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

WHEN: Tuesday, September 15, 2009
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Rules and Regulations

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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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 124, 125, and 126

RIN 3245–AF74

Inflationary Adjustments to Acquisition-Related Dollar Thresholds

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule, with request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its regulations to implement the statutorily required inflationary adjustment of the Agency's acquisition-related dollar thresholds and to make SBA's regulations consistent with the inflationary adjustments that are already codified in the Federal Acquisition Regulation (FAR).

DATES: *Effective Date:* This rule is effective on September 14, 2009.

Comment Date: Comments must be received on or before October 14, 2009.

ADDRESSES: You may submit comments, identified by RIN 3245–AF74 by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov* and follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD–ROM submissions:* Dean Koppel, Assistant Director for Policy and Research, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Dean Koppel, Assistant Director for Policy and Research, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *http://www.Regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.Regulations.gov*, please submit the information to Dean Koppel and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination of whether the information will be published or not.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Director for Policy, and Research, at (202) 205–7322 or by e-mail at *dean.koppel@sba.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Small Business Act provides thresholds with respect to 8(a) Business Development (8(a)), Historically Underutilized Business Zone (HUBZone), Service Disabled Veteran-Owned (SDVO), and other Government Contracting Programs. For example, work offered into the 8(a) Program shall be competed among eligible 8(a) participants if the value of the procurement is greater than $5 million for procurements with manufacturing North American Industry Classification System (NAICS) codes and greater than $3 million for procurements with other than manufacturing NAICS codes, commonly referred to as ''all other'' procurements. Section 431a of title 41 of the United States Code authorizes the Office of Federal Procurement Policy's FAR Council to review all statutes with dollar based acquisition-related thresholds and adjust for inflation where appropriate. The FAR Council reviewed all such thresholds and decided that thresholds contained within the Small Business Act should be adjusted. The FAR final rule, published on September 28, 2006, at 71 FR 57363, amended the following FAR provisions and established the adjusted dollar based acquisition thresholds for SBA's small business programs.

FAR Citation	Threshold adjustment
FAR 7.104(d)(2)(i)(A)	$7,500,000
FAR 7.104(d)(2)(i)(B)	5,500,000
FAR 7.107(b)(1)	86,000,000
FAR 7.107(b)(2)	8,600,000
FAR 19.702(a)(1)	550,000
FAR 19.702(a)(2)	550,000
FAR 19.704(a)(9)	550,000
FAR 19.708(b)(1)	550,000
FAR 19.805–1(a)(2)	5,500,000
FAR 19.805–1(a)(2)	3,500,000
FAR 19.1306(a)(2)(i)	5,500,000
FAR 19.1306(a)(2)(ii)	3,500,000
FAR 19.1406(a)(2)(i)	5,500,000

Because these adjusted thresholds affect SBA's contracting programs, this rule makes the necessary changes to the Agency's regulations to ensure consistency with the FAR.

II. Section By Section Analysis

SBA is amending § 124.506(a) to inform the users about the inflationary adjustments for the 8(a) Program's competitive thresholds. Thresholds within this section are stating the total dollar values for determining if procurements shall be competed among 8(a) firms or awarded as 8(a) sole-source contracts. These thresholds are acquisition-related dollar thresholds as defined elsewhere in this preamble and in part contribute to the acquisition community's procurement planning for contracts awarded through the SBA's 8(a) Program. Section 124.506(a) is further amended to correct the identifier of a referenced example that was indirectly changed by the re-designating of paragraphs within § 124.506(a).

Section 125.2 is revising acquisition-related dollar thresholds the Federal agencies use for determining when the procuring activities must coordinate review of its agencies' acquisition strategies with the agencies' respective small business specialists (SBSs), Offices of Small Disadvantaged Business Utilization (OSDBUs), and the SBA's procurement center representatives (PCRs).

Section 125.3 provides the statutory thresholds for the submission of subcontracting plans by other than small business concerns awarded contracts offering subcontracting possibilities. Only one threshold for contracts and modifications in excess of $500,000 for procurements that are for other than construction of public facilities, received an inflationary adjustment under the FAR; section 125.3 reflects that change.

SBA is adding a paragraph at § 125.7 that provides an explanation of the inflationary adjustments as applied to regulations governing SBA's Government Contracting Assistance Programs.

The SDVO SBC Program regulations at § 125.20 contain statutory acquisition-related dollar thresholds for competing manufacturing and ''all other'' requirements, as explained elsewhere in the preamble. Only the threshold of $5,000,000, for competing manufacturing procurements is being revised to reflect the inflationary adjustment made in the FAR.

The SBA is amending § 126.601 by adding a new paragraph to advise the users about the inflationary adjustments for the HUBZone Program's competitive thresholds that are used to determine if procurements are to be competed among qualified HUBZone firms or awarded as HUBZone sole-source contracts. The amendments to § 126.612 reflect the actual revised thresholds, each of which establishes a dollar value that is utilized by the Federal procuring agencies for determining competitive decisions for procurements that are limited to participation by qualified HUBZone firms.

III. Justification for Publication as an Interim Final Status Rule

In general, SBA publishes a rule for public comment before issuing a final rule in accordance with the Administrative Procedure Act (APA) and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. The APA provides an exception to this standard rulemaking process where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In the present case, the SBA notes that Public Law 108–375, 41 U.S.C. 431a. requires the FAR Council to take responsibility for adjusting each acquisition-related dollar threshold provided by law and publish a notice of the adjusted dollar thresholds in the **Federal Register**. These actions have been completed and a final rule with an immediate effective date was published in the **Federal Register** on September 28, 2006, 71 FR 57363. Small business programs within the SBA's 8(a) Business Development, Government Contracting, and HUBZone Programs codified within Title 13, Parts 124, 125, and 126 contain acquisition-related dollar thresholds subject to inflationary adjustments that are currently codified in the FAR. This interim final rule is amending SBA's regulations to acknowledge and implement the adjustments that are codified within the FAR. The SBA is not establishing new or differing acquisition-related dollar thresholds with this interim final rule. Rather, SBA is merely amending its regulations to advise the users of SBA's regulations of the inflationary adjustments to SBA's small business programs every five years. Immediate implementation of the interim final rule is needed to ensure a consistency between the SBA's regulations and the FAR for the acquisition-related dollar thresholds governing small business contracting opportunities. Consequently, SBA believes it is unnecessary to publish this rule as a proposed rule because it is beneficial to the public and acquisition communities that the regulations governing the SBA's small business programs are made consistent through implementing this rule promptly. Comments may be offered by the public and will be reviewed by the SBA. Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule as quickly as possible.

IV. Justification for Immediate Effective Date of Interim Final Rule

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3) SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in Section III, ''Justification for Publication as Interim Final Status Rule'', SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date. Nonetheless, the public may provide comments to SBA by the deadline for comments. SBA will review any comments received.

V. Compliance With Executive Orders 12866, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under E.O. 12866.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purpose of E.O. 13132, SBA has determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act

Because this rule is an interim final rule, there is no requirement for SBA to prepare an Initial Regulatory Flexibility Act analysis. The RFA requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule the agency must prepare analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required.

List of Subjects

13 CFR Part 124

Administrative practice and procedure, Government procurement, Hawaiian Natives, Indians—business and finance, Minority business, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements Small businesses.

■ For the reasons stated in the preamble, the Small Business Administration amends 13 CFR Parts 124, 125 and 126 as follows:

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATION

■ 1. The authority citation for 13 CFR Part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j) 637(a), 637(d) and Public Law 99–661, Public Law 100–656, sec. 1207, Public Law 100–656, Public Law 101–37, Public Law 101–574, and 42 U.S.C. 9815.

Subpart A—8(a) Business Development

§ 124.506 [Amended]

■ 2. Amend § 124.506 as follows:

■ a. In § 124.506 redesignate paragraphs (a)(1) through (4) as paragraphs (a)(2) through (5) and add new paragraph (a)(1) to read as set forth below.

■ b. Amend newly designated paragraph (a)(2)(ii) by removing ''$5,000,000'' and adding in its place ''$5,500,000''.

■ c. Amend newly designated paragraph (a)(2)(ii) by removing ''$3,000,000'' and adding in its place ''$3,500,000''.

■ d. Amend newly designated paragraph (a)(4) by removing ''$2.7 million'' and adding in its place ''$3.4 million''.

■ e. Amend newly designated paragraph (a)(4) by removing ''$3.1 million'' and adding in its place ''$3.7 million''.

§ 124.506 At what dollar threshold must an 8(a) procurement be competed among eligible Participants?

(a) * * *

(1) The Federal Acquisition Regulatory Council (FAR Council) has the responsibility of adjusting each acquisition-related dollar threshold on October 1, of each year that is evenly divisible by five. Acquisition-related dollar thresholds are defined as dollar thresholds that are specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency as determined by the FAR Council. 41 U.S.C. 431a(c). Part 124, Subpart A, 8(a) Business Development, contains acquisition-related dollar thresholds subject to inflationary adjustments. The FAR Council shall publish a notice of the adjusted dollar thresholds in the **Federal Register**. The adjusted dollar thresholds shall take effect on the date of publication.

* * * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 3. The authority citation for 13 CFR Part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644 and 657(f).

■ 4. Amend § 125.2 as follows:

■ a. Amend paragraph (b)(2)(i)(A) by removing ''$7'' and adding in its place ''$7.5'';

■ b. Amend paragraph (b)(2)(i)(B) by removing ''$5'' and adding in its place ''$5.5'';

■ c. Amend paragraph (d)(5)(i)(A) by removing ''$75'' and adding in its place ''$86'';

■ d. Revise paragraph (d)(5)(i)(B) to read as follows:

§ 125.2 Prime contracting assistance.

* * * * *

(d) * * *

(5) * * *

(i) * * *

(B) Benefits equivalent to 5 percent of the contract or order value (including options) or $8.6 million, whichever is greater, where the contract or order value exceeds $86 million.

* * * * *

§ 125.3 [Amended]

■ 5. Amend § 125.3(a) as follows:

■ a. Amend paragraph (a) by removing ''$500,000'' and adding in its place ''$550,000'';

■ b. Amend paragraph (c)(1) by removing ''$500,000'' and adding in its place ''$550,000''.

■ 6. *Add* § 125.7 to read as follows:

§ 125.7 Acquisition-related dollar thresholds.

The Federal Acquisition Regulatory Council (FAR Council) has the responsibility of adjusting each acquisition-related dollar threshold on October 1, of each year that is evenly divisible by five. Acquisition-related dollar thresholds are defined as dollar thresholds that are specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency as determined by the FAR Council. 41 U.S.C. 431a(c). Part 125, Government Contracting Programs, contains acquisition-related dollar thresholds subject to inflationary adjustments. The FAR Council shall publish a notice of the adjusted dollar thresholds in the **Federal Register**. The adjusted dollar thresholds shall take effect on the date of publication.

Subpart C—Contracting With SDVO SBCs

§ 125.20 [Amended]

■ 7. Amend paragraph (b)(1) of § 125.20 by removing ''$5,000,000'' and adding in its place ''$5,500,000''.

PART 126—HUBZONE PROGRAM

■ 8. The authority citation for 13 CFR Part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p) and 657a.

Subpart F—Contractual Assistance

■ 9. Amend § 126.601 to redesignate paragraphs (a) through (e) as paragraphs (b) through (f) and add new paragraph (a) to read as follows:

§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?

(a) The Federal Acquisition Regulatory Council (FAR Council) has the responsibility of adjusting each acquisition-related dollar threshold on October 1 of each year that is evenly divisible by five. Acquisition-related dollar thresholds are defined as dollar thresholds that are specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency as determined by the FAR Council. 41 U.S.C. 431a(c). Part 126, Subpart F, Contract Assistance, contains acquisition-related dollar thresholds subject to inflationary adjustments. The FAR Council shall publish a notice of the adjusted dollar thresholds in the **Federal Register**. The adjusted dollar thresholds shall take effect on the date of publication.

* * * * *

§ 126.612 [Amended]

■ 10. Amend § 126.612 as follows:

■ A. Amend paragraph (b)(1) by removing ''$5,000,000'' and adding in its place ''$5,500,000''.

■ B. Amend paragraph (b)(2) by removing ''$3,000,000'' and adding in its place ''$3,500,000''.

Dated: August 25, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–21602 Filed 9–11–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0817; Directorate Identifier 2009–CE–046–AD; Amendment 39–16020; AD 2009–19–03]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1, Jetstream Series 200 and 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

BAE Systems have been notified by the main landing gear (MLG) radius rod manufacturer, APPH Ltd, that a batch of incorrectly manufactured Buffer Springs (part number 184818) has been supplied to their parts distributor and maintenance and repair organisation (MRO) facilities in North America.

There is a risk that any radius rod fitted with one of these incorrectly manufactured Buffer Springs could jam in an unlocked position. This condition, if not corrected, could result in MLG collapse and consequent injury to occupants of the aeroplane. EASA issued AD 2009–0121–E to require the replacement of the affected radius rods.

BAE Systems (Operations) Ltd Alert Service Bulletin (ASB) 32–A–JA090640 Revision 2 (the ASB) has now been issued, which identifies an additional seven affected radius rods by serial number (s/n).

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

DATES: This AD becomes effective October 5, 2009.

On October 5, 2009, the Director of the Federal Register approved the incorporation by reference of British Aerospace Jetstream Series 3100 and 3200 Alert Service Bulletin 32–A–JA090640, Revision 2, dated August 11, 2009, listed in this AD.

As of June 26, 2009 (74 FR 29936, June 24, 2009), the Director of the Federal Register approved the incorporation by reference of British Aerospace Jetstream Series 3100 and 3200 Alert Service Bulletin 32–A–JA090640, dated June 2009 (includes an attached Accomplishment Report), and APPH Ltd. Service Bulletins 1847–32–14 and 1862–32–14, as applicable, both dated June 2009, listed in this AD.

We must receive comments on this AD by October 29, 2009.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Taylor Martin, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On June 18, 2009, we issued AD 2009–13–10, Amendment 39–15949 (74 FR 29936; June 24, 2009). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2009–13–10, British Aerospace Regional Aircraft has issued revised service information which identifies an additional seven affected radius rods by serial number.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency AD No. 2009–0181–E, dated August 12, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

BAE Systems have been notified by the main landing gear (MLG) radius rod manufacturer, APPH Ltd, that a batch of incorrectly manufactured Buffer Springs (part number 184818) has been supplied to their parts distributor and maintenance and repair organisation (MRO) facilities in North America.

There is a risk that any radius rod fitted with one of these incorrectly manufactured Buffer Springs could jam in an unlocked position. This condition, if not corrected, could result in MLG collapse and consequent injury to occupants of the aeroplane. EASA issued AD 2009–0121–E to require the replacement of the affected radius rods.

BAE Systems (Operations) Ltd Alert Service Bulletin (ASB) 32–A–JA090640 Revision 2 (the ASB) has now been issued, which identifies an additional seven affected radius rods by serial number (s/n).

For the reasons described above, this AD retains the requirements of AD 2009–0121–E, which is superseded, and expands the applicability to include the replacement of the additional units.

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

Relevant Service Information

British Aerospace Regional Aircraft has issued:

- British Aerospace Jetstream Series 3100 and 3200 Alert Service Bulletin 32–A–JA090640, dated June 2009 (includes an attached Accomplishment Report);
- British Aerospace Jetstream Series 3100 and 3200 Alert Service Bulletin 32–A–JA090640, Revision 2, dated August 11, 2009 (includes an attached Accomplishment Report); and
- APPH Ltd. Service Bulletins 1847–32–14 and 1862–32–14, both dated June 2009.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. 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–2009–0817; Directorate Identifier 2009–CE–046–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15949 (74 FR 29936; June 24, 2009), and adding the following new AD:

2009–19–03 British Aerospace Regional Aircraft: Amendment 39–16020; Docket No. FAA–2009–0817; Directorate Identifier 2009–CE–046–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 5, 2009.

Affected ADs

(b) This AD supersedes AD 2009–13–10; Amendment 39–15949.

Applicability

(c) This AD applies to Model HP.137 Jetstream Mk.1, Jetstream Series 200 and 3101, and Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

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

BAE Systems have been notified by the main landing gear (MLG) radius rod manufacturer, APPH Ltd, that a batch of incorrectly manufactured Buffer Springs (part number 184818) has been supplied to their parts distributor and maintenance- and repair organisation (MRO) facilities in North America.

There is a risk that any radius rod fitted with one of these incorrectly manufactured Buffer Springs could jam in an unlocked position. This condition, if not corrected, could result in MLG collapse and consequent injury to occupants of the aeroplane. EASA issued AD 2009–0121–E to require the replacement of the affected radius rods.

BAE Systems (Operations) Ltd Alert Service Bulletin (ASB) 32–A–JA090640 Revision 2 (the ASB) has now been issued, which identifies an additional seven affected radius rods by serial number (s/n).

For the reasons described above, this AD retains the requirements of AD 2009–0121–E, which is superseded, and expands the applicability to include the replacement of the additional units.

Actions and Compliance

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

(1) Before further flight after October 5, 2009 (the effective date of this AD) inspect the main landing gear (MLG) radius rods to identify if you have part number (P/N) 1847/D through 1847/N and 1862/D through 1862/N with one of the affected serial numbers listed in British Aerospace Jetstream Series 3100 and 3200 Alert Service Bulletin 32–A–JA090640, Revision 2, dated August 11, 2009. Perform the inspection following British Aerospace Jetstream Series 3100 and 3200 Alert Service Bulletin 32–A–JA090640, Revision 2, dated August 11, 2009. Only paragraphs (f)(3) and (f)(4) of this AD apply to you if one or both of the following exists:

(i) If you do not have one of the affected P/Ns installed; and/or

(ii) If you can positively show (maintenance records) that, during the inspection required by AD 2009–13–10, none of the serial number radius rods listed in

British Aerospace Jetstream Series 3100 and 3200 Alert Service Bulletin 32–A–JA090640, Revision 2, dated August 11, 2009, are installed.

(2) If as a result of the inspection required in paragraph (f)(1) of this AD you find one of the affected P/N MLG radius rods installed on the airplane, before further flight, install one of the following MLG radius rods:

(i) A serviceable MLG radius rod that is not in one of the following P/N ranges: 1847/D through 1847/N or 1862/D through 1862/N; or

(ii) An affected P/N MLG radius rod that has already been inspected following APPH Ltd. Service Bulletin 1847–32–14 or 1862–32–14, as applicable, both dated June 2009, and found to be serviceable.

(3) As of October 5, 2009 (the effective date of this AD), do not install an affected part number MLG radius rod unless it has been inspected following APPH Ltd. Service Bulletin 1847–32–14 or 1862–32–14, as applicable, both dated June 2009, and found to be serviceable.

Note 1: The inspection requirements of paragraph (f)(3) above apply to any replacement required per AD 2007–21–17.

(4) Within 30 days after the inspection required in paragraph (f)(1) of this AD, send an Accomplishment (Inspection) Report to BAE Systems following the instructions in paragraph 2.C of British Aerospace Jetstream Series 3100 and 3200 Alert Service Bulletin 32–A–JA090640, Revision 2, dated August 11, 2009. Include the details of any radius rods removed.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Special Flight Permit

(h) Under 14 CFR 39.23, we are limiting special flight permits for the purpose of compliance with this AD under the following conditions:

(1) Operate the airplane only with the MLG in the down and verified locked position throughout the entire flight; and

(2) Coordinate additional flight restrictions with British Aerospace Regional Aircraft using the contact information provided in paragraph (j)(2) of this AD.

Related Information

(i) Refer to MCAI EASA Emergency AD No. 2009–0181–E, dated August 12, 2009; British Aerospace Jetstream Series 3100 and 3200 Alert Service Bulletin 32–A–JA090640, Revision 2, dated August 11, 2009 (includes an attached Accomplishment Report); and APPH Ltd. Service Bulletins 1847–32–14 and 1862–32–14, both dated June 2009, for related information.

Material Incorporated by Reference

(j) You must use British Aerospace Jetstream Series 3100 and 3200 Alert Service Bulletin 32–A–JA090640, Revision 2, dated August 11, 2009 (includes an attached Accomplishment Report); and APPH Ltd. Service Bulletins 1847–32–14 and 1862–32–14, both dated June 2009, 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 British Aerospace Jetstream Series 3100 and 3200 Alert Service Bulletin 32–A–JA090640, Revision 2, dated August 11, 2009 (includes an attached Accomplishment Report) under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On June 26, 2009 (74 FR 29936, June 24, 2009), the Director of the Federal Register previously approved the incorporation by reference of APPH Ltd. Service Bulletins 1847–32–14 and 1862–32–14, both dated June 2009.

(3) For service information identified in this AD, contact BAE Systems (Operations) Ltd., Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone: +44 1292 675207; fax: +44 1292 675704; e-mail: *RApublications@baesystems.com;* Internet: *http://www.baesystems.com/Capabilities/Air/.*

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

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

Issued in Kansas City, Missouri on September 1, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–21741 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0604; Airspace Docket No. 09–ASO–18]

Establishment of Class E Airspace; Tompkinsville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Tompkinsville, KY. Airspace is needed to support new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for Tompkinsville-Monroe County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rule (IFR) operations at the airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP. This action enhances the safety and airspace management of Tompkinsville-Monroe County Airport, Tompkinsville, KY.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before October 29, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2009–0604; Airspace Docket No. 09–ASO–18, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0604; Airspace Docket No. 09–ASO–18.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Tompkinsville, KY, to provide controlled airspace required to support the Approach Procedures (SIAPs) that have been developed for Tompkinsville-Monroe County Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Tompkinsville, KY.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Tompkinsville, KY [NEW]

Tompkinsville-Monroe County Airport, KY (Lat. 36°43′45″ N., long. 85°39′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Tompkinsville-Monroe County Airport.

* * * * *

Issued in College Park, Georgia, on August 17, 2009.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–21833 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0705; Airspace Docket No. 09–ASO–25]

Establishment of Class E Airspace; Hertford, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Hertford, NC. Airspace is needed to support new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for Harvey Point Defense Testing Activity. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rule (IFR) operations at the airport. The operating status of the airport will change from Visual flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP. This action enhances the safety and airspace management of Harvey Point Defense Testing Activity, Hertford, NC.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before October 29, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2009–0705; Airspace Docket No. 09–ASO–25, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0705; Airspace Docket No. 09–ASO–25.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Hertford, NC, to provide controlled airspace required to support the Approach Procedures (SIAPs) that have been developed for Harvey Point Defense Testing Activity. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Hertford, NC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO NC E5 Hertford, NC [NEW]

Harvey Point Defense Testing Activity, NC (Lat. 36°05′46″ N., long. 76°19′37″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.5-mile radius of Harvey Point Defense Testing Activity and within 2 miles each side of the 199° bearing from the airport extending from the 6.5-mile radius to 9 miles southwest of the airport, and within a 6.5-mile radius of Harvey Point Defense Testing Activity and within 2 miles each side of the 018° bearing from the airport extending from the 6.5-mile radius to 9 miles northeast of the airport.

* * * * *

Issued in College Park, Georgia, on August 17, 2009.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–21876 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0605; Airspace Docket No. 09–ASO–19]

Establishment of Class E Airspace; Clayton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Clayton, GA. Airspace is needed to support new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for Heaven's Landing Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rule (IFR) operations at the airport. The operating status of the airport will change from Visual flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP. This action enhances the safety and airspace management of Heaven's Landing Airport, Clayton, GA.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before October 29, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2009–0605; Airspace Docket No. 09–ASO–19, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will

publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0605; Airspace Docket No. 09–ASO–19.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Clayton, GA, to provide controlled airspace required to support the Approach Procedures (SIAPs) that have been developed for Heaven's Landing Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part, A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Clayton, GA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO GA E5 Clayton, GA [NEW]

Heaven's Landing Airport, GA
(Lat. 34°54′52″ N., long. 83°27′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Heaven's Landing Airport.

* * * * *

Issued in College Park, Georgia, on August 21, 2009.

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–21892 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0603; Airspace Docket No. 09–ASO–16]

Establishment of Class E Airspace; Saluda, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Saluda, SC. Airspace is needed to support new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been

developed for Saluda County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rule (IFR) operations at the airport. The operating status of the airport will change from Visual flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP. This action enhances the safety and airspace management of Saluda County Airport, Saluda, SC.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before October 29, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2009–0603; Airspace Docket No. 09–ASO–16, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0603; Airspace Docket No. 09–ASO–16.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Saluda, SC, to provide controlled airspace required to support the Approach Procedures (SIAPs) that have been developed for Saluda County Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the

efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Saluda, SC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO SC E5 Saluda, SC [NEW]

Saluda County Airport, SC
(Lat. 33°55′36″ N., long. 81°47′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Saluda County Airport.

* * * * *

Issued in College Park, Georgia, on August 21, 2009.

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–21878 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0706; Airspace Docket No. 09–ASO–26]

Establishment of Class E Airspace; Lewisport, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Lewisport, KY. Airspace is needed to support new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for Hancock Co.—Ron Lewis Field. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rule (IFR) operations at the airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP. This action enhances the safety and airspace management of Hancock Co.—Ron Lewis Field, Lewisport, KY.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before October 29, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2009–0706; Airspace Docket No. 09–ASO–26, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the

closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0706; Airspace Docket No. 09–ASO–26.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Lewisport, KY, to provide controlled airspace required to support the Approach Procedures (SIAPs) that have been developed for Hancock Co.—Ron Lewis Field. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Lewisport, KY.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO NC E5 Lewisport, KY [NEW]

Hancock Co.—Ron Lewis Field, KY
(Lat. 37°57′12″ N., long. 86°51′26″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.4-mile radius of Hancock Co.—Ron Lewis Field.

* * * * *

Issued in College Park, Georgia, on August 24, 2009.

Signed by:

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–21813 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0202; Airspace Docket 09–AEA–11]

Modification of Class D and Class E Airspace, Establishment of Class E Airspace; Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** (73 FR 17901) that modifies the Class D and E airspace at Binghamton Regional/Edwin A. Link Field Airport in Binghamton, NY. The development of specific Approach Procedures (APs) for the airfield required that the Class D and E surface airspace be reviewed and subsequently modified to facilitate a more efficient operation at Binghamton Regional/Edwin A. Link Field Airport.

DATES: *Effective Date:* 0901 UTC, September 14, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments modifying Class D and E airspace; establishing Class E airspace in the **Federal Register** on April 20, 2009 (74 FR 17901), Docket No. FAA–2009–0202; Airspace Docket No. 09–AEA–11. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 2, 2009. No adverse comments were received, and thus this notice confirms that effective date.

* * * * *

Issued in College Park, Georgia, on August 31, 2009.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–21839 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0652; Airspace Docket 09–ASO–21]

Modification of Class E Airspace; Sarasota, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action modifies the Class E airspace at Sarasota/Bradenton International Airport in Sarasota, FL. After the Sarasota VORTAC was moved, it was determined that the Class E airspace at the airport should be modified to facilitate a more efficient operation. This rule increases the safety and management of the National Airspace System (NAS) around Sarasota/Bradenton International Airport.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments should be received no later that October 29, 2009.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2009–0652; Airspace Docket No. 09–ASO–21, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit and adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0652; Airspace Docket No. 09–ASO–21.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E3 airspace at Sarasota, FL by expanding the controlled airspace, extending upward from the surface of the Earth to support IFR operations at Sarasota/Bradenton International Airport. Additionally, the existing Class E airspace that extends upwards from 700 feet above the surface of the Earth (E5) will have its dimensions decreased from a 10-mile radius to a 7.9-mile radius of the Sarasota/Bradenton International Airport.

Class E3 airspace designations for airspace areas extending upwards from the surface of the Earth and Class E5 airspace designations for airspace areas extending from 700 feet above the surface of the Earth are published in Paragraph 6003 and 6005 respectively of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E3 and E5 airspace designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Class E3 and E5 airspace at Sarasota/Bradenton International Airport in Sarasota, FL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6003 Class E Airspace Areas Designated as an Extension.

* * * * *

ASO FL E3 Sarasota, FL [REVISED]

Sarasota/Bradenton International Airport, Sarasota, FL
(Lat. 27°23′43″ N., long. 82°33′14″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the 140° bearing from the airport, extending from a 5-mile radius of Sarasota/Bradenton International Airport to 6.2 miles southeast of the airport and that airspace 2.4 miles each side of the 293° bearing from the airport, extending from a 5-mile radius of Sarasota/Bradenton International Airport to 7.9 miles northwest of the airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Sarasota, FL [REVISED]

Sarasota/Bradenton International Airport, Sarasota, FL
(Lat. 27°23′43″ N., long. 82°33′14″ W.)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of the Sarasota/Bradenton International Airport.

* * * * *

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Areas.

* * * * *

Issued in College Park, Georgia, on August 31, 2009.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–21896 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30684; Amdt. No. 3337]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective September 14, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 14, 2009.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City,

OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on August 21, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	Subject
08/12/09	FL	DUNNELLON	DUNNELLON/MARION CO & PARK OF COMMERCE.	9/4021	VOR/DME RWY 23, AMDT 1A.
08/13/09	TX	PALESTINE	PALESTINE MUNI	9/4346	RNAV (GPS) RWY 18, ORIG.
08/13/09	TX	PALESTINE	PALESTINE MUNI	9/4347	VOR/DME RWY 18, AMDT 5.
08/13/09	TX	PALESTINE	PALESTINE MUNI	9/4349	RNAV (GPS) RWY 36, AMDT 1.
08/17/09	CA	CAMARILLO	CAMARILLO	9/4838	VOR RWY 26, AMDT 5.
08/17/09	OR	REDMOND	ROBERTS FIELD	9/4921	VOR A, AMDT 5.

