgia pigtoe in the Conasauga River, indicating the presence of PCEs 1, 2, 3, and 4. The endangered southern clubshell, the threatened fine-lined pocketbook, and other mussel and snail species requiring PCEs 1, 2, 3, and 4 similar to the Georgia pigtoe continue to survive in the Coosa River just below the confluence of Terrapin Creek. Additionally, a diverse fish fauna, including potential fish hosts for the Georgia pigtoe (PCE 5), is known from Terrapin Creek and Coosa River.

Minimum flows from Weiss Dam into the Coosa River will be implemented upon completion of the Alabama Power Company Coosa River hydropower relicensing process with FERC (Weiss Bypass Working Group 2005, pp. 6–8) currently in progress. These minimum flows will improve the PCEs necessary for the survival of the Georgia pigtoe in the Coosa River, particularly above the confluence with Terrapin Creek. Because the minimum flows will originate from the large reservoir impounded by Weiss Dam, there is little threat of nonpoint source pollution and reduced potential of stochastic threats, such as drought and spills. ADCNR recognizes this reach of the Coosa River as having high conservation potential for imperiled mollusks in Alabama and is planning to reintroduce imperiled mollusks, including the Georgia pigtoe, following initiation of minimum flows. Over the past few decades, changes in land uses, implementation of best management practices for agriculture and forestry activities in the watershed, and implementation of State water quality standards have resulted in improved water quality and shoal habitats in Terrapin Creek. The Mobile River Basin Mollusk Restoration Committee (2008, p. 40) recognizes Terrapin Creek as an appropriate reintroduction opportunity for the Georgia pigtoe.

Unit GP 3: Hatchet Creek, Coosa and Clay Counties, Alabama

Unit 3 for the Georgia pigtoe includes approximately 66 km (41 mi) of Hatchet Creek, extending from Clay County Road 4, Clay County, downstream to the confluence of Swamp Creek at Coosa County Road 29, Coosa County, Alabama. The State of Alabama owns navigable stream bottoms within the ordinary high water line, and Hatchet Creek is considered navigable.

The Georgia pigtoe does not currently occupy Hatchet Creek. However, historical records of the species show their presence in this stream from its confluence with the Coosa River, Coosa County, upstream into Clay County, Alabama. An extensive reach of Hatchet Creek is occupied by the threatened fine-lined pocketbook, along with other mollusk species that currently or historically co-occur with Georgia pigtoe, indicating the presence of PCEs 1, 2, 3, and 4. A diverse fish fauna, including several potential fish hosts for the pigtoe (PCE 5), is also known to inhabit Hatchet Creek. Water quality and shoal habitats in this stream have improved relative to past historical conditions due to changes in land uses, implementation of best management practices in agriculture and forestry activities in the watershed, and implementation of State water quality standards. Due to these improvements, Hatchet Creek has been designated as an Outstanding Alabama Water, which also provides for increased water quality protections. The Mobile River Basin Mollusk Restoration Committee (2008, p. 40) recognizes Hatchet Creek as

having high conservation potential for reintroduction of the Georgia pigtoe.

Re-establishing Georgia pigtoe in Hatchet Creek will significantly reduce the level of stochastic threats to the species' survival and is essential to the conservation of the species. We do not know which specific shoals or reaches of Hatchet Creek may be capable of supporting the Georgia pigtoe. Therefore, we propose to designate all apparently suitable habitat within the historical range of the species in Hatchet Creek as critical habitat essential to the conservation of Georgia pigtoe.

Unit IR 1: Coosa River, Cherokee County, Alabama (overlaps in part with GP 2, described above)

Unit 1 for the interrupted rocksnail includes approximately 11 km (7 mi) of the Coosa River extending from Weiss Dam downstream to about 1.6 km (1 mi) below the confluence of Terrapin Creek, Cherokee County, Alabama. The State of Alabama owns navigable stream bottoms within the ordinary high water line, and the Coosa River is considered navigable.

The interrupted rocksnail historically inhabited the Coosa River in Cherokee County. Although the species does not currently occupy the area, Unit 1 is essential to the conservation of the interrupted rocksnail due to the high degree of stochastic threats to the single surviving population in the Ostanaula River and the need to re-establish the species within other portions of its historical range. The presence of the endangered southern clubshell, the threatened fine-lined pocketbook, and other mussel and snail species in the Coosa River at and below the confluence of Terrapin Creek indicates the presence of PCEs 1, 2, 3, and 4 for the interrupted rocksnail.

Minimum flows from Weiss Dam into the Coosa River will be implemented upon completion of the Alabama Power Company Coosa River hydropower relicensing process with FERC (Weiss Bypass Working Group 2005, pp. 6–8) currently in progress. These minimum flows will improve the PCEs necessary for the survival of the interrupted rocksnail in about 11 km (7 mi) of the Coosa River, between Weiss Dam downstream to the confluence with Terrapin Creek. Implementation of minimum flows from Weiss Dam (Weiss Bypass Working Group 2005, pp. 6–8) will improve PCEs necessary for the survival of the interrupted rocksnail. The majority of flow into the reach above the confluence of Terrapin Creek originates from Weiss Dam. Therefore, there is little threat of nonpoint source pollution, and reduced potential of stochastic threats such as drought and spills. ADCNR recognizes this reach as having high conservation potential for imperiled mollusks in Alabama and is planning to reintroduce imperiled mollusk species, including the interrupted rocksnail, into the reach following initiation of minimum flows. Re-establishing the interrupted rocksnail into the Coosa River will significantly reduce stochastic threats to the survival of the species and is essential to its conservation.

Unit IR 2: Oostanaula River, Gordon and Floyd Counties, Georgia

Unit 2 for the interrupted rocksnail includes approximately 77 km (48 mi) of the Oostanaula River from the Conasauga–Coosawattee confluence in Gordon County, downstream to Georgia Highway 1 loop in Floyd County, Georgia. The State of Georgia owns navigable stream bottoms within the ordinary high water line, and the Oostanaula River is considered navigable.

The interrupted rocksnail occupies shoals along a 12-km (7.4-mi) reach of the Oostanaula River, extending from the confluence of Johns Creek in Gordon and Floyd Counties, downstream to the confluence of Armuchee Creek in Floyd County, Georgia. Threats to the interrupted rocksnail and its habitat in the Oostanaula River that may require special management of the PCEs include the potential of activities (such as channelization, impoundment, and channel excavation) that could cause aggradation or degradation of the channel bed elevation or significant bank erosion; the potential of significant changes in the existing flow regime due to activities such as impoundment, hydropower generation, water diversion, or water withdrawal; the potential of significant alteration of water chemistry or water quality; and the potential of significant changes in stream bed material composition and quality by activities such as construction projects, livestock grazing, timber harvesting, off-road vehicle use, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Although there are no recent collections of the species from shoal habitats above and below the currently inhabited reach, these currently unoccupied areas contain three of the PCEs required by the species, including geomorphically stable stream channels, natural flows, and appropriate substrates (PCEs 1, 2, and 4). The presence of other mollusk species with similar habitat requirements as the interrupted rocksnail in this reach, including the endangered triangular kidneyshell, along with more common species of pleurocerid snails, also indicates the potentially suitable presence of appropriate water quality (PCE 3). Shoals within the 65 km (40.6 mi) of currently unoccupied reaches of the Oostanaula River are available to natural recolonization of the species. Expanding the range of the interrupted rocksnail into adjacent shoals in the river would greatly reduce the degree of threat from stochastic events, and is essential to the conservation of the interrupted rocksnail.

Unit IR 3: Lower Coosa River, Elmore County, Alabama

Unit 3 for the interrupted rocksnail includes 13 km (8 mi) of the Lower Coosa River between Jordan Dam and Alabama Highway 111 in Elmore County, Alabama. The State of Alabama owns navigable stream bottoms within the ordinary high water line, and the Coosa River is considered navigable.

The Lower Coosa River is within the historical range of the species, and a small population of the interrupted rocksnail has been reintroduced into a 1-km (0.6-mi) portion of a shoal there (ADCNR 2004, p 33). However, this reintroduced population will likely require augmentations over several years before population size can reach self-sustainable levels. The remaining 12 km (7.4 mi) of this reach, from Jordan Dam downstream to the Fall Line at Wetumpka, contains numerous high-quality shoals and pools characteristic of the large river habitats historically occupied by the species. Several other species of pleurocerid snails, the endangered tulotoma snail, and a diverse mussel fauna are currently found throughout the reach, indicating the presence and suitability of PCEs 1, 2, 3, and 4 for the interrupted rocksnail in this reach. Historical threats, including seasonal loss of flow and low dissolved oxygen, were eliminated in 1990 by implementation of minimum flows from Jordan Dam by the Alabama Power Company. As noted, ADCNR recognizes the Lower Coosa River as an appropriate location for imperiled mollusk reintroductions and has begun efforts to reestablish the interrupted rocksnail into this reach. Due to the extremely limited distribution of the interrupted rocksnail and the high degree of stochastic threats to the single natural population, reestablishing the species in the Lower Coosa River is essential to the conservation of the interrupted rocksnail.

Unit RH 1: Lower Coosa River, Elmore County, Alabama (overlaps in part with IR 3, described above)

Unit 1 for the rough hornsnail includes 21 km (13 mi) of the Lower Coosa River extending from Jordan Dam, downstream to the confluence of the Tallapoosa River in Elmore County, Alabama. The State of Alabama owns navigable stream bottoms within the ordinary high water line, and the Coosa River is considered navigable. We believe PCEs 1, 2, 3, and 4 to be suitable throughout the reach, due to the presence of rough hornsnail colonies or other closely related pleurocerid snail species that are known to co-occur with the hornsnail and have similar habitat requirements.

Early 1990 records of rough hornsnail from the reach of the Coosa River between Jordan Dam and the Fall Line (FLMNH 2006), and more recent records of the hornsnail extending 2 km (1.2 mi) below the Fall Line (J. Garner and P. Hartfield pers. obsv. 2001), indicate an occupied range of 14 km (9 mi) in the Lower Coosa River. An additional 7-km (4-mi) channel reach extending downstream to the confluence of the Tallapoosa River is not currently occupied. This downstream unoccupied area is available for natural recolonization, and contains PCEs 1, 2, 3, and 4, including a geomorphically stable channel, and adequate flow, water quality, and substrate, as indicated by the presence of closely related pleurocerids and other mollusk species with similar habitat requirements. Expanding the range of rough hornsnail into the currently unoccupied downstream habitat would reduce the level of stochastic threats to the species, and is essential to its conservation.

Threats to the rough hornsnail and its habitat in the Coosa River that may require special management of the PCEs include the potential of activities (such as channelization, impoundment, and channel excavation) that could cause aggradation or degradation of the channel bed elevation or significant bank erosion; the potential of significant changes in the existing flow regime due to such activities as hydropower generation, water diversion, or water withdrawal; the potential of significant alteration of water chemistry or water quality due to discharges or land use activities; and the potential of significant changes in stream bed material composition and quality by activities such as construction projects, livestock grazing, timber harvesting, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit RH 2: Yellowleaf Creek, Shelby County, Alabama

Unit 2 for the rough hornsnail includes approximately 6.4 km (4 mi) of the Yellowleaf Creek channel from the confluence of Morgan Creek, downstream to 1.6 km (1 mi) below the Alabama Highway 25 crossing in Shelby County, Alabama. The State of Alabama owns navigable stream bottoms within the ordinary high water line, and the lower reach of Yellowleaf Creek is considered navigable.

The rough hornsnail occupies a 3.2-km (2-mi) reach of Yellowleaf Creek above and below Alabama Highway 25. We are also proposing a 3.2-km (2-mi) reach of currently unoccupied habitat above this reach. This upstream reach is characterized by a stable channel, natural flows, and appropriate water quality and substrates (PCEs 1, 2, 3, and 4). The shoals and pools within the unoccupied reach are inhabited by the endangered triangular kidneyshell, southern clubshell, and cylindrical lioplax snail, as well as other more common species of mussels and snails that require similar PCEs as the hornsnail. Increasing the range and numbers of the rough hornsnail into this currently unoccupied area will decrease the vulnerability of this population and the species to stochastic threats, and is essential to its conservation.

Threats to the rough hornsnail and its habitat in Yellowleaf Creek that may require special management of PCEs 1, 2, 3, and 4 include the potential of activities (such as channelization, impoundment, and channel excavation) that could cause aggradation or degradation of the channel bed elevation or significant bank erosion; the potential of significant changes in the existing flow regime due to such activities as water diversion or water withdrawal; and the potential of significant alteration of water chemistry or water quality due to discharges or nonpoint source pollution; the potential of significant changes in stream bed material composition and quality by activities such as construction projects, livestock grazing, timber harvesting, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the courts of appeals for the Fifth and Ninth Circuits have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service 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. This is a procedural requirement only, as any conservation recommendations in a conference report or opinion are strictly advisory.

The primary utility of the conference procedures is to allow a Federal agency to maximize its opportunity to adequately consider species proposed for listing and proposed critical habitat and, if we list the proposed species or designate proposed critical habitat, to avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process. We may conduct conferences either informally or formally. We typically use informal conferences as a means of providing advisory conservation recommendations to assist the agency in eliminating conflicts that the proposed action may cause. We typically use formal conferences when we or the Federal agency believes the proposed action is likely to jeopardize the continued existence of the species proposed for listing or adversely modify proposed critical habitat.

We generally provide the results of an informal conference in a conference report, while we provide the results of a formal conference in a conference opinion. We typically prepare conference opinions on proposed species or critical habitat in accordance with procedures contained at 50 CFR 402.14, as if the proposed species were already listed or the proposed critical habitat was already designated. We may adopt the conference opinion as the

biological opinion when the species is listed or the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. Activities on State, tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for each species (the Georgia pigtoe, interrupted rocksnail, and rough hornsnail).

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for each species (Georgia pigtoe, interrupted rocksnail, and rough hornsnail) include, but are not limited to:

(1) Actions that would alter the geomorphology of their stream and river habitats. Such activities could include, but are not limited to, instream excavation or dredging, impoundment, channelization, and discharge of fill materials. These activities could cause aggradation or degradation of the channel bed elevation or significant bank erosion and result in entrainment or burial of these mollusks, and could cause other direct or cumulative adverse effects to these species and their life cycles.

(2) Actions that would significantly alter the existing flow regime. Such activities could include, but are not limited to, impoundment, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for growth and reproduction of these mollusks.

(3) Actions that would significantly alter water chemistry or water quality (for example, temperature, pH, contaminants, and excess nutrients). Such activities could include, but are not limited to, hydropower discharges, or the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions that are beyond the tolerances of these mollusks and result in direct or cumulative adverse affects to the species and their life cycles.

(4) Actions that would significantly alter stream bed material composition and quality by increasing sediment deposition or filamentous algal growth. Such activities could include, but are not limited to, construction projects, livestock grazing, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances that release sediments or nutrients into the water. These activities could eliminate or reduce habitats necessary for the growth and reproduction of these mollusks by causing excessive sedimentation and burial of the species or their habitats, or nutrification leading to excessive filamentous algal growth. Excessive filamentous algal growth can cause reduced nighttime dissolved oxygen levels through respiration, cover the hard substrates required by aquatic snails for egg deposition, and prevent mussel glochidia from settling into stream sediments.

Exemptions and Exclusion

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of

natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation for any of the three species.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate or make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factors to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we must consider the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. For example, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We also consider whether landowners have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion of lands from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider the economic impacts, environmental impacts, and any social impacts that might occur because of the designation.

This discussion of the potential economic and other impacts of critical habitat designation is separate from and has not been considered in the proposed listing rule. The inclusion of this information in the proposed rule is solely for the purpose of soliciting public comments on the proposed critical habitat designation, not the proposed listing.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If, based on this analysis, we determine that the benefits of exclusion outweigh the benefits of inclusion, we can exclude the area only if such exclusion would not result in the extinction of the species.

In preparing this proposed rule, we have determined that the lands within the proposed designation of critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail are not owned or managed by the Department of Defense; there are currently no HCPs for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail; and the proposed designation does not include any tribal lands or trust resources. At this time, we have not identified areas for which the benefits of exclusion outweigh the benefits of inclusion; therefore, we are not identifying any specific proposed exclusions for the designation of critical habitat for interrupted rocksnail, rough hornsnail, or Georgia pigtoe.

Economics

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for economic reasons if the Secretary determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

We are evaluating the economic impacts of proposing critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at the *Federal eRulemaking Portal*: *http://www.regulations.gov*, or by contacting the Mississippi Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**). We may exclude areas from the final rule based on the information in the economic analysis.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies; groups; and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Federal agencies are required to confer with us informally on any action that is likely to jeopardize the continued existence of a proposed species, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, 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 such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that may affect the Georgia pigtoe, interrupted rocksnail, and rough hornsnail include, but are not

limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met.

Listing the Georgia pigtoe, interrupted rocksnail, and rough hornsnail initiates the development and implementation of rangewide recovery plans for each species. These plans will bring together Federal, State, and local agency efforts for the conservation of these species. Recovery plans will establish a framework for agencies to coordinate their recovery efforts. The plans will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. They also will describe the site-specific actions necessary to achieve conservation and survival of each species.

Listing also will require us to review any actions on Federal lands and activities under Federal jurisdiction that may affect the three species; allow State plans to be developed under section 6 of the Act; encourage scientific investigations of efforts to enhance the propagation or survival of the species under section 10(a)(1)(A) of the Act; and promote habitat conservation plans non-Federal lands and activities under section 10(a)(1)(B) of the Act.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), 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 listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwiseprohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are set forth at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Under the Interagency Cooperative Policy for Endangered Species Act Section 9 Prohibitions, published in the **Federal Register** on July 1, 1994 (59 FR 34272), we identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act if the Georgia pigtoe, interrupted rocksnail, and rough hornsnail are listed. The intent of this policy is to increase public awareness as to the effects of these proposed listings on future and ongoing activities within a species' range. We believe, based on the best available information, that the following actions will not result in a violation of the provisions of section 9 of the Act, provided these actions are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, or movement, including interstate transport that does not involve commercial activity, of specimens of these species that were legally acquired prior to the addition of these three mollusks on the **Federal Register** of the Federal List of Endangered or Threatened Wildlife;

(2) Discharges into waters supporting the Georgia pigtoe, interrupted rocksnail, and rough hornsnail, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to section 404 of the Clean Water Act and discharges regulated under the National Pollutant Discharge Elimination System (NPDES));

(3) Development and construction activities designed and implemented under State and local water quality regulations and implemented using approved best management practices; and

(4) Any actions that may affect the Georgia pigtoe, interrupted rocksnail, and rough hornsnail that are authorized, funded, or carried out by a Federal agency (such as bridge and highway construction, pipeline construction, hydropower licensing), when the action is conducted in accordance with the consultation requirements for listed species under section 7 of the Act.