[FR Doc. E9–21060 Filed 9–11–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30683 Amdt. No. 3336]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective September 14, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 14, 2009.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on August 21, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 24 SEP 2009

Cullman, AL, Folsom Field, GPS RWY 20, Orig, CANCELLED
Cullman, AL, Folsom Field, RNAV (GPS) RWY 2, Orig
Cullman, AL, Folsom Field, RNAV (GPS) RWY 20, Orig
Mobile, AL, Mobile Rgnl, RNAV (GPS) RWY 36, Orig
Daggett, CA, Barstow-Daggett, RNAV (GPS) RWY 22, Amdt 1
Daggett, CA, Barstow-Daggett, RNAV (GPS) RWY 26, Amdt 1
Daggett, CA, Barstow-Daggett, Takeoff Minimums and Obstacle DP, Amdt 2
Daggett, CA, Barstow-Daggett, VOR OR TACAN RWY 22, Amdt 9
Eureka, CA, Murray Field, VOR–A, Amdt 7A
San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (GPS) Y RWY 12R, Amdt 2A
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (RNP) Y RWY 9L, Orig-C
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (RNP) Z RWY 9R, Orig-C
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (RNP) Z RWY 27R, Orig-C
Miami, FL, Dade-Collier Training and Transition, Takeoff Minimums and Obstacle DP, Orig
Orlando, FL, Orlando Intl, ILS OR LOC RWY 35R, ILS RWY 35R (CAT II), Amdt 1A
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (RNP) Z RWY 8L, Orig-A
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (RNP) Z RWY 8R, Orig-A
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (RNP) Z RWY 9L, Orig-A
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (RNP) Z RWY 9R, Orig-A
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (RNP) Z RWY 10, Orig-A
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (RNP) Z RWY 26L, Orig-A
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (RNP) Z RWY 26R, Orig-A
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (RNP) Z RWY 27R, Orig-A
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (RNP) Z RWY 28, Orig-A
Bogalusa, LA, George R Carr Memorial Airfield, GPS RWY 36, Orig-B, CANCELLED
Bogalusa, LA, George R Carr Memorial Airfield, RNAV (GPS) RWY 36, Orig
Many, LA, Hart, NDB OR GPS RWY 12, Amdt 4A, CANCELLED
Many, LA, Hart, RNAV (GPS) RWY 12, Orig
Many, LA, Hart, RNAV (GPS) RWY 30, Orig
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, RNAV (RNP) Z RWY 10, Orig-A
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, RNAV (RNP) Z RWY 15R, Orig-A
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, RNAV (RNP) Z RWY 28, Orig-A
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, RNAV (RNP) Z RWY 33L, Orig-A
Mankato, MN, Mankato Rgnl. RNAV (GPS) RWY 15, Orig
Mankato, MN, Mankato Rgnl. RNAV (GPS) RWY 33, Orig
Mankato, MN, Mankato Rgnl, Takeoff Minimums and Obstacle DP, Orig
Mankato, MN, Mankato Rgnl, VOR RWY 15, Amdt 7
Mankato, MN, Mankato Rgnl, VOR RWY 33, Amdt 8
Gulfport, MS, Gulfport-Biloxi Intl, RNAV (GPS) RWY 18, Amdt 1A
Starkville, MS, Oktibbeha, Takeoff Minimums and Obstacle DP, Orig
Tunica, MS, Tunica Muni, RNAV (GPS) RWY 17, Amdt 2
Tunica, MS, Tunica Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Raleigh/Durham, NC, Raleigh-Durham Intl, RNAV (RNP) Z RWY 5L, Orig-A
Raleigh/Durham, NC, Raleigh-Durham Intl, RNAV (RNP) Z RWY 5R, Orig-A
Raleigh/Durham, NC, Raleigh-Durham Intl, RNAV (RNP) Z RWY 23L, Orig-A
Raleigh/Durham, NC, Raleigh-Durham Intl, RNAV (RNP) Z RWY 23R, Orig-A
Newark, NJ, Newark Liberty Intl, RNAV (RNP) Y RWY 22L, Orig-D
Newark, NJ, Newark Liberty Intl, RNAV (RNP) Y RWY 29, Orig-A
Newark, NJ, Newark Liberty Intl, RNAV (RNP) Z RWY 4R, Orig-A
Newark, NJ, Newark Liberty Intl, RNAV (RNP) Z RWY 29, Orig-A
Sussex, NJ, Sussex, GPS RWY 3, Orig, CANCELLED
Sussex, NJ, Sussex, RNAV (GPS) RWY 3, Orig
Altus, OK, Altus/Quartz Mountain Rgnl, GPS RWY 17, Amdt 1B, CANCELLED
Altus, OK, Altus/Quartz Mountain Rgnl, RNAV (GPS) RWY 17, Orig
Altus, OK, Altus/Quartz Mountain Rgnl, RNAV (GPS) RWY 35, Orig
Altus, OK, Altus/Quartz Mountain Rgnl, Takeoff Minimums and Obstacle DP, Orig
Altus, OK, Altus/Quartz Mountain Rgnl, VOR–B, Amdt 1
McAlester, OK, McAlester Regional, RNAV (GPS) RWY 2, Orig-A
McAlester, OK, McAlester Regional, RNAV (GPS) RWY 20, Orig-A
Pittsburgh, PA, Pittsburgh Intl, RNAV (RNP) Z RWY 10C, Orig-A
Pittsburgh, PA, Pittsburgh Intl, RNAV (RNP) Z RWY 10R, Orig-A
Pittsburgh, PA, Pittsburgh Intl, RNAV (RNP) Z RWY 28C, Orig-A
Pittsburgh, PA, Pittsburgh Intl, RNAV (RNP) Z RWY 28L, Orig-A
Pittsburgh, PA, Pittsburgh Intl, RNAV (RNP) Z RWY 28R, Orig-A
Pittsburgh, PA, Pittsburgh Intl, RNAV (RNP) Z RWY 32, Orig-B
Columbia, SC, Columbia Metropolitan, RADAR 1, Amdt 12
Green Bay, WI, Austin Straubel Intl, ILS OR LOC RWY 36, Amdt 9
Green Bay, WI, Austin Straubel Intl, RNAV (GPS) RWY 6, Amdt 2
Green Bay, WI, Austin Straubel Intl, RNAV (GPS) RWY 24, Amdt 1
Green Bay, WI, Austin Straubel Intl, RNAV (GPS) RWY 36, Amdt 3

Effective 22 OCT 2009

Chuathbaluk, AK, Chuathbaluk, EBSIH ONE Graphic Obstacle DP
Chuathbaluk, AK, Chuathbaluk, RNAV (GPS) RWY 9, Orig
Chuathbaluk, AK, Chuathbaluk, RNAV (GPS) RWY 27, Orig
Chuathbaluk, AK, Chuathbaluk, Takeoff Minimums and Obstacle DP, Orig
Fairbanks, AK Fairbanks Intl, ILS OR LOC RWY 2L, ILS RWY 2L (CAT II), ILS RWY 2L (CAT III), Amdt 8
Fairbanks, AK Fairbanks Intl, ILS OR LOC RWY 20R, Amdt 22
Fairbanks, AK Fairbanks Intl, RNAV (GPS) RWY 2L, Orig
Fairbanks, AK Fairbanks Intl, RNAV (GPS) RWY 2R, Orig-A
Fairbanks, AK Fairbanks Intl, RNAV (GPS) RWY 20L, Orig-A
Fairbanks, AK Fairbanks Intl, RNAV (GPS) RWY 20R, Orig
Fairbanks, AK Fairbanks Intl, RNAV (GPS) Y RWY 1L, Orig-C, CANCELLED
Fairbanks, AK Fairbanks Intl, RNAV (GPS) Y RWY 19R, Orig-D, CANCELLED
Fairbanks, AK Fairbanks Intl, RNAV (GPS) Z RWY 1L, Orig, CANCELLED
Fairbanks, AK Fairbanks Intl, RNAV (GPS) Z RWY 19R, Orig, CANCELLED
Fairbanks, AK Fairbanks Intl, Takeoff Minimums and Obstacle DP, Amdt 5
Fairbanks, AK Fairbanks Intl, VOR OR TACAN RWY 20R, Amdt 2
Koyukuk, AK, Koyukuk, DIBVY ONE Graphic Obstacle DP
Koyukuk, AK, Koyukuk, RNAV (GPS) RWY 6, Orig
Koyukuk, AK, Koyukuk, RNAV (GPS) RWY 24, Orig
Koyukuk, AK, Koyukuk, Takeoff Minimums and Obstacle DP, Orig
Nenana, AK, Nenana Muni, NDB RWY 4L, Amdt 3
Nenana, AK, Nenana Muni, RNAV (GPS) RWY 4L, Amdt 1
Nenana, AK, Nenana Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Chino, CA, Chino, VOR RWY 26R, Orig
Chino, CA, Chino, VOR OR GPS–B, Amdt 3C, CANCELLED

Merced, CA, Castle, ILS OR LOC/DME RWY 31, Amdt 2B
Merced, CA, Castle, RNAV (GPS) RWY 13, Orig-B
Merced, CA, Castle, RNAV (GPS) RWY 31, Orig-B
Merced, CA, Castle, VOR/DME RWY 31, Amdt 1A
Monterey, CA, Monterey Peninsula, Takeoff Minimums and Obstacle DP, Amdt 6
San Carlos, CA, San Carlos, Takeoff Minimums and Obstacle DP, Amdt 1
Annapolis, MD, Lee, RNAV (GPS) RWY 30, Orig-D, CANCELLED
Annapolis, MD, Lee, RNAV (GPS)-A, Orig
Jackson, MI, Jackson County-Reynolds Field, RNAV (GPS) RWY 6, Orig
Jackson, MI, Jackson County-Reynolds Field, RNAV (GPS) RWY 14, Orig
Jackson, MI, Jackson County-Reynolds Field, RNAV (GPS) RWY 24, Orig
Jackson, MI, Jackson County-Reynolds Field, RNAV (GPS) RWY 32, Orig
Jackson, MI, Jackson County-Reynolds Field, Takeoff Minimums and Obstacle DP, Amdt 5
Jackson, MI, Jackson County-Reynolds Field, VOR RWY 6, Amdt 20
Jackson, MI, Jackson County-Reynolds Field, VOR RWY 14, Amdt 20
Jackson, MI, Jackson County-Reynolds Field, VOR RWY 32, Amdt 18
Jackson, MI, Jackson County-Reynolds Field, VOR/DME RWY 24, Orig
Jackson, MI, Jackson County-Reynolds Field, VOR OR GPS RWY 24, Amdt 21, CANCELLED
West Branch, MI, West Branch Community, NDB OR GPS RWY 27, Amdt 6C, CANCELLED
West Branch, MI, West Branch Community, RNAV (GPS) RWY 9, Orig
West Branch, MI, West Branch Community, RNAV (GPS) RWY 27, Orig
Zanesville, OH, Zanesville Muni, ILS OR LOC/DME RWY 22, Amdt 1
Pottstown, PA, Pottstown, Takeoff Minimums and Obstacle DP, Amdt 2A
Covington, TN, Covington Muni, NDB OR GPS RWY 1, Amdt 3, CANCELLED
Covington, TN, Covington Muni, RNAV (GPS) RWY 1, Orig
Charlottesville, VA, Charlottesville-Albemarle, Takeoff Minimums and Obstacle DP, Amdt 9
Clarksburg, WV, North Central West Virginia, Takeoff Minimums and Obstacle DP, Amdt 5

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BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9462]

RIN 1545–BH91

Disregarded Entities and Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations clarifying that a single-owner eligible entity that is disregarded as an entity separate from its owner for any purpose, but regarded as a separate entity for certain excise tax purposes, is treated as a corporation for tax administration purposes related to those excise taxes. These regulations also make conforming changes to the tax liability rule for disregarded entities and the treatment of entity rule for disregarded entities with respect to employment taxes. These regulations affect disregarded entities in general and, in particular, disregarded entities that pay or pay over certain federal excise taxes or that are required to be registered by the IRS. The text of these temporary regulations serves as the text of proposed regulations (REG–116614–08) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on September 14, 2009.

Applicability Date: For dates of applicability, see § 301.7701–2T(e)(2), (e)(5), and (e)(6).

FOR FURTHER INFORMATION CONTACT: Michael H. Beker, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 7701 of the Internal Revenue Code (Code).

Under existing § 301.7701–2(c)(2)(iv), a single-owner eligible entity that is disregarded as an entity separate from its owner for Federal tax purposes is treated as a separate entity for purposes of employment taxes imposed under Subtitle C of the Code and related reporting requirements. The regulations treat these disregarded eligible entities as corporations for purposes of employment taxes imposed under Subtitle C of the Code and related reporting requirements.

Under existing § 301.7701–2(c)(2)(v), a single-owner eligible entity that is disregarded as an entity separate from its owner for Federal tax purposes is treated as a separate entity for purposes of certain excise taxes reported on Form 720, ''Quarterly Federal Excise Tax Return;'' Form 730, ''Monthly Tax Return for Wagers;'' Form 2290, ''Heavy Highway Vehicle Use Tax Return;'' and Form 11–C, ''Occupation Tax and Registration Return for Wagering;'' excise tax refunds or payments claimed on Form 8849, ''Claim for Refund of Excise Taxes;'' and excise tax registrations on Form 637, ''Application for Registration (For Certain Excise Tax Activities).'' Although liability for excise taxes is not dependent upon an entity's classification, an entity's classification is relevant for certain tax administration purposes, such as determining the proper location for filing a notice of federal tax lien and the place for hand-carrying a return under section 6091. Therefore, these temporary regulations clarify that these disregarded eligible entities are treated as corporations for tax administration purposes.

These temporary regulations also make conforming changes to the tax liability rule for disregarded entities in § 301.7701–2(c)(2)(iii) and the treatment of entity rule for disregarded entities with respect to employment taxes in § 301.7701–2(c)(2)(iv)(B).

Effective/Applicability Date

These regulations apply on and after September 14, 2009.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Michael H. Beker, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.7701–2 is amended by:

■ 1. Revising paragraphs (c)(2)(iii) and (c)(2)(iv)(B).

■ 2. Redesignating paragraph (c)(2)(v)(B) as paragraph (c)(2)(v)(C) and added new paragraph (c)(2)(v)(B).

■ 3. In newly-designated paragraph (c)(2)(v)(C), *Example* (iv) is added.

■ 4. Revising paragraph (e)(2).

The additions and revisions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(c) * * *

(2) * * *

(iii) [Reserved]. For further guidance, see § 301.7701–2T(c)(2)(iii).

(iv) * * *

(B) [Reserved]. For further guidance, see § 301.7701–2T(c)(2)(iv)(B).

* * * * *

(v) * * *

(B) [Reserved]. For further guidance, see § 301.7701–2T(c)(2)(v)(B).

(C) * * *

(iv) [Reserved]. For further guidance, see § 301.7701–2T(c)(2)(v)(C) *Example (iv).*

* * * * *

(e) * * *

(2) [Reserved]. For further guidance, see § 301.7701–2T(e)(2).

* * * * *

■ **Par. 3.** Section 301.7701–2T is added to read as follows:

§ 301.7701–2T Business entities; definitions (temporary).

(a) through (c)(2)(ii) [Reserved]. For further guidance, see § 301.7701–2(a) through (c)(2)(ii).

(iii) *Tax liabilities of certain disregarded entities*—(A) *In general.* An entity that is disregarded as separate from its owner for any purpose under § 301.7701–2 is treated as an entity separate from its owner for purposes of—

(*1*) Federal tax liabilities of the entity with respect to any taxable period for which the entity was not disregarded;

(*2*) Federal tax liabilities of any other entity for which the entity is liable; and

(*3*) Refunds or credits of Federal tax.

(B) *Examples.* The following examples illustrate the application of paragraph (c)(2)(iii)(A) of this section:

Example 1. In 2006, X, a domestic corporation that reports its taxes on a calendar year basis, merges into Z, a domestic LLC wholly owned by Y that is disregarded as an entity separate from Y, in a state law merger. X was not a member of a consolidated group at any time during its taxable year ending in December 2005. Under the applicable state law, Z is the successor to X and is liable for all of X's debts. In 2009, the Internal Revenue Service (IRS) seeks to extend the period of limitations on assessment for X's 2005 taxable year. Because Z is the successor to X and is liable for X's 2005 taxes that remain unpaid, Z is the proper party to sign the consent to extend the period of limitations.

Example 2. The facts are the same as in *Example 1,* except that in 2007, the IRS determines that X miscalculated and underreported its income tax liability for 2005. Because Z is the successor to X and is liable for X's 2005 taxes that remain unpaid, the deficiency may be assessed against Z and, in the event that Z fails to pay the liability after notice and demand, a general tax lien will arise against all of Z's property and rights to property.

(c)(2)(iv)(A) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(iv)(A).

(B) *Treatment of entity.* An entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2 is treated as a corporation with respect to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code).

(C) through (c)(2)(v)(A) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(iv)(C) through (c)(2)(v)(A).

(B) *Treatment of entity.* An entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2 is treated as a corporation with respect to items described in § 301.7701–2(c)(2)(v)(A).

(C) *Example.* (i) through (iii) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(v)(C) *Example (i)* through *(iii).*

(iv) Assume the same facts as in § 301.7701–2(c)(2)(v)(C) *Example (i)* and *(ii).* If LLCB does not pay the tax on its sale of coal under chapter 32 of the Internal Revenue Code, any notice of lien the Internal Revenue Service files will be filed as if LLCB were a corporation.

(d) through (e)(1) [Reserved]. For further guidance, see § 301.7701–2(d) through (e)(1).

(e)(2) Paragraph (c)(2)(iii) of this section applies on and after September 14, 2009. For rules that apply before September 14, 2009, see 26 CFR part 301 revised as of April 1, 2009.

(e)(3) through (e)(4) [Reserved]. For further guidance, see § 301.7701–2(e)(3) through (e)(4).

(e)(5) Paragraph (c)(2)(iv)(B) of this section applies with respect to wages paid on or after September 14, 2009. For rules that apply before September 14, 2009, see 26 CFR part 301 revised as of April 1, 2009.

(e)(6) Paragraphs (c)(2)(v)(B) and (c)(2)(v)(C) *Example (iv)* of this section apply on and after September 14, 2009.

(7) [Reserved]. For further guidance, see § 301.7701–2(e)(7).

(8) *Expiration Date.* The applicability of paragraphs (c)(2)(iii), (c)(2)(iv)(B), (c)(2)(v)(B), (c)(2)(v)(C) *Example (iv),* (e)(2), (e)(5) and (e)(6) of this section expires on or before September 11, 2012.

L.E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: August 31, 2009.

Michael F. Mundace,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–21987 Filed 9–11–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203, 210, 250, 251, 253, 254, 256, 280, and 291

[Docket No. MMS–OMM–2009–0008]

RIN 1010–AD52

Outer Continental Shelf—Technical Corrections

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule; technical corrections and announcement of effective dates.

SUMMARY: This document makes technical changes to regulations that were published in various **Federal Register** documents and are codified in the Code of Federal Regulations, as well as announcing the approval by the Office of Management and Budget of information collection requirements contained in two previously published regulations.

DATES: This rule is effective on September 14, 2009. The information collection requirements contained in the rulemaking (63 FR 42699, published August 11, 1998) for 30 CFR part 253, were approved by the Office of Management and Budget (OMB) on October 7, 1998, and the information collection requirements contained in the

rulemaking (63 FR 2605, published January 16, 1998) for 30 CFR 203.61, were approved by OMB on May 30, 1998.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulatory Specialist at (703) 787–1607, fax (703) 787–1546, or e-mail *cheryl.blundon@mms.gov.*

SUPPLEMENTARY INFORMATION:

Changes to regulations: The technical corrections in this rule affect all parties who do business with MMS. This rulemaking does the following:

(1) Remove erroneous dates and make corrections;

(2) Revise and update the paperwork authority in § 203.5;

(3) Revise the MMS mail stop;

(4) Correct and remove Editorial Note in 30 CFR 203; and,

(5) Announce dates of effective information collections.

Background

(1) In various subparts throughout the 30 CFR, there are dates that are no longer in effect. Therefore, this rulemaking removes the irrelevant dates and in the same date correction, where applicable, changes the words ''shall'' and ''which'', to, ''must'' and ''that''.

(2) Since initial rulemaking in January 2004 (69 FR 3509), the information collection requirements have been consolidated. The OMB, through a Notice of Action dated April 30, 2005, approved the information collection merge of 1010–0153 into the primary collection 1010–0071. This rulemaking updates the regulatory text to reflect this action.

(3) In 2008, MMS moved offices in the Main Interior Building in Washington, DC. As a result, the proper mail stop for inquiries related to regulations in the CFR changed from 4230 to 5438. The regulations in the various 30 CFR Parts need to be amended to reflect the official change of the mail stop.

(4) Due to final rulemaking on November 18, 2008 (73 FR 69513), 1010–AD33, Royalty Relief, had an editorial note added by the **Federal Register** due to MMS inadvertently leaving out the word ''introductory'' in the amendatory language for 30 CFR 203.45. This rulemaking corrects the amendatory language per the intention of the 1010–AD33 rulemaking.

(5) The MMS published the following two final rules in 1998. The rules were published before OMB approved the information collection requirements so the **Federal Register** added Effective Date Notes to these regulations. The OMB approved the information collection requirements but the Effective Date Notes were not removed. This rulemaking publication satisfies the statements that the MMS would publish a document announcing the effective dates of the rule changes requiring OMB approval.

(a) Effective February 17, 1998, (63 FR 2605) rulemaking established a new requirement pertaining to information required for a complete application for royalty relief. This rulemaking contained information collection requirements subject to the Paperwork Reduction Act of 1995 that were not effective until after approval by OMB. On May 30, 1998, OMB approved the collection of information requirements in 30 CFR part 203. This information collection was assigned OMB Control Number 1010–0071.

(b) On August 11, 1998, (63 FR 42699) rulemaking established new requirements for demonstrating oil spill financial responsibility for removal costs and damages caused by oil discharges and substantial threats of oil discharges from oil and gas exploration and production facilities and associated pipelines. The rule also implemented the authority of the Oil Pollution Act of 1990. This rulemaking contained information collection requirements subject to the Paperwork Reduction Act of 1995 that were not effective until after approval by OMB. On October 7, 1998, OMB approved the collection of information requirements and MMS forms required for 30 CFR part 253. This information collection was assigned OMB Control Number 1010–0106.

This document corrects regulations in 30 CFR parts 203, 210, 250, 251, 253, 254, 256, 280, and 291 to reflect these technical changes. Because this rule makes no substantive regulatory changes, MMS for good cause finds that notice and public comment are impracticable and unnecessary pursuant to 5 U.S.C. 553(b)(3)(B). For the same reason, MMS finds good cause to waive the delay in effectiveness pursuant to 5 U.S.C. 553(d). The rule does not require any regulated party to adjust their conduct, but only makes technical corrections.

The following table shows the current regulation and what changes were made.

Current citation	Revised text
EFFECTIVE DATE NOTE: at the end of § 203.61	Removed.
EFFECTIVE DATE NOTE: at the end of the Subpart F (table of contents and before § 253.1.	Removed.
§ 203.5	Revised to reflect correct OMB control number.
Editorial Note: at the end of § 203.45	Removed.
§ 203.45(e)	Added correct language from 73 FR 69513 that did not get codified (public had opportunity to comment in both proposed and final rulemaking).
§ 203.82(d)	Amended the phrase ''Mail Stop 4230'' to ''Mail Stop 5438''.
§ 210.20	Amended the phrase ''Mail Stop 4230'' to ''Mail Stop 5438''.
§ 250.108(b),	Removed the date no longer in effect.
§ 250.199(d)	Amended the phrase ''Mail Stop 4230'' to ''Mail Stop 5438''.
§ 250.233(b)(2)	In the second column of the table, removed the word ''notify'' and added the word ''other'' in its place.
§ 250.441(b)	Removed the date no longer in effect.
§ 250.510	Removed the date no longer in effect. Changed the word ''shall'' to ''must'', and the word ''which'' to ''that''.
§ 250.511	Removed the date no longer in effect. Changed the word ''shall'' to ''must'', and the word ''which'' to ''that''.
§ 250.515(b)	Removed the words, ''blind or'', in (b)(1–3). Removed (b)(5) since removing the words in (b)(1–3) corrected the regulation.
§ 250.515(c), (c)(1)	Removed the date no longer in effect. Changed the word ''shall'' to ''must''.
§ 250.615(b)	Removed the words, ''blind or'', in (b)(1–3). Removed (b)(5) since removing the words in (b)(1–3) corrected the regulation.

Current citation	Revised text
§ 250.615(c), (c)(1)	Removed the date no longer in effect. Changed the word "shall" to "must".
§ 250.803(b)(5)(ii)	Removed the date no longer in effect. Changed the word "shall" to "must", and the word "which" to "that".
§ 250.1604(f)	Removed the date no longer in effect. Changed the word "shall" to "must".
§ 250.1605(h)	Removed the date no longer in effect. Changed the word "shall" to "must".
§ 250.1610(d)(1)	Removed the date no longer in effect. Changed the word "shall" to "must", and the word "which" to "that".
§ 250.1613(b), (c), (d), (e)	Removed paragraph (b) and the following undesignated paragraph no longer in effect. Redesignated paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d).
§ 251.15(e)	Amended the phrase "Mail Stop 4230" to "Mail Stop 5438".
§ 253.5(d)	Amended the phrase "Mail Stop 4230" to "Mail Stop 5438".
§ 253.44	Removed the section since the dates are no longer in effect. [RESERVED] the section number for future use.
§ 254.9(d)	Amended the phrase "Mail Stop 4230" to "Mail Stop 5438".
§ 256.0(d)	Amended the phrase "Mail Stop 4230" to "Mail Stop 5438".
§ 256.64(a)(9)	Removed the section since the date is no longer in effect.
§ 280.13(1)	Changed the Alaska Region address.
§ 280.80(e)	Amended the phrase "Mail Stop 4230" to "Mail Stop 5438".
§ 291.1(e); 103; 106(a); 107(a)	Amended the phrase "Mail Stop 4230" to "Mail Stop 5438".

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) This rule will not have an annual effect of $100 million or more on the economy because it only makes technical changes to existing regulations. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with action taken or planned by another agency. It will have no effect on any other agency.

(3) This rule will not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients.

(4) This rule will not raise novel legal or policy issues.

Regulatory Flexibility Act (RFA)

The Department of the Interior certifies that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it only makes technical changes to existing regulations.

Your comments are important to us. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This rule:

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

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

c. 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 of 1995

This proposed rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no substantial

effects on Federally recognized Indian Tribes. There are no Indian or Tribal lands in the OCS.

Paperwork Reduction Act (PRA)

The rule does not contain any new information collection requirements subject to the PRA; therefore, it does not require a submittal to OMB for review and approval under the PRA (44 U.S.C. 3501 *et seq*). Any information collection burdens referenced in this rulemaking are already approved under various OMB Control Numbers. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it qualifies as a regulation of an administrative nature (for further information *see* 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

List of Subjects

30 CFR Part 203

Oil and gas exploration, Reporting and recordkeeping requirements.

30 CFR Part 210

Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 250

Administrative practice and procedure, Oil and gas exploration, Public lands—rights-of-way, Reporting and recordkeeping requirements.

30 CFR Part 251

Public lands—mineral resources, Reporting and recordkeeping requirement.

30 CFR Part 253

Environmental protection, Investigations, Oil and gas exploration, Reporting and recordkeeping requirements.

30 CFR Part 254

Oil and gas exploration, Public lands—minerals resources, Reporting and recordkeeping requirements.

30 CFR Part 256

Administrative practice and procedure, Oil and gas exploration, Reporting and recordkeeping requirements.

30 CFR Part 280

Reporting and recordkeeping requirements.

30 CFR Part 291

Oil and gas, Reporting and recordkeeping requirements.

Dated: September 2, 2009.

Ned Farquhar,

Acting Assistant Secretary, Land and Minerals Management.

■ For the reasons stated above, MMS amends 30 CFR Parts 203, 210, 250, 251, 253, 254, 256, 280, and 291 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 42 U.S.C. 15903–15906; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

■ 2. Revise § 203.5 to read as follows:

§ 203.5 What is MMS's authority to collect information?

(a) The Office of Management and Budget (OMB) has approved the information collection requirements in this part under 44 U.S.C. 3501 *et seq.,* and assigned OMB Control Number 1010–0071. The title of this information collection is ''30 CFR part 203, Relief or Reduction in Royalty Rates.''

(b) The MMS collects this information to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. Responses are required to obtain a benefit or are mandatory according to 43 U.S.C. 1331 *et seq.* The MMS will protect information considered proprietary under applicable law and under regulations at 30 CFR 203.63, ''How do I assess my chances for getting relief?'' and 250.197, ''Data and information to be made available to the public or for limited inspection.''

(c) 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.

(d) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 5438, 1849 C Street, NW., Washington, DC 20240.

■ 3. Revise § 203.45(e), introductory text, to read as follows:

§ 203.45 If I drill a certified unsuccessful well, what royalty relief will my lease earn?

* * * * *

(e) If the same wellbore that earns an RSS as a certified unsuccessful well later produces from a perforated interval the top of which is 15,000 feet TVD or deeper and becomes a qualified well, it will be subject to the following conditions:

* * * * *

§ 203.82 [Amended]

■ 4. In § 203.82(d), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

PART 210—FORMS AND REPORTS

■ 5. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.*; and 44 U.S.C. 3506(a).

§ 210.20 [Amended]

■ 6. In § 210.20, remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 7. The authority citation for part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 8. Revise § 250.108(b) to read as follows:

§ 250.108 What requirements must I follow for cranes and other material-handling equipment?

* * * * *

(b) All cranes installed on fixed platforms must be equipped with a functional anti-two block device.

* * * * *

§ 250.199 [Amended]

■ 9. In § 250.199(d), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

§ 250.233 [Amended]

■ 10. In § 250.233(b)(2), in the second column of the table remove the word ''notify'', and add, in its place, the word ''other''.

■ 11. Revise § 250.441(b) to read as follows:

§ 250.441 What are the requirements for a surface BOP stack?

* * * * *

(b) Your surface BOP stack must include at least four remote-controlled, hydraulically operated BOPs consisting of an annular BOP, two BOPs equipped with pipe rams, and one BOP equipped with blind-shear rams. The blind-shear rams must be capable of shearing the drill pipe that is in the hole.

* * * * *

■ 12. Revise § 250.510 to read as follows:

§ 250.510 Diesel engine air intakes.

Diesel engine air intakes must be equipped with a device to shut down the diesel engine in the event of runaway. Diesel engines that are continuously attended must be equipped with either remote operated manual or automatic-shutdown devices. Diesel engines that are not continuously attended must be equipped with automatic-shutdown devices.

■ 13. Revise § 250.511 to read as follows:

§ 250.511 Traveling-block safety device.

All units being used for well-completion operations that have both a traveling block and a crown block must be equipped with a safety device that is designed to prevent the traveling block from striking the crown block. The device must be checked for proper operation weekly and after each drill-line slipping operation. The results of the operational check must be entered in the operations log.

■ 14. Amend § 250.515 by:

■ (a) Revising the table in paragraph (b);

■ (b) Revising the introductory text of paragraph (c); and

■ (c) Revising paragraph (c)(1) to read as follows:

§ 250.515 Blowout prevention equipment.

* * * * *

(b) * * *

When	The minimum BOP stack must include
(1) The expected pressure is less than 5,000 psi,.	Three BOPs consisting of an annular, one set of pipe rams, and one set of blind-shear rams.
(2) The expected pressure is 5,000 psi or greater or you use multiple tubing strings,.	Four BOPs consisting of an annular, two sets of pipe rams, and one set of blind-shear rams.
(3) You handle multiple tubing strings simultaneously,.	Four BOPs consisting of an annular, one set of pipe rams, one set of dual pipe rams, and one set of blind-shear rams.
(4) You use a tapered drill string, ...	At least one set of pipe rams that are capable of sealing around each size of drill string. If the expected pressure is greater than 5,000 psi, then you must have at least two sets of pipe rams that are capable of sealing around the larger size drill string. You may substitute one set of variable bore rams for two sets of pipe rams.

(c) The BOP systems for well completions must be equipped with the following:

(1) A hydraulic-actuating system that provides sufficient accumulator capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure without assistance from a charging system. Accumulator regulators supplied by rig air and without a secondary source of pneumatic supply, must be equipped with manual overrides, or alternately, other devices provided to ensure capability of hydraulic operations if rig air is lost.

* * * * *

■ 15. Amend § 250.615 by:

■ (a) Revising the table in paragraph (b);

■ (b) Revising the introductory text of paragraph (c); and

■ (c) Revising paragraph (c)(1) to read as follows:

§ 250.615 Blowout prevention equipment.

* * * * *

(b) * * *

When	The minimum BOP stack must include
(1) The expected pressure is less than 5,000 psi,.	Three BOPs consisting of an annular, one set of pipe rams, and one set of blind-shear rams.
(2) The expected pressure is 5,000 psi or greater or you use multiple tubing strings,.	Four BOPs consisting of an annular, two sets of pipe rams, and one set of blind-shear rams.
(3) You handle multiple tubing strings simultaneously,.	Four BOPs consisting of an annular, one set of pipe rams, one set of dual pipe rams, and one set of blind-shear rams.
(4) You use a tapered drill string, ...	At least one set of pipe rams that are capable of sealing around each size of drill string. If the expected pressure is greater than 5,000 psi, then you must have at least two sets of pipe rams that are capable of sealing around the larger size drill string. You may substitute one set of variable bore rams for two sets of pipe rams.

(c) The BOP systems for well-workover operations with the tree removed must be equipped with the following:

(1) A hydraulic-actuating system that provides sufficient accumulator capacity to supply 1.5 times the volume

necessary to close all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure without assistance from a charging system. Accumulator regulators supplied by rig air and without a secondary source of pneumatic supply, must be equipped with manual overrides, or alternately, other devices provided to ensure capability of hydraulic operations if rig air is lost;

* * * * *

■ 16. Revise § 250.803(b)(5)(ii) to read as follows:

§ 250.803 Additional production system requirements.

* * * * *

(b) * * *

(5) * * *

(ii) *Diesel engine air intake.* All diesel engine air intakes must be equipped with a device to shutdown the diesel engine in the event of runaway. Diesel engines that are continuously attended must be equipped with either remote operated manual or automatic shutdown devices. Diesel engines that are not continuously attended must be equipped with automatic shutdown devices.

* * * * *

■ 17. Revise § 250.1604(f) to read as follows:

§ 250.1604 General requirements.