Potential activities that we believe will likely be considered a violation of section 9 of the Act if these species become listed, include, but are not limited to, the following:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including interstate and foreign commerce, or harming, or attempting any of these actions, of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail;

(2) Unlawful destruction or alteration of their habitats (such as unpermitted instream dredging, impoundment, channelization, or discharge of fill material) that impairs essential behaviors, such as breeding, feeding, or sheltering, or results in killing or injuring any of these species;

(3) Violation of any discharge or water withdrawal permit that results in harm or death to any of these species or that results in degradation of their occupied habitat to an extent that essential behaviors such as breeding, feeding and sheltering are impaired; and

(4) Unauthorized discharges or dumping of toxic chemicals or other pollutants into waters supporting the Georgia pigtoe, interrupted rocksnail, and rough hornsnail that kills or injures these species, or otherwise impairs essential life-sustaining requirements, such as reproduction, food, or shelter.

Other activities not identified above will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity should these mollusks become listed. The Service does not consider these lists to be exhaustive and provides them as information to the public.

If you have questions regarding whether specific activities will likely violate the provisions of section 9 of the Act, contact the Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, GA 30345 (phone 404–679–7313; fax 404–679–7081).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our proposed actions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing and designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing within 45 days of the publication of this proposal (see DATES and **ADDRESSES** sections). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Persons needing reasonable accommodations to attend and participate in the public hearings should phone Connie Dickard at 601–321–1121 as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding the proposal is available in alternative formats upon request.

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. We currently have some information available but have not evaluated it for the three species. At this time, we lack the economic information necessary to provide an adequate factual basis for the required RFA finding. This includes information on hydroelectric generation, transportation, mining, permitted discharges, as well as other economic factors within the Coosa River Basin. We will evaluate that information and solicit additional information, if needed, to determine potential economic impacts of the critical habitat designation.

Our draft economic analysis will provide updated and more complete information to enable us to verify or change this initial finding as to the proposed designation of critical habitat for each species. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not jeopardize the continued existence of the species, or destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would listing these species or designating critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that the proposed designation of critical habitat for the Georgia pigtoe, interrupted rocksnail, or rough hornsnail will significantly or uniquely affect small governments because these mollusk species occur primarily in State-owned river channels, or in remote privately owned stream channels. As such, a Small Government Agency Plan is not

required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Alabama, Georgia, and Tennessee. The critical habitat designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et. seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Also, it is our position that, outside the jurisdiction of the United States Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. We have determined that there are no tribal lands occupied at the time of listing contain the features essential for the conservation and no tribal lands that are unoccupied areas that are essential for the conservation of the Georgia pigtoe, interrupted rocksnail, and rough hornsnail. Therefore, designation of critical habitat for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail has not been proposed on Tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of critical habitat for the Georgia pigtoe, interrupted rocksnail, or rough hornsnail to significantly affect energy supplies, distribution, or use. Although two of the proposed units are below hydropower reservoirs, current and proposed operating regimes have been deemed adequate for the species, and therefore their operations will not be affected by the proposed listing or designation of critical habitat. All other proposed units are remote from energy

supply, distribution, or use activities. Therefore, we have determined that this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author(s)

The primary author of this package is Paul Hartfield (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) as follows:

a. Add ''Pigtoe, Georgia'' in alphabetical order under ''CLAMS;'' and

b. Add ''Rocksnail, interrupted'' and ''Hornsnail, rough'' in alphabetical order under ''SNAILS,'' to the List of Endangered and Threatened Wildlife 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						
* * * * * * *							
CLAMS							
* * * * * * *							
Pigtoe, Georgia	*Pleurobema hanleyianum*	U.S.A. (AL, GA, TN)	NA	E		17.95(f)	NA
* * * * * * *							
SNAILS							
* * * * * * *							
Hornsnail, rough	*Pleurocera foremani*	U.S.A. (AL)	NA	E		17.95(f)	NA
* * * * * * *							
Rocksnail, interrupted	*Leptoxis foremani*	U.S.A. (AL, GA)	NA	E		17.95(f)	NA
* * * * * * *							

3. Amend § 17.95(f) by adding entries for ''Georgia pigtoe (*Pleurobema hanleyianum*)'', ''Interrupted Rocksnail (*Leptoxis foremani*)'', and ''Rough Hornsnail (Pleurocera foremani)'' at the end of the paragraph to read as set forth below:

§ 17.95 Critical habitat fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Georgia Pigtoe (*Pleurobema hanleyianum*)

(1) Critical habitat units are depicted for Cherokee, Coosa, and Clay Counties, Alabama; Murray and Whitfield Counties, Georgia; and Bradley and Polk Counties, Tennessee, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for the Georgia pigtoe are the habitat components that provide:

(i) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(ii) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found. Unless other information becomes available, existing conditions at locations where the species occur will be considered as minimal flow requirements for survival.

(iii)Water quality (including temperature, pH, hardness, turbidity, oxygen content, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (33 U.S.C. 1251–1387).

(iv) Sand, gravel, cobble, boulder, or bedrock substrates with low to moderate amounts of fine sediment and attached filamentous algae.

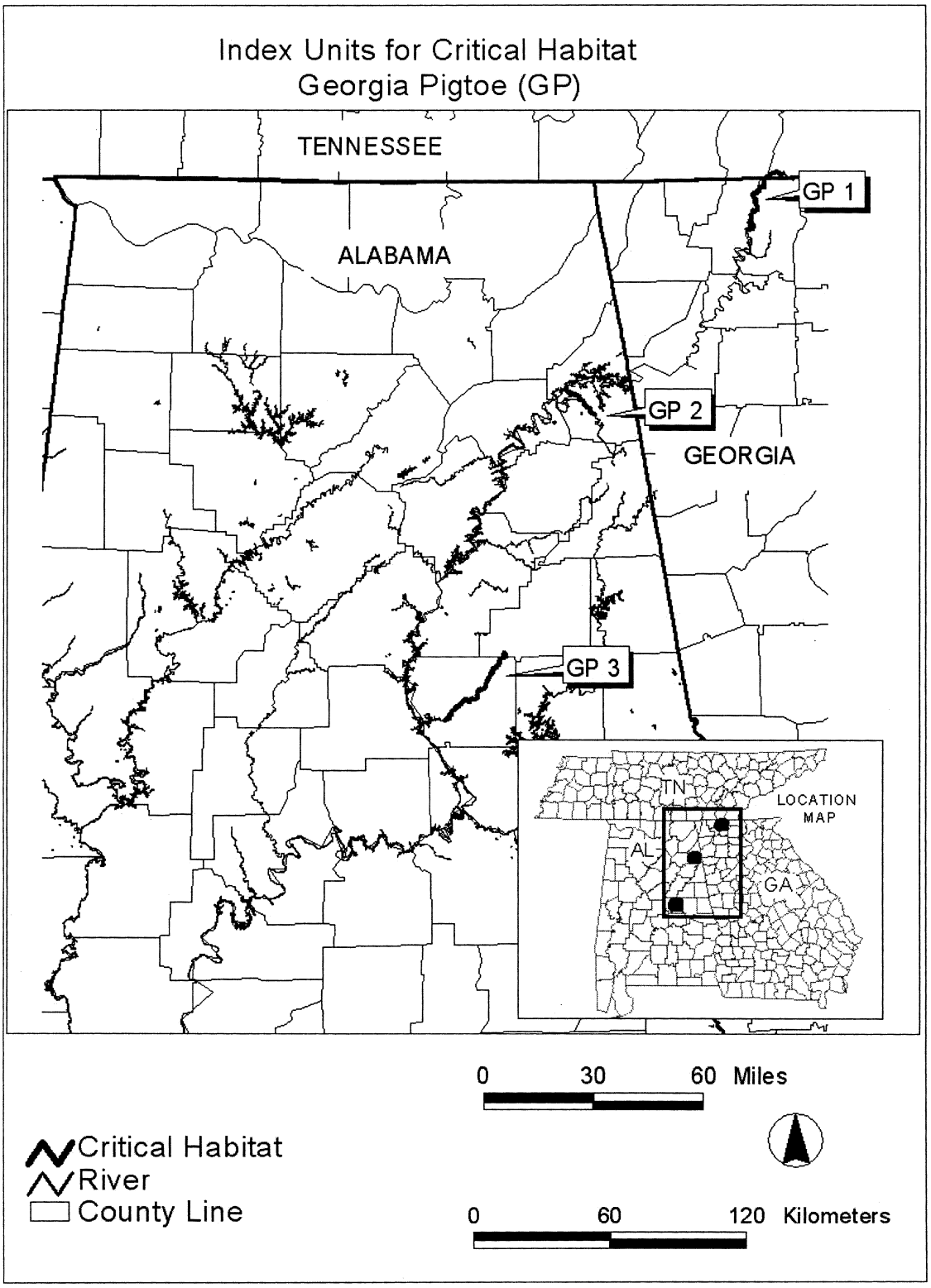
(v) The presence of fish host(s) for the Georgia pigtoe (species currently unknown). Diverse assemblages of native fish will serve as a potential indication of presence of host fish.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the PCEs, such as buildings, bridges, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat unit maps*. Maps were developed from USGS 7.5' quadrangles, and critical habitat unit upstream and downstream limits were then identified by longitude and latitude using decimal degrees.