* * * * *

(f) *Traveling-block safety device.* All drilling units being used for drilling, well-completion, or well-workover operations that have both a traveling block and a crown block must be equipped with a safety device that is designed to prevent the traveling block from striking the crown block. The device must be checked for proper operation weekly and after each drill-line slipping operation. The results of the operational check must be entered in the operations log.

■ 18. Revise § 250.1605(h) to read as follows:

§ 250.1605 Drilling requirements.

* * * * *

(h) *Diesel-engine air intakes.* Diesel-engine air intakes must be equipped with a device to shut down the diesel engine in the event of runaway. Diesel engines that are continuously attended must be equipped with either remote-operated manual or automatic-shutdown devices. Diesel engines that are not continuously attended must be equipped with automatic shutdown devices.

■ 19. Revise § 250.1610(d)(1) to read as follows:

§ 250.1610 Blowout preventer systems and system components.

* * * * *

(d) * * *

(1) An accumulator system that provides sufficient capacity to supply 1.5 times the volume necessary to close and hold closed all BOP equipment units with a minimum pressure of 200 psi above the precharge pressure, without assistance from a charging system. Accumulator regulators supplied by rig air that do not have a secondary source of pneumatic supply must be equipped with manual overrides or other devices alternately provided to ensure capability of hydraulic operations if rig air is lost.

* * * * *

§ 250.1613 [Amended]

■ 20. In § 250.1613, remove paragraph (b) and the undesignated paragraph which follows it; and redesignate paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d).

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

■ 21. The authority citation for part 251 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.,* 31 U.S.C. 9701.

§ 251.15 [Amended]

■ 22. In § 251.15(e), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

PART 253—OIL SPILL FINANCIAL RESPONSIBLITY FOR OFFSHORE FACILITIES

■ 23. The authority citation for part 253 is revised to read as follows:

Authority: 33 U.S.C. 2716, 28 U.S.C. 2461.

§ 253.5 [Amended]

■ 24. In § 253.5(d), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

§ 253.44 [Removed and Reserved]

■ 25. Remove and reserve § 253.44.

PART 254—OIL SPILL RESPONSE REQUIREMENTS FOR FACILITIES LOCATED SEAWARD OF THE COAST LINE

■ 26. The authority citation for part 254 continues to read as follows:

Authority: 33 U.S.C. 1321.

§ 254.9 [Amended]

■ 27. In § 254.9(d), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

■ 28. The authority citation for part 256 continues to read as follows:

Authority: 31 U.S.C. 9701, 42 U.S.C. 6213, and 43 U.S.C. 1334.

§ 256.0 [Amended]

■ 29. In § 256.0(d), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

§ 256.64 [Amended]

■ 30. In § 256.64, remove paragraph (a)(9).

PART 280—PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR ON THE OUTER CONTINENTAL SHELF

■ 31. The authority citation for part 280 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 32. Revise the table in § 280.13 to read as follows:

§ 280.13 Where must I send my application or notification?

* * * * *

For the OCS off the . . .	Apply to . . .
(a) State of Alaska	Regional Supervisor for Resource Evaluation, Minerals Management Service, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, AK 99503.
(b) Atlantic Coast, Gulf of Mexico, Puerto Rico, or U.S. territories in the Caribbean Sea.	Regional Supervisor for Resource Evaluation, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123.

For the OCS off the . . .	Apply to . . .
(c) States of California, Oregon, Washington, Hawaii, or U.S. territories in the Pacific Ocean.	Regional Supervisor for Resource Evaluation, Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010.

§ 280.80 [Amended]

■ 33. In § 280.80(e), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

PART 291—OPEN AND NON-DISCRIMINATORY ACCESS TO OIL AND GAS PIPELINES UNDER THE OUTER CONTINENTAL SHELF LANDS ACT

■ 34. The authority citation for part 291 is revised to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

§ 291.1 [Amended]

■ 35. In § 291.1(e), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

§ 291.103 [Amended]

■ 36. In § 291.103 introductory text, remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

§ 291.106 [Amended]

■ 37. In § 291.106(a), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

§ 291.107 [Amended]

■ 38. In § 291.107(a), remove the words ''Mail Stop 4230,'' and add, in their place, ''Mail Stop 5438,''.

[FR Doc. E9–22027 Filed 9–11–09; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0684]

Drawbridge Operation Regulation; Three Mile Slough, Rio Vista, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the California Route 160 Drawbridge across Three Mile Slough, mile 0.1, near Rio Vista, CA. The deviation is necessary to allow Caltrans to conduct drawbridge maintenance. This deviation allows the bridge to remain in the closed-to-navigation position during the maintenance period.

DATES: This deviation is effective from 7 a.m. on September 14, 2009 through 4:30 p.m. on September 14, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0684 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0684 in the ''Keyword'' box and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, e-mail *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Caltrans requested a temporary change to the operation of the California Route 160 Drawbridge, mile 0.1, Three Mile Slough, near Rio Vista, CA. The drawbridge navigation span provides a vertical clearance of 12 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal as required by 33 CFR 117.5. Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 7 a.m. through 4:30 p.m. Monday through Friday, from August 31, 2009 through September 14, 2009, to allow Caltrans to replace the industrial staircase leading to the control house. At all other times during this period, and on September 7, 2009, Labor Day, the drawspan will open on signal as required by 33 CFR 117.5. This temporary deviation has been coordinated with commercial and recreational waterway users. There is no anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

In the event of an emergency the drawspan can be opened with 4 hours advance notice.

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

Dated: August 28, 2009.

J.R. Castillo,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. E9–21979 Filed 9–11–09; 8:45 am]
BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0815; FRL–8954–7]

Approval and Promulgation of Implementation Plans; New Mexico; Excess Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the New Mexico State Implementation Plan (SIP) submitted by the Governor of New Mexico on behalf of the New Mexico Environment Department (NMED) in a letter dated October 7, 2008 (the October 7, 2008 SIP submittal). The October 7, 2008 SIP submittal concerns revisions to New Mexico Administrative Code Title 20, Chapter 2, Part 7 Excess Emissions (20.2.7 NMAC—Excess Emissions) occurring during startup, shutdown, and malfunction related activities. We are approving the October 7, 2008 SIP submittal because the revisions to 20.2.7 NMAC are consistent with the Clean Air Act (the Act). This action is in accordance with section 110 of the Act.

DATES: This direct final rule will be effective November 13, 2009 without

further notice unless EPA receives relevant adverse comments by October 14, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2008–0815, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.*
- Follow the online instructions for submitting comments.
- *EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6comment.htm.* Please click on ''6PD (Multimedia)'' and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov*. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7242.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2008–0815. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *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 *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the State Air Agency listed below during official business hours by appointment: NMED, Air Quality Bureau, 1301 Siler Road, Building B, Santa Fe, NM 87507.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6691, fax (214) 665–7263, e-mail address *shar.alan @epa.gov*.

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

Outline

I. Background
A. What action are we taking in this document?
B. What documents did we use in our evaluation of the October 7, 2008 SIP submittal?
C. Why are we approving the October 7, 2008 SIP submittal?
II. Final Action
III. Statutory and Executive Order Reviews

I. Background

A. What action are we taking in this document?

We are approving revisions to 20.2.7 NMAC—Excess Emissions occurring during startup, shutdown, and malfunction related activities as revisions to the New Mexico SIP. We received this submittal with an October 7, 2008 letter from the Governor of New Mexico on behalf of the NMED.

We are approving the repeal of the existing EPA-approved 20.2.7—Excess Emissions, and replacing it with the revised version of 20.2.7 NMAC as contained in the October 7, 2008 SIP submittal. The existing 20.2.7 NMAC—Excess Emissions rule was approved by EPA on September 26, 1997 (62 FR 50518) at 40 CFR 52.1620(c)(66). See Chapter A of our Technical Support Document (TSD) prepared in conjunction with this rulemaking action for more information. The TSD is a part of the docket and available for public review.

The October 7, 2008 submittal also included proposed revisions to NMAC 20.2.70—Operating Permits. We are not taking action on those revisions as part of today's rulemaking action. The revisions to NMAC 20.2.70 are part of the Title V program approval, and will be handled in a separate rulemaking action.

B. What documents did we use in our evaluation of the October 7, 2008 SIP submittal?

The EPA's interpretation of the Act on excess emissions occurring during periods of startup, shutdown, and malfunction is set forth in the following documents: A memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions'' (1982 Policy); EPA's clarification to the above policy memorandum dated February 15, 1983, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation (1983 Policy); EPA's policy memorandum reaffirming and supplementing the above policy, dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert Perciasepe, Assistant

Administrator for Air and Radiation, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (1999 Policy); EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), April 27, 1977 (42 FR 21472); EPA's final rule for Idaho's sulfur dioxide control strategy, November 8, 1977 (42 FR 58171); and the latest clarification of EPA's policy issued on December 5, 2001 (2001 Policy). You can find the 2001 Policy at: *http://www.epa.gov/ttn/oarpg/t1pgm.html* (URL dating July 22, 2008). The EPA's interpretation of the Act related to exclusions from emission limitations for sources in certain startup, shutdown, or malfunction situations was upheld by the United States Court of Appeals for the Sixth Circuit in *Michigan Mfrs. Ass'n* v. *Browner*, 230 F.3d 181 (6th Cir. 2000).

C. Why are we approving the October 7, 2008 SIP submittal?

Under section 110(a) of the Act, EPA views all excess emissions as violations of the applicable emission limitation because excess emissions have the potential to interfere with attainment and maintenance of the National Ambient Air Quality Standards, or with the protection of Prevention of Significant Deterioration increments. However, EPA recognizes that imposition of a penalty for sudden and unavoidable malfunctions, startups or shutdowns caused by circumstances entirely beyond the control of the owner or operator may not be appropriate. The EPA has provided guidance on two approaches for addressing excess emissions, the use of enforcement discretion and providing an affirmative defense to actions for civil penalties. Neither approach waives liability or reporting requirements for the violation. Excess emissions occurring during periods of startup, shutdown, maintenance, and malfunction must be included in determining compliance with SIP emission limitations. States are not required to provide an affirmative defense approach, but if they choose to do so, EPA will evaluate the State's SIP rules for consistency with our policy and guidance documents listed in section B of this document. Our reasons for approval of the October 7, 2008 SIP submittal are as follows:

The NMED's October 7, 2008 SIP submittal adopts an affirmative defense approach to address excess emissions. This approach is permissible under the 1999 Policy.

The NMED's October 7, 2008 SIP submittal clearly states that operation resulting in an excess emission is a violation of the air quality regulation or permit, and may be subject to potential enforcement action. This statement is consistent with the 1999 Policy.

The NMED's October 7, 2008 SIP submittal adequately sets forth notification and reporting requirements for the owner or operator of a source having an excess emission. We believe that notification and reporting, including implementation of corrective action(s) when needed, of excess emissions will assist with the management of excess emissions and will enhance the New Mexico SIP by reducing the amount or frequency of future potential excess emissions.

The NMED's October 7, 2008 SIP submittal contains criteria to be considered when asserting an affirmative defense for an excess emission during startup or shutdown to claims for a civil penalty (not injunctive relief) that are similar, if not identical, to those in the 1999 Policy. We believe the criteria for asserting an affirmative defense are consistent with our guidance documents and should be approved.

The NMED's October 7, 2008 SIP submittal contains criteria to be considered when asserting affirmative defense for an excess emission during a malfunction to claims for a civil penalty (but not the injunctive relief) that are similar, if not identical, to those in the 1999 Policy. We believe the criteria for asserting an affirmative defense are consistent with our guidance documents and should be approved.

The NMED's October 7, 2008 SIP submittal clearly states that NMED's determinations concerning an owner or operator's assertion of the affirmative defense shall not preclude EPA or citizens' enforcement authority under the Act. This statement is consistent with 42 U.S.C. 7413 and 7604.

Neither section 20.2.7.111 NMAC nor section 20.2.7.112 NMAC of the October 7, 2008 SIP submittal makes an affirmative defense available to an owner or operator of a source having an excess emission due to maintenance related activities. We believe that maintenance activities are predictable events that are subject to planning to minimize releases, unlike malfunctions or upsets, which are sudden, unavoidable or beyond the control of owner or operator. The owner or operator of a source should be able to plan maintenance that might otherwise lead to excess emissions to coincide with maintenance of production equipment or other facility shutdowns. This position is consistent with EPA's interpretation of section 110 of the Act, and with our guidance documents.

The NMED's October 7, 2008 SIP submittal narrowly defines an emergency situation. An owner and operator may assert an affirmative defense for an emergency if certain criteria are met. See 20.2.7.113(B)(1) through (4) NMAC for these criteria. In any enforcement proceeding, the owner or operator seeking to establish the occurrence of an emergency has the burden of proof. In addition, NMED may require additional information reported within the time period specified by the department. See 20.2.7.113(C) and (D) NMAC. We believe this approach is consistent with our guidance documents.

For a section-by-section evaluation of the October 7, 2008 SIP submittal see Chapter B of our TSD. The TSD is a part of the docket and available for public review. For these reasons we are approving 20.2.7 NMAC into New Mexico SIP.

In addition, we are approving the repeal and replacement of the existing EPA-approved 20.2.7 NMAC Excess Emissions rule with the revised 20.2.7 NMAC contained in the October 7, 2008 SIP submittal. The existing EPA-approved 20.2.7 NMAC Excess Emissions rule provided for frequent startup and shutdowns, and exempted certain facilities from notification requirements. See Chapter A of the TSD. The existing EPA-approved 20.2.7 NMAC Excess Emissions rule did not conform with the 1999 Policy. The revised 20.2.7 NMAC contained in the October 7, 2008 SIP submittal conforms with the 1999 Policy, and its approval will enhance the New Mexico SIP. See Chapter B of the TSD.

II. Final Action

Today, we are approving revisions to New Mexico Administrative Code Title 20, Chapter 2, Part 7 Excess Emissions (20.2.7 NMAC—Excess Emissions) occurring during startup, shutdown, and malfunction related activities into New Mexico SIP. We are approving the repeal of the existing 20.2.7 NMAC, and replacing it with the revised 20.2.7 NMAC contained in the October 7, 2008 SIP submittal.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely

approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994);
- Does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law; and
- Is not a ''major rule'' as defined by 5 U.S.C. 804(2) under the Congressional Review Act, 5 U.S.C. 801 *et seq.,* added by the Small Business Regulatory Enforcement Fairness Act of 1996. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule.'' Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 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 such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2) of the Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

Dated: August 28, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart GG—New Mexico

■ 2. The table in § 52.1620(c) entitled ''EPA Approved New Mexico Regulations'' is amended by revising the entry for ''Part 7'' to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/ submittal date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environmental Protection				
Chapter 2—Air Quality				
*	*	*	*	*
Part 7	Excess Emissions	7/10/2008	9/14/2009 [Insert *FR* page number where document begins].	
*	*	*	*	*

* * * * *

[FR Doc. E9–21827 Filed 9–11–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–IA–2007–0021; 96100–1671–0000–B6]

RIN 1018–AV21

Endangered and Threatened Wildlife and Plants; Listing the Chatham Petrel, Fiji Petrel, and Magenta Petrel as Endangered Throughout Their Ranges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for three petrel species (order Procellariiformes)—Chatham petrel (*Pterodroma axillaris*) previously referred to as (*Pterodroma hypoleuca axillaris*); Fiji petrel (*Pseudobulweria macgillivrayi*) previously referred to as (*Pterodroma macgillivrayi*); and the magenta petrel (*Pterodroma magentae*)—under the Endangered Species Act of 1973, as amended (Act). This rule implements the Federal protections provided by the Act for these three species.

DATES: This rule becomes effective October 14, 2009.

ADDRESSES: Comments and materials we receive, as well as supporting information used in the preparation of this rule, are available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Division of Scientific Authority, 4401 N. Fairfax Drive, Suite 110, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Monica A. Horton, Biologist, Division of Scientific Authority (see **ADDRESSES**); telephone 703–358–1708; facsimile 703–358–2276; e-mail *ScientificAuthority@fws.gov.* If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires us to make a finding (known as a ''90-day finding'') on whether a petition to add a species to, remove a species from, or reclassify a species on the Federal Lists of Endangered and Threatened Wildlife and Plants has presented substantial information indicating that the requested action may be warranted. To the maximum extent practicable, the finding must be made within 90 days following receipt of the petition and must be published promptly in the **Federal Register.** If we find that the petition has presented substantial information indicating that the requested action may be warranted (a positive finding), section 4(b)(3)(A) of the Act requires us to commence a status review of the species if one has not already been initiated under our internal candidate assessment process. In addition, section 4(b)(3)(B) of the Act requires us to make a finding within 12 months following receipt of the petition (''12-month finding'') on whether the requested action is warranted, not warranted, or warranted but precluded by higher priority listing. Section 4(b)(3)(C) of the Act requires that a finding of warranted but precluded for petitioned species should be treated as having been resubmitted on the date of the warranted but precluded finding, and is, therefore, subject to a new finding within 1 year and subsequently thereafter until we publish a proposal to list or a finding that the petitioned action is not warranted. The Service publishes an annual notice of resubmitted petition findings (annual notice) for all foreign species for which listings were previously found to be warranted but precluded.

Previous Federal Actions

On November 28, 1980, we received a petition (1980 petition) from Dr. Warren B. King, Chairman of the International Council for Bird Preservation (ICBP), to add 60 foreign bird species to the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)), including two species (the Chatham petrel and magenta petrel) that are the subject of this final rule. Two of the foreign species identified in the petition were already listed under the Act; therefore, in response to the 1980 petition, we published a substantial 90-day finding on May 12, 1981 (46 FR 26464), for 58 foreign species and initiated a status review. On January 20, 1984 (49 FR 2485), we published a 12-month finding within an annual review on pending petitions and description of progress on all pending petition findings. In that notice, we found that all 58 foreign bird species from the 1980 petition were warranted but precluded by higher priority listing actions. On May 10, 1985, we published the first annual notice (50 FR 19761) in which we continued to find that listing all 58 foreign bird species from the 1980 petition was warranted but precluded. We published additional annual notices on the 58 species included in the 1980 petition on January 9, 1986 (51 FR 996), July 7, 1988 (53 FR 25511), December 29, 1988 (53 FR 52746), April 25, 1990 (55 FR 17475), November 21, 1991 (56 FR 58664), and May 21, 2004 (69 FR 29354). These notices indicated that the Chatham petrel and the magenta petrel, along with the remaining species in the 1980 petition, continued to be warranted but precluded.

On May 6, 1991, we received a petition (1991 petition) from ICBP to add an additional 53 species of foreign birds to the List of Endangered and Threatened Wildlife, including the Fiji petrel. In response to the 1991 petition, we published a substantial 90-day finding on December 16, 1991 (56 FR 65207), for all 53 species, and initiated a status review. On March 28, 1994 (59 FR 14496), we published a 12-month finding on the 1991 petition, along with a proposed rule to list 30 African birds under the Act (15 each from the 1980 petition and 1991 petition). In that document, we announced our finding that listing the remaining 38 species from the 1991 petition, including the Fiji petrel, was warranted but precluded by higher priority listing actions. We made a subsequent warranted-but-precluded finding for all outstanding foreign species from the 1980 and 1991 petitions, including the three species that are the subject of this final rule, as published in our annual notice of review (ANOR) on May 21, 2004 (69 FR 29354).

Per the Service's listing priority guidelines (September 21, 1983; 48 FR 43098), in our April 23, 2007, Annual Notice on Resubmitted Petition Findings for Foreign Species (72 FR 20184), we determined that listing six seabird species of the family Procellariidae, including the three species that are the subject of this final rule, was warranted. In selecting these six species from the list of warranted-but-precluded species, we took into consideration the magnitude and immediacy of the threats to the species, consistent with the Service's listing priority guidelines.

On December 17, 2007 (72 FR 71298), we published in the **Federal Register** a proposal to list the Chatham petrel, Fiji petrel, and the magenta petrel as endangered under the Act, and the Cook's petrel, Galapagos petrel, and the Heinroth's shearwater as threatened under the Act. We implemented the Service's peer review process and opened a 60-day comment period to solicit scientific and commercial

information on the species from all interested parties following publication of the proposed rule.

On December 30, 2008, the Service received a 60-day notice of intent to sue from the Center for Biological Diversity (CBD) over violations of section 4 of the Act and the Administrative Procedure Act (APA) for the Service's failure to issue a final determination regarding the listing of these six foreign birds. Under a settlement agreement approved by the U.S. District Court for the Northern District of California on June 15, 2009 (*CBD* v. *Salazar,* 09-cv-02578–CRB), the Service must submit to the **Federal Register** final determinations on the proposed listings of the Chatham petrel, Fiji petrel, and magenta petrel by September 30, 2009, and final determinations on the proposed listings of the Cook's petrel, Galapagos petrel, and Heinroth's shearwater by December 29, 2009.

In this final rule, we determine endangered status for three foreign seabird species under the Act: Chatham petrel (*Pterodroma axillaris*), Fiji petrel (*Pseudobulweria macgillivrayi*), and the magenta petrel (*Pterodroma magentae*). We will publish our final listing determinations for the Cook's petrel (*Pterodroma cookii*), Galapagos petrel (*Pterodroma phaeopygia*), and the Heinroth's shearwater (*Puffinus heinrothi*) in a subsequent **Federal Register** notice.

Summary of Comments and Recommendations

In the proposed rule published on December 17, 2007 (72 FR 71298), we requested that all interested parties submit information that might contribute to development of a final rule. We received nine comments: six from members of the public, one from an international conservation organization, one from the U.S. National Marine Fisheries Service (NMFS), and one from the New Zealand Department of Conservation (NZDOC). In all, three commenters supported the proposed listings. The NZDOC provided new information on the Chatham and magenta petrels and concluded that the information presented in the December 2007 proposal supported the listing of these two species under the U.S. Endangered Species Act. Five commenters provided information but did not express support of or opposition to the proposed listings.

General comments we received, as well as comments we received regarding the three species that are the subject of this final rule, are addressed in the following summary and incorporated into the final rule as appropriate. Comments we received regarding the other three species of seabirds in the family Procellariidae proposed for listing (December 17, 2007; 72 FR 71298) will be addressed in a subsequent **Federal Register** notice announcing our final listing determinations for those species.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from 14 knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received a response from six of the peer reviewers from whom we requested comments. The peer reviewers generally agreed that the description of the biology and habitat for each species was accurate and based on the best available information. New or additional information on the current population numbers of each of the three species and their threats was provided and incorporated into the final rule as appropriate (as indicated in the citations by ''in litt.'').

We reviewed all comments received from the public and the peer reviewers for substantive issues and new information regarding the proposed listing of the three species, and address them in the following summary.

Peer Reviewers' General Comments

Comment 1: While it is generally true that ''once a population is reduced below a certain number of individuals it tends to rapidly decline towards extinction,'' without details on what the ''certain'' number of individuals is, this statement is superfluous for these species. For these species, the issue is not so much reaching certain low numbers as whether or not catastrophic threats impacting these species are still ongoing.

Our Response: We concur and have amended this statement in this final rule.

Comment 2: Provide the taxonomic list(s) of birds used to identify the species.

Our Response: We have added information on taxonomy of each species to this final rule.

Peer Reviewers' Species-Specific Comments

Fiji Petrel

Comment 3: The analysis of the population size is not accurate, although based on the best available information, since the estimated population size is based on single sightings. Until surveys are carried out in the catchment area of the main waterway of Gau Island [the likely breeding area for this species], the population size of the Fiji petrel is unknown.

Our Response: We agree that surveys of the purported breeding area will be important in determining an accurate population size for this elusive bird. Although we have acknowledged the lack of certainty regarding the current estimate of the population size of this species in this final rule, this estimate represents the best available scientific data on the population size of the Fiji petrel.

Comment 4: Two peer reviewers disagreed with the commonly held belief that this species nests in ''rocky, mountainous cloud forests'' on Gau Island. According to these reviewers, aerial photos of interior Gau Island show no ''rocky'' terrain, just steep terrain covered in tropical rainforest. Past surveys focused on these ''rocky'' areas (the highest parts of the island) without success, based on information reported in Jenkins (1986). These peer reviewers suggest that, as no nests or birds have been found in the highest parts of the island, other possible sites should be considered. According to Jenkins (1986, as cited in Priddel *et al.* in draft), in 1925, Rollo Beck trekked to the summit of the island with the chief who indicated that the petrels nested not in the summit area but down below in dense canyons on the eastern side of the island. Therefore, according to these reviewers, future surveys should focus on the unsurveyed catchment of the main waterway of the island, particularly the headwaters of the Waiboteigau Creek on the eastern side of Gau. This remote lowland area is uncleared and lacks roads or trails. According to the peer reviewers, an intensive survey of this area for potential breeding sites is planned for July 2009 (Carlile and Priddel, in litt. 2008, pp. 2–3).

Our Response: We have added this new information regarding the potential breeding habitat of the Fiji petrel in the remote and unsurveyed catchment area of the main waterway of Gau Island to this final rule.

Comment 5: Consider the potential impact of the recently established feral pig population in the southern part of Gau Island.

Our Response: We agree that there may be impacts to the Fiji petrel from recently established feral pig populations on Gau Island and have included this new information in the discussion of threats under Factor C (*Disease or Predation*) in this final rule.

New Zealand Department of Conservation's (NZDOC) Comments

Chatham Petrel

Comment 6: Incidental take of the Chatham petrel by commercial long-line fisheries is not a significant threat and is overstated for this species. There has been no documented incidental take of small *Pterodroma* petrels in any New Zealand fishery from 1993–2007. New Zealand supports a fisheries observer and seabird autopsy program, and this species and its close small relatives have not been taken in any fisheries operations. Therefore, there is little risk to this species from fishing impacts.

Our Response: We have reexamined our discussion of this threat in the proposed rule, and based on the information provided above, we agree that commercial long-line fisheries is not a significant threat to the Chatham petrel, and have amended this final rule accordingly.

Comment 7: Pitt Island also has a population of feral pigs that could be a potential predator threat to translocated birds that attempt to nest outside the predator-proof fence.

Our Response: We have included, in this final rule, this new information regarding the potential threat of predation by feral pigs on birds nesting outside the predator-proof fence on Pitt Island.

Comment 8: We disagree that the existing regulatory protections have not reduced the threats to Chatham petrels. The Chatham petrel is well-protected in New Zealand under the Wildlife Act of 1953 and access to the breeding grounds is strictly controlled under the Reserves Act of 1977 (permitted access only for scientific or management purposes). In addition, while there might be illegal visits to the breeding grounds, the burrows are located some distance from the landing areas and are unlikely to be disturbed.

Our Response: We agree, based on the information provided by the NZDOC (2008, in litt.), that existing regulatory mechanisms have reduced the threats to the Chatham petrel. As a result, we have amended our discussion under Factor D (*The Inadequacy of Existing Regulatory Mechanisms*) in this final rule.

Comment 9: It is unlikely that the Chatham petrel is threatened by burrow damage from storm waves. The current breeding sites on the [three] islands are mostly above 33 feet (ft) (10 meters (m)) in elevation and more than 330 ft (100 m) from the coast. However, there is a risk of burrow damage from storm-related tree falls.

Our Response: We agree that the Chatham petrel is likely not threatened by burrow damage from storm waves, although there is a potential threat to the birds and their burrows from storm-related tree falls. Therefore, we have amended the discussion under Factor E (*Other Natural or Manmade Factors Affecting the Continued Existence of the Species*) for this species in this final rule to reflect this new information.

Magenta Petrel

Comment 10: The risk of logging activities on private land impacting the magenta petrel is quite low for the following reasons: (1) Unprotected breeding sites are more than 3 miles (mi) (5 kilometers (km)) from existing roads [which are needed to move vehicles and equipment to potential logging sites], (2) over the past 50 years there has been no logging of forests near the breeding burrows except to clear a thin strip of forest for a reserve boundary fence, and (3) the private landowners are aware of the petrel's rare status and are fully supportive of its protection.

Our Response: Based on the information provided above, we agree that the magenta petrel is not threatened by logging on private land, and we have amended our discussion under Factor A (*The Present or Threatened Destruction, Modification, or Curtailment of Species' Habitat or Range*) in this final rule.

Comment 11: The risk to the magenta petrel from long-line fishing is probably not as serious as concluded in the proposed rule. There may be some risk as the closely related grey-faced petrel (*Pterodroma macroptera gouldi*) is occasionally caught on commercial long lines. However, the New Zealand fisheries observer program has not reported any incidental take of the closely related white-headed petrel (*Pterodroma lessonii*), which feeds in the same cold, subantarctic waters as the magenta petrel.

Our Response: We have reexamined our discussion of this threat in the proposed rule, and based on the information provided by the NZDOC and other commenters, we agree that commercial long-line fisheries are not a significant threat to the magenta petrel. We have amended this final rule accordingly.

Comment 12: There is not a risk of burrow damage by storm waves because the known breeding sites on Chatham Island are at least 660 ft (200 m) in elevation and over 3 mi (5 km) from the coast. Storm-related windfalls and flooding of breeding sites from rising streams, however, do pose a threat to the magenta petrel.

Our Response: We agree that the magenta petrel is not threatened by storm waves, although there is a potential threat of storm-related tree falls and flooding from rising streams. Therefore, we have amended the discussion under Factor E (*Other Natural or Manmade Factors Affecting the Continued Existence of the Species*) in this final rule.

Comment 13: The NZDOC disagreed that one random, naturally occurring event, such as a cyclone, during the nesting season could destroy the entire known breeding population on Chatham Island. The NZDOC acknowledged that there is a risk that some burrows might be destroyed during such an event, but it is unlikely that all burrows would be destroyed in a major storm because the forest on Chatham Island is very resilient to storm damage as it is regularly exposed to wind gusts over 60 knots. In addition, some proportion of the breeding birds is at sea at any stage of the [breeding] season, so the risk of catastrophic loss of all adults in a storm is also unlikely.

Our Response: Based on this new information regarding the risk of destruction of the entire breeding population of magenta petrels due to one stochastic event, we have amended our discussion under Factor E (*Other Natural or Manmade Factors Affecting the Continued Existence of the Species*) for this species in this final rule.

Comment 14: The risk of inbreeding depression is a new threat to consider for this species. While the magenta petrel gene pool appears to be fairly diverse, the tendency for returning chicks to nest close to their natal burrows greatly increases the risk of interbreeding among close relatives. Poor fertility rates were found in recent seasons where close relatives have interbred.

Our Response: We have included the threat of inbreeding depression in our discussion under Factor E (*Other Natural or Manmade Factors Affecting the Continued Existence of the Species*) for this species in this final rule.

Other Comments

Comment 15: Listing under the Act provides substantial benefits to foreign species.

Our Response: We agree that listing a foreign species under the Act provides benefits to the species in the form of conservation measures, such as recognition, requirements for Federal protection, and prohibitions against certain practices (see Available Conservation Measures). In addition, once a foreign species is listed as endangered under the Act, a section 7 consultation and an enhancement finding are usually required for the

issuance of a permit. Through various enhancement findings pursuant to section 10(a)(1)(A) of the Act, the permit process can be used to create incentives for conservation, through cooperation and consultation with range countries and users of the resource.

Comment 16: Listing under the Act can only help these birds by drawing attention to their needs and providing much needed funding and expertise to address the significant threats they face.

Our Response: Listing the three species that are the subject of this final rule under the Act can provide several benefits to the species in the form of conservation measures, such as recognition, requirements for Federal protection, and prohibitions against certain practices (see Available Conservation Measures).

Comment 17: We would encourage the U.S. Fish and Wildlife Service to carefully consider how listing these species under the Act will benefit their conservation. Would a listing under the Act prompt U.S.-based actions that the species would otherwise not receive?

Our Response: As part of the conservation measures provided to foreign species listed under the Act (see Available Conservation Measures), recognition through listing results in public awareness and encourages and results in conservation actions by Federal and State governments, private agencies and groups, and individuals. In addition, section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered and threatened species and to provide assistance for such programs in the form of personnel and the training of personnel.