(5) *Note*: Index map of critical habitat units for the Georgia pigtoe follows:

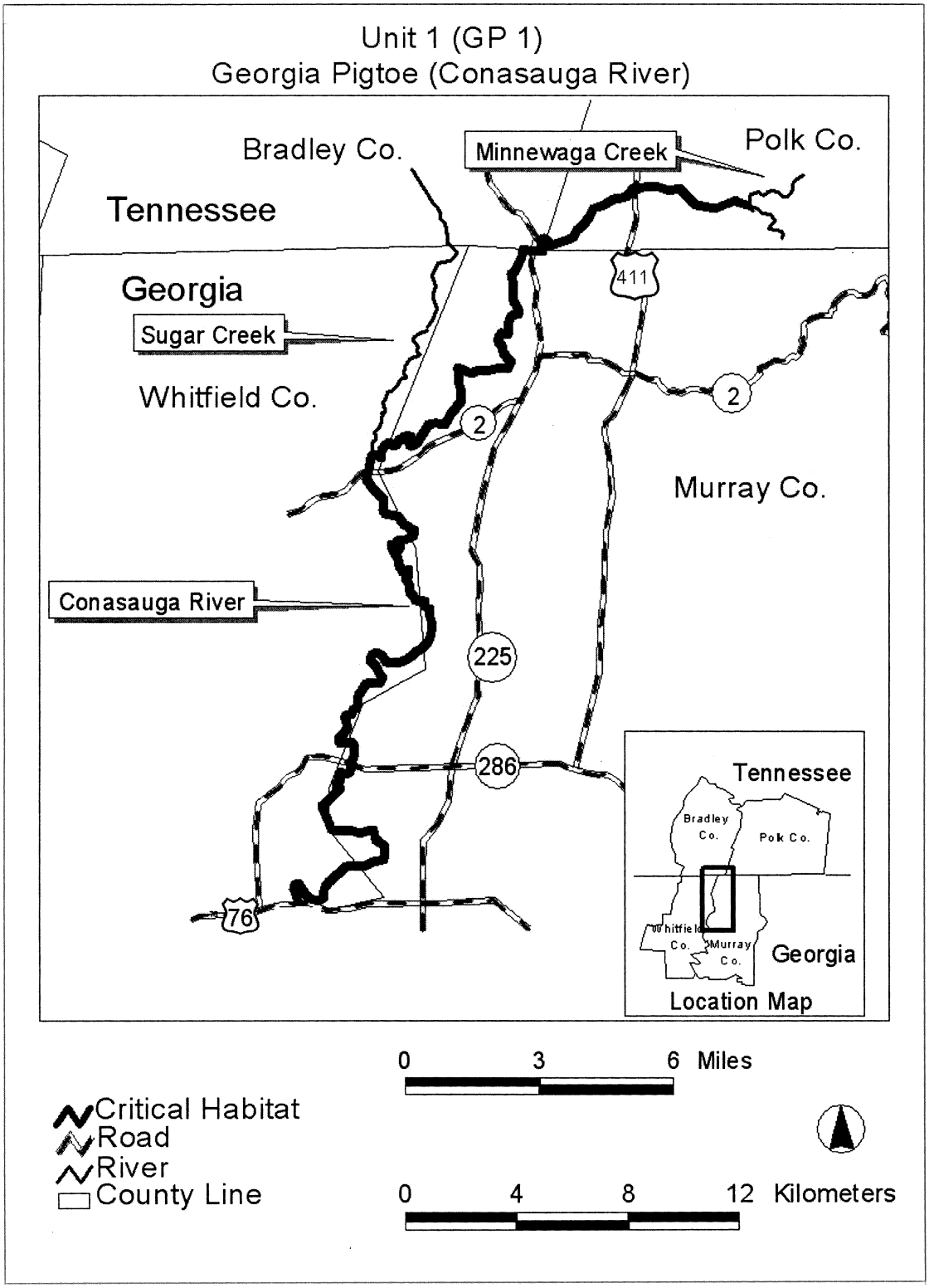
BILLING CODE 4310–55–S



(6) Unit 1 for Georgia pigtoe (GP 1): Conasauga River, Bradley and Polk Counties, Tennessee; Murray and Whitfield Counties, Georgia.

(i) Unit GP 1 includes the channel of the Conasauga River from the confluence of Minnewaga Creek (longitude 84.690540, latitude 35.003703), Polk County, Tennessee, downstream to U.S. Highway 76 (longitude 84.873083, latitude 34.783154), Murray/Whitfield County, Georgia.

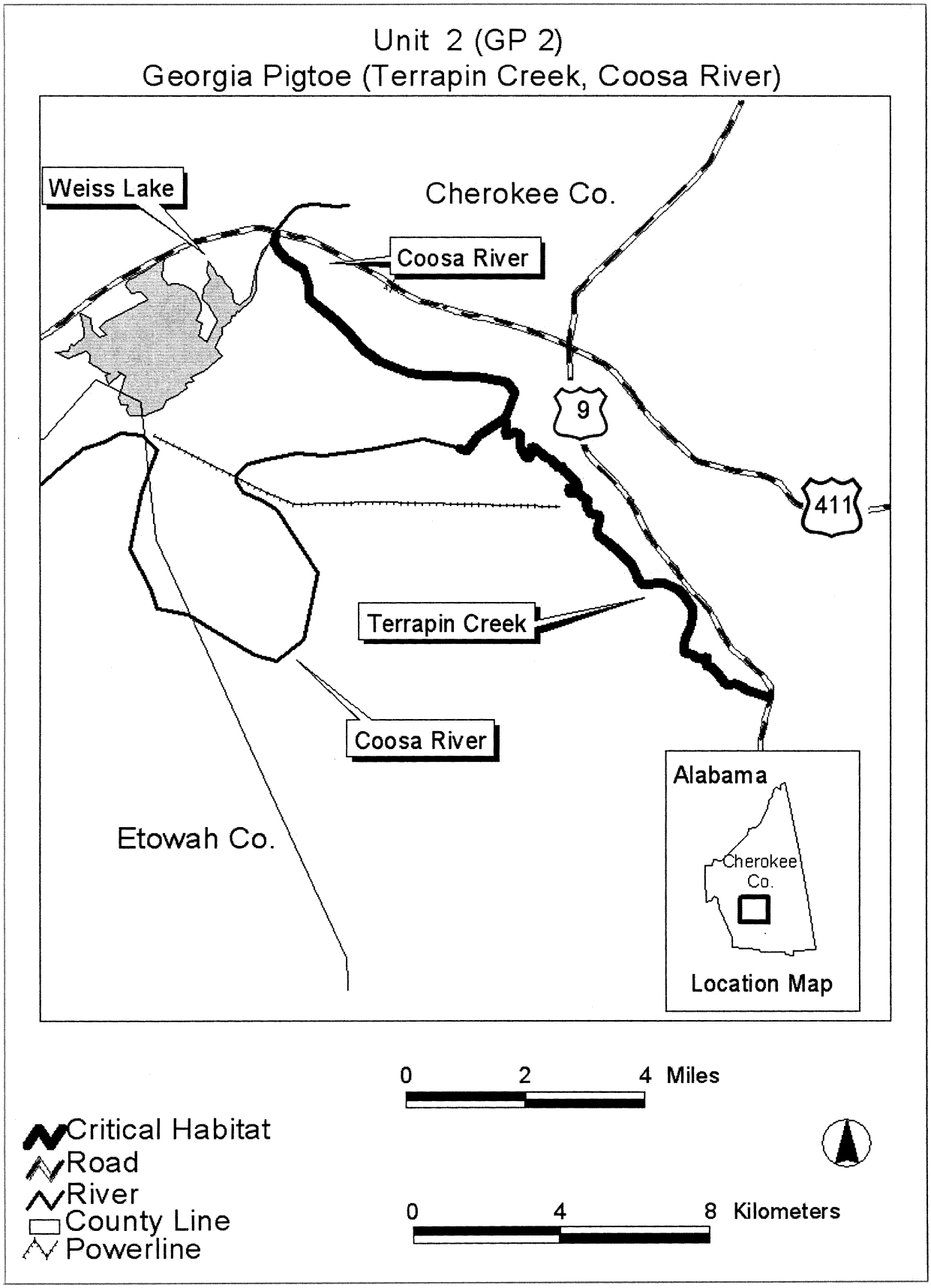
(ii) *Note*: Map of Unit 1 (GP 1) for Georgia pigtoe (Conasauga River) follows:



(7) Unit 2 for Georgia pigtoe (GP 2), Terrapin Creek and Coosa River, Cherokee County, Alabama.

(i) Unit GP 2 includes the channel of Terrapin Creek from Alabama Highway 9 (longitude 85.612250, latitude 34.062972), downstream to the confluence with the Coosa River (longitude 85.687750, latitude 34.13084), Cherokee County, Alabama; and the Coosa River channel from Weiss Dam (longitude 85.753667, latitude 34.172361), downstream to a point 1.6 km (1 mi) below the confluence of Terrapin Creek (longitude 85.701407, latitude 34.123895), Cherokee County, Alabama.