Comment 18: The general statement that the ''long-line fishery * * * is the single greatest threat to all seabirds'' erroneously indicates long-line fishing as a threat to *all* seabirds. The main species of seabirds killed in long-line fisheries are albatrosses and other species of petrels (not *Pterodroma* species). The characteristics of a petrel species vulnerable to long-line fishing (seabird that is aggressive and good at seizing prey (or baited hooks) at the water's surface, or is a proficient diver) do not describe the five *Pterodroma* species or the Heinroth's shearwater that are proposed for listing under the Act. Fisheries bycatch has not been identified as a key threat for any of these species; therefore, it is inaccurate to characterize long-line fishing as a threat to these species or to all seabird species.

Our Response: We received several comments disputing our statement that long-line fisheries threaten all seabirds, including the Chatham petrel, Fiji petrel, and magenta petrel (see also Comments 6 and 11 above). We have amended this final rule accordingly (see Summary of Factors Affecting the Species).

Comment 19: The serious threats to the species are impacts from extremely small populations, limited breeding locations or foraging ranges, loss and degradation of nesting habitat, invasive alien species, introduced predators, and hunting.

Our Response: We agree that the Chatham petrel, Fiji petrel, and magenta petrel are threatened by extremely small populations, limited breeding sites, degradation or destruction of nesting habitat, or nonnative species. We have incorporated this information into this final rule. We are not aware of any information regarding the current threat from hunting of any of these seabirds. Harvesting of petrel chicks (called muttonbird harvesting), especially shearwater species (*Puffinus* spp.), for food, oil, and feathers prior to European arrival may have contributed to the decline of some New Zealand petrel species (Tennyson and Millener 1994, pp. 165, 174). Currently, the Maori people of New Zealand's southernmost region and their descendents have gathering rights to sooty shearwater (*Puffinus griseus*) chicks on islands around Stewart Island. Maori from the Alderman group of islands off the Coromandel Peninsula have rights to harvest grey-faced petrels (*Pterodroma macroptera gouldi*). However, we are not aware of any information that indicates that the Chatham petrel or the magenta petrel is currently threatened by hunting or overcollection in New Zealand (Lyver *et al.* 2007). In addition, we are unaware of any information that indicates that the Fiji petrel currently faces threats from human hunting or overcollection.

Comment 20: The primary threats to these species are predation by introduced predators and risk at breeding colonies.

Our Response: We agree that predation by nonnative predators is a significant threat to one or more life stages of the Chatham petrel, Fiji petrel, and the magenta petrel, and we have incorporated this information into this final rule.

Species Information and Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to 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. The five factors are: (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; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

As previously mentioned, several commenters disputed our statement that long-line fisheries threaten all seabirds, including the species that are the subject of this final rule. According to the U.S. National Marine Fisheries Service (Mecum, in litt. 2008) and BirdLife International (Small, in litt. 2008), the main seabirds killed in long-line fisheries are albatrosses and other species of petrels (not *Pterodroma* species). The characteristics of a petrel species vulnerable to long-line fishing (a seabird that is aggressive and good at seizing prey (or baited hooks) at the water's surface, or is a proficient diver) do not describe the three species that are the subject of this final rule. According to the commenters, fisheries bycatch has not been identified as a key threat for any of these species (Mecum, in litt. 2008; NZDOC, in litt. 2008, pp. 2–3; Small, in litt. 2008). Therefore, we do not believe that long-line fishing is a significant threat to the Chatham petrel or Fiji petrel. The NZDOC (in litt. 2008, p. 3) stated that there may be some risk to the magenta petrel as the closely related grey-faced petrel (*Pterodroma macroptera gouldi*) is occasionally caught on commercial long lines. However, because the New Zealand fisheries observer program has not reported any incidental take of the closely related white-headed petrel (*Pterodroma lessonii*), which feeds in the same cold, subantarctic waters as the magenta petrel, the risk to the magenta petrel from long-line fisheries is not significant (NZDOC, in litt. 2008, p. 3). Therefore, we do not believe that long-line fisheries are a significant threat to the magenta petrel.

Below is a species-by-species analysis of the five factors. The species are considered in alphabetical order, beginning with the Chatham petrel, and followed by the Fiji petrel and the magenta petrel.

I. Chatham petrel (*Pterodroma axillaris*)

Species Information

The Chatham petrel (*Pterodroma axillaris*) is a small, gray and white gadfly petrel that is endemic to the Chatham Islands of New Zealand (BirdLife International 2008a). Its unique underwing pattern (a black diagonal band that runs from the bend of the wing to the body) distinguishes this species from other petrels (BirdLife International 2008a; del Hoyo *et al.* 1992, p. 247). The Chatham petrel is also known by its Maori name, ''ranguru.'' The species was first taxonomically described by Salvin in 1893 (Sibley and Monroe 1990, p. 321).

Habitat and Life History

In general, Chatham petrels are considered pelagic, occurring on the open sea generally out of sight of land, where they feed year round. They return to nesting sites on islands during the breeding season where they nest in colonies (Pettingill 1970, p. 206). Banding studies have shown that young birds of this species remain at sea for at least 2 years before returning to land to breed and nest. Based on limited feeding habits data, the Chatham petrel preys on squid and small fish (Heather and Robertson 1997, p. 212).

The Chatham petrel breeds in lowland temperate forest and scrub in habitats with low forest, bracken, or rank grass (BirdLife International 2008a; del Hoyo *et al.* 1992, p. 247). It nests in burrows in very friable (brittle) soils on flat to moderately sloping ground among low vegetation and roots (BirdLife International 2008a; Marchant and Higgins 1990, as cited in BirdLife International 2000, p. 55).

Range and Distribution

The range of the Chatham petrel changes intra-annually based on an established breeding cycle. During the breeding season (November to June) (New Zealand Department of Conservation (NZDOC) 2001b, p. 7), breeding birds return to breeding colonies to breed and nest. During the nonbreeding season, birds migrate far from their breeding range, where they remain at sea until returning to breed.

BirdLife International (2008a) estimates the range of the Chatham petrel to be 168,300 square miles (mi^2) (436,000 square kilometers (km^2)); however, BirdLife International (2000, pp. 22, 27) defines ''range'' as the ''Extent of Occurrence, the area contained within the shortest continuous imaginary boundary which can be drawn to encompass all the known, inferred, or projected sites of present occurrence of a species, excluding cases of vagrancy.'' Therefore, this reported range includes a large area of nonbreeding habitat (*i.e.,* the sea).

Fossil evidence indicates that the Chatham petrel was once widespread throughout the Chatham Islands of New Zealand (NZDOC 2001b, p. 5). However, the species is currently only known to breed on one island (BirdLife International 2000, p. 55; NZDOC 2001b, p. 5), the 0.84 mi^2 (2.18 km^2) (Oceandots n.d.) South East Island in the Chatham Islands, New Zealand (BirdLife International 2000, p. 55; NZDOC 2001b, p. 5). In 2002, the NZDOC began efforts to expand the species' breeding range by releasing chicks onto Pitt Island, an island approximately 1.55 mi (2.5 km) northwest of South East Island. Over a 4-year time period, 200 chicks were transferred to the 98.8-acre (ac) (40-hectare (ha)) Ellen Elizabeth Preece Conservation Covenant (Caravan Bush), a fenced, predator-free enclosure on Pitt Island. As of 2006, four adult birds had returned to the island from the sea to breed, and in June 2006, a pair successfully reared a chick. This represents the first time in more than a century that a Chatham petrel chick has fledged on Pitt Island (BirdLife International News 2006). In 2008, there were six pairs of Chatham petrels breeding in the predator-proof reserve on Pitt Island (NZDOC, in litt. 2008, p. 5). In addition, in April 2008, 43 chicks were transferred from South East Island to the 6.2-ac (2.5-ha) predator-proof fenced site (Sweetwater Conservation Covenant) on main Chatham Island (NZDOC News 2008).

The Chatham petrel's range at sea is poorly known; the species has been recorded on several occasions at sea near South East Island, and has been recorded once 7.5 mi (12 km) south of the island (West 1994, p. 25), and northeast of the Bounty Islands (NZDOC, in litt. 2008, p. 5). It is believed that the species migrates to the North Pacific Ocean in the nonbreeding season, based on the habits of closely related species; however, no sightings have been recorded in the Northern Hemisphere (Taylor 2000, p. 128).

Population Estimates

The population of the Chatham petrel is very small, estimated at 900 to 1,100 birds based on recent research and banding studies (NZDOC, in litt. 2008, p. 5), and is showing a decreasing population trend (BirdLife International 2008a). The breeding population was estimated to be 250 pairs in 2004 on South East Island (NZDOC, in litt. 2008, p. 5), and the breeding population on Pitt Island was 6 pairs in 2008 (NZDOC, in litt. 2008, p. 5).

Conservation Status

The Chatham petrel is ranked as ''Nationally Endangered'' by the New Zealand Department of Conservation, which is the second highest threat category and signifies that the species has a small population size with an ongoing or predicted population decline (Hitchmough *et al.* 2005, p. 38; Townsend *et al.* 2008, p. 11). The species is considered ''Endangered'' by the International Union for Conservation of Nature (IUCN). The species was recently (2009) downlisted from ''Critically Endangered'' because ''despite very rapid declines over the past three generations, the population stabilized and began to increase since 2000; a trend boosted by two recent translocations'' (BirdLife International 2009).

Summary of Factors Affecting the Chatham Petrel

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The range of the Chatham petrel changes intra-annually based on an established breeding cycle. During the breeding season (November to June) (NZDOC 2001b, p. 7), breeding birds return to breeding colonies to breed and nest. During the nonbreeding season, birds migrate far from their breeding range, and they remain at sea until returning to breed. Therefore, our analysis of Factor A is separated into analyses of: (1) The species' breeding habitat and range; and (2) the species' nonbreeding habitat and range.

The Chatham petrel breeds primarily on one island, the island of South East Island in the Chatham Islands, New Zealand (BirdLife International 2000, p. 55; NZDOC 2001b, p. 5). The species breeds in lowland temperate forest and scrub in habitats with low forest, bracken, or rank grass (BirdLife International 2008a; del Hoyo *et al.* 1992, p. 247). Since the arrival of European explorers, this breeding habitat has contracted extensively, largely as a result of its conversion to agricultural purposes (NZDOC 2001b, p. 5; Tennyson and Millener 1994, pp.

165–166). However, we are not aware of any present or threatened destruction or modification of the Chatham petrel's habitat on South East Island. This island is currently uninhabited by humans (Lechner *et al.* 1997, p. 256), and since 1954, it has been managed as a nature reserve for native plants and animals, including fur seals, rare birds (including the Chatham petrel), and endangered invertebrates (NZDOC n.d.(a)). Access to this island is restricted by permit. In addition, since 1961, all livestock has been removed from the island, allowing the natural vegetation to regenerate (Nilsson *et al.* 1994, p. 110; NZDOC n.d.(a)). The Chatham petrel's fenced release areas on Pitt and Chatham Islands are protected by conservation covenants, and we are unaware of any present or threatened destruction or modification of any of the species' habitat on either island.

The Chatham petrel's range at sea is poorly known; the species has been recorded on several occasions at sea near South East Island, and has been recorded once 7.5 mi (12 km) south of the island (West 1994, p. 25), and northeast of the Bounty Islands (NZDOC, in litt. 2008, p. 5). It is believed that the species migrates to the North Pacific Ocean in the nonbreeding season, based on the habits of closely related species; however, no sightings have been recorded in the Northern Hemisphere (Taylor 2000, p. 128). We are not aware of any present or threatened destruction, modification, or curtailment of the species' current sea habitat or range.

Summary of Factor A

We are not aware of any scientific or commercial information that indicates that the present or threatened destruction, modification, or curtailment of the Chatham petrel's habitat or range poses a threat to this species. As a result, we do not consider the destruction, modification, or curtailment of the species' habitat or range to be a contributing factor to the continued existence of the Chatham petrel.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any scientific or commercial information that indicates that overutilization of the Chatham petrel for commercial, recreational, scientific, or educational purposes poses a threat to this species. As a result, we do not consider overutilization to be a contributing factor to the continued existence of the Chatham petrel.

C. Disease or Predation

Disease

The information available suggests that petrels in general are susceptible to a variety of diseases and parasites, particularly during the breeding season, when large numbers of seabirds congregate in relatively small areas to breed and nest (BirdLife International 2007a; Taylor 2000, p. 23). However, there are no documented records of diseases impacting the persistence of the Chatham petrel. Therefore, we find that disease is not a threat to this species.

Predation

The Chatham petrel's breeding range was reduced extensively following the arrival of European explorers, largely due to predation by introduced species such as rats (*Rattus* spp.), feral cats (*Felis catus*), and weka (*Gallirallus australis*), a bird native to the North and South Islands and introduced to Chatham and Pitt Islands in the early 1900s (Heather and Robertson 1997, p. 213; NZDOC 2001b, p. 7; Taylor 2000, pp. 20–21). Currently, no introduced predators are present on South East Island (Dowding and Murphy 2001, p. 51). The NZDOC manages South East Island under the New Zealand Conservation Act of 1987 as a nature reserve for the conservation of Chatham Islands flora, fauna, and ecosystems (NZDOC n.d.(a)). Access to the island is restricted by permit for scientific or conservation purposes only, and visitor numbers and movements are strictly regulated. While there is an ongoing risk that predators, such as rats or cats, may be inadvertently reintroduced to the island by boats transporting conservation and research groups to the island, we believe the risk of these predators becoming reestablished on the island is quite low because the NZDOC monitors and manages the island intensively to maintain the island as a predator-free habitat. Therefore, we find that predation by introduced species is not a significant threat to the Chatham petrel on South East Island, the species' primary breeding location.

On Pitt Island, Chatham petrel chicks were released within a 98.8-ac (40-ha) fenced, predator-free breeding habitat. Although this area is fenced, and the threat of predation on nesting Chatham petrels is reduced, introduced predators, such as rats, feral cats and pigs, and weka, are present on this island (BirdLife International News 2002; NZDOC, in litt. 2008, p. 1) and could potentially get inside the fenced area or prey on Chatham petrels that leave the fenced area. Therefore, we find that predation by introduced species is a threat to the Chatham petrel on Pitt Island.

On Chatham Island, 43 Chatham petrel chicks were released within the 6.2-ac (2.5-ha) fenced, predator-free Sweetwater Covenant site in April 2008 (NZDOC News 2008). Although this area is fenced, and the threat of predation on nesting Chatham petrels is reduced, introduced predators, such as rats, feral cats and pigs, and weka, are present on this island (NZDOC, in litt. 2008, p. 1) and could potentially get inside the fenced area or prey on Chatham petrels that leave the fenced area. Therefore, we find that predation by introduced species is a threat to the Chatham petrel on Chatham Island.

We are unaware of any threats due to predation on Chatham petrels during the nonbreeding season while the species is at sea.

Summary of Factor C

On the basis of this analysis, we find that predation by nonnative predators, such as rats, feral cats, pigs, and weka, is a threat to the continued existence of the Chatham petrel on Pitt and Chatham Island.

D. The Inadequacy of Existing Regulatory Mechanisms

The Chatham petrel is protected from disturbance and harvest under New Zealand's Wildlife Act of 1953 and its Reserves Act of 1977. The petrel is designated as ''Nationally Endangered'' by the NZDOC, which is the second highest threat category and signifies that the species has a small population size with an ongoing or predicted population decline (Hitchmough *et al.* 2005, p. 38; Townsend *et al.* 2008, p. 11). Access to the breeding grounds on all three islands is strictly controlled (*i.e.,* permitted access only for scientific or management purposes). While some illegal visits may occur to the breeding ground [on South East Island], the burrows of this species are sited away from the main landing areas and are unlikely to be disturbed (NZDOC, in litt. 2008, p. 2).

In addition, the NZDOC developed a 10-year recovery plan for the Chatham petrel in 2001, with the goals of protecting the species' breeding burrows on South East Island from the broad-billed prion (*Pachyptila vittata*) (see Factor E) and establishing a reintroduced population elsewhere within the species' historic breeding range (NZDOC 2001b, p. 10). New Zealand has implemented management actions for the conservation of the species, including establishment of predator-proof breeding sites, hand-

rearing and translocation of chicks to establish additional breeding sites, broadcasting of Chatham petrel calls to attract adults to protected breeding sites, and nest site protection efforts to prevent occupation by the broad-billed prion (Chatham Islands Conservation News 2008b–e; NZDOC 2001b, p. 8; NZDOC, in litt. 2008, p. 5). A measure of the success of the recovery plan is the successful establishment of breeding individuals on Pitt Island (see Range and Distribution) in 2006, which increased the breeding range of the species, and the introduction of chicks to a protected site on Chatham Island in 2008. These efforts are beginning to show some success (see Factor E), but it is too early to know the level of success, because it can take fledged seabirds years to return to their breeding colony to breed and nest (Taylor 2000, p. 15). Similarly, protection of Chatham petrel burrows has reduced the population impacts resulting from competition with the broad-billed prion (see Factor E); however, this still remains the greatest threat to the species.

Summary of Factor D

We believe the regulatory protections conferred by the New Zealand Wildlife and Reserves Acts in combination with the actions implemented for the conservation of the Chatham petrel by the NZDOC under the 2001 recovery plan provide significant protection to the species. As a result, we believe that existing regulatory protections have significantly reduced the threats from predation by rats, cats, pigs, and weka, and competition with the broad-billed prion. However, these threats still exist. We, therefore, find that the inadequacy of existing regulatory mechanisms is a threat to the Chatham petrel throughout its range.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Competition With the Broad-Billed Prion (*Pachyptila vittata*)

Based on the information available, the predominant threat to the Chatham petrel is nest burrow competition between this species and the more abundant broad-billed prion (*Pachyptila vittata*), which numbers around 300,000 individuals. The prion not only occupies potential Chatham petrel burrows, but has been observed actively evicting or lethally attacking eggs, nestlings, and occasionally adults of the Chatham petrel. Such competition has resulted in a high rate of pair bond disruption and a low rate of breeding success in Chatham petrels, despite the high percentage of egg fertility (BirdLife International 2000, p. 55; Hirschfeld 2007, p. 102; NZDOC 2001b, p. 7).

To reduce the threat posed by competition with the broad-billed prion on South East Island, the NZDOC has implemented nest site protection efforts for the Chatham petrel, including placement of artificial nest sites and the blockage of burrows to prevent occupation by the broad-billed prion (NZDOC 2001b, pp. 12, 14, 16). Although these actions are improving the petrel's breeding success (NZDOC 2001b, p. 8; Taylor 1999, as cited in BirdLife International 2000, p. 55), only a small proportion of breeding burrows occupied by Chatham petrels have been located and, therefore, protected (Taylor 1999, as cited in BirdLife International 2000, p. 55). Therefore, we consider nest burrow competition between this species and the broad-billed prion to be a significant threat to the Chatham petrel.

Restricted Breeding Range

The Chatham petrel's restricted breeding range puts the species at a greater risk of extinction. Breeding colonies were once widespread throughout the Chatham Islands (Hirschfeld 2007, p. 102; NZDOC 2001b, p. 5), a group of about 10 islands within a 24.85-mi (40-km) radius covering a total land area of 375 mi^2 (970 km^2) (Oceandots n.d.). Currently, however, breeding of this species is restricted to South East Island (BirdLife International 2007a), a land area of less than 1 mi^2 (2.5 km^2) (Oceandots n.d.), and, as a result of recent release efforts, Pitt Island (BirdLife International News 2006; NZDOC, in litt. 2008, p. 5). It is unknown at this time if the recent translocation of Chatham petrel chicks to Chatham Island will result in successful breeding pairs. This habitat area is insufficient for the long-term survival of the Chatham petrel, particularly since breeding pairs, eggs, and nestlings on South East Island, the primary breeding area of this species, face the pervasive threat of nest-site competition with the broad-billed prion. It is estimated that the self-sustainability of the breeding population on Pitt Island as a result of the release program will take longer than 4 more years to achieve (NZDOC 2001b, pp. 18–19).

Stochastic Events

The Chatham petrel's restricted breeding range combined with its colonial nesting habits and small population size of 900 to 1,100 birds (NZDOC, in litt. 2008, p. 5) makes the species particularly vulnerable to the threat of adverse random, naturally occurring events (*e.g.,* cyclones, fire) that destroy breeding individuals and their breeding habitat. Fire is a high risk in the Chatham Islands because the climate is very dry during the summer, and the vegetation becomes tinder dry. If fires do occur, the remoteness of the islands renders the fires unlikely to be exterminated by human intervention. Burrow-nesting species such as the Chatham petrel are at a high risk because they are likely to suffocate from smoke inhalation or to be lethally burned inside or while attempting to escape from their burrows (Taylor 2000, p. 22).

Another natural disaster, severe storms, has impacted New Zealand historically, and so the likelihood of future impacts of storms is high. A severe storm in 1985 stripped two islands in the Chatham Islands chain bare of vegetation and soil cover, causing high increases in egg mortality of nesting albatrosses (Taylor 2000, p. 23). Considered the worst recorded cyclone in New Zealand's history, Cyclone Giselle hit New Zealand on April 10, 1968, with wind speeds of 275 km per hour (Christchurch City Libraries n.d.). Although we are unaware of the impact of this cyclone on the Chatham petrel's population numbers or breeding habitat, the severity of the wind, or tree falls created by such a storm, has potential to significantly damage Chatham petrel burrows. These burrows are particularly vulnerable because they are extremely fragile, occurring in soft soils that are easily disrupted by severe climatic events (BirdLife International 2008a; NZDOC, in litt. 2008, p. 2; Taylor 2000, p. 128).

While species with more extensive breeding ranges or higher population numbers could recover from adverse random, naturally occurring events such as fire or storms, the Chatham petrel does not have such resiliency. Its very small population size and restricted breeding range puts the species at higher risk for experiencing the irreversible adverse effects of random, naturally occurring events. Therefore, we find a combination of factors—the species' small population size, the species' restricted breeding range, and the likelihood of adverse random, naturally occurring events—to be a significant threat to the Chatham petrel.

Summary of Factor E

On the basis of this analysis, we find that due to the species' small population size and restricted breeding range, the continued existence of the Chatham petrel is threatened by nest burrow competition between this species and

the more abundant broad-billed prion in its primary breeding area, and adverse random, naturally occurring events (*e.g.,* cyclones, fire).

Status Determination for the Chatham Petrel

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the Chatham petrel. Historically, predation by introduced species reduced the Chatham petrel's population numbers throughout all of its range (Factor C). Today, however, South East Island is predator free, and we believe the risk of these predators becoming reestablished on the island is quite low because the NZDOC monitors and manages the island intensively to maintain the island as a predator-free habitat. Therefore, predation by nonnative predators, such as rats, feral cats, pigs, and weka, is only a significant threat to the species on Pitt and Chatham Island (Factor C).

Nest burrow competition between the Chatham petrel and the more abundant broad-billed prion is a current, ongoing threat to the species that is of high magnitude and that has not been controlled by human intervention (Factor E). The broad-billed prion occupies Chatham petrel burrows, actively evicting or lethally attacking eggs, nestlings, and occasionally adults of the Chatham petrel, and as a result is reducing the Chatham petrel's population, which is already very small, estimated at 900 to 1,100 individuals (Factor E). Although the NZDOC has been actively working to protect Chatham petrel nest sites from the broad-billed prion, only a small proportion of Chatham petrel breeding burrows have been located and protected (Taylor 1999, as cited in BirdLife International 2000, p. 55). This threat is magnified by the fact that the impacted area is the Chatham petrel's primary breeding location (South East Island), and the breeding area is extremely small, less than 1 mi^2 (2.5 km^2) in size. The only other location where the species has been documented to breed is the 98.8-ac (40-ha) enclosed area on Pitt Island where Chatham petrels were reintroduced. It is currently uncertain whether the species will maintain this portion of its range as a breeding area. As of 2006, one pair breeding in this area had successfully reared a chick, and in 2008, there were six pairs breeding in the predator-proof reserve (Chatham Islands Conservation News 2008e; NZDOC, in litt. 2008, p. 5).

The regulatory protections conferred by the New Zealand Wildlife and Reserves Acts in combination with the actions implemented for the conservation of the Chatham petrel by the NZDOC under the 2001 recovery plan have significantly reduced the threats to the species from predation by introduced species and competition with the broad-billed prion. However, these threats still exist, and despite the efforts undertaken in New Zealand to address the threats to the Chatham petrel, the species has not recovered (Factor D).

In general, the fewer the number of populations and the smaller the size of each population, the higher the probability of extinction (Franklin 1980, pp. 147–148; Gilpin and Soulé 1986, p. 25; Meffe and Carroll 1996, pp. 218–219; Pimm *et al.* 1998, pp. 757–785; Raup 1991, pp. 124–127; Soulé 1987, p. 181). The Chatham petrel's small population, combined with its restricted breeding range and colonial nesting habits, makes the species particularly vulnerable to the threat of random, naturally occurring events. These catastrophic events, such as cyclones and fire, are known to occur in New Zealand and have the potential to destroy breeding individuals and their breeding habitat (Factor E).

Section 3 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'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Because the survival of the Chatham petrel is dependent on recruitment of chicks from its breeding range, the severity of threats to the species within its breeding range, as described above, puts the species in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we determine that the Chatham petrel meets the Act's definition of endangered and warrants protection as an endangered species under the Act.

II. Fiji petrel (*Pseudobulweria macgillivrayi*)

Species Information

The Fiji petrel (*Pseudobulweria macgillivrayi*) is a small, dark brown gadfly petrel that is endemic to Fiji (BirdLife International 2008b). The species was first taxonomically described by G.R. Gray in 1860 (Sibley and Monroe 1990, p. 321). In our December 17, 2007, proposal (72 FR 71298), we listed the scientific name of the Fiji petrel as *Pterodroma macgillivrayi,* with *Pseudobulweria macgillivrayi* as a synonym. However, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) standard taxonomic and nomenclatural reference for birds (Dickinson 2003, p. 75), as well as BirdLife International (2008b), recognizes the species as *Pseudobulweria macgillivrayi.* Therefore, we accept the species as *Pseudobulweria macgillivrayi,* which also follows the Integrated Taxonomic Information System (ITIS 2009).

Habitat and Life History

Very little information is available on the Fiji petrel and its life history. However, Fiji petrels are considered pelagic, occurring on the open sea generally out of sight of land, where they feed year round. During the breeding season, they return to nesting sites on islands where they nest in colonies (Pettingill 1970, p. 206).

There have only been 12 substantiated sightings of the Fiji petrel on land since 1965, and a total of 13 historically. These sightings have all been of single individuals on Gau Island (BirdLife International 2000, p. 55; BirdLife International 2008b; Carlile and Priddel, in litt. 2008, p. 3; Priddel *et al.* in draft), a 52.55 mi^2 (136.1 km^2) island in Fiji's Lomaiviti archipelago.

Based on the locations of Fiji petrel sightings on Gau Island, researchers have speculated that the species' breeding habitat is most likely to be undisturbed, mature forest on rocky, mountainous ground within the island's cloud forest highlands (del Hoyo *et al.* 1992, p. 248; RARE Conservation 2006a). It has been suggested that, based on the nesting habits of other colonial seabirds, Fiji petrels nest in close proximity to collared petrels (*Pterodroma leucoptera*), which nest on the ground in this rugged terrain of interior Gau Island (Watling and Lewanavanua 1985, p. 233).

Recently, Priddel *et al.* (in draft) and Carlile and Priddel (in litt. 2008, p. 3) reviewed the available information regarding the attempts to discover the nesting sites of this elusive bird. All surveys to date have focused on the interior summit area of Gau Island within the island's cloud forest highlands. These authors suggest that, as no nests or birds have been found in the upland area, other possible sites should be considered for surveys. According to Jenkins (1986, as cited in Priddel *et al.* in draft), in 1925, Rollo Beck trekked to the summit of the island with the island's chief who indicated that the petrels nested not in the summit area but down below in dense canyons on the eastern side of the island.

Therefore, according to Priddel *et al.* (in draft) and Carlile and Priddel (in litt. 2008, p. 3), future surveys should focus on the unsurveyed catchment of the main waterway of the island, particularly the headwaters of the Waiboteigau Creek on the eastern side of Gau. This remote lowland area is uncleared and lacks roads or trails. According to Carlile and Priddel (in litt. 2008, pp. 2–3), an intensive survey of this area for potential breeding sites is planned for July 2009.

Range and Distribution

Although little is known about the Fiji petrel and its life history, based on general information common to all other Procellariid species, we know that the range of the Fiji petrel changes intra-annually based on an established breeding cycle. During the breeding season, breeding birds return to breeding colonies to breed and nest. During the nonbreeding season, birds migrate far from their breeding range, where they remain at sea until returning to breed.

BirdLife International (2008b) estimates the range of the Fiji petrel to be 59,460 mi^2 (154,000 km^2); however, BirdLife International (2000, pp. 22, 27) defines ''range'' as the ''Extent of Occurrence, the area contained within the shortest continuous imaginary boundary which can be drawn to encompass all the known, inferred, or projected sites of present occurrence of a species, excluding cases of vagrancy.'' Therefore, this reported range includes a large area of nonbreeding habitat (*i.e.,* the sea).

Although the nesting area of this species has not been located (Carlile and Priddel, in litt. 2008, p. 3; Priddel *et al.* in draft), the information available indicates that the species breeds only on Gau Island, Fiji, where the few recorded sightings of this species on land have occurred (Onley and Scofield 2007, p. 161; Priddel *et al.* in draft; RARE Conservation 2006a; Watling and Lewanavanua 1985, p. 230). BirdLife International (2008b) suggests that this species may occur on other islands in Fiji, but Priddel *et al.* (in draft) found no records to support this suggestion. The species was originally known from just one specimen collected in 1855 on Gau Island. There were no additional confirmed sightings of the species until 1984, when an extensive, 16-month search on Gau Island revealed one additional sighting. The researchers used spotlights and recorded collared petrel calls in an attempt to attract petrels to the highlands area where the researchers were searching. On the first night of spotlighting, a single Fiji petrel flew into the researchers' light. No additional birds were found on this search expedition (Watling 1986, p. 32; Watling and Lewanavanua 1985, p. 231). There have been an additional 16 reported sightings of this species on land, all on Gau Island, and 10 additional sightings at sea; however, many of these reports have not been substantiated (Priddel *et al.* in draft). In 2007, Priddel *et al.* (in draft) summarized all these records, specifying which records were credible. The researchers determined that of the 17 recorded sightings on land between 1965 and 2007, 12 were highly credible based on researchers' identification of dead specimens, photographs of specimens, or live specimens. In addition to the sightings on land, there have been 10 sightings at sea, all since 1960. However, none of these reports have been substantiated. Based on researcher observation or detailed descriptions, three of these reports are considered by Priddel *et al.* (in draft) to be credible.

We consider the evidence sufficient to conclude that the Fiji petrel breeds on Gau Island because: (1) All 12 substantiated sightings of the species on land have been on Gau Island; (2) Procellariids return to land only for breeding purposes; and (3) the original specimen of this species collected in 1855 was determined to be an immature bird, based on its feathers and skull morphology (Bourne 1981, as cited in Priddel *et al.* in draft; Priddel *et al.* in draft). It is therefore reasonable to believe that its nest was in the vicinity.

The Fiji petrel's range at sea is poorly known; the species has been recorded once at sea near Gau Island and once at sea 124.3 mi (200 km) north of Gau Island (Watling 2000, as cited in BirdLife International 2000, p. 55; Watling and Lewanavanua 1985, p. 230).

Population Estimates

The population of the Fiji petrel is believed to be very small. While BirdLife International (2008b) estimates the population to be fewer than 50 birds and showing a decreasing population trend, Carlile and Priddel (in litt. 2008, p. 3) and Priddel *et al.* (in draft) state that ''the population size is unknown but assumed to be very small (due to the lack of sightings)'' and that ''until surveys are carried out * * * population size will remain unknown.''

Conservation Status

The Fiji petrel is considered ''Critically Endangered'' by IUCN because it is ''estimated, given the paucity of recent records, that there is only a tiny population which is confined to a very small breeding area. Furthermore, it is assumed to be declining because of predation by cats, which may therefore threaten its long-term survival'' (BirdLife International 2008b).

Summary of Factors Affecting the Fiji Petrel

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Based on general information common to all other Procellariid species, we know that the range of the Fiji petrel changes intra-annually based on an established breeding cycle. During the breeding season, breeding birds return to breeding colonies to breed and nest. During the nonbreeding season, birds migrate far from their breeding range, and they remain at sea until returning to breed. Therefore, our analysis of Factor A is separated into analyses of: (1) The species' breeding habitat and range; and (2) the species' nonbreeding habitat and range.

In 1985, it was estimated that over 27 mi^2 (70 km^2) of forest habitat up to 2,346 ft (715 m) in elevation was potentially suitable for breeding and nesting of Fiji petrels on Gau Island (Watling and Lewanavanua 1985, p. 232). Unlike the lowlands of Gau Island, which have been cleared to a large extent for settlement, agriculture, and forest plantations, the upland interior forests have not been logged (Priddel *et al.* in draft.; Veitayaki 2006, p. 242). The only maintained inland trail leads to a telecommunication tower on a mountain peak just below Delaco. The 3,115 inhabitants of Gau Island live in coastal villages, where the majority live by subsistence fishing and farming, and maintain gardens up to 990 ft (300 m) in elevation. Although low-level forestry activities occur in lowland areas, no other intensive industry or agriculture is practiced on the island (Priddel *et al.* in draft). Veitayaki (2006, p. 242) noted that the practice of shifting cultivation on Gau Island using improved machinery and the indiscriminant use of fire is rapidly progressing toward the cloud forests within the interior of the island. However, no information was provided to show this is actually occurring.

Veitayaki (2006, p. 239) described a community-based conservation project on Gau Island that has been in place since 2001, whereby villagers in the district of Vanuaso Tikina are collaborating with the University of the South Pacific to sustainably manage

their environmental resources. Goals of the project include preservation of the upland cloud forest, adoption of sustainable land use practices, protection of drinking water, and development of alternative sources of livelihood. The success of this project has provided momentum beyond the Vanuaso Tikina district, as there is interest in incorporating the same sustainable-use practices in the other villages on Gau Island (Veitayaki 2006, p. 239).

In 2003, the World Resources Institute (WRI) reported that less than 1 percent (0.88 percent) of Fiji's total land area is protected to such an extent that it is preserved in its natural condition (EarthTrends 2003). Gau Island, however, is relatively pristine compared to most areas of Fiji due to the semi-subsistence lifestyle (Veitayaki 2006, p. 241). The Fiji people show great pride in the Fiji petrel; it is the emblem of the national airline (Air Fiji) and appears on the Fijian $50 banknote (Priddel *et al.* in draft). Legislation has been drafted to protect the Fiji petrel's habitat on Gau Island, once nesting colonies have been located (RARE Conservation 2006a) (see Factor D). Gau Island's upland forest habitat, where the species may breed, remains in a pristine condition and does not appear to be threatened with destruction or modification. In their review of our December 17, 2007, proposal (72 FR 71298), Carlile and Priddel (in litt. 2008, pp. 2–3) suggested that a potential breeding site for the Fiji petrel is the unsurveyed catchment of the main waterway of the island, particularly the headwaters of the Waiboteigau Creek on the eastern side of Gau. According to these reviewers, this remote lowland area is unsurveyed, uncleared, and lacks roads or trails. Based on the information provided by the reviewers, the lowland area of the catchment of the main waterway of the island does not appear to be threatened with destruction or modification. Therefore, we find that the present or threatened destruction, modification, or curtailment of this species' purported breeding habitat or range in the upland forest or the lowland catchment area on the eastern side of Gau is not a threat to the species.

The Fiji petrel's range at sea is poorly known; the species has been recorded once at sea near Gau Island and once at sea 124.3 mi (200 km) north of Gau Island (Watling 2000, as cited in BirdLife International 2000, p. 55; Watling and Lewanavanua 1985, p. 230). We are not aware of any present or threatened destruction, modification, or curtailment of this species' current sea habitat or range.

Summary of Factor A

We are not aware of any scientific or commercial information that indicates that the present or threatened destruction, modification, or curtailment of the Fiji petrel's habitat or range poses a threat to this species. As a result, we do not consider the destruction, modification, or curtailment of the species' habitat or range to be a threat to the continued existence of the Fiji petrel.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any scientific or commercial information that indicates that overutilization of the Fiji petrel for commercial, recreational, scientific, or educational purposes poses a threat to this species. As a result, we do not consider overutilization to be a threat to the continued existence of the Fiji petrel.

C. Disease or Predation

Disease

Although several diseases have been documented in other species of petrels (see Factor C for the Chatham petrel), disease has not been documented in the Fiji petrel. Therefore, we find that disease is not a threat to this species.

Predation

The greatest threat to the long-term survival of the Fiji petrel is thought to be predation on breeding birds and their eggs and chicks by introduced predators such as rats and feral cats on Gau Island (BirdLife International 2000, p. 55). Since nesting colonies of Fiji petrels have not been located, predation on the Fiji petrel has not been directly observed. However, cats and Pacific rats (*Rattus exulans*) have been found in the highland forests of Gau Island, one of the purported breeding areas of the petrel (Imber 1986, as cited in Priddel *et al.* in draft; Watling and Lewanavanua 1985, p. 233). The path to the telecommunications transmitter on the summit of Gau Island may have facilitated the movement of feral cats, and Pacific and brown rats (*R. norvegicus*), into this habitat (Watling 2000, as cited in BirdLife International 2000, p. 55). Feral cats and rats are present in all habitats on Gau Island from the coastal lowlands to the highest ridges and pose a threat to the Fiji petrel in its presumptive breeding sites, as feral cats and rats have caused local extirpations of many petrel species around the world (Moors and Atkinson 1984, as cited in Priddel *et al.* in draft; NZDOC, in litt. 2008, pp. 1–2, 5).

The remains of collared petrels have been found in feral cat scats and killings in the highland forests of Gau Island, where the Fiji petrel may breed. Despite this predation threat, it is suggested that the collared petrel nests successfully due to the species' synchronized nesting (*i.e.,* nesting that occurs at the same time). Synchronized nesting of collared petrels during the first half of the year produces a sudden abundance of eggs and chicks such that local predators (*i.e.,* cats) are unable to prey upon all of them. The collection of a first-flight young of the Fiji petrel on Gau Island in the month of October, however, indicates that this species has a more extended or later breeding season, putting this more sparsely populated species at greater risk of predation (Watling 1986, p. 32). In addition, according to Priddel *et al.* (in draft), there do not appear to be any cliffs or mountainous ledges where Fiji petrels could nest out of the reach of cats or rats.

A feral pig (*Sus scrofa*) population has recently established in southern areas of Gau Island and is considered an emerging threat to the Fiji petrel, as this area of Gau Island includes the main water catchment of the island, one of the purported breeding areas of the species (Priddel *et al.* in draft). Feral pigs have caused the local extinction of other species of seabirds on numerous islands (Moors and Atkinson 1984, as cited in Priddel *et al.* in draft; Carlile and Priddel, in litt. 2008, p. 4).

Protecting Fiji petrel nest sites from introduced predators by creating barriers around the nests is not possible at this time because the exact location of the nesting sites is unknown. There is no information indicating that predator eradication has been attempted on Gau Island. Even if a predator eradication program were to be implemented, protection of the nest sites would be difficult due to the permanent habitation of humans on the island and the concern for free-ranging livestock (Priddel *et al.* in draft). Even if cats were prohibited as pets, there is still a high potential for cats and rats to be transported to Gau Island in boats transporting humans or other shipments.

Because the threat of predation by introduced cats and rats has severely impacted closely related petrel species, and because there are records of these introduced predators as well as feral pigs on Gau Island from the coastal lowlands to the highland forests, the purported breeding sites of the Fiji petrel, we find that predation is a significant threat to the Fiji petrel.

We are unaware of any threats due to predation on Fiji petrels during the nonbreeding season while the species is at sea.

Summary of Factor C

On the basis of this analysis, we find that predation by nonnative predators, such as rats, feral cats, and feral pigs, is a threat to the continued existence of the Fiji petrel throughout all of its breeding range.

D. The Inadequacy of Existing Regulatory Mechanisms

The Fiji petrel is protected from international trade under Fijian law (Government of Fiji 2002, 2003). However, as discussed under Factor B, we do not consider overutilization of the species for commercial, recreational, scientific, or educational purposes, such as international trade, to be a threat to the Fiji petrel. Therefore, this law does not reduce any current threats to the species.

Community awareness of the conservation significance of the Fiji petrel has been promoted in Fiji. From 2002 to 2004, Milika Ratu, a local conservationist on Gau Island, led a ''Pride campaign'' (RARE Conservation 2006a), a constituency-building program developed by the conservation organization RARE (RARE Conservation 2006b). Ratu chose the Fiji petrel as the flagship mascot for this movement and used a series of high-profile activities to raise awareness of the conservation urgency of the species. This campaign resulted in a confirmed sighting of a Fiji petrel (RARE Conservation 2006a). A follow-up survey to the campaign revealed that 99 percent of the participants believed natural resource protection to be important, and 94 percent were aware that the Fiji petrel is at risk of extinction.

Based on increased public awareness of the Pride campaign, all 16 of Gau Island's village chiefs signed a formal agreement supporting the creation of a bird sanctuary for the species (Carlile and Priddel, in litt. 2008, p. 4; RARE Conservation 2006a).

The Australian Regional National Heritage Programme continues to fund the Pride campaign on Gau Island. The Wildlife Conservation Society, BirdLife International, and the National Trust of the Fiji Islands are collaborating to work towards implementation of conservation recommendations made by Ratu, including minimizing predators (RARE Conservation 2006a).

Since 2002, Carlile and Priddel (in litt. 2008, p. 2) have been working with several local organizations and agencies in Fiji, as well as with the people of Gau Island, conducting surveys for the Fiji petrel, developing a draft recovery plan for the petrel, and training the local people in the identification and handling of petrel species in general. The recovery plan, however, has not been officially adopted or sanctioned by the Fijian government and is not legally enforceable (Priddel *et al.* in draft).

Summary of Factor D

Although the Fiji petrel is protected from international trade by Fijian law (Government of Fiji 2002, 2003) and public awareness and support for the species' protection on Gau Island is strong, these conservation measures have not significantly reduced the threats to the species. Therefore, we find that the existing regulatory mechanisms and conservation measures are inadequate to mitigate the current threats to the Fiji petrel throughout its range.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Small Population Size and Restricted Breeding Range

Because of the paucity of recorded sightings of the Fiji petrel (see Range and Distribution), the population is apparently very small. Although the population size is unknown, the IUCN estimates the population to be fewer than 50 individuals, with a decreasing trend due to predation by introduced predators (BirdLife International 2008b; Carlile and Priddel, in litt. 2008, p. 3; Priddel *et al.* in draft). Small population sizes render species vulnerable to any of several risks, including inbreeding depression, loss of genetic variation, and accumulation of new mutations. Inbreeding can have individual or population-level consequences either by increasing the phenotypic expression (the outward appearance or observable structure, function, or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Charlesworth and Charlesworth 1987, p. 231; Shaffer 1981, p. 131). Small, isolated populations of wildlife species are also susceptible to demographic problems (Shaffer 1981, p. 131), which may include reduced reproductive success of individuals and chance disequilibrium of sex ratios.

A general approximation of minimum viable population size is the 50/500 rule (Shaffer 1981, p. 133; Soulé 1980, pp. 160–162). This rule states that an effective population (N_e) of 50 individuals is the minimum size required in the near term to avoid imminent risks from inbreeding. N_e represents the number of animals in a population that actually contribute to reproduction, and is often much smaller than the census, or total number of individuals in the population (N). Furthermore, the rule states that the long-term fitness of a population requires an N_e of at least 500 individuals, so that it will not lose its genetic diversity over time and will maintain an enhanced capacity to adapt to changing conditions. Therefore, an analysis of the fitness of this population would be a good indicator of the species' overall survivability.

Although the current population size of the Fiji petrel is unknown, we presume the population is very small, since recorded sightings of the Fiji petrel are few and IUCN estimates the population to be less than 50 individuals, with a decreasing trend (BirdLife International 2008b; Carlile and Priddel, in litt. 2008, p. 3; Priddel *et al.* in draft). As a result, we presume the size of the Fiji petrel population falls below the minimum effective population size required to avoid imminent risks from inbreeding ($N_e = 50$ individuals). We also presume the population size of the species falls below the upper threshold ($N_e = 500$) required for long-term fitness of a population that will not lose its genetic diversity over time and that will maintain an enhanced capacity to adapt to changing conditions. Therefore, we currently consider the Fiji petrel to be at risk due to lack of near- and long-term viability.

Species with such small population sizes are at greater risk of extinction. In general, the fewer the number of populations and the smaller the size of each population, the higher the probability of extinction (Franklin 1980, pp. 147–148; Gilpin and Soulé 1986, p. 25; Meffe and Carroll 1996, pp. 218–219; Pimm *et al.* 1998, pp. 757–785; Raup 1991, pp. 124–127; Soulé 1987, p. 181). This species' risk of extinction is further compounded by its restricted current breeding range, which according to the best available information is limited to Gau Island, where an estimated 27 mi^2 (70 km^2) of potential breeding habitat is available. However, based on what is known about the species, this is considered a relatively small amount of appropriate habitat for breeding, particularly since breeding pairs, eggs, and nestlings on Gau Island face the pervasive threat of predation by introduced species such as feral cats and rats.

Stochastic Events

The Fiji petrel's restricted breeding range combined with its colonial nesting habits and small population size (estimated to be fewer than 50 birds according to BirdLife International (2008b)) makes the species particularly vulnerable to the threat of adverse random, naturally occurring events (*e.g.,* cyclones, flooding, and landslides) that destroy breeding individuals and their breeding habitat. Fiji is vulnerable to the devastating effects of cyclones inter-annually between November and April. On average, 15 cyclones affect this country each decade (World Meteorological Organization 2004). The most severe cyclone within the past 100 years was cyclone Kina in January 1993, with wind speeds of 120 knots spanning an area 180 mi (290 km) from its center. The Government of Fiji declared the area a disaster, because virtually all areas of Fiji were impacted by this cyclone and the associated flooding (United Nations (UN) Department of Humanitarian Affairs 1993). Landslides are common in Fiji's mountainous areas during these severe weather conditions (World Meteorological Organization 2004), and would be particularly threatening to breeding Fiji petrels and their breeding habitat.

While species with more extensive breeding ranges or higher population numbers could recover from adverse random, naturally occurring events such as cyclones, the Fiji petrel does not have such resiliency. Its very small population size and restricted breeding range puts the species at higher risk for experiencing the irreversible adverse effects of random, naturally occurring events. One such event could destroy the entire breeding population on Gau Island.

Summary of Factor E

On the basis of this analysis, we find a combination of factors—the species' very small population size, the species' restricted breeding range, and the likelihood of adverse random, naturally occurring events—to be a significant threat to the continued existence of the Fiji petrel throughout its range.

Status Determination for the Fiji Petrel

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the Fiji petrel. The species is at risk throughout all of its range primarily due to predation by introduced feral cats, pigs, and rats within the species' breeding range (Factor C). The probability of introduced predators preying on this species is high given that introduced feral cats and rats are present in all habitats on the island of Gau from coastal lowlands to the high interior ridges. Feral cats are documented to prey upon the closely related collared petrel in the interior forests of Gau Island, one of the purported breeding areas of the Fiji petrel. Furthermore, the devastating impact of predation by introduced species has been documented in several closely related species. There is no information indicating that predator eradication has been attempted on Gau Island. This threat is magnified by the fact that these predators likely threaten the species throughout its breeding range on Gau Island. A recently established feral pig population in the southern part of the island potentially threatens the Fiji petrel, particularly if the petrel's breeding habitat is in the main water catchment area of the island, which is in the southern part of Gau Island. Although the Fiji petrel is legally protected from international trade by Fijian law, and public awareness and support for the species' protection on Gau Island is strong, these measures have not significantly reduced the threats to the species (Factor D).

The Fiji petrel's population size is unknown, but, based on the paucity of sightings of this species over the last 150 years, it is believed to be extremely small. BirdLife International (2008b) estimates the population to be fewer than 50 individuals. This low population size puts the species at a high risk of extinction due to the lack of near- and long-term viability (Factor E). The low population size combined with its restricted breeding and colonial nesting habits, typical of all Procellariid species, makes the species particularly vulnerable to the threat of random, naturally occurring events (*e.g.,* cyclones) that are known to occur in Fiji and have the potential to destroy breeding individuals and their breeding habitat (Factor E). One such event, such as a cyclone, during the nesting season could significantly impact eggs and birds in residence at the time of the storm.

Section 3 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'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Because the survival of the Fiji petrel is dependent on recruitment of chicks from its breeding range, the severity of threats to the species within its breeding range, as described above, puts the species in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we determine that the Fiji petrel meets the Act's definition of endangered and warrants protection as an endangered species under the Act.

III. Magenta petrel (*Pterodroma magentae*)

Species Information

The magenta petrel (*Pterodroma magentae*) is a medium-sized, dark gray and white petrel that is native to Chatham Island, New Zealand (BirdLife International 2008c). The magenta petrel is locally known as ''Chatham Island Taiko.'' The species was first taxonomically identified by Giglioli and Salvadori in 1869 (Sibley and Monroe 1990, p. 323).

Habitat and Life History

In general, magenta petrels are considered pelagic, occurring on the open sea generally out of sight of land, where they feed year round. They return to nesting sites on islands during the breeding season where they nest in colonies (Pettingill 1970, p. 206). The limited feeding habits data show that the magenta petrel preys on squid (Heather and Robertson 1997, p. 218; BirdLife International 2008c).

The magenta petrel breeds exclusively on Chatham Island, New Zealand, within relatively undisturbed inland forests (Crockett 1994, pp. 53, 56; Imber *et al.* 1994a, p. 14). It has been reported that prior to 1900, indigenous Moriori and Maori harvested large numbers of petrel chicks for food (Crockett 1994, p. 57).

Range and Distribution

The range of the magenta petrel changes intra-annually based on an established breeding cycle. During the breeding season (September to May) (Imber *et al.* 1994b, p. 64; Taylor 1991, p. 8), breeding birds return to breeding colonies to breed and nest. During the nonbreeding season, birds migrate far from their breeding range where they remain at sea until returning to breed.

BirdLife International (2008c) estimates the range of the magenta petrel to be 7,568,000 mi^2 (1,960,000 km^2); however, BirdLife International (2000, pp. 22, 27) defines ''range'' as the ''Extent of Occurrence, the area contained within the shortest continuous imaginary boundary which can be drawn to encompass all the known, inferred, or projected sites of present occurrence of a species,

excluding cases of vagrancy.'' Therefore, this reported range includes a large area of nonbreeding habitat (*i.e.,* the sea).

The magenta petrel breeds exclusively on Chatham Island, New Zealand (Crockett 1994, pp. 53, 56; Imber *et al.* 1994a, p. 14), the largest island in the Chatham Islands chain, covering 348 mi^2 (900 km^2) (Oceandots n.d.). Based on fossil evidence and historical records, it is believed that the magenta petrel was once the most abundant burrowing seabird on Chatham Island (NZDOC 2001a, p. 5). The type specimen for the magenta petrel was first collected at sea in 1867, and after 10 years of intensive searching the species was rediscovered in 1978 in the southeast corner of Chatham Island (Crockett 1994, pp. 50, 53). Since then, additional searches have resulted in the location and banding of 92 birds (BirdLife International 2008c).

Between 1987 and 2007, the NZDOC located 25 sites occupied by nonbreeding birds, and at least 19 breeding burrows all located near the Tuku-a-Tamatea River (BirdLife International 2007b; Brooke 2004, p. 352; Hilhorst 2000, p. 59; NZDOC, in litt. 2008, p. 2). Although some breeding burrows are on private land (Taylor 2000, p. 139), the majority of known breeding burrows are located within the Tuku Nature Reserve (Reserve) (Chatham Island Taiko Trust 2008d).

The magenta petrel's range at sea is poorly known; however, research has documented foraging behavior south and east of the Chatham Islands (Howell 2005, as cited in BirdLife International 2008c; Imber *et al.* 1994a, p. 14; Taylor 2000, p. 139). In addition, because the original specimen of this species was shot at sea eastwards in the temperate South Pacific Ocean, it is believed birds disperse there during the nonbreeding season.

Population Estimates

The magenta petrel population is extremely small, estimated at 120 to 150 individuals based on population surveys (BirdLife International 2008c; Hilhorst 2000, p. 59). Though the recent (1999–2007) discovery of new burrows and recruitment of birds banded as chicks back to the colony may indicate that the population has stabilized as a direct result of intensive management (NZDOC, in litt. 2008, p. 3), the long-term trend for the species is decreasing due to predation by introduced species (BirdLife International 2008c; NZDOC, in litt. 2008, p. 3).

Conservation Status

The magenta petrel is ranked as ''Nationally Critical'' by the New Zealand Department of Conservation, which is the highest threat category and signifies that the species has a very high risk of extinction in New Zealand (Hitchmough *et al.* 2005, p. 28; Townsend *et al.* 2008, p. 18). The species is considered ''Critically Endangered'' by IUCN because it has ''undergone an extremely rapid historical decline over three generations (60 years). It has an extremely small population and, although the long-term reduction in numbers may have begun to stabilize, it is premature to assume that there is not a continuing decline. Furthermore, it is restricted to just one extremely small location'' (BirdLife International 2008c).

Summary of Factors Affecting the Magenta Petrel

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The range of the magenta petrel changes intra-annually based on an established breeding cycle. During the breeding season (September to May) (Imber *et al.* 1994b, p. 64; Taylor 1991, p. 8), breeding birds return to breeding colonies to breed and nest. During the nonbreeding season, birds migrate far from their breeding range, and they remain at sea until returning to breed. Therefore, our analysis of Factor A is separated into analyses of: (1) The species' breeding habitat and range; and (2) the species' nonbreeding habitat and range.

The magenta petrel breeds exclusively on Chatham Island, New Zealand, within relatively undisturbed inland forests (Crockett 1994, pp. 53, 56; Imber *et al.* 1994a, p. 14). Between 1987 and 2007, the NZDOC located 25 sites occupied by nonbreeding birds, and at least 19 breeding burrows all located near the Tuku-a-Tamatea River (BirdLife International 2007b; Brooke 2004, p. 352; Hilhorst 2000, p. 59; NZDOC, in litt. 2008, p. 2). Although some breeding burrows are on private land (Taylor 2000, p. 139), the majority of known breeding burrows are located within the Tuku Nature Reserve (Reserve) (Chatham Island Taiko Trust 2008d). This Reserve was established in 1984 to protect 2,900 ac (1,238 ha) of habitat for the magenta petrel and other native Chatham Island birds (Chatham Island Taiko Trust 2008d). In 1993, 494 ac (200 ha) of contiguous forested land was added to the Reserve by covenant (Sweetwater Covenant), and a second covenant expected to be approved in the near future will protect an additional 2,718 ac (1,100 ha) of habitat adjacent to the Reserve (Chatham Island Taiko Trust 2008d).

In our December 17, 2007, proposal (72 FR 71298), we identified logging on private lands to be a threat to magenta petrel nest sites. However, based on information provided by the NZDOC during the public comment period, we believe that this activity is not a significant threat to the magenta petrel (NZDOC, in litt. 2008, p. 2). While breeding burrows have been located on private land, the risk of logging activities on these lands impacting magenta petrels is quite low (NZDOC, in litt. 2008, p. 2). The unprotected breeding sites are more than 3 mi (5 km) from existing roads, and the private landowners are fully supportive of the protection of these birds and, therefore, unlikely to log the areas with breeding burrows (NZDOC, in litt. 2008, p. 2). The risk of logging on private land, therefore, is not a threat to the magenta petrel.

On Chatham Island, the significant loss of magenta petrel burrows and colonies historically because of livestock grazing (Crockett 1994, p. 58) demonstrates that habitat alteration severely impacts magenta petrel populations. Natural fires are identified as a threat to the magenta petrel's breeding habitat (BirdLife International 2008c; NZDOC 2001a, p. 7; NZDOC, in litt. 2008, p. 2). Although the species' recovery plan identifies natural fires as a threat to the magenta petrel, it does not address mitigation of this threat (NZDOC 2001a, p. 7). The NZDOC deals with an average of 160 fires in New Zealand each year, suggesting that fires are relatively common in New Zealand (NZDOC n.d.(b)). Taylor (2000, p. 139) and others (Aikman *et al.* 2001, as cited in BirdLife International 2008c; NZDOC, in litt. 2008, p. 2) identify natural flooding of burrows as a threat, given that most known burrows are in wet areas in valley floors. Taylor (2000, p. 139) also notes that destruction of nest sites by pigs and by dogs accompanying pig hunters near the burrows threatens the magenta petrel's breeding habitat. These threats to the magenta petrel's breeding habitat are magnified by the species' restricted habitat area on Chatham Island. Because of the very small number of breeding pairs, any loss of breeders from the population would increase the species' threat of extinction. Therefore, we find that the present or threatened destruction, modification, or curtailment of the magenta petrel's breeding habitat to be a significant threat to the species.

The magenta petrel's range at sea is poorly known; however, research has documented foraging behavior south

and east of the Chatham Islands (Howell 2005, as cited in BirdLife International 2008c; Imber *et al.* 1994a, p. 14; Taylor 2000, p. 139). In addition, because the original specimen of this species was shot at sea eastwards in the temperate South Pacific Ocean, it is believed birds disperse there during the nonbreeding season. We are not aware of any present or threatened destruction, modification, or curtailment of this species' current sea habitat or range.

Summary of Factor A

On the basis of this analysis, we find that the present or threatened destruction, modification, or curtailment of the species' breeding habitat is a threat to the continued existence of the magenta petrel.

B. Overutilization for Commercial, Recreational, Scientific, or Educational

Purposes

We are not aware of any scientific or commercial information that indicates that overutilization of the magenta petrel for commercial, recreational, scientific, or educational purposes poses a threat to this species. As a result, we do not consider overutilization to be a contributing factor to the continued existence of the magenta petrel.

C. Disease or Predation

Disease

Although several diseases have been documented in other species of petrels (see Factor C for the Chatham petrel), disease has not been documented in the magenta petrel. Therefore, we find that disease is not a threat to this species.

Predation

The available information suggests that the most serious threat to the magenta petrel is predation on all life stages (eggs, chicks, and adults) of the species by introduced predators, including feral cats, pigs, rats, and weka (NZDOC, in litt. 2008, p. 2). Permanent eradication of these introduced predators from Chatham Island is difficult due to the permanent habitation of humans on the island. Since the 1980s, however, the NZDOC has monitored known breeding burrows and has implemented an intensive predator control program, including setting extensive trap lines and poisoning to remove introduced predators from the magenta petrel's breeding areas (NZDOC, in litt. 2008, p. 2; Taylor 2000, pp. 140–142). This effort has significantly reduced the threat of predation on adult petrels, with only two being found dead in 20 years, as of the year 2000 (Taylor 2000, p. 140). Loss of chicks by rat predation was a significant problem until 1996. Since then the NZDOC has implemented improved pest management techniques, and only one chick has been lost to predation in the last 11 years at monitored burrows (NZDOC, in litt. 2008, p. 2). The risk to eggs, chicks, and adults at unmonitored sites (undiscovered breeding sites), however, is still very high. In 2001, an adult bird was found dead from cat predation in a newly discovered breeding site (NZDOC, in litt. 2008, p. 2). As additional burrows have been located and protection from predation expanded over the years, breeding has increased and breeding success has improved. In 1994, only 4 breeding pairs were known, but in 2004, 15 breeding pairs were observed (Hilhorst 2000, p. 59; Taylor 2005, as cited in BirdLife International 2007b). The breeding population in the 2007–2008 season was 16 pairs. Last year (2008) was the most successful year to date for the magenta petrel as a record 13 chicks fledged (Chatham Islands Conservation News 2008g; NZDOC, in litt. 2008, p. 5). Seventeen chicks were known to have fledged between 1987 and 1999 (Taylor 2000, p. 138), and within a single year, 2002, a total of seven chicks fledged (BirdLife International 2007b). Eight chicks fledged in the 2005 season, 11 magenta petrel chicks fledged in the 2006 season, and 8 chicks fledged in 2007 (Chatham Island Taiko Trust 2006; NZDOC, in litt. 2008, p. 5).

Even though the predator control program has decreased the threat of predation to the magenta petrel, birds, especially chicks, are still killed by introduced predators, and only areas where petrels are known to breed are protected. Therefore, we find predation by introduced species to be a threat to the magenta petrel.

We are unaware of any threats due to predation on magenta petrels during the nonbreeding season while the species is at sea.

Summary of Factor C

On the basis of this analysis, we find that predation by nonnative predators, such as rats, feral cats, pigs, and weka, is a threat to the continued existence of the magenta petrel throughout all of its breeding range.

D. The Inadequacy of Existing Regulatory Mechanisms

The magenta petrel is protected from disturbance and harvest under New Zealand's Wildlife Act of 1953 and its Reserves Act of 1977. The petrel is designated as ''Nationally Critical'' by the NZDOC, which is the highest threat category and signifies that the species has a very high risk of extinction in New Zealand (Hitchmough *et al.* 2005, p. 28; Townsend *et al.* 2008, p. 18). Access to the breeding sites is strictly controlled (permitted access only for scientific or management purposes). While some illegal visits may occur to the breeding sites, the burrows of this species are located far away from roads on remote trails (more than 1 hour walking distance), and are unlikely to be disturbed (NZDOC, in litt. 2008, p. 3).

In 1998, the Chatham Island Taiko Trust was established to coordinate and administer the activities of the Chatham Island Taiko Expedition and personnel supporting research on the magenta petrel (Chatham Island Taiko Trust 2008b). In addition, the NZDOC developed a 10-year recovery plan for the magenta petrel in 2001, with the goals of preventing further loss of known breeding pairs, maximizing productivity at known breeding burrows, locating and protecting additional burrows, and establishing an additional predator-proof breeding area in southern Chatham Island (NZDOC 2001a, pp. 11–20). New Zealand has implemented management actions for the conservation of the species, including establishment of predator-proof breeding sites, hand-rearing and translocation of chicks to establish additional breeding sites, and broadcasting of magenta petrel calls to attract adults to protected breeding sites (Chatham Islands Conservation News 2008a,f; Chatham Island Taiko Trust 2008a-d; NZDOC 2001a; NZDOC, in litt. 2008, p. 5). A measure of success of the recovery plan has been demonstrated by the successful protection of breeding pairs and increased productivity resulting from predator control efforts (see Factor C). However, the threat of predation on magenta petrels by introduced species remains the greatest threat to the species.

In 2006, a second protected area was established near the southern coast of Chatham Island at a location where magenta petrels were known to have bred in reasonable numbers 90 years ago. This 18.5-ac (7.5-ha) area, protected by landowner covenant, has been fenced to exclude livestock in an effort to allow the forest to recover. Within this fenced area, 7 ac (3 ha) are enclosed by a predator-proof fence. Loudspeakers were placed on the site, and pre-recorded magenta petrel calls are being played to attract young males to the ground, where it is hoped they will begin to dig burrows and eventually find a mate to breed. Remote cameras installed at the Sweetwater Covenant predator-proof site captured the image

of an adult magenta petrel visiting the site in November 2007 (Chatham Islands Conservation News 2008f; NZDOC, in litt. 2008, p. 5). It is too early to know the success of this effort because it is anticipated that it will take several years for breeding to begin once young males start digging burrows. Captive rearing studies of the closely related grey-faced petrel (*Pterodroma macroptera gouldi*) have been undertaken, and its diet analyzed, to develop methods for captive rearing of magenta petrels in captivity should it ever be necessary to 'rescue' abandoned or malnourished magenta petrel chicks (Chatham Islands Conservation News 2008a,f; Chatham Island Taiko Trust 2008a–d; NZDOC 2001a, p. 13).

Summary of Factor D

We believe the regulatory protections conferred by the New Zealand Wildlife and Reserves Acts in combination with the actions implemented for the protection and conservation of the magenta petrel by the New Zealand government under the 2001 recovery plan and by the Chatham Island Taiko Trust provide significant protection to the species. As a result, we believe that existing regulatory protections have significantly reduced the threats from predation by rats, cats, pigs, and weka. However, these threats still exist. Therefore, we find that the inadequacy of existing regulatory mechanisms is a threat to the magenta petrel throughout its range.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Small Population Size and Restricted Breeding Range

The magenta petrel population is extremely small, estimated at 120 to 150 individuals based on population surveys (BirdLife International 2008c; Hilhorst 2000, p. 59). Though the recent (1999–2007) discovery of new burrows and recruitment of birds banded as chicks back to the colony may indicate that the population has stabilized as a direct result of intensive management (NZDOC, in litt. 2008, p. 3), the long-term population trend for the species is decreasing due to predation by introduced species (BirdLife International 2008c; NZDOC, in litt. 2008, p. 3). The fact that it took 10 years of intensive searching to rediscover the species in 1978 is an indication of the rarity of the species.