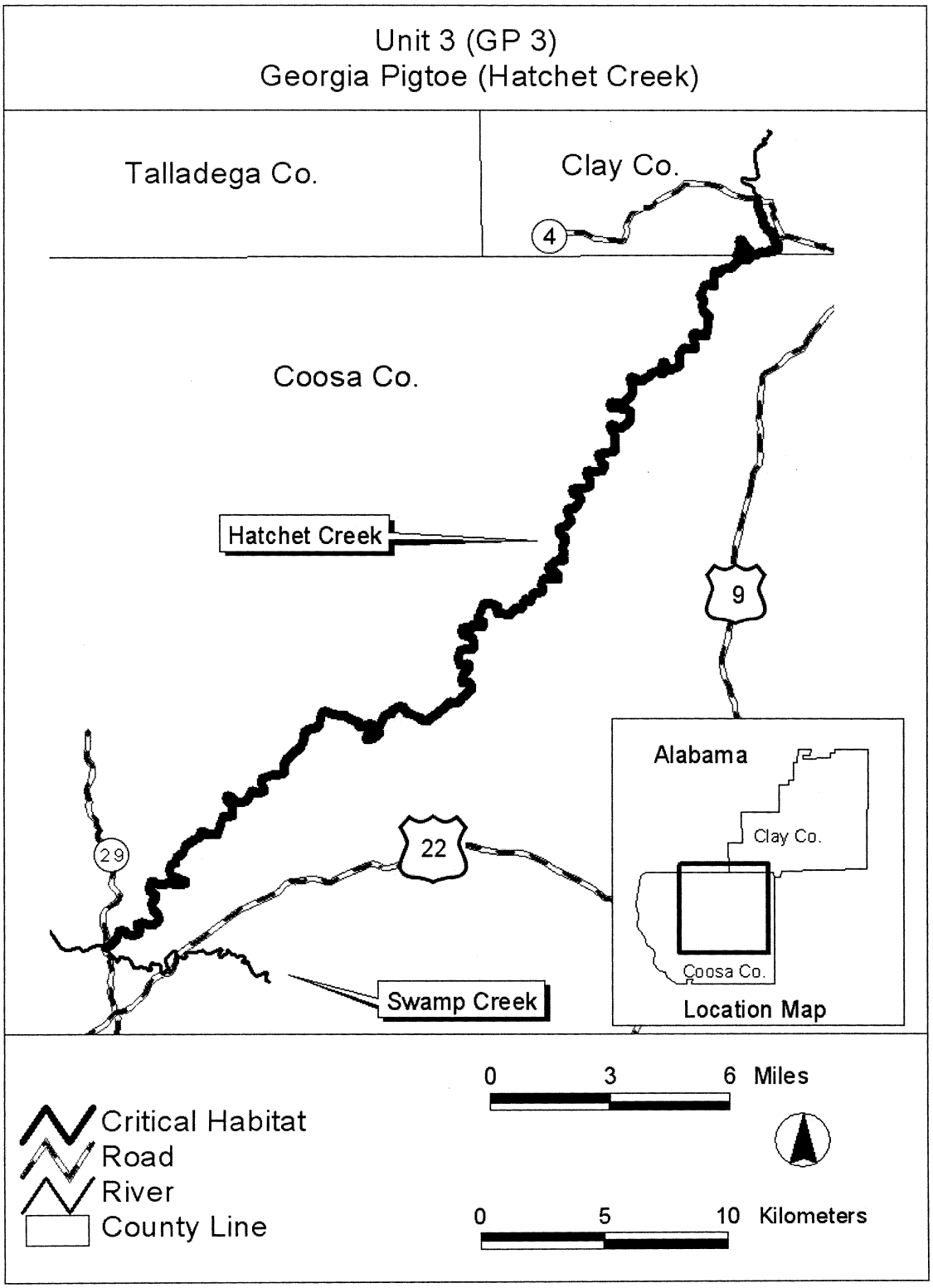
(ii) *Note*: Map of Unit 2 (GP 2) for Georgia pigtoe (Terrapin Creek and Coosa River) follows:


Unit 2 (GP 2)
Georgia Pigtoe (Terrapin Creek, Coosa River)
Weiss Lake
Cherokee Co.
Coosa River
9
411
Terrapin Creek
Coosa River
Etowah Co.
Alabama
Cherokee Co.
Location Map
0 2 4 Miles
Critical Habitat
Road
River
County Line
Powerline
0 4 8 Kilometers

(8) Unit 3 for Georgia pigtoe (GP 3): Hatchet Creek, Coosa and Clay Counties, Alabama.

(i)Unit GP 3 includes the channel of Hatchet Creek from Clay County Road 4 (longitude 86.054306, latitude 33.129472), Clay County, downstream to the confluence of Swamp Creek at Coosa County Road 29 (longitude 86.338361, latitude 32.860944), Coosa County, Alabama.

(ii)*Note*: Map of Unit 3 (GP 3) for Georgia pigtoe (Hatchet Creek) follows:



Interrupted Rocksnail (*Leptoxis foremani*)

(1) Critical habitat units are depicted for Cherokee and Elmore Counties, Alabama, and Gordon and Floyd Counties, Georgia, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for the interrupted rocksnail are the habitat components that provide:

(i) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(ii) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found. Unless other information becomes available, existing conditions at locations where the species occur will be considered as minimal flow requirements for survival.

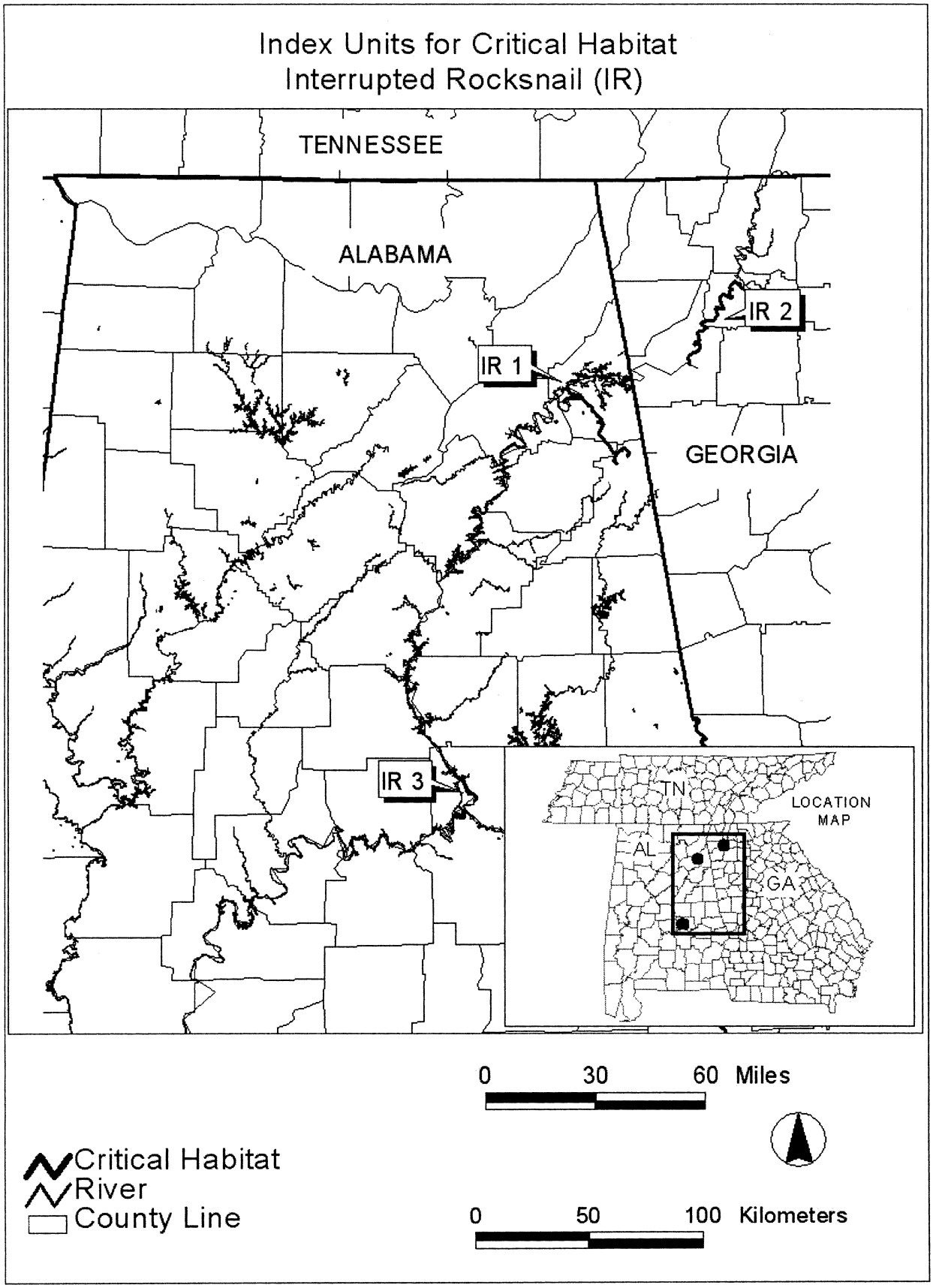
(iii) Water quality (including temperature, pH, hardness, turbidity, oxygen content, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (33 U.S.C. 1251–1387).