Small population sizes render species vulnerable to any of several risks, including inbreeding depression, loss of genetic variation, and accumulation of new mutations. Inbreeding can have individual or population-level consequences either by increasing the phenotypic expression (the outward appearance or observable structure, function, or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Charlesworth and Charlesworth 1987, p. 231; Shaffer 1981, p. 131). Small, isolated populations of wildlife species are also susceptible to demographic problems (Shaffer 1981, p. 131), which may include reduced reproductive success of individuals and chance disequilibrium of sex ratios.

In the absence of more species-specific life history data, the 50/500 rule (as explained under Factor E for the Fiji petrel) may be used to approximate minimum viable population sizes. The magenta petrel population is extremely small, estimated at 120 to 150 individuals based on population surveys (BirdLife International 2008c; Hilhorst 2000, p. 59). Although the estimated number of individuals is above the minimum effective population size (N_e = 50 individuals) required to avoid imminent risks from inbreeding according to the 50/500 rule, during the public comment period on our December 17, 2007, proposal (72 FR 71298), we received new species-specific information regarding the threat of inbreeding depression in magenta petrels. The NZDOC (in litt. 2008, p. 5) informed us that a recent conservation genetics study revealed that the magenta petrel gene pool is still fairly diverse but that the tendency for returning chicks to nest close to their natal burrows greatly increases the risk of close relatives interbreeding. The NZDOC has found that in recent seasons where close relatives have interbred, magenta petrels had poor fertility rates (NZDOC, in litt. 2008, p. 5). Furthermore, the estimated number of magenta petrels falls well below the upper threshold (N_e = 500) required for long-term fitness of a population that will not lose its genetic diversity over time and that will maintain an enhanced capacity to adapt to changing conditions. As such, we currently consider the magenta petrel to be at risk due to lack of near- and long-term viability.

Species with such small population sizes are at greater risk of extinction. In general, the fewer the number of populations and the smaller the size of each population, the higher the probability of extinction (Franklin 1980, pp. 147–148; Gilpin and Soulé 1986, p. 25; Meffe and Carroll 1996, pp. 218–219; Pimm *et al.* 1998, pp. 757–785; Raup 1991, pp. 124–127; Soulé 1987, p. 181). This species' risk of extinction is compounded by its restricted breeding range, which is limited to Chatham Island. Based on what is known about the species, the breeding habitat available on Chatham Island is a relatively small area, particularly since breeding pairs, eggs, and nestlings on Chatham Island continue to be threatened by introduced species such as feral cats and rats.

Stochastic Events

The magenta petrel's restricted breeding range combined with its colonial nesting habits and small population size of 120 to 150 birds makes the species particularly vulnerable to the threat of adverse random, naturally occurring events (*e.g.,* storms, fire) that destroy breeding individuals and their breeding habitat (NZDOC 2001a, p. 7; NZDOC, in litt. 2008, p. 2). Fire is a high risk in the Chatham Islands because the climate is very dry during the summer, and the vegetation becomes tinder dry. Burrow-nesting species such as the magenta petrel are at a high risk because they are likely to suffocate from smoke inhalation or to be lethally burned inside or while attempting to escape from their burrows (Taylor 2000, p. 24).

Another natural disaster, severe storms, has impacted New Zealand historically (see Factor E for the Chatham petrel), and so the likelihood of future impacts of storms is high. Although we are unaware of the impact of previous cyclones on the magenta petrel's population numbers or breeding habitat, the severity of the wind or windfalls created by such storms or flooding from rising streams associated with storms has the potential to significantly damage magenta petrel burrows (NZDOC, in litt. 2008, p. 3). These known burrows are particularly vulnerable to flooding because they are located on valley floors (NZDOC 2001a, p. 7).

While species with more extensive breeding ranges or higher population numbers could recover from adverse random, naturally occurring events such as fires or storms, the magenta petrel does not have such resiliency. Its very small population size and restricted breeding range puts the species at higher risk for experiencing the irreversible adverse effects of random, naturally occurring events. While one such event may not destroy the entire known breeding population on Chatham Island, it may significantly impact any eggs and birds in residence at the time of the storm (NZDOC, in litt. 2008, p. 3). Therefore, we find a combination of factors—the species' small population

size, the species' restricted breeding range, and the likelihood of adverse random, naturally occurring events—to be a significant threat to the magenta petrel.

Summary of Factor E

On the basis of this analysis, we find that due to the species' very small population size and restricted breeding range, the continued existence of the magenta petrel is threatened by inbreeding depression and adverse random, naturally occurring events (*e.g.,* storms, fire) that destroy breeding individuals and their breeding habitat.

Status Determination for the Magenta Petrel

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the magenta petrel. The species is at risk throughout all of its range primarily due to predation by introduced species such as rats, feral cats and pigs, and weka (Factor C). These introduced predators are known to destroy magenta petrel eggs, chicks, and adults, reducing the species' population (NZDOC 2001a, p. 7; NZDOC, in litt. 2008, pp. 2–3), which is already very small (estimated at 120 to 150 individuals). The NZDOC has been actively working to protect magenta petrel nest sites from predation by introduced species, and only one chick has been lost to predation in the last 11 years at monitored burrows (NZDOC, in litt. 2008, p. 2). However, the risk to eggs, chicks, and adults at unmonitored sites (breeding burrows that have not yet been located) is still very high.

The regulatory protections conferred by the New Zealand Wildlife and Reserves Acts, in combination with the actions implemented for the protection and conservation of the magenta petrel by the New Zealand government under the 2001 recovery plan and by the Chatham Island Taiko Trust, have significantly reduced the threats from predation by introduced species. However, these threats still exist, and despite the efforts undertaken in New Zealand to address the threats to the magenta petrel, the species has not recovered (Factor D).

The threat of predation by introduced species is magnified by the fact that only a limited amount of breeding habitat is protected from habitat alteration or destruction (Factor A). However, the breeding habitat that is protected remains at risk from accidental fires and stochastic events such as storm-related windfalls and flooding (Factor E).

The magenta petrel's low population size of 120 to 150 individuals puts the species at a high risk of extinction due to the lack of near- and long-term viability (Factor E). The low population size combined with its restricted breeding habitat and colonial nesting habits makes the species particularly vulnerable to the threat of random, naturally occurring events (*e.g.,* fire, cyclones) that are known to occur in New Zealand and have the potential to destroy breeding individuals and their breeding habitat (Factor E). One such event, such as a cyclone during the nesting season, could significantly impact eggs and birds in residence at the time of the storm (NZDOC, in litt. 2008, p. 3).

Inbreeding depression is a potentially significant threat to the magenta petrel (Factor E). A recent genetics study revealed that the magenta petrel gene pool appears to be fairly diverse, although the tendency for returning chicks to nest close to their natal burrows greatly increases the risk of close relatives interbreeding (NZDOC, in litt. 2008, p. 5).

Section 3 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'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Because the survival of the magenta petrel is dependent on recruitment of chicks in its breeding range, the severity of threats to the species within its breeding range, as described above, puts the species in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we determine that the magenta petrel meets the Act's definition of endangered and warrants protection as an endangered species under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and encourages and results in conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas 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. However, given that the Chatham petrel, Fiji petrel, and magenta petrel are not native to the United States, we are not designating critical habitat in this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered and threatened species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. As such, these prohibitions would be applicable to the Chatham petrel, Fiji petrel, and magenta petrel. These prohibitions, under 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered or threatened wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Required Determinations

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by the Office of Management

and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose new 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

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), 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).

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Branch of Listing, Endangered Species Program, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Author

The primary authors of this final rule are staff members of the Division of Scientific Authority, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding new entries for ''Petrel, Chatham,'' ''Petrel, Fiji,'' and ''Petrel, magenta'' in alphabetical order under ''Birds'' to the List of Endangered and Threatened Wildlife 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						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Petrel, Chatham	*Pterodroma axillaris*	Pacific Ocean—New Zealand (Chatham Islands).	Entire	E	763	NA	NA
Petrel, Fiji	*Pseudobulweria macgillivrayi*	Pacific Ocean—Fiji (Gau Island).	Entire	E	763	NA	NA
*	*	*	*	*	*		*
Petrel, magenta	*Pterodroma magentae*	Pacific Ocean—New Zealand (Chatham Islands).	Entire	E	763	NA	NA
*	*	*	*	*	*		*

Dated: August 31, 2009.

Daniel M. Ashe,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–22033 Filed 9–11–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 0809121212–91160–02]

RIN 0648–AX20

Endangered and Threatened Wildlife; Sea Turtle Conservation

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) currently requires the use of chain-mat modified dredge gear in the Atlantic sea scallop fishery south of 41° 9.0' North latitude from May 1 through November 30 each year. This gear is necessary to help reduce mortality and injury to endangered and threatened sea turtles captured in this fishery and to conserve sea turtles listed under the Endangered Species Act. NMFS issues this final rule to make minor modifications to these chain-mat requirements. This final rule clarifies where on the dredge the chain mat must be hung, excludes the sweep from the requirement that the side of each opening in the chain mat be less than or equal to 14 inches (35.5 cm); and adds definitions of the sweep and the diamonds, which are terms used to describe parts of the scallop dredge gear. Any incidental take of threatened sea turtles in Atlantic sea scallop dredge gear in compliance with the gear modification requirements and all other applicable requirements will be exempted from the ESA prohibition against takes.

DATES: Effective October 14, 2009.

ADDRESSES: Copies of the Supplement to the Environmental Assessment/ Regulatory Impact Review prepared for this final rule may be obtained by writing to Ellen Keane, NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Ellen Keane (ph. 978–282–8476, fax 978–281–9394, email *ellen.keane@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico that are listed as endangered. Due to the inability to distinguish between these populations of green turtles away from the nesting beach, NMFS considers green sea turtles endangered wherever they occur in U.S. waters. Kemp's ridley, hawksbill, loggerhead, and green sea turtles are hard-shelled sea turtles.

Under the ESA and its implementing regulations, taking sea turtles under NMFS' jurisdiction, even incidentally, is prohibited, with exceptions identified at 50 CFR 223.206. The incidental take, both lethal and non-lethal, of loggerhead, Kemp's ridley, and unidentified hard-shelled sea turtles as a result of scallop dredging has been observed in the Atlantic sea scallop fishery (Northeast Fisheries Science Center (NEFSC) Fisheries Sampling Branch (FSB), Observer Database). In addition, a non-lethal take of a green sea turtle has been observed in this fishery (NEFSC FSB, Observer Database) and one unconfirmed take of a leatherback sea turtle was reported during the experimental fishery to test the chain-mat modified gear (DuPaul *et al.*, 2004).

Sea turtles caught in scallop dredge gear often suffer injuries. The most commonly observed injury is damage to the carapace. The exact causes of these injuries are unknown, but most likely appear to be from being struck by the dredge (during a tow or upon emptying of the dredge bag on deck), crushed by debris (e.g., large rocks) that collects in the dredge bag, or as a result of a fall during hauling of the dredge. The chain mat is a grid of horizontal and vertical chains hung over the opening of the dredge bag to prevent sea turtles from entering the bag and to prevent injury and mortality that results from such capture (i.e., due to debris in the bag, a fall while emptying the bag, or dropping of the gear on the catch). A full description of the chain mat and the benefits to sea turtles can be found in the proposed and final rules implementing the regulations (72 FR 63537, November 9, 2007; 73 FR 18984, April 8, 2008) and the associated Environmental Assessment (NMFS 2008). Additional information on the background, affected environment, and environmental consequences of this action is included in the preamble to the proposed rule (74 FR 20667, May 5, 2009) and in the Supplement to the Environmental Assessment (NMFS 2009).

This action is being taken under the ESA provisions authorizing the issuance of regulations to conserve threatened species and for enforcement purposes (sections 4(d) and 11(f), respectively). This final rule modifies the existing chain mat regulations that apply to chain-mat modified dredges in the Atlantic sea scallop fishery to: (1) more clearly define where on the dredge gear the chain mat must be hung; (2) exclude the sweep from the requirement that the each side of the opening be 14 inches (35.5 cm) or less; and (3) define the ''sweep'' and the ''diamonds'', which are terms used to describe parts of the scallop dredge gear.

Specifically, the chain-mat regulations now require that, during the time period of May 1 through November 30, any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, that enters waters south of 41°9.0 N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat described as follows. The chain mat must be composed of horizontal (''tickler'') chains and vertical (''up-and down'') chains that are configured such that the openings formed by the intersecting chains have no more than 4 sides. The vertical and horizontal chains must be hung to cover the opening of the dredge bag such that the vertical chains extend from the back of the cutting bar to the sweep. The horizontal chains must intersect the vertical chains such that the length of each side of the openings formed by the intersecting chains is less than or equal to 14 inches (35.5 cm) with the exception of the side of any individual opening created by the sweep. The chains must be connected to each other with a shackle or link at each intersection point. The measurement must be taken along the chain, with the chain held taut, and include one shackle or link at the intersection point and all links in the chain up to, but excluding, the shackle or link at the other intersection point. The action does not change the requirement that any vessel that enters the waters described above and that is required to have a Federal Atlantic sea scallop fishery permit must have the chain mat configuration installed on all dredges for the duration of the trip (50 CFR 223.206 (d)(11)(ii)) or the transiting provision (50 CFR 223.206 (d)(11)(iii).

Comments and Responses

On May 5, 2009, NMFS published a proposed rule which would clarify where on the dredge the chain mat should be hung, exclude the sweep from the requirement that each side of the opening in the chain mat be less than or equal to 14 inches (35.5 cm), and add definitions of the sweep and diamonds (74 FR 20667). Comments on this proposed rule were requested through June 4, 2009. Four comment letters from individuals or organizations were received during the public comment period. One comment letter was related to the Hawaii shallow set longline fishery, and another letter was related to overfishing. These two comment letters are not relevant to the proposed action and are not discussed further. One commenter was generally supportive of the action but provided comments on particular aspects of the rule. One commenter expressed neither support for nor opposition to the action. A complete summary of the comments/issues raised in the relevant comment letters and NMFS' responses, grouped according to general subject matter in no particular order, is provided here.

Comment 1: The commenter supports the refinements. While the proposed changes stating that the chain mat must cover the entire opening of the dredge bag provide more clarity, the exclusion of the sweep from the 14–inch (35.5–cm) requirement is a significant improvement that helps insure the configuration of the chain mat more closely resembles the design that Fisheries Survival Fund developed and tested.

Response: The information available on the size and identification of sea turtles encountered in this fishery and the gear tested during the experimental fishery supports the 14–inch (35.5–cm) requirement. As described in the Supplement to the Environmental Assessment and the proposed rule (74 FR 20667, May 5, 2009), excluding the sweep from the 14–inch (35.5–cm) requirement will only have an inconsequential impact on the degree to which the modified gear provides protection to sea turtles. This change will result in only one slightly larger opening on a subset of dredges used in the fishery, and this increase in size of the opening is small due to the way the gear is configured. For these reasons, this action excludes the sweep from the 14–inch (35.5–cm) requirement.

Comment 2: Applying the 14–inch (35.5–cm) requirement to the sides of

the squares (or triangles) formed by the sweep would mean that the other squares in the mat would have to be significantly smaller than 14–inches (35.5–cm) per side because the sweep hangs in an arc. The commenter claims that the chain mat design, as tested, had openings with sides that exceeded 14 inches (35.5 cm) and yet the test results showed that the device was highly effective in protecting sea turtles by preventing them from entering the dredge bag. For this reason, the commenter agrees that the new rule ''would result in inconsequential impacts on the conservation benefit of the chain mats.''

Response: As described in the Supplement to the EA and the proposed rule (74 FR 20667, May 5, 2009), NMFS identified two alternate ways to configure the gear to comply with the 14–inch requirement throughout the chain mat, including the sweep. One of these would result in smaller openings (approximately 9–10 inches (22.9 25.4 cm) per side) throughout the chain mat. It was never the intention that the requirement result in openings in the chain mat of 9–10 inches (22.9- 25.4 cm) per side. The second way fishermen could comply with the 14–inch requirement including the sweep would be to add a small piece of chain to any opening where the sweep side measured more than 14 inches, dividing the sweep and creating two smaller openings. The number of openings that would require modification with a small piece of chain would be limited to that area along the sweep that is curved.

An image analysis that calculated the length of the sides of the openings created by the intersecting horizontal and vertical chains for an 11–ft chain-mat equipped dredge was completed in 2008. Only a single photograph of one 11–ft dredge was analyzed. The analysis showed that the lengths of the sides of the openings on the image analyzed were both greater than and less than 14 inches (35.5 cm) and that 14 inches (35.5 cm) was within the range of openings tested in the experimental fishery. Based on this information, NMFS re-evaluated the chain mat requirements and found that the available information continues to support an opening of 14 inches (35.5 cm) or less and that the conclusions of the analysis conducted for the April 2008 rule are still valid.

The proposed rule describes the reasons why excluding the sweep from the 14–inch requirement would only result in inconsequential impacts on the conservation benefits of the chain mats. In general, there may only be one slightly larger opening on a subset of dredges used in the fishery and the increase in the size of that opening is small due to the way the gear is configured. Therefore, the conservation benefits to sea turtles are essentially the same. It is unlikely that a sea turtle that would be excluded by a square with 14 inches (35.5 cm) per side would encounter and pass through the one slightly larger opening present on some dredges.

Comment 3: The commenter requests that NMFS consider that any vessel leaving a mid-Atlantic port for a Georges Bank access area trip would have to install the chains to transit the regulated area, uninstall them at sea to fish, and then reinstall them for the return voyage. The commenter claims that the alleged lack of a transit provision an exemption for vessels embarking on a declared access area trip outside the regulated area serves no purpose. All vessels have a Vessel Monitoring System (VMS), and it would be an easy matter to know if vessels were fishing in the mid-Atlantic. Enforcement officials would be able to confirm that the vessel was declared into an access program.

Response: The current chain-mat regulations have a transiting provision, allowing transiting vessels to be exempted from the requirements provided the dredge gear is stowed and there are no scallops on-board. A vessel leaving a port in the mid-Atlantic would not need to install the gear while transiting to the fishing grounds provided it met those conditions of the transiting provision. As a consequence of this provision, vessels fishing north of the line would need to either land the catch north of the line or install chain mats before transiting back through the regulated area with scallops on-board.

It is possible to determine if the vessel has declared into an access area. However, the northern boundary of the chain-mat regulation divides the Closed Area I (CAI) and Closed Area II (CAII) Scallop Access Areas. Therefore, vessels fishing in CAI or CAII may or may not be within the regulated area. The VMS regulations require scallop vessels to be responsible for position reports ''at least twice per hour.'' Although speed and vessel tracklines might indicate fishing activity, half-hour polls alone do not provide a full picture of where the vessel was between polls. Therefore, increased polling would be necessary to determine where the vessel was fishing. At this time, increased polling is not possible because the current technology provided by the VMS vendors does not support changing the reporting rate by fishery declaration. Before a vessel starts a trip, it must declare whether the trip will be general category or limited access and the area in which it will fish. The vendors do not have the capacity to sort through the declarations and target polling intervals accordingly. In addition, it is more enforceable during an at-sea boarding to have the requirement that the chain-mat gear be installed as the boarding officer would not need to make the determination whether the vessel is or recently has been fishing or is only transiting. For these reasons, NMFS is not modifying the transiting provision with this action.

Comment 4: There are no objectionable vessel safety or enforcement concerns with the proposed rule.

Response: NMFS concurs with this comment.

Changes From the Proposed Rule

No changes have been made from the proposed rule (74 FR 20667, May 5, 2009).

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis is not required and none has been prepared.

Literature Cited

DuPaul, W. D., D. B. Rudders, and R. J. Smolowitz. 2004. Industry trials of a modified sea scallop dredge to minimize the catch of sea turtles. Final Report. November 2004. VIMS Marine Resources Report, No. 2004 12. 35 pp.

NMFS (National Marine Fisheries Service). 2008. Final Environmental Assessment and Regulatory Impact Review/Regulatory Flexibility Act Analysis of Sea Turtle Conservation Measures for the Atlantic Sea Scallop Dredge Fishery. NOAA, NMFS Northeast Regional Office. Gloucester, MA. 152 pp.

NMFS (National Marine Fisheries Service). 2009. Final Supplement to the Environmental Assessment/Finding of No Significant Impact and Regulatory Impact Review for Sea Turtle Conservation Measures for the Atlantic Sea Scallop Dredge Fishery. NOAA, NMFS Northeast Regional Office. Gloucester, MA. 26 pp.

List of Subjects in 50 CFR Parts 222 and 223

Endangered and threatened species.

Dated: September 8, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set forth in the preamble, 50 CFR parts 222 and 223 are amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

■ 1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

■ 2. In § 222.102, the definition of ''Diamonds'' and ''Sweep'' are added in alphabetical order to read as follows:

§ 222.102 Definitions.

* * * * *

Diamonds, with respect to dredge or dredge gear as defined in this section, means the triangular shaped portions of the ring bag on the ''dredge bottom'' as defined in 50 CFR 648.2.

* * * * *

Sweep, with respect to dredge or dredge gear as defined in this section, means a chain extending, usually in an arc, from one end of the dredge frame to the other to which the ring bag, including the diamonds, is attached. The sweep forms the edge of the opening of the dredge bag.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 et. seq.; 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 4. In § 223.206, paragraph (d)(11)(i) is revised to read as follows:

§ 223.206 Exemptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(11) *Restrictions applicable to sea scallop dredges in the mid-Atlantic*—(i) *Gear Modification.* During the time period of May 1 through November 30, any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, that enters waters south of 41° 9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat described as follows. The chain mat must be composed of horizontal (''tickler'') chains and vertical (''up-and-down'') chains that are configured such that the openings formed by the intersecting chains have no more than 4 sides. The vertical and horizontal chains must be hung to cover the opening of the dredge bag such that the vertical chains extend from the back of the cutting bar to the sweep. The horizontal chains must intersect the vertical chains such that the length of each side of the openings formed by the intersecting chains is less than or equal to 14 inches (35.5 cm) with the exception of the side of any individual opening created by the sweep. The chains must be connected to each other with a shackle or link at each intersection point. The measurement must be taken along the chain, with the chain held taut, and include one shackle or link at the intersection point and all links in the chain up to, but excluding, the shackle or link at the other intersection point.

* * * * *

[FR Doc. E9–22039 Filed 9–11–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 176
Monday, September 14, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AL93

Absence and Leave; Sick Leave

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U. S. Office of Personnel Management (OPM) is issuing proposed regulations to modify definitions related to family member and immediate relative in 5 CFR part 630 for purposes of use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer. These changes would implement Section 1 of the President's June 17, 2009 Memorandum on Federal Benefits and Non-Discrimination and ensure that agencies are considering the needs of a widely diverse workforce and providing the broadest support possible to employees to help them balance their increasing work, personal, and family obligations.

DATES: Comments must be received on or before November 13, 2009.

ADDRESSES: You may submit comments, identified by RIN number ''3206–AL93,'' using either of the following methods:

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

Mail: Jerome D. Mikowicz, Deputy Associate Director, Center for Pay and Leave Administration, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to modify definitions related to family member and immediate relative in 5 CFR part 630 for purposes of use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer. These regulations would ensure that agencies are considering the needs of a widely diverse workforce and providing the broadest support possible to employees to help them balance their increasing work requirements and personal and family obligations. As part of OPM's continued efforts to support the needs of the Federal workforce during times of sickness, funerals, and medical or other emergencies, we are proposing to make the definitions of *family member* and *immediate relative* more explicit to include more examples of relationships that are covered under the phrase ''[a]ny individual related by blood or affinity'' whose close association with the employee is the equivalent of a family relationship. These examples include step-parents and step-children, grandparents, grandchildren, and same-sex and opposite-sex domestic partners. By making the definitions of *family member* and *immediate relative* more explicit, we ensure more consistent application of policy across the Federal Government, implement the Section 1 of the President's June 17, 2009 Memorandum on Federal Benefits and Non-Discrimination, and set an example of the Federal Government as a model employer of a diverse workforce.

Background

The current definition of *family member* in 5 CFR 630.201 and 630.902 was derived from the definition of *immediate relative* used to reflect the provisions of 5 U.S.C. 6326 for funeral leave. (See 34 FR 13655, August 26, 1969.) In the Civil Service Commission's (CSC's and now OPM's) funeral leave regulations for immediate relatives of members of the Armed Forces who died as a result of wounds, disease, or injury incurred while serving in a combat zone, the CSC recognized that there were many cases in which an employee's close relationship to another person was equivalent to a family relationship, although a blood relationship did not exist. Examples provided in the regulations included foster children and stepchildren. Therefore, in the current definition of *immediate relative* for funeral leave purposes, and in the definition of *family member* for purposes of sick leave, voluntary leave transfer, voluntary leave bank, and the emergency leave transfer programs, we included ''[a]ny individual related by blood or affinity'' whose close association with another person is the equivalent of a family relationship. At that time, the CSC provided no further guidance on what relationships would be covered under this category. The intent was for agencies to make the determination on a case-by-case basis based on the close relationship of the employee to the other individual, which might vary from employee to employee. The CSC did not believe it was necessary then to make these two definitions more specific.

However, because of the lack of more specific examples, administration and the approval of leave across and within agencies have been inconsistent. Where agencies have created their own written policies defining whom they include in the category of individuals related by blood or affinity whose close association with another individual is equivalent to a family relationship, implementation necessarily differs from agency to agency. In other cases, moreover, agencies have no written policies, and it then falls to an employee's supervisor to make determinations without consistent overarching guidance. In order to provide more equitable and consistent Governmentwide administration of the leave programs, we believe it is important to define additional categories of individuals who are covered when relying on the phrase ''[a]ny individual related by blood or affinity'' whose close association with the employee is the equivalent of a family relationship.

With America's changing demographics and socio-economic trends, employees have increasing personal needs and family care obligations. Two-parent families often need both parents to be engaged in the workforce, and many parents raise children in single-parent homes. Employees face increasing demands to provide care to aging relatives or other family members outside of the nuclear family. OPM believes it is important to address the needs of a more diverse workforce. By ensuring consistent policies within the Federal Government

we set an example as the model employer of a diverse workforce.

In order to strengthen Government support for employees and help them balance their increasing work, personal, and family obligations, we are revising and adding to the definitions in 5 CFR part 630, subparts B, H, I, J, and K, to specify more of the types of relationships for which employees may use leave under these regulations.

Our proposed changes do not apply to the Family and Medical Leave Act (FMLA). The situations in which an employee can invoke FMLA leave and the individuals for whom an employee can provide care under FMLA are specified in law.

We are not re-defining the phrase ''[a]ny individual related by blood or affinity'' whose close association with the employee is the equivalent of a family relationship. We have broadly interpreted the phrase in the past to include such relationships as grandparent and grandchild, brother and sister-in-law, fiancé(e), cousin, aunt and uncle, other relatives outside definitions (1)–(4) in current 5 CFR 630.201 and 630.902, and close friend, to the extent that the connection between the employee and the individual was significant enough to be regarded as having the closeness of a family relationship even though the individuals might not be related by blood or formally in law. The current definition is not altered by the changes we are proposing, and the above list is not intended to be exhaustive, but illustrative. The purpose of the amendments we are proposing to the current definitions of *family member* and *immediate relative* is to make the application of the leave program across the Federal Government as uniform as possible, to implement Section 1 of the President's June 17, 2009 Memorandum on Federal Benefits and Non-Discrimination, and to continue to cover significant relationships.

Definitions

OPM's proposed regulations would amend the definition of *family member* in part 630, subparts B (Definitions and General Provisions for Annual Leave and Sick Leave) and I (Voluntary Leave Transfer) and *immediate relative* in subpart H (Funeral Leave); and include new definitions for *committed relationship, domestic partner, parent,* and *son or daughter.* We are also making conforming changes to subparts J (Voluntary Leave Bank Program) and K (Emergency Leave Transfer Program) because both subparts reference the current definition of *family member.* The definitions are being changed as follows.

The current definition of *family member* at 5 CFR 630.201 and 5 CFR 630.902 reads—

''*Family member* means the following relatives of the employee:

''(1) Spouse, and parents thereof;

''(2) Children, including adopted children and spouses thereof;

''(3) Parents;

''(4) Brothers and sisters, and spouses thereof; and

''(5) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.''

We are modifying the definition of *family member* to include domestic partners, grandparents, and grandchildren. Our proposed definition reads—

''*Family member* means an individual with any of the following relationships to the employee:

''(1) Spouse, and parents thereof;

''(2) Sons and daughters, and spouses thereof;

''(3) Parents, and spouses thereof;

''(4) Brothers and sisters, and spouses thereof;

''(5) Grandparents and grandchildren, and spouses thereof;

''(6) Domestic partner, including domestic partners of any individual in paragraphs (2)–(5) of this definition; and

''(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.''

We are also defining the terms *committed relationship, domestic partner, parent,* and *son or daughter.* The proposed definition of *domestic partner* reads—

''*Domestic partner* means an adult in a committed relationship with another adult, including both same sex and opposite sex relationships.

Committed relationship means that the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a state or by the District of Columbia as a marriage or analogous relationship (including, but not limited to a civil union).

The proposed definition of *parent* reads—

''*Parent* means—

''(1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;

''(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or

''(3) A person who stands in loco parentis to the employee or stood in loco parentis to the employee when the employee was a minor or required someone to stand in loco parentis.

''(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner.''

Finally, we are also proposing a definition of *son or daughter,* which reads—

''*Son or daughter* means—

''(1) A biological, adopted, step, or foster son or daughter of the employee;

''(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

''(3) A person for whom the employee stands in loco parentis or stood in loco parentis when that individual was a minor or required someone to stand in loco parentis; or

''(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner.''

We are also proposing a new definition of *immediate relative* for the purposes of funeral leave under subpart H, which uses the same categories of relationship as the definition of *family member.* In order to be consistent with the definition of *family member* of subparts B and I, we are also taking the opportunity to write the definition of *immediate relative* in the present tense and to define *immediate relative* by relationship to the employee rather that by relationship to the deceased. The proposed definition reads—

''*Immediate relative* means an individual with any of the following relationships to the employee:

''(1) Spouse, and parents thereof;

''(2) Sons and daughters, and spouses thereof;

''(3) Parents, and spouses thereof;

''(4) Brothers and sisters, and spouses thereof;

''(5) Grandparents and grandchildren and spouses thereof;

''(6) Domestic partner, including domestic partners of any individual in paragraphs (2)–(5) of this definition; and

''(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.''

In the Voluntary Leave Transfer Program regulations in 5 CFR part 630,

subpart I, we are proposing the same change to the definition of *family member* and the addition of the same definitions of *committed relationship, domestic partner, parent,* and *son or daughter* as we are proposing in 5 CFR 630.201. In the voluntary leave bank and emergency leave transfer programs, we are referencing the changes we are making in the definitions section of the voluntary leave transfer program.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR 630

Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 630 as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.205 also issued under Pub. L. 108–411, 118 Stat 2312; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410 and Pub. L. 108–411, 118 Stat 2312; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

2. In § 630.201, paragraph (b) is amended by revising the definition of *family member* and by adding definitions of *committed relationship, domestic partner, parent,* and *son or daughter* to read as follows:

§ 630.201 Definitions.

* * * * *

(b) * * *

Committed relationship means that the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a state or by the District of Columbia as a marriage or analogous relationship (including, but not limited to a civil union).

Domestic partner means an adult in a committed relationship with another adult, including both same sex and opposite sex relationships.

* * * * *

Family member means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner, including domestic partners of any individual in paragraphs (2)–(5) of this definition; and

(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

* * * * *

Parent means—

(1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;

(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or

(3) A person who stands in loco parentis to the employee or stood in loco parentis to the employee when the employee was a minor or required someone to stand in loco parentis.