(iv) Sand, gravel, cobble, boulder, or bedrock substrates with low to moderate amounts of fine sediment and attached filamentous algae.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the PCEs, such as buildings, bridges, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat unit maps*. Maps were developed from USGS 7.5' quadrangles, and critical habitat unit upstream and downstream limits were then identified by longitude and latitude using decimal degrees.

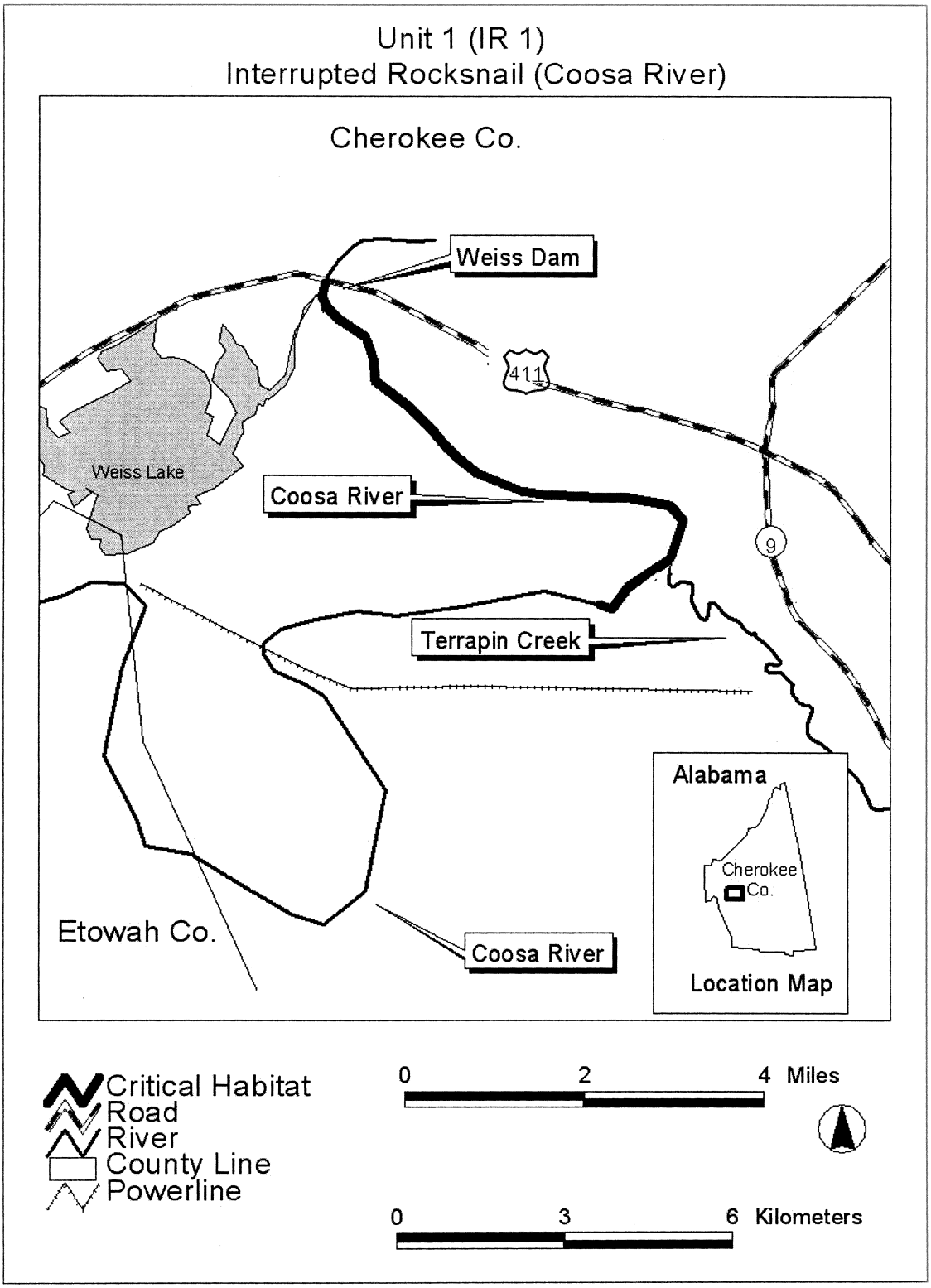
(5) *Note*: Index map of critical habitat units for the interrupted rocksnail follows:


Index Units for Critical Habitat
Interrupted Rocksnail (IR)
TENNESSEE
ALABAMA
GEORGIA
IR 1
IR 2
IR 3
TN
AL
GA
LOCATION MAP
0 30 60 Miles
0 50 100 Kilometers
Critical Habitat
River
County Line

(6) Unit 1 for interrupted rocksnail (IR 1): Coosa River, Cherokee County, Alabama.

(i) Unit IR 1 includes the Coosa River channel from Weiss Dam (longitude 85.753667, latitude 34.172361), downstream to a point 1.6 km (1 mi) below the confluence of Terrapin Creek (longitude 85.701407, latitude 34.123895), Cherokee County, Alabama.

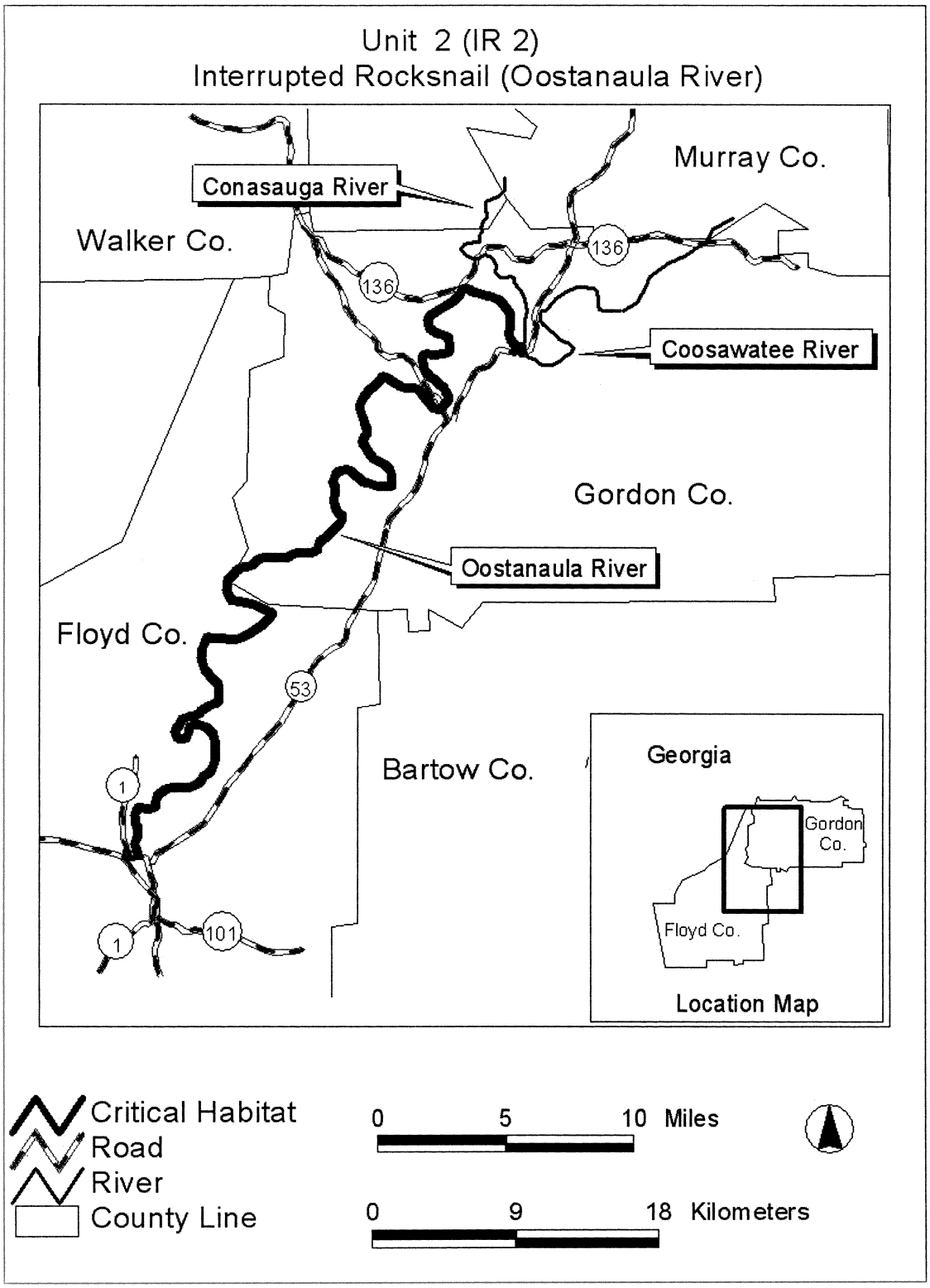
(ii) *Note*: Map of Unit 1 (IR 1) for interrupted rocksnail (Coosa River) follows:



(7) Unit 2 for interrupted rocksnail (IR 2): Oostanaula River, Gordon and Floyd Counties, Georgia.

(i) Unit IR 2 includes the primary channel of the Oostanaula River from the confluence of the Conasauga and Coosawattee Rivers (longitude 84.904611, latitude 34.544833), Gordon County, downstream to Georgia Highway 1 Loop (longitude 85.171417, latitude 34.260694), Floyd County, Georgia.

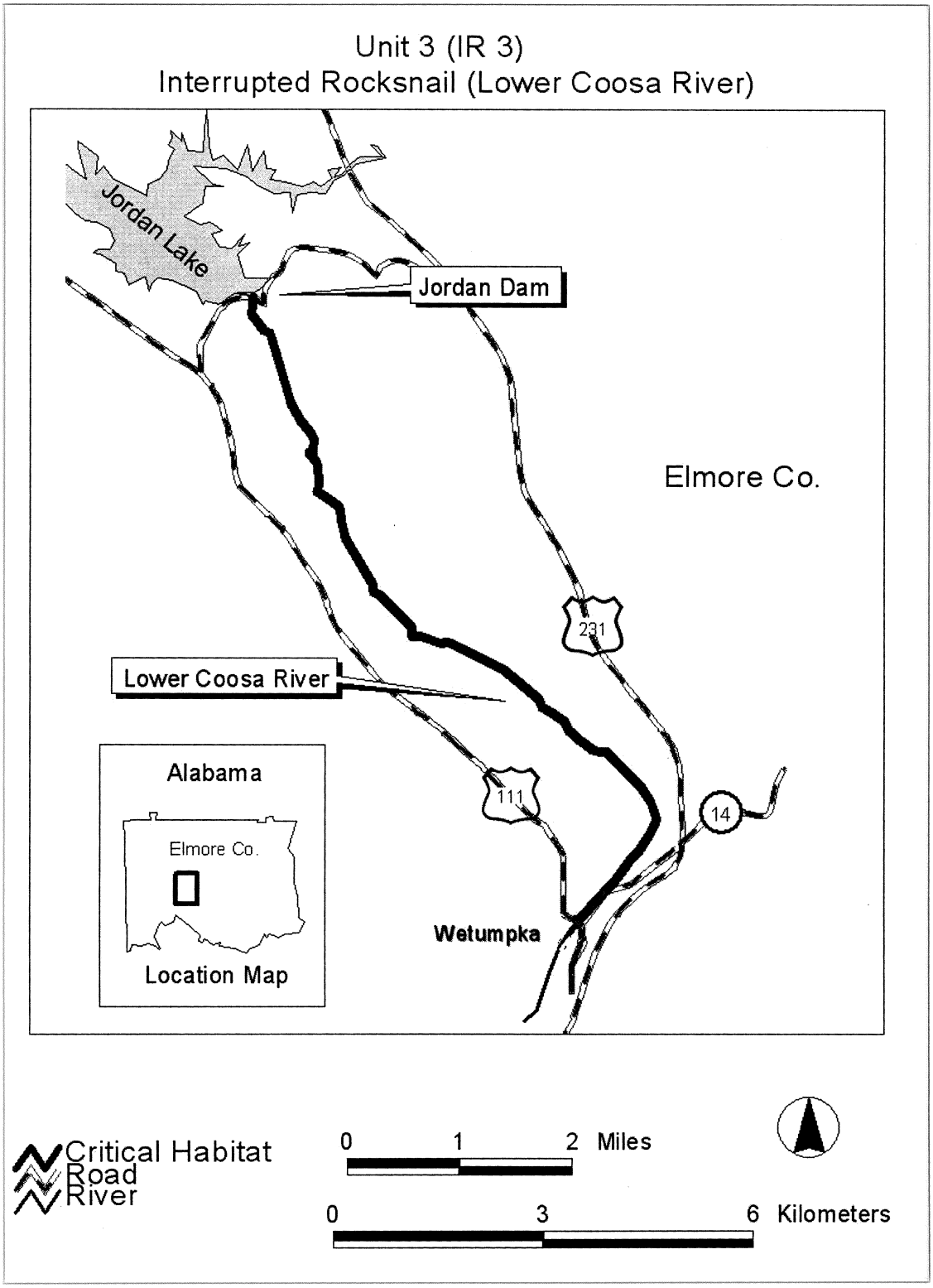
(ii) *Note*: Map of Unit 2 (IR 2) for interrupted rocksnail (Oostanaula River) follows:



(8) Unit 3 for interrupted rocksnail (IR 3): Lower Coosa River, Elmore County, Alabama.

(i) Unit IR 3 includes the Coosa River channel from Jordan Dam (longitude 86.254611, latitude 32.618250), downstream to Alabama Highway 111 Bridge (longitude 86.208500, latitude 32.535250), Elmore County, Alabama.

(ii) *Note*: Map of Unit 3 (IR 3) for interrupted rocksnail (Lower Coosa River) follows:



Rough Hornsnail (*Pleurocera foremani*)

(1) Critical habitat units are depicted for Elmore and Shelby Counties, Alabama, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for the rough hornsnail are the habitat components that provide:

(i) Geomorphically stable stream and river channels and banks (channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation).

(ii) A hydrologic flow regime (the magnitude, frequency, duration, and seasonality of discharge over time) necessary to maintain benthic habitats where the species are found. Unless other information becomes available, existing conditions at locations where the species occur will be considered as minimal flow requirements for survival.

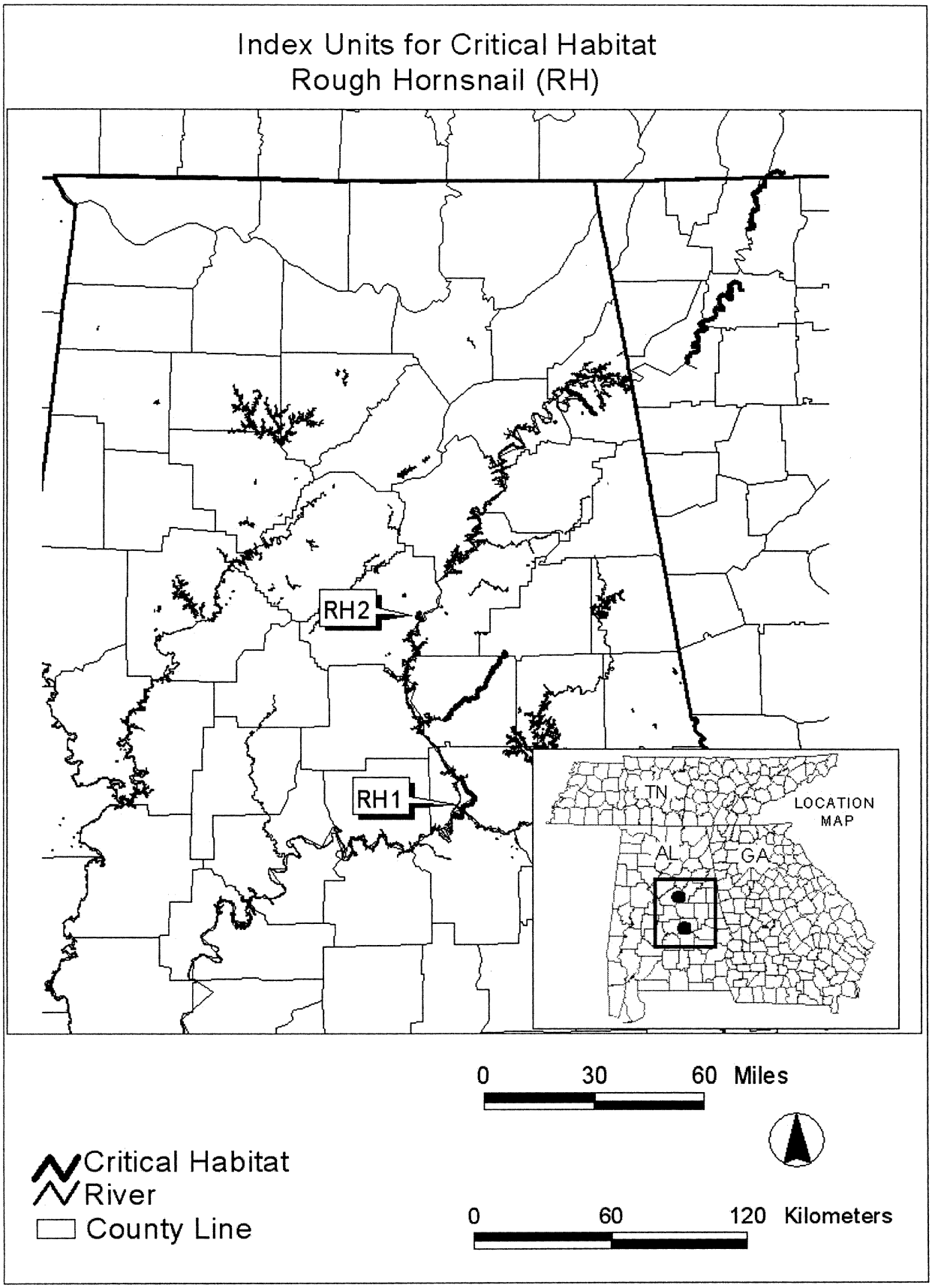
(iii) Water quality (including temperature, pH, hardness, turbidity, oxygen content, and chemical constituents) that meets or exceeds the current aquatic life criteria established under the Clean Water Act (33 U.S.C. 1251–1387).