(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner.

* * * * *

Son or daughter means—

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands in loco parentis or stood in loco parentis when that individual was a minor or required someone to stand in loco parentis; or

(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner.

* * * * *

3. In § 630.803, revise the definition of *immediate relative* and add definitions of *committed relationship, domestic partner, parent,* and *son or daughter* to read as follows:

§ 630.803 Definitions.

* * * * *

Committed relationship means that the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a state or by the District of Columbia as a marriage or analogous relationship (including, but not limited to a civil union).

Domestic partner means an adult in a committed relationship with another adult, including both same sex and opposite sex relationships.

* * * * *

Immediate relative means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner, including domestic partners of any individual in paragraphs (2)–(5) of this definition; and

(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Parent means—

(1) A biological, adoptive, step, or foster parent of the employee;

(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or

(3) A person who stands in loco parentis to the employee or stood in loco parentis to the employee when the employee was a minor or required someone to stand in loco parentis.

(4) A parent, as described in paragraphs (1) through (3) of this

definition, of an employee's domestic partner.

Son or daughter means—

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands in loco parentis or stood in loco parentis when that individual was a minor or required someone to stand in loco parentis; or

(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner.

4. In § 630.902, revise the definition of *family member* and add definitions of *committed relationship, domestic partner, parent,* and *son or daughter* to read as follows:

§ 630.902 Definitions.

* * * * *

Committed relationship means that the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a state or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

Domestic partner means an adult in a committed relationship with another adult, including both same sex and opposite sex relationships.

* * * * *

Family member means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner, including domestic partners of any individual in (2)–(5) above; and

(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

* * * * *

Parent means—

(1) A biological, adoptive, step, or foster parent of the employee;

(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or

(3) A person who stands in loco parentis to the employee or stood in loco parentis to the employee when the employee was a minor or required someone to stand in loco parentis.

(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner.

* * * * *

Son or daughter means—

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands in loco parentis or stood in loco parentis when that individual was a minor or required someone to stand in loco parentis; or

(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner.

5. In § 630.1002, add the definitions of *committed relationship, domestic partner, parent,* and *son or daughter* to read as follows:

§ 630.1002 Definitions.

* * * * *

Committed relationship has the meaning given that term in subpart I of this part.

Domestic partner has the meaning given that term in subpart I of this part.

* * * * *

* * * * *

Parent has the meaning given that term in subpart I of this part.

* * * * *

Son or daughter has the meaning given that term in subpart I of this part.

6. In § 630.1102, add the definitions of *committed relationship, domestic partner, parent,* and *son or daughter* to read as follows:

§ 630.1102 Definitions.

* * * * *

Committed relationship has the meaning given that term in subpart I of this part.

* * * * *

Domestic partner has the meaning given that term in subpart I of this part.

* * * * *

Parent has the meaning given that term in subpart I of this part.

Son or daughter has the meaning given that term in subpart I of this part.

* * * * *

[FR Doc. E9–22030 Filed 9–11–09; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 875

RIN 3206–AL92

Federal Long Term Care Insurance Program: Eligibility Changes

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed regulation.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed regulation to expand eligibility to apply for coverage under the Federal Long Term Care Insurance Program (FLTCIP). Under the proposed regulation, the definition of ''qualified relative'' is expanded to cover the same-sex domestic partners of eligible Federal and U.S. Postal Service employees and annuitants. The proposed regulation will help agencies address the family needs of an increasingly diverse workforce, and will enhance the Federal Government's ability to compete with the private sector for talent.

DATES: OPM must receive comments on or before November 13, 2009.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* John Cutler, Senior Policy Analyst, Insurance Policy Group, Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street, NW., Room 3415, Washington, DC 20415; or deliver to OPM, Room 3415, 1900 E Street, NW.; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: John Cutler, at *john.cutler@opm.gov* or (202) 606–0735.

SUPPLEMENTARY INFORMATION: The President's Memorandum of June 17, 2009, on Federal Benefits and Non-Discrimination requests that the Office of Personnel Management (OPM) extend certain benefits that can be provided to same-sex domestic partners of Federal employees consistent with Federal law. In response, OPM is proposing a regulatory change to expand eligibility to apply for coverage under the Federal Long Term Care Insurance Program

(FLTCIP). The purpose of the change is to enhance the ability of Federal agencies to provide for the needs of an increasingly diverse workforce, and to assist the Federal Government in competing with the private sector for talent. To promote both of these policies, OPM proposes to expand the term ''qualified relative'' to include additional individuals who are same-sex domestic partners and whose close association with the employee or annuitant constitutes a family relationship.

Currently, a ''qualified relative'' is defined to include:

- The spouse of an employee, annuitant, member of the uniformed services or retired member of the uniformed services;
- A parent, stepparent or parent in-law of an employee or member of the uniformed services;
- An adult child (natural, step or adopted) of an employee, annuitant, member of the uniformed services, or retired member of the uniformed services if such a child is at least age 18.

The proposed regulatory change will expand the definition of ''qualified relative'' under 5 U.S.C. 9001(5)(D) to provide eligibility to apply for FLTCIP coverage to the same-sex domestic partners of Federal and U.S. Postal Service employees and annuitants. Opposite-sex domestic partners are not included in the proposed regulation because they may obtain eligibility for federal long term care insurance through marriage, an option not currently available to same-sex domestic partners.

In order to demonstrate eligibility to apply for coverage under the FLTCIP, individuals will be required to provide documentation to establish they meet the criteria for domestic partners.

OPM's proposed regulations will not only modernize FLTCIP and provide for workforce equity, but also will make the Federal Government more competitive in recruiting and retaining highly qualified employees. A majority of Fortune 500 companies and thousands of smaller companies already provide the same-sex domestic partners of their employees with access to a variety of insurance benefits that are available to other family members. Such benefits also are provided by public-sector entities such as state and local governments, and by colleges and universities. The extension of such benefits to Federal employees would help the government compete for talent.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only adds an additional group to the list of groups eligible to apply for coverage under the FLTCIP. The FLTCIP is a voluntary, self-pay benefits program with no Government contribution.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local or tribal governments.

List of Subjects in 5 CFR Part 875

Administrative practices and procedures, Employee benefit plans, Government contracts, Government employees, health insurance, military personnel, organization and functions, retirement.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM proposes to amend 5 CFR part 875, as follows:

PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM

1. The authority citation for 5 CFR part 875 continues to read as follows:

Authority: Authority: 5 U.S.C. 9008.

2. Add a new § 875.213 as follows:

§ 875.213 May I apply as a qualified relative if I am the domestic partner of an employee or annuitant?

(a) You may apply for coverage as a qualified relative if you are a domestic partner, as described in paragraph (b) of this section. As prescribed by OPM, you will be required to provide documentation to demonstrate that you meet these requirements.

(b) For purposes of this part, the term ''domestic partner'' is a person in a domestic partnership with an employee or annuitant of the same sex. The term ''domestic partnership'' is defined as a committed relationship between two adults, of the same sex, in which the partners—

(1) Are each other's sole domestic partner and intend to remain so indefinitely;

(2) Have a common residence, and intend to continue the arrangement indefinitely;

(3) Are at least 18 years of age and mentally competent to consent to contract;

(4) Share responsibility for a significant measure of each other's financial obligations;

(5) Are not married to anyone else;

(6) Are not a domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the State in which they reside;

(8) Will certify they understand that willful falsification of the documentation described in paragraph (a) of this section may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification and may constitute a criminal violation under *18 U.S.C. 1001.*

[FR Doc. E9–22028 Filed 9–11–09; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 214 and 274a

[CIS No. 2758–08; DHS Docket No. USCIS–2008–0035]

RIN 1615–AB75

E–2 Nonimmigrant Status for Aliens in the Commonwealth of the Northern Mariana Islands With Long-Term Investor Status

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) is proposing to amend its regulations governing E–2 nonimmigrant treaty investors to establish procedures for classifying long-term investors in the Commonwealth of the Northern Mariana Islands (CNMI) as E–2 nonimmigrants. This proposed rule implements the CNMI nonimmigrant investor visa provisions of the Consolidated Natural Resources Act of 2008 extending the immigration laws of the United States to the CNMI.

DATES: Written comments must be submitted on or before October 14, 2009.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2008–0035 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* You may submit comments directly to USCIS by e-mail at

rfs.regs@dhs.gov. Include DHS Docket No. USCIS–2008–0035 in the subject line of the message.

• *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2008–0035 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.

• *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Contact telephone number is (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Steven W. Viger, Office of Policy & Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529–2140 telephone (202) 272–1470.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. The Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) also invite comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to DHS will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2008–0035. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2140.

II. Background

The Commonwealth of the Northern Mariana Islands (CNMI) is a U.S. territory located in the western Pacific that has been subject to most U.S. laws for many years. However, the CNMI has administered its own immigration system under the terms of its 1976 covenant with the United States. *See* A Joint Resolution To Approve the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, (the Covenant Act), Public Law 94–241, sec. 1, 90 Stat. 263, 48 U.S.C. 1801 note (1976). On May 8, 2008, former President Bush signed into law the Consolidated Natural Resources Act of 2008 (CNRA). *See* Public Law 110–229, Title VII, 122 Stat. 754, 853 (2008). Title VII of the CNRA extends U.S. immigration laws to the CNMI with transition provisions unique to the CNMI. The stated purpose of the CNRA is to ensure effective border control procedures, to properly address national security and homeland security concerns by extending U.S. immigration law to the CNMI (phasing-out the CNMI's nonresident contract worker program while minimizing to the greatest extent practicable the potential adverse economic and fiscal effects of that phase-out), and to maximize the CNMI's potential for future economic and business growth.

Since 1978, the CNMI has admitted a substantial number of foreign workers from China, the Philippines, and other countries through an immigration system that provides a permit program for foreigners entering the CNMI, such as visitors, investors, and workers. In fact, foreign workers under this program represent a majority of the CNMI labor force. Such workers outnumber U.S. citizens and other local residents in most industries central to the CNMI's economy. Currently, the CNMI faces serious economic challenges, including a substantial decline in the garment industry and fluctuation in the tourism industry.[1]

Title VII of the CNRA became effective approximately one year after the date of enactment, subject to certain transition provisions unique to the CNMI. On March 31, 2009, DHS announced that the Secretary of Homeland Security, in her discretion under the CNRA, had extended the effective date of the transition program from June 1, 2009 (the first day of the first full month that commences one year from the date of enactment of the CNRA) to November 28, 2009. *http://www.dhs.gov/ynews/releases/pr_1238533954343.shtm.* The transition period concludes on December 31, 2014. The law also contains several CNMI-specific provisions affecting foreign workers and investors during the transition period. These temporary provisions are intended to provide for an orderly transition from the CNMI permit system to the INA and to mitigate potential harm to the CNMI economy before these foreign workers and investors are required to obtain U.S. immigrant or nonimmigrant visa classifications. *See* Section 6(d)(1) or (2) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229 (cited herein as ''§ 702 of the CNRA'').

Among the CNMI-specific provisions applicable during the transition period is a provision authorizing the Secretary of Homeland Security to classify an alien foreign investor in the CNMI as a CNMI-only ''E–2'' nonimmigrant investor under section 101(a)(15)(E)(ii) of the INA, 8 U.S.C. 1101(a)(15)(E)(ii). This status is provided upon application of the alien and notwithstanding the treaty requirements otherwise applicable. *See* § 702 of the CNRA. Eligible investors are those who:

• Were admitted to the CNMI in long-term investor status under CNMI immigration law before the transition program effective date;

• Have continuously maintained residence in the CNMI under long-term investor status;

• Are otherwise admissible to the United States under the INA; and

• Maintain the investment(s) that formed the basis for the CNMI long-term investor status.

DHS is required to promulgate implementing regulations no later than 60 days before the transition program effective date. *See id.*

Under the CNMI's current foreign investor programs, foreign investors can apply for the following entry permits:

• Foreign Investor Entry Permit, 4 N. Mar. I. Code section 5951 *et seq.* (2007), 5 N. Mar. I. Admin. Code section 5–40.3–240(g) (2009);

• Retiree Investor Entry Permit, 4 N. Mar. I. Code section 50101 *et seq.,* 5 N. Mar. I. Admin. Code section 5–40.3–240(o) (2009); and

• Long-Term Business Entry Permit, 4 N. Mar. I. Code section 5941 *et seq.,* 5 N. Mar. I. Admin. Code section 5–40.3–240(n) (2009).

Foreign investors may also obtain short-term or regular-term business

[1] GAO, *Commonwealth of the Northern Mariana Islands: Pending Legislation Would Apply U.S. Immigration Law to the CNMI with a Transition Period,* GAO–08–466 (Washington, DC: Mar. 18, 2008); GAO, *U.S. Insular Areas: Economic, Fiscal, and Accountability Challenges,* GAO–07–119 (Washington, DC: Dec. 12, 2006); and GAO, *Commonwealth of the Northern Mariana Islands: Serious Economic, Fiscal, and Accountability Challenges,* GAO–07–746T (Washington, DC: Apr. 19, 2007).

entry permits, may be authorized to enter the CNMI under its permit waiver program, or may invest without entering the CNMI.

The CNMI currently has a Foreign Investor Entry Permit available for an indefinite period of time to individuals who submit evidence of good moral character and who meet all of the requirements for the foreign investment certificate. These foreign investors must maintain an investment of at least $250,000 by an individual in a single investment or $100,000 per person in an aggregate investment exceeding $2 million. CNMI regulations for foreign investors also require a $100,000 security deposit. *See* 4 N. Mar. I. Code section 5951 *et seq.; see also* 5 N. Mar. I. Admin. Code section 5–40.3–240(g) (2009).

The CNMI also offers a Retiree Investor Entry Permit requiring a minimum investment of $100,000 in residential property on Saipan or $75,000 on the islands of Tinian or Rota by an applicant 55 years or older. Previously, the CNMI issued a different Retiree Investor Entry Permit to foreign investors over the age of 55 years; the previous certificate was issued for an unlimited term if the investor had invested and maintained a minimum of $150,000 in an approved residence to live in the CNMI.

The CNMI also has a Two-Year Foreign Retirees Investment Certification that is limited to Japanese nationals only, which allows retirees over the age of 55 years to live in the CNMI for a period not to exceed two years, during which each applicant makes a minimum investment in a residence equivalent to $1,500 in monthly lease or rent. This certificate is not renewable. *See* 4 N. Mar. I. Code 50101 *et seq.*

In addition, the CNMI's Long-Term Business Entry Permit for holders of long-term business certificates is valid for two years and requires an investment of at least $150,000 in a public organization or at least $250,000 in a private investment. Each applicant alien also must provide the CNMI with a security deposit of $25,000. *See* 4 N. Mar. I. Code section 5941 *et seq., see also* 5 N. Mar. I. Admin. Code section 5–40.3–240(n) (2009)

Under U.S. immigration law, foreign investors may enter the United States as nonimmigrants within the treaty investor classification with an ''E–2'' visa, or may change to E–2 treaty investor nonimmigrant status from within the United States. *See* INA sec. 101(a)(15)(E)(ii), 8 U.S.C. 1101(a)(15)(E)(ii); *see also* 8 CFR 214.2(e). To qualify for E–2 treaty investor status, treaty investors must invest a substantial amount of capital in a bona fide enterprise in the United States, must be seeking entry solely to develop and direct the enterprise, and must intend to depart the United States when their treaty investor status ends. Treaty investors must be nationals of a country with which the United States has a treaty of friendship, commerce, or navigation and must be entering the United States pursuant to treaty provisions.

This rule proposes to establish procedures for foreign investors in the CNMI to obtain nonimmigrant status within the E–2 treaty investor classification, in accordance with the CNRA. USCIS refers to this special group of E–2 treaty investors as ''E–2 CNMI Investors.'' With E–2 CNMI Investor nonimmigrant status, eligible CNMI investors would be able to remain in the CNMI for the duration of the transition period as investors under E–2 CNMI status, and to exit and enter the CNMI with valid E–2 CNMI Investor visas. The proposed rule is intended to provide a smooth transition for existing CNMI investors and to mitigate potential adverse consequences to the CNMI economy if the current investments could not be maintained as a basis for immigration status during the transition period because of the different provisions of the INA. At the end of the transition period, E–2 CNMI Investors and qualifying spouses and children must qualify for and obtain an appropriate immigrant or nonimmigrant status under the INA in order to remain in the CNMI or to enter the CNMI after a departure.

III. Proposed E–2 CNMI Investor Program

A. Eligibility Requirements

The proposed rule incorporates into DHS's immigration regulations the statutory eligibility requirements for E–2 CNMI Investor nonimmigrant status. *See* proposed 8 CFR 214.2(e)(23)(i). In order to be eligible for E–2 CNMI Investor nonimmigrant status, USCIS proposes to require that an alien must:

- Have been admitted to the CNMI in ''long term investor'' status before the transition program effective date;
- Have continuously maintained residence in long term investor status;
- Maintain an investment or investments forming the basis for such long term investment status; and
- Be otherwise admissible to the United States under the INA.

1. CNMI Admission

To qualify for E–2 CNMI Investor status, an alien must have been lawfully admitted to the CNMI under one of the eligible CNMI long-term investor classifications before the transition program effective date, now November 28, 2009. This proposed rule would not require the status to have been granted before the enactment date of the CNRA (May 8, 2008), but does provide that the eligible CNMI long-term investor classifications shall be only those in effect as of May 8, 2008. Such a limitation is necessary to create a practicable baseline for this rule that conforms with Congress' intent to provide an orderly transition period. It must be noted that the CNMI re-codified its regulations regarding immigration effective on January 1, 2009, but the substantive classifications based upon investment generally remained the same as those in effect as of May 8, 2008. *See* 5 N. Mar. I. Admin. Code section 5–40.0 *et seq.* (2009); *see* also 20 N. Mar. I. Admin Code section 20–30.2 *et seq.*; 4 N. Mar. I. Code section 5941 *et seq.*; 4 N. Mar. I. Code section 5951 *et seq.*; 4 N. Mar. I. Code section 50101 *et seq.*

Aliens who have not been admitted as eligible CNMI investors prior to the beginning of the transition period are not eligible for classification as E–2 CNMI Investors. Aliens who have investor applications pending with the CNMI as of the transition program effective date, or who have approved investor applications but have not been admitted to the CNMI as of the transition program effective date, will not be eligible for E–2 CNMI Investor status.

2. Continuous Maintenance of Residence in the CNMI

This rule proposes to define continuous maintenance of residence in the CNMI to mean residence in the CNMI from the date that an alien obtained his or her CNMI status through the future date on which USCIS grants the new E–2 CNMI Investor status. However, continuous residence does not mean continuous physical presence; thus, an alien would not need to have remained in the CNMI for the entire period in order to be deemed to have maintained continuous residence. ''Residence'' is defined by section 101(a)(33) of the INA (8 U.S.C. 1101(a)(33)) as ''the place of general abode; the place of general abode of a person means his or her principal actual dwelling place in fact, without regard to intent.'' This statutory definition is incorporated into DHS's immigration regulations by 8 CFR 1.1(a). The proposed rule provides that an alien must have been physically present in the CNMI during at least half the time for which continuous residence is

required. In addition, any single absence of over one year will break continuity of residence, as will any single absence of more than six months, unless the subject alien is able to demonstrate that he or she did not abandon his or her residence by such absence. *See, e.g.,* 8 CFR section 316.5(c).

3. Maintenance of Investment in the CNMI

To establish that an alien is maintaining the investment or investments that formed the basis for admission to the CNMI, the proposed rule would require each subject alien to provide specific evidence demonstrating that the investor is in compliance with the terms upon which the CNMI investor certificate was issued. All documentation previously submitted in each investor application to the CNMI government should also be submitted as part of E–2 CNMI petitions to USCIS. The rule proposes to require the following documentary evidence for submission with each E–2 CNMI Investor application, as applicable:

• Evidence that the applicant has invested capital in the CNMI. Such evidence may include bank statements showing amounts deposited in CNMI business accounts, invoices, receipts or contracts for assets purchased, stock purchase transaction records, loan or other borrowing agreements, land leases, financial statements, business gross tax receipts, and any other agreements supporting the application.

• Evidence that the applicant has invested the minimum amount required. Such evidence may include evidence of assets that have been purchased for use in the enterprise, evidence of property transferred from abroad for use in the enterprise, evidence of monies transferred or committed to be transferred to the new or existing enterprise in exchange for shares of stock, any loan or mortgage, promissory note, security agreement or other evidence of borrowing which is secured by assets of the applicant.

• A comprehensive business plan for each new enterprise.

• Articles of incorporation, by-laws, partnership agreements, joint venture agreements, corporate minutes and annual reports, affidavits, declarations or certifications of paid-in capital.

• Current business licenses.

• Foreign business registration records, recent tax returns of any kind, and evidence of other sources of capital.

• A listing of all resident and nonresident employees.

• A listing of all holders of business certificates for the business establishment.

• A listing of all corporations in which the applicant has a controlling interest.

• For the holder of a Certificate of Foreign Investment, copies of annual reports of investment activities in the CNMI showing whether the certificate holder is under continuing compliance with the standards of issuance. Each report must be accompanied by an annual financial audit report performed by an independent certified public accountant.

• *For Retiree Investors:*

—Proof that the alien applicant has an interest in property in the CNMI and the value of that property interest. Proof of the value of the property could be supported by a lease agreement for the property or an appraisal of the value of the property.

—Proof of the value of the improvements to the property, such as receipts or invoices regarding the costs of construction or the amount paid for a preexisting structure, or an appraisal of a structure.

—Any other evidence supporting proof of investment in a residence and the value of the property interest.

4. Categories of CNMI Foreign Investors

After consideration of CNMI law and consultation with the CNMI government, DHS is proposing to limit eligibility for E–2 CNMI Investor status to the following categories of long-term foreign investors in the CNMI.

• *Long-Term business investor.* An alien who has been lawfully admitted to the CNMI under a Long-Term Business Entry Permit and has been issued a Long-Term Business Certificate by CNMI for a period of two years on the basis of the alien's $150,000 (minimum) investment in the CNMI.

• *Foreign investor.* An alien who has been lawfully admitted to the CNMI as a Foreign Investor with a Foreign Investment Certificate on the basis of the alien's investment of either $100,000 (minimum) per individual in an aggregate investment in excess of $2,000,000, or $250,000 (minimum) in a single investment.

• *Retiree investor.* An alien who has been lawfully admitted to the CNMI on the basis of one of the following Foreign Retirees Investment Certificates issued by the CNMI:

—*Foreign Retirees Investment Certification.* This certificate is issued to an alien retiree over the age of 55 years who has an interest in a residential property either (1) on Saipan in which the alien has invested a minimum of $100,000, or (2) on Tinian or Rota in which the alien has invested a minimum of $75,000.

—*Foreign Retiree Investment Certificate.* This certificate was issued to an alien retiree over the age of 55 years who had invested and maintained a minimum of $150,000 in an approved residence to live in the CNMI.

In creating the E–2 CNMI Investor status, the CNRA refers to admission in ''long-term investor'' status under the laws of the CNMI, but does not define the term. *See* section 6(c)(1) of the Covenant Act. The admission categories under CNMI law that could potentially be referenced by the CNRA include the three categories listed above (Long-Term Business Investor, Foreign Investor, and Retiree Investor), a sub-category of the Retiree Investor specifically limited to Japanese retirees, discussed below, and Short- and Regular-Term Business Entry Permits. In order to meaningfully construe both ''long-term'' and ''investor,'' only CNMI categories that mandated a fixed minimum threshold amount of investment *and* are renewable over a period of multiple years were considered to be ''long-term investor'' statuses.

While the Retiree Investor category may not meet the current regulatory definition of investment for E–2 purposes (at 8 CFR 214.2(e)(12)), DHS believes that the Retiree Investor category falls within the meaning of ''long-term investor'' as it is used in the CNRA. USCIS understands that land ownership limitations in the CNMI generally prohibit alien ownership of real property, and that the maximum term of an interest in real property is a 55-year lease. For this reason, and consistent with the intent of sections 701(b) and sections 702(6)(c) and (6)(d) of the CNRA, USCIS has determined that a lease of residential property, which normally would not be considered ''investment,'' may serve as the basis for E–2 CNMI Investor status as long as the qualifying investment amount under CNMI law has been placed in the property through an upfront commitment to a long-term lease or improvements to the property. Therefore, USCIS has included this category in the proposed rule. Additionally, including the Retiree Investor is consistent with USCIS' objective to provide a smooth transition for current CNMI investors and to mitigate potential economic harm to the CNMI.

USCIS finds that CNMI status obtained through the two-year program for Japanese retirees requiring only monthly rental payments does not reasonably meet the statutory requirement of long-term investment

with respect either to its length, as the permit is non-renewable, or the character of the investment, and is thus not included in the E–2 CNMI Investor program proposed by this rule. USCIS notes that either the visa waiver program or B–1/B–2 visas may be available to such Japanese retirees.

Aliens lawfully admitted to the CNMI under any other categories, including the Short-Term Business Entry Permit or the Regular-Term Business Entry Permit are not included in this proposed rule as eligible to apply for E–2 CNMI Investor status. Aliens lawfully admitted under the Short-Term Business Entry Permit or the Regular-Term Business Entry Permit categories are not included because such permits are not long-term, nor do they require investments. These aliens, however, would be eligible to apply for other nonimmigrant classifications, such as the B–1 business visitor classification.

B. Application Procedures

In keeping with the language of the CNRA, which discusses an alien's application for a nonimmigrant investor visa, the rule proposes to require that those CNMI long-term investors seeking E–2 CNMI Investor status file applications requesting such status with USCIS, and pay the appropriate fees to USCIS, in accordance with instructions on the application form. USCIS will designate the form as Form I–129, ''Petitioner for a Nonimmigrant Worker,'' with Supplement E as the application form for requesting E–2 CNMI Investor status. The current fee for Form I–129 is $320.

1. Application Period

This rule proposes a limited application period. Applicants would be required to apply for E–2 CNMI Investor status either: (1) Before the start of the transition period; or (2) within the first two years following the start of the transition period. Therefore, USCIS would reject an application filed after the two-year period. Note, that while the rule would permit applications to be filed before the transition program effective date, USCIS would not be permitted to grant E–2 CNMI Investor status before that date. However, if USCIS completes its adjudication of an early-filed application prior to the transition program effective date, a consulate would be able to issue an E–2 CNMI Investor visa so that the subject alien would be able to seek admission to the CNMI as an E–2 CNMI Investor on or after the transition program effective date.

2. Physical Presence

Because E–2 CNMI Investor nonimmigrant status is a CNMI-only status, the rule proposes that each alien must be present in the CNMI or outside the United States at the time his or her application is filed with USCIS. Upon approval, an alien outside the CNMI would need to obtain an E–2 CNMI Investor nonimmigrant visa at a United States consulate abroad to be admitted to the CNMI as an E–2 CNMI Investor on or after the transition program effective date.

3. Fee Waiver

Waiver of the current $320 fee for filing Form I–129 is normally not permitted under the applicable regulations at 8 CFR 103.7. In recognition of adverse economic conditions in the CNMI as compared to many other U.S. places, and because of the inclusion of some retirees in this new nonimmigrant category and the likely participation by a number of proprietors of small businesses with CNMI Long-Term Business Entry Permits, the proposed rule permits waiver of the fee in cases where the subject alien is able to substantiate that he or she is unable to pay the prescribed fee, under the standards provided in 8 CFR 103.7(c)(1). Currently there is no fee-waiver provision for Form I–129 and this rule is proposing a specific waiver provision limited to investors under this rule. *See* proposed 8 CFR 103.7(c)(5)(iv). While such a provision may seem inconsistent with a benefit based upon a monetary investment, the CNMI E–2 Investor program proposed in this rule differs from the current E–2 program in that retiree investors are eligible. The waiver provision is limited to those who can make a showing of inability to pay. USCIS believes that some CNMI E–2 Investor eligible retiree investors may have invested the majority of their savings in their investment residences, may be living on fixed incomes, and may qualify for waivers. Applicants in the CNMI will also have to submit the $80 biometric service fee; this fee is waivable for inability to pay under current USCIS regulations. *See* 8 CFR 103.7(b)(1) (discussing the current biometric service fee); proposed 8 CFR 214.2(e)(23)(viii) (discussing ability to seek waiver of biometric service fee).

4. Discretionary Benefit and Appeal Rights

Adjudication of the application for E–2 CNMI Investor nonimmigrant status is a discretionary determination by USCIS. USCIS may deny an application for failure of the applicant to demonstrate eligibility or for other good cause. As with other adjudications of Form I–129, denial of an E–2 CNMI Investor application may be appealed to the USCIS Administrative Appeals Office for agency review of the denial.

5. Spouses and Children

USCIS proposes to extend E–2 CNMI Investor status to the spouse and children of each principal E–2 CNMI Investor if they accompany or follow-to-join the principal alien. The nationality of these dependents would not be material to their classification as dependents of E–2 CNMI Investors. Such spouse and dependents, however, must be otherwise admissible to the United States under the INA to qualify for the status. The rule proposes to require that those CNMI long-term investors seeking E–2 CNMI Investor status file applications requesting such status with USCIS in accordance with instructions on the application form. *See* proposed 8 CFR 214.2(e)(23)(v). In accordance with instructions on the application form, E–2 CNMI investors whose spouses and children seek to accompany or follow-to-join him or her will utilize Form I–539, ''Application to Extend/Change Nonimmigrant Status'' as the application form for requesting E–2 CNMI Investor status for dependants. The current fee for Form I–539 is $300.

C. Work Authorization

The proposed rule would amend 8 CFR 214.2(e) and 274a.12 to provide for the work authorization of certain E–2 CNMI Investors and their spouses. Work authorization is not permitted for children of E–2 CNMI Investors. The E–2 CNMI Investor is authorized to work for a specific employer incident to status to the extent that such work authorization is for a qualifying entity that was the basis for the long-term investor status under CNMI law upon which the grant of E–2 CNMI Investor status is based. For example, an authorized investment in a business operated by the investor in the CNMI under a Long-Term Business Permit granted prior to the transition program effective date will permit the investor to operate that business as an E–2 CNMI Investor. E–2 CNMI Investors obtaining status under a Retiree Investment Permit are not work-authorized, since, by definition, coming to the CNMI as a ''retiree'' is inconsistent with obtaining employment there.

After each spouse of E–2 CNMI Investors lawfully obtains E–2 CNMI Investor status, and upon lawful admission to the CNMI, each spouse may request employment authorization by filing Form I–765, Application for

Employment Authorization, with USCIS. However, spouses of E–2 CNMI Investors who obtained that status as retirees are not eligible for work authorization, for the reason stated above. This is consistent with the level of benefits currently afforded under CNMI law, as neither retiree investors nor their spouses are permitted to work. Employment authorization is inconsistent with being a ''retiree''. DHS understands that the spouse of a retiree may not in all cases also be a retiree, but notes that retiree spouses may qualify for transition worker or other specific work-authorized statuses if eligible. However, DHS specifically invites comments on whether work authorization should be permitted for spouses of retiree investors.

All E–2 CNMI Investor principal and spousal employment authorization is expressly limited to employment in the CNMI.

D. Changes in the Terms and Conditions of E–2 CNMI Investor Status

If there are any substantive changes to aliens' compliance with the terms and conditions of qualification for E–2 CNMI Investor status, the rule proposes to require those aliens to file with USCIS new copies of Form I–129 and Supplement E with respect to the changes. An unauthorized change of employment to a new employer would constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the INA, 8 U.S.C. 1227(a)(1)(C)(i).

E. Period of Admission

This rule proposes to provide an initial admission period of two years for aliens with E–2 CNMI Investor status. The spouse and minor children accompanying or following-to-join an E–2 CNMI Investor would be admitted for the same period that the principal alien is in valid E–2 CNMI Investor status. If an E–2 CNMI Investor temporarily departs the CNMI, the derivative status of the dependent spouse and children would not be affected, provided that the familial relationship continues to exist and the principal remains eligible for admission as an E–2 CNMI Investor.