(iv) Sand, gravel, cobble, boulder, or bedrock substrates with low to moderate amounts of fine sediment and attached filamentous algae.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, bridges, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat unit maps.* Maps were developed from USGS 7.5' quadrangles, and critical habitat unit upstream and downstream limits were then identified by longitude and latitude using decimal degrees.

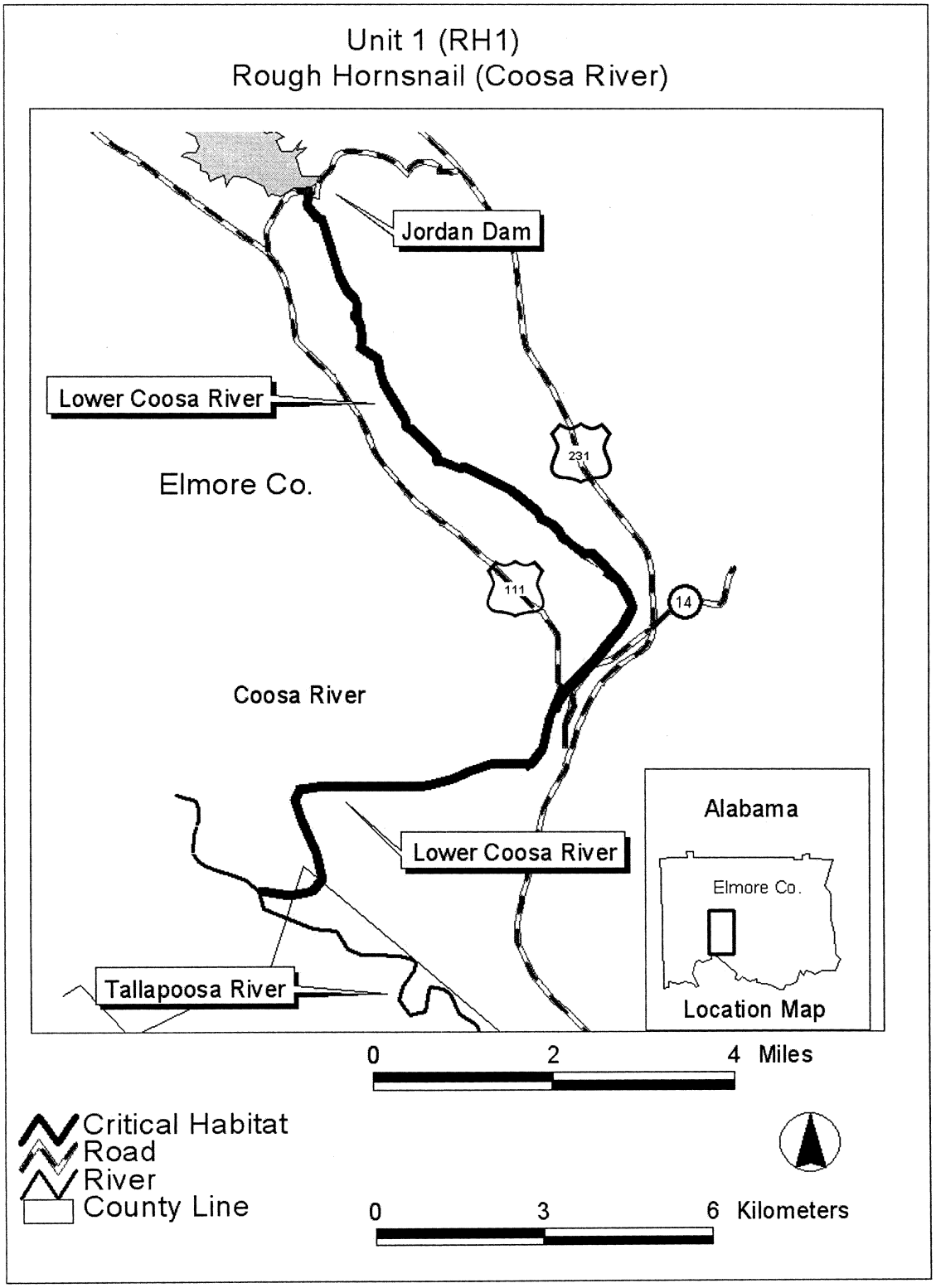
(5) *Note*: Index map of critical habitat units for the rough hornsnail follows:


Index Units for Critical Habitat
Rough Hornsnail (RH)
RH2
RH1
TN
LOCATION MAP
AL
GA
0 30 60 Miles
0 60 120 Kilometers
Critical Habitat
River
County Line

(6) Unit 1 for rough hornsnail (RH 1): Lower Coosa River, Elmore County, Alabama.

(i) Unit RH 1 includes the Coosa River channel from Jordan Dam (longitude 86.254611, latitude 32.618250), downstream to the confluence of the Tallapoosa River (longitude 86.265417, latitude 32.515417), Elmore County, Alabama.

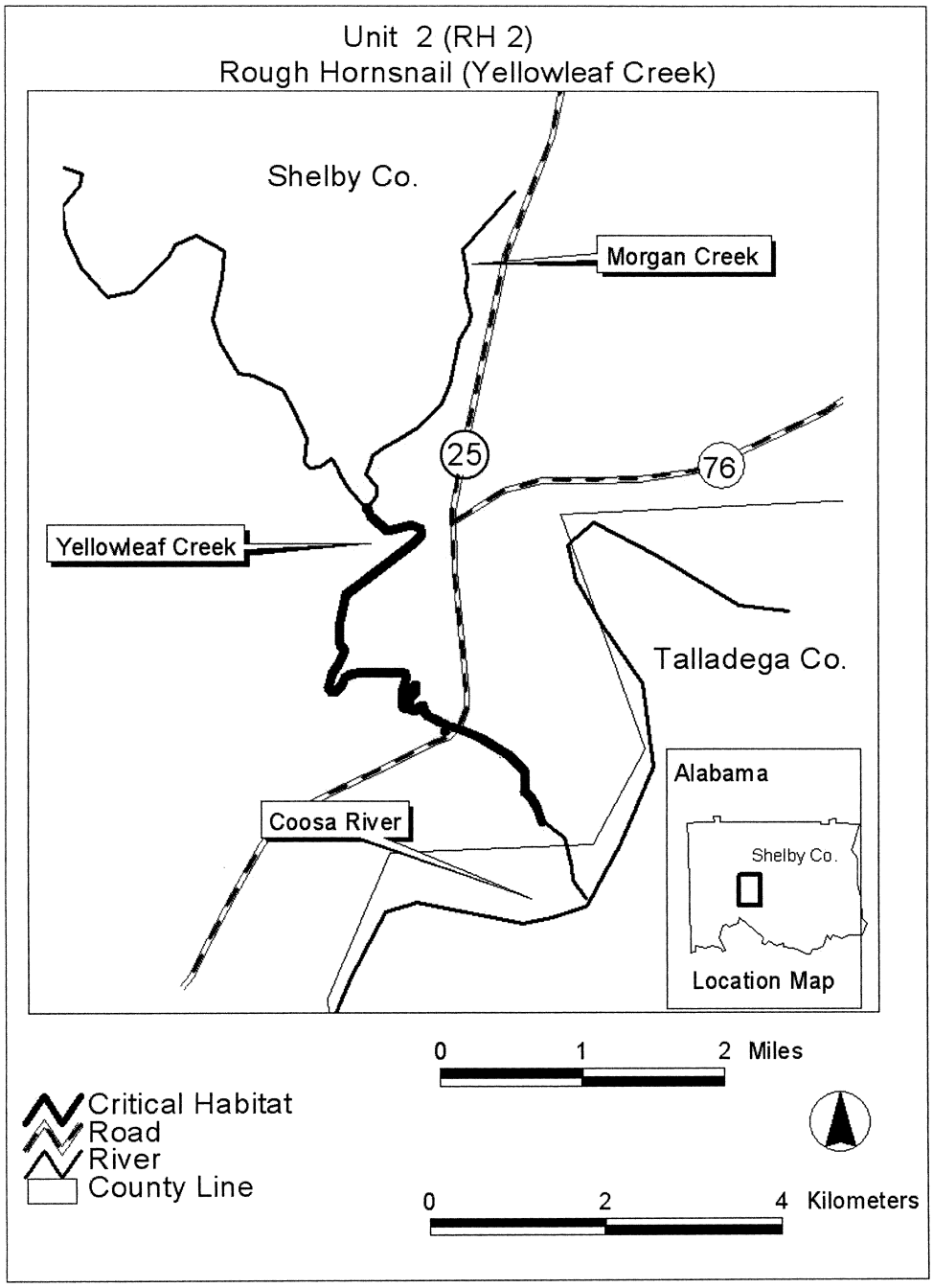
(ii) *Note*: Map of Unit 1 (RH 1) for rough hornsnail (Lower Coosa River) follows:



(7) Unit 2 for rough hornsnail (RH 2): Yellowleaf Creek, Shelby County, Alabama.

(i) Unit RH 2 includes the channel of Yellowleaf Creek from the confluence of Morgan Creek (longitude 86.459972, latitude 33.283667), downstream to 1.6 km (1 mi) below Alabama Highway 25 (longitude 86.438583, latitude 33.251306), Shelby County, Alabama.

(ii) *Note*: Map of Unit 2 (RH 2) for rough hornsnail (Yellowleaf Creek) follows:



Dated: May 27, 2009

Jane Lyder

Deputy Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. E9–15236 Filed 6–26–09; 8:45 am]

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