F. Extensions of Stay

This proposed rule provides for extensions of E–2 CNMI Investor status, until the end of the transition period, in two-year increments, which is the same increment permitted for non-CNMI E–2 nonimmigrants. To apply for an extension of stay, each E–2 CNMI Investor would be required to file with USCIS a new Form I–129 and Supplement E with the required evidence and fee. To qualify for an extension of stay, each E–2 CNMI Investor would be required to demonstrate that he or she:

(i) Continuously maintained the terms and conditions of E–2 CNMI Investor status;

(ii) Was physically present in the CNMI at the time of filing the application for extension of stay; and

(iii) Did not abandon the request for extension of stay.

G. Travel

E–2 status provided to long-term CNMI investors is a ''CNMI-only nonimmigrant'' status. *See* section 6(c)(1) of the Covenant Act, as added by section 702 of the CNRA. Consistent with this provision, the proposed rule provides that a grant of E–2 CNMI investor status is a grant of status valid within the CNMI only, and not within the United States as a whole. It does not authorize admission or travel to Guam or to any other part of the United States. However, it does not bar such travel if the alien is otherwise authorized and admissible to the United States in another status. For example, an E–2 CNMI Investor who wishes to make a tourist or business visit to Guam or another part of the United States (including but not limited to transit through the Guam airport) may do so if he or she has a B nonimmigrant visa or is eligible under an applicable visa waiver program. However, the alien may not do so based upon the current E–2 CNMI Investor status, or based upon any E–2 CNMI Investor visa.

The proposed rule provides that travel or attempted travel from the CNMI to another part of the United States without the appropriate visa or other authorization, or violation of the terms applicable to the authorized status, would constitute violation of the E–2 CNMI Investor status. For example, if an E–2 CNMI Investor were identified by U.S. Customs and Border Protection as seeking to board a plane in Saipan for Guam, and the alien lacked a B nonimmigrant visa or other visa (or eligibility for a visa waiver) that would authorize the alien to have traveled from a foreign place to Guam and to be admitted there, then the alien would have failed to comply with the conditions of the E–2 CNMI Investor status and would be deportable from the CNMI or any other U.S. location under section 237(a)(1)(C) of the INA, 8 U.S.C. 1227(a)(1)(C).

With respect to travel from the CNMI to a foreign place and return to the CNMI, if an E–2 CNMI Investor obtained his or her status from USCIS in the CNMI, he or she would need to obtain an E–2 CNMI Investor visa from a U.S. embassy or consulate in order to be readmitted to the CNMI, regardless of nationality. USCIS approval of E–2 CNMI Investor status provides status while present in the CNMI, but does not preclude the requirement of a visa for admission to the CNMI.

H. Change of Status to E–2 CNMI Investor Status

This rule proposes to permit aliens eligible for E–2 CNMI investor status on the transition program effective date, but who obtain other valid nonimmigrant visa statuses, to apply to change to E–2 CNMI Investor status by filing Form I–129 and Supplement E in accordance with the current regulations at 8 CFR 214.2(e)(21). However, applications for this change in status would have to be filed within the two-year filing period for obtaining initial grants of E–2 CNMI Investor status. Note that during the transition period, E–2 CNMI Investors may apply for changes of status to any other nonimmigrant or immigrant visa classifications for which they may qualify.

I. Post-Transition Period

As previously discussed, E–2 CNMI Investors may maintain status and apply for subsequent extensions of this status until the end of the transition period. After the transition period, however, the E–2 CNMI Investor classification will cease to exist. Absent delay, the transition period will end on December 31, 2014. Although the Secretary of Labor is authorized under section 702 of the CNRA to extend the transition provisions relating to temporary workers in additional increments of up to five years each, this authority is limited to extension of those provisions relating to temporary workers and not the investor provisions. Therefore, the investor provisions will terminate on December 31, 2014, regardless of whether the temporary worker provisions are extended.

IV. Regulatory Requirements

A. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule, with its impact limited to addressing eligible aliens currently in one of the CNMI long term investor classifications, will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment,

investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

B. Executive Order 12866

In accordance with Executive Order 12866, USCIS is required to prepare an assessment of the benefits and costs anticipated to occur as a result of this regulatory action and to provide the assessment to the Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs. The analysis below is the DHS Economic Analysis as required by the Executive Order.

(1) Background

The CNMI lies north of Guam, between the Philippines and Japan. S. Rep. No. 110–324, at 2 (2008). The United States captured the islands of the CNMI in World War II and they became a district of the U.S.-administered United Nations Trust Territory of the Pacific Islands. *Id.* Under the Covenant through which the CNMI joined the United States in 1976, the CNMI was exempted from most provisions of U.S. immigration laws and allowed to control its own immigration; however, the Covenant gave the U.S. Congress the authority to modify that arrangement through Federal legislation. *Id.*

The United States enacted the CNRA amending the level of control the CNMI would have over its immigration system to more closely harmonize it with the laws and procedures applicable to other U.S. jurisdictions, particularly those designed to ensure that border control, national security, and homeland security issues are properly addressed. *See* CNRA Section 701.

(2) Changes Made in This Rule

In order to reduce the opportunity for fraud and to improve homeland security, USCIS is proposing in this rule that foreign investors who wish to reside in the CNMI must reapply every two years using USCIS Form–129, Petition for a Nonimmigrant Worker. Requiring renewal every two years will help USCIS make sure investors have maintained their eligibility, update their biometrics, or allow USCIS to advise them whether they are potentially eligible for another program under the INA that will allow them to stay in legal nonimmigrant status after the end of the transition program, currently December 31, 2014. The CNRA generally extends Federal control of immigration in the CNMI to combat fraud and abuse, and the requirement for renewal within this period is consistent with current practice for non-CNMI E–2 treaty investor non-immigrants.

However, USCIS is aware of and sensitive to the potential economic impact of new Federal immigration requirements on the CNMI economy, and this rule's proposed requirements have been developed with that in mind. According to an economic study performed by the Northern Marianas College, employment grew in the CNMI by 12.7 percent annually between 1980 and 1995, because of expansion of the garment and tourism sectors.[2] During that time, the garment and tourism industries accounted for 85 percent of the CNMI economy.[3] Recently, economic conditions have changed dramatically for these two CNMI industries. Due to changes in trade agreements, the value of CNMI textile exports to the United States dropped from $1.1 billion in 1998 to $317 million in 2007. The number of licensed apparel manufacturers dropped from 34 to 3 in 2008.[4] The remaining three garment factories have closed or suspended their operations in early 2009.[5] The CNMI tourism industry also has been in decline in recent years. The terrorist attacks on the United States on September 11, 2001, the Severe Acute Respiratory Syndrome (SARS) epidemic which began in Asia in 2003 and led to the death of 774 worldwide, the downturn in many Asian economies, changes in airline service, and other concerns have reduced the number of tourists traveling to the CNMI from 736,117 in 1996 to 389,345 in 2007.[6] Because of the decline of the CNMI economy, USCIS has sought to minimize the impact of any additional visa requirements, while recognizing that Federal oversight of CNMI immigration is necessary to reduce fraud and ensure U.S. homeland security.

(3) Alternatives Considered

USCIS considered a narrow construction for implementation of the CNMI-only nonimmigrant investor visa as required by section (6)(c) of the Covenant Act, as added by section 702 of the CNRA. Possible constructions would have limited the categories of investors under current CNMI law who would be permitted to become CNMI E–2 Investors. Possible constructions analyzed included limiting which investor-based categories under current CNMI law would be permitted to become CNMI E–2 Investors. Specifically, DHS discussed options wherein only CNMI perpetual foreign investors would be permitted, as well as options wherein only long-term business permit holders or a combination of only perpetual foreign investors and long-term business permit holders would be permitted. However, in light of the potential adverse economic impact of such limitations and the goal of limiting adverse economic impact on the CNMI, such limiting options were not chosen. USCIS chose the broadest interpretation possible, whereby long-term business permit holders, foreign investors and retiree investors (other than investors under a short-term program not believed to qualify under the CNRA) would be eligible for CNMI E–2 Investor status, because it believes such an interpretation is most in keeping with the mandate to limit adverse economic impact.

(4) The Total Cost of This Regulation

(a) Fees

This proposed regulation will require all foreign investors wishing to remain in the CNMI to reapply for investor registration every two years using USCIS Form I–129, Petition for a Non-Immigrant Worker. The application fee for this form is $320. Additionally, this rule will require CNMI investors to provide their biometrics and imposes an additional $80 biometrics fee. Thus, the total fees for each initial and biennial registration are $400 ($320 + $80). Fee waivers for inability to pay are available.

(b) *Paperwork Burden*

It takes approximately 2.75 hours to complete the Form I–129, according to the instructions to the form. Since most of the respondents under this rule will be business investors, their average hourly costs will be much higher than the average hourly costs of the average salaried worker. Thus, for the purpose of this analysis, USCIS based hourly costs on the average hourly salary for ''chief executives'' from the Department of Labor's May 2007 National Occupational Employment and Wage Estimates to determine the cost associated with the hours necessary to

[2] Northern Marianas College, Business Development Center, An Economic Study of the Commonwealth of the Northern Mariana Islands (Saipan, MP: Northern Marianas College 1999).

[3] Ibid.

[4] CNMI Comprehensive Economic Development Strategic Plan 2009–2014. CNMI CEDS Commission Updated 1/29/09.

[5] *See,* Walt F. J. Goodridge, ''The Last Garment Factory is Closing,'' Saipan Times, January 14, 2009, *http://www.saipantribune.com/newsstory.aspx?cat=3&newsID=86872.*

[6] United States Government Accountability Office, Commonwealth of the Northern Mariana Islands Managing Economic Impact of Applying U.S. Immigration Law Requires Coordinated Federal Decisions and Additional Data (July 2008).

complete the Form I–129. The hourly wage for chief executives is $72.77. If we multiply $72.77 by 1.4 to account for fringe benefits, the hourly cost is $101.88. Multiplying $101.88 by the 2.75 hours required to fill out the I–129 results in paperwork burden cost per form of $280.16. However, because of generally lower wage levels in the CNMI and because some CNMI investors are retirees, this is a maximum cost estimate and the likely actual cost is lower.

Additionally, if a foreign investor wishes to bring along his or her family they will have to complete Form I–539, Application to Extend/Change Status. The application fee for this form is $300 and this form takes approximately 45 minutes to complete according to the form instructions. If the foreign investor fills out this form himself, the paperwork cost to complete this form is $101.88 × .75, or $76.41 per investor.

(c) Cost per Foreign Investor

Adding the estimated paperwork burden cost for completing Form I–129 of $280 to the $400 application and biometrics fee, the total cost for each CNMI foreign investor to submit the I–129 as required under this rule every two years is $680. Since re-registration is only required every other year, annual costs are $340 per year ($680/2). In addition, the $76 paperwork cost of completing the I–539 plus the $300 application fee costs a total of $376. Form I–539 is a one time only application. So the first year cost for foreign investors to complete and submit the two forms combined is $716 ($340 + $376). Each additional year is only $340.

Currently foreign investors are charged $1,000 every two years or $500 per year by the CNMI government. CNMI fee setting methodology is unknown to USCIS. For this analysis it is assumed that the CNMI fees resemble U.S. Government agency service and user fees in that they are set at the amount necessary to recover costs in accordance with Office of Management and Budget guidance, and are not intended to generate a profit. Thus, while fees collected by the CNMI for the foreign investor program will no longer be collected by the CNMI Government, the cost of administering that program will not be incurred, resulting in a neutral financial effect. To the extent that the CNMI government used such fees to raise revenue, such excess will be lost as a result of this rule.

Additionally, spouses and children who wish to receive the same status as their foreign investor spouse or parent may be required to provide biometrics at a cost of $80 per person. According to a recent GAO report the average family in the Marianas Islands includes 2 children.[7] However, biometrics are only required for children between the ages of 14 and 21. Therefore, for purposes of analysis, we assume that each foreign investor's family will be required to provide biometric fees for one spouse and only one child for an additional cost of $160. This will be required only every other year for an average annual cost of $80 ($160/2). Adding this cost to the above fees will lead to a cost per investor family of $796 in the first year ($340 + $376 + $80) and $420 in the second year ($340 + $80) and every subsequent year until the end of the transition period. Once the Federal regulations are in place the CNMI government will no longer charge the $1,000 fee they have been charging foreign investors every two years as foreign investors will now be subject to the Federal regulations. Therefore, this rule will raise the foreign investor's annual cost by $296 in the first year ($796—$500), but reduce the cost in second and future years until the end of the transition period in 2014 by $80 ($500—$420).[8]

The above annual cost estimates represent the costs for those investors with a spouse and one child between the ages of 14 and 21. For those investors with a spouse and more than 1 child between the ages of 14 and 21 these cost estimates may be too low. For those investors, particularly those who are retired, these estimates may be too high. Lack of data on foreign investors does not allow us to further refine our estimates.

(5) Number of Filings Expected

USCIS projects that most foreign investors plan to re-register their status Although a small number of foreign investors may be found ineligible, USCIS lacks data on the basis of which to estimate to what extent that may occur. USCIS therefore is soliciting comments on the subject along with any supporting material, data, or calculations that support the estimated rejection rate so that we may consider this information and place it in the public docket for this rulemaking.

Additionally, given the decline in the textile and tourist businesses in the CNMI as discussed earlier, even the small fee imposed by this rule may lead some foreign investors not to re-register. Since data on which to base a reliable estimate of the numbers of foreign investors who may choose not to re-register are lacking, USCIS is interested in comments containing information concerning the likelihood of re-registration.

In 2006–2007, there were 464 long-term business entry permit holders and 20 foreign investor entry permit holders and retiree investor permit holders, totaling 484, or approximately 500 foreign registered investors. In its recent report, the GAO estimates that the number of long-term business and perpetual foreign investor entry permits active and valid in 2008 were 506. In another measure, the GAO suggests that 448 businesses were associated with long-term business entry permits and 56 additional perpetual foreign entry permits were associated with 30 businesses.[9] This analysis assumes that 500 foreign investors would be affected because of the constantly changing economic environment in CNMI. The first year costs, as discussed above, would be an additional $296 per investor for a total first year cost of $148,000 ($296 × 500) for all CNMI foreign investors. The additional transition years will see a savings of $80 per investor or a total foreign investor savings of $40,000 ($80 × 500 = $40,000) per year until 2014.

Foreign investors who travel to and from CNMI will now be required to have visas. USCIS, however, is not requiring foreign investors who travel to the United States to have visas in this rule, as that requirement will exist irrespective of this rule. Thus the costs to obtain a visa are not a cost of this rule but rather the cost of the CNRA, and the CNMI adopting the INA.

(6) The Cost to the Federal Government

There are no additional costs to the Federal Government as USCIS is a generally a fee funded agency. USCIS will recoup its costs through the collection of Form I–129 and Form I–539 fees.

(7) Effects after 2014

(a) The CNRA and This Rule

The CNRA was intended to ensure effective border control procedures and to properly address national security and homeland security concerns by

[7] GAO–08–791 Commonwealth of the Northern Mariana Islands, Managing Potential Impact of Applying U.S. Immigration Law requires Coordinated Federal Decisions and Additional Data, August 2008.

[8] This estimate considers the added time burden costs of the new USCIS paperwork but includes no similar cost savings from eliminating the paperwork burden associated with the CNMI's current program. Thus actual costs savings are likely to be greater than estimated here.

[9] GAO, GAO–08–791, Commonwealth of the Northern Mariana Islands, Managing Potential Economic Impact of Applying U.S. Immigration Law Required Coordinated Federal Decisions and Additional Data, August 2008.

extending U.S. immigration law to the CNMI, and to maximize the CNMI's potential for future economic and business growth under U.S. immigration law. This rule proposes temporary regulatory provisions to transition the CNMI to the INA and to mitigate harm to the CNMI economy before investors in the CNMI are required to obtain U.S. immigrant or nonimmigrant visa classifications. The CNMI investor program proposed in this rule will last until the end of the transition program, currently December 31, 2014, at which time, the CNMI E–2 Investor must apply and be approved for another immigrant or nonimmigrant status under the INA. It is assumed that the data provided by the CNMI and other interested parties, gathered by Congress, and considered in development and passage of the CNRA showed significant differences in the non-immigrant visa programs under the INA and the visa and certificate programs offered by the CNMI. Current foreign workers and investors in the CNMI would mostly not be eligible for a status under the INA, or else legislation of a transition period and temporary mitigating regulations as proposed under this rule would be unnecessary. Thus, while one stated goal of the CNRA is the economic and business growth of the CNMI, by providing a mitigating transition program, the legislation implies that goal will require at least 5 years to be achieved. This rule will operate during that time.

(b) Effect on Investors

This rule links investment levels to those required for CNMI status for a long-term business investor at $150,000; a perpetual foreign investor at $100,000, in an aggregate approved investment in excess of $2,000,000, or a minimum of $250,000 in a single investment; and, a retiree investor at $100,000 in Saipan, $75,000 in Tinian or Rota, or $150,000 elsewhere in the CNMI. To qualify as a U.S E–2 treaty investor with nonimmigrant status, the applicant must invest a substantial amount of capital in a bona fide enterprise in the United States, must be seeking entry solely to develop and direct the enterprise, and must intend to depart the United States when their treaty investor status ends. Next, the treaty investor must be a national of a country with which the United States has a treaty of friendship, commerce, or navigation and must be entering the United States pursuant to treaty provisions.

USCIS has not analyzed the data on current CNMI long-term business entry permit holders and foreign investor entry permit holders to determine who would qualify as U.S. E–2 Investors. There is no accurate way to estimate for what other visa or nonimmigrant status the 500 foreign registered investors may qualify. However, a review of the CNMI eligibility criteria and anecdotal evidence indicates that many of them would not meet the minimum financial investment necessary to be eligible for U.S. E–2 status currently. Further, the retiree investor permit holders do not qualify as U.S. E–2 Investors in their current status, notwithstanding that they may have access to or be able to acquire enough capital to invest and qualify. Finally, according to the GAO Report, about 18 percent of foreign investors in the CNMI are from countries with which the United States does not have a treaty of friendship, commerce, or navigation.[10] Thus of the 500 foreign registered investors in the CNMI, many of them will need to spend the transition period making themselves eligible for another status under the INA. Anecdotal evidence indicates that at least a few of the affected investors from countries without treaties of friendship, commerce or navigation with the United States may be eligible for L–1A executive or managerial visas; thus the possibility exists that some of these investors may be able to stay in the CNMI in another status after the end of the transition program, currently December 31, 2014.[11]

(c) Effect on the CNMI Economy

USCIS has not analyzed the precise effect of increased or decreased investments in the CNMI. Nevertheless, as indicated before, the differences between the CNMI foreign investor programs before the CNRA takes effect and those available afterward under the INA are certain to change the mix of foreign investors eligible for a new status and maintaining a presence in the CNMI after the end of the transition program, currently December 31, 2014. An immigrant investor program, or immigration through investment, seeks to promote economic growth through increased export sales, improved regional productivity, creation of new jobs, and increased domestic capital investment. The presumption is that the investment opportunity coupled with the opportunity to live in the country offering the program offers advantages, or at least appears to offer advantages, to the investor over investments and residence in his or her country of origin. Assuming that these goals are generally achieved, withdrawal of the alien's investment without substitution of a substantially similar investment, would, at the least, end what positive results had been started, and, at the worst, have the reverse effect and retard growth, sales, productivity, jobs, and investment. Thus, if a substantial number of the 500 foreign investors in the CNMI are required to leave, liquidate their investments, and their investments are not replaced by another equal or greater investment, then it will likely have a negative impact on the CNMI economy. This rule is intended to mitigate that impact.

(8) Benefits

CNMI administration of an immigration system outside U.S. immigration law has led to an abuse of the visa system in the CNMI. S. Rep. No. 110–324, at 3 (2008). Given this abuse, there are concerns not only for the well-being of foreign employees working in the CNMI, but also for the potential abuse of the visa system by those seeking to illegally emigrate from the CNMI to Guam or elsewhere in the United States. *Id.* at 3–5. This reduces the integrity of the U.S. immigration system by increasing the ease by which aliens may unlawfully enter the United States through the CNMI. Federal oversight and regulation of CNMI foreign investors should help reduce abuse by foreign investors in the CNMI, and should help reduce the opportunity for aliens to use the CNMI as an entry point into the United States. *Id.* at 2, 4–5. Because oversight of immigration by the CNMI government is thought to be less stringent than that of the United States Federal Government, there is presently the opportunity by individuals seeking entrance to the United States to seek admittance to CNMI as an opportunity to gain, in turn, illegal entrance into the United States. By the Federal Government taking over responsibility for immigration enforcement in CNMI, the opportunity for abuse of the CNMI immigration regime for illegal access to the United States is reduced.

(9) Conclusion

This proposed rule responds to a Congressional mandate that requires the Federal Government to assume responsibility for all immigration to the CNMI by foreign investors, whether temporary or permanent. This proposed rule will implement this mandate and thus contribute to U.S. homeland security. USCIS concludes that the alternative chosen for this proposed rule represents the most cost-effective means

[10] GAO, GAO–08–791, Commonwealth of the Northern Mariana Islands, Managing Potential Economic Impact of Applying U.S. Immigration Law Required Coordinated Federal Decisions and Additional Data, August 2008.

[11] *See,* INA Section 101(a)(15)(L); 8 CFR 214.2(l).

of implementing its Congressional mandate while having only minimal negative impact on the CNMI economy. Comments are welcome on these conclusions.

D. Regulatory Flexibility Act—Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the impact of their regulatory proposals on small entities.

1. Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

a. Regulated Entities

This proposed rule would affect foreign investors in the CNMI. As previously stated, foreign investors can apply for the following CNMI entry permits: foreign investor permits, long-term business permits, and retiree investor permits.

b. Number of Small Entities to Which the Proposed Rule Will Apply

Data available on the present 464 long-term permit holders reveal that they account for 419 businesses with about 4,592 employees, approximately 11 employees per business. In additional, as discussed above, there are an additional 20 foreign investor entry permit holders and retiree investor permit holders for a total of 484. Since the economic situation in the CNMI is dynamic, this analysis approximates the number of affected businesses at 500 total. Now that the last garment factory in the CNMI has closed, the remaining industries affected by this rule are tourism (lodging and recreation) which are North American Industry Classification System (''NAICS'') codes 72111 and 7139, respectively, miscellaneous manufacturing (NAICS code 339999), and retail sales (NAICS Code 445). According to the Small Business Administration guidelines firms in the accommodation and food services and recreation industries are considered small if they have sales of less than $7 million per year.[12] Miscellaneous manufacturing firms are considered small if they have fewer than 500 employees, and specialty retail food stores are small if they have sales of less than $7 million. The firms affected by this rule have an average of 11 employees, however, USCIS has no data on the average annual sales of those firms. Thus, for the purposes of this analysis, under the requirements of the RFA, USCIS assumes that all of the foreign investor owned businesses in the CNMI affected by this rule are small entities.

According to the 2005 CNMI Household, Income, and Expenditures Survey, there were 35,365 employed workers in the CNMI. Dividing the 4,592 employees who are employed in foreign investor businesses by the total employment of 35,365 shows that approximately 13 percent of the CNMI labor force works directly for foreign investor owned businesses that this proposed rule would require to register. This may constitute a significant percentage of employers in the CNMI, particularly considering current economic trends that show a continued decline in both the garment and tourism industries, which comprise a significant share of the CNMI economy. Therefore, while 500 total petitioners appear to be a small number, 13 percent may be a sufficiently high percentage of workers in the economy to represent a substantial number of small entities in the CNMI.

2. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

As discussed above, the average petitioner will be required to pay fees of $796 in the first year ($340 for I–129 + $376 for I–539 + $80 for biometrics), $420 in the second ($340 + $80) and subsequent years, and the CNMI government will no longer charge their $1,000 fee every two years. Therefore, this rule will raise the foreign investor's annual cost by $296 per year in the first year ($796–$500), and decline by $80 per year for the remaining years of the transition. USCIS believes that this additional fee in the first year should have little to no impact on the decision of foreign investors to remain in CNMI. However, USCIS welcomes public comments explaining how this conclusion may be in error.

a. Paperwork Reduction Act—New Reporting Requirement

Foreign investors who wish to reside in the CNMI will have to apply in the first year and reapply every two years using USCIS Form-129, Petition for a Nonimmigrant Worker. This is a new requirement within the meaning of the Paperwork Reduction Act. As stated above, Form I–129 results in paperwork burden cost per form of $280.16. Additionally, a foreign investor who brings along his or her family will have to complete Form I–539, Application to Extend/Change Status. The paperwork cost to complete this form is $76.41. This rule does not require professional skills for the preparation of reports or records.

3. Identification of Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

DHS is unaware of any duplicative, overlapping, or conflicting Federal rules. As noted below, DHS seeks comments and information about any such rules, as well as any other State, local, or industry rules or policies that impose similar requirements as those in this proposed rule.

4. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities, Including Alternatives Considered, Such As: (1) Establishment of Differing Compliance or Reporting Requirements or Timetables That Take Into Account the Resources Available to Small Entities; (2) Clarification, Consolidation, or Simplification of Compliance and Reporting Requirements Under the Rule for Such Small Entities; (3) Use of Performance Rather Than Design Standards; (4) Any Exemption From Coverage of the Rule, or Any Part Thereof, for Such Small Entities

Throughout the development of the proposed rule DHS has made every effort to gather information regarding the economic impact of the rule's requirements on all operators, including small entities. USCIS considered limiting the categories of investors under current CNMI law who would be permitted to become CNMI E–2 Investors, and limiting which investor-based categories under current CNMI law would be permitted to become CNMI E–2 Investors. However, in light of the goal of limiting adverse economic impact on the CNMI, USCIS chose the broadest interpretation possible, whereby long-term business permit holders, foreign investors and retiree investors (other than investors under a short term program not believed to qualify under the CNRA) would be eligible for CNMI E–2 Investor status, because it believes such an interpretation is most in keeping with

[12] U. S. Small Business Administration, Table of Small Business Size Standards, Matched to North American Industry Classification System Codes. Viewed April 2, 2009, at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

the mandate to limit adverse economic impact.

Since all of the entities affected by this rule are small, this rule provides no different requirements or any exemption from coverage of the rule based on entity size. USCIS welcomes public comment regarding the costs and benefits associated with the proposed rule with respect to how operators, including small entities, can comply with the rule's requirements. It should be noted, however, that small entities may request a waiver of their fees under this rule, if they do not have the ability to pay.

5. Questions for Comment To Assist Regulatory Flexibility Analysis

Please provide comment on any or all of the provisions in the proposed rule with regard to:

a. The number of small entities to which the proposed rule will apply.

b. The economic impact of the provision(s), if any; including:

i. The new reporting requirements on CNMI investors, including the time frame for reporting and mechanisms for reporting.

ii. Costs to ''implement and comply'' with the rule including expenditures of time and money for any employee training; attorney, computer programmer, or other professional time; preparing relevant materials; processing materials, including, materials or requests for access to information; and recordkeeping.

iii. Any other requirement not mentioned above.

c. Costs to implement and comply with this rule including expenditures of time and money for professional time; preparing relevant materials; processing materials, including, materials or requests for access to information; and recordkeeping. As stated above, this rule has a direct impact on about 500 small entities. USCIS believes that most if not all foreign investors will be eligible for re-registration and will choose to re-register to participate in the foreign investor program in the CNMI during the transition period. As indicated above, USCIS believes that the additional costs required by this proposed rule are low enough that the vast majority of foreign investors will not be deterred from re-registering. USCIS welcomes comments from the public on the impact of this proposed rule on the eligibility and capability of foreign investors to re-register in the CNMI and the economic impacts on the CNMI, its inhabitants, and employers.

d. Any industry rules or policies that already require compliance with the requirements of the DHS proposed rule.

e. Any relevant Federal, State or local rules that may duplicate, overlap or conflict with the proposed rule. In addition, please identify any industry rules or policies that already require compliance with the requirements of the DHS proposed rule.

f. Ways in which the rule could be modified to reduce any costs or burdens for small entities consistent with the Immigration and Nationality Act's requirements.

g. Whether and how technological developments could reduce the costs of implementing and complying with the rule for small entities or other operators.

h. Any information quantifying the economic benefits of:

i. Minimizing immigration fraud and protect against abuses.

ii. Ensuring that border control, national security, and homeland security issues are properly addressed.

iii. Reducing the opportunity for fraud and to improve homeland security.

iv. Amending the level of control the CNMI would have over its immigration system to more closely harmonize it with the laws and procedures applicable to other U.S. jurisdictions.

v. Any other requirement not mentioned above.

E. Executive Order 13132

Executive Order 13132 requires each Federal agency to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' The phrase ''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.'' USCIS has considered the Federalism implications of this proposed rule under the Executive Order.

Executive Order 13132 is based upon the role and authorities of ''States'' under the U.S. Constitution. The CNMI is not a ''State'' as defined by section 1(b) of Executive Order 13132 to include ''the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.'' Therefore, USCIS has determined that no actions are required under Executive Order 13132. USCIS has, however, solicited the input of the CNMI government and other CNMI stakeholders on issues relating to treatment of investors under Public Law 110–229, and encourages further comment on all aspects of the proposed rule.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995), all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a regulatory action. The information collection requirements contained in this rule, Form I–129, Form I–539, and Form I–765 have been previously approved for use by OMB. The OMB control numbers for these collections are 1615–0009, 1615–0003, and 1615–0040 respectively. The evidentiary requirements contained in this proposed rule at 8 CFR 214.2(e)(23)(vi) are not new requirements and are currently contained on the instructions to From I–129. Accordingly, these evidentiary requirements will not add to the burden for completing Form I–129 and Supplement E.

However, it is estimated that there will be an increase in the number of filings of Form I–129 and Form I–765. Accordingly, USCIS will prepare the OMB 83–Cs (correction worksheets) for both these forms, and will submit them to OMB once this proposed rule is submitted to OMB as a final rule.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*), E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7 is amended by adding paragraph (c)(5)(iv) to read as follows:

§ 103.7 Fees.

* * * * *

(c) * * *

(5) * * *

(iv) Form I–129, only in the case of an alien applying for E–2 CNMI Investor nonimmigrant status under 8 CFR 214.2(e)(23).

* * * * *

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; Title VII of Pub. L. 110–229; 8 CFR part 2.

2. Section 214.2 is amended by adding a new paragraph (e)(23) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(e) * * *

(23) *Special procedures for classifying foreign investors in the Commonwealth of the Northern Mariana Islands (CNMI) as E–2 nonimmigrant treaty investors under Title VII of the Consolidated Natural Resources Act of 2008 (Pub. L. 110–229).*

(i) *E–2 CNMI Investor eligibility.* During the period ending on the date that is two years after the transition program effective date, an alien may, upon application to the Secretary of Homeland Security, be classified as a CNMI-only nonimmigrant treaty investor (E–2 CNMI Investor) under section 101(a)(15)(E)(ii) of the Act (8 U.S.C. 1101(a)(15)(E)(ii)) if the alien:

(A) Has been lawfully admitted to the CNMI in long-term investor status under the immigration laws of the CNMI before the transition program effective date and has that status on the transition program effective date;

(B) Has continuously maintained residence in the CNMI under such long-term investor status;

(C) Is otherwise admissible to the United States; and

(D) Maintains the investment or investments that formed the basis for such long-term investment status.

(ii) *Definitions.* For purposes of paragraph (e)(23) of this section, the following definitions apply:

(A) *Approved investment or residence* means an investment or residence approved by the CNMI government.

(B) *Approval letter* means a letter issued by the CNMI government certifying the acceptance of an approved investment subject to the minimum investment criteria and standards provided in 4 N. Mar. I. Code section 5941 *et seq.* (long-term business certificate), 4 N. Mar. I. Code section 5951 *et seq.* (foreign investor certificate), and 4 N. Mar. I. Code section 50101 *et seq.* (foreign retiree investment certificate).

(C) *Certificate* means a certificate or certification issued by the CNMI government to an applicant whose application has been approved by the CNMI government.

(D) *Continuously maintained residence in the CNMI* means that the alien has maintained his or her residence within the CNMI since being lawfully admitted as a long-term investor and has been physically present therein for periods totaling at least half of that time. Absence from the CNMI for any period of more than six months but less than one year after such lawful admission shall break the continuity of such residence, unless the subject alien establishes to the satisfaction of the Secretary of Homeland Security that he or she did not in fact abandon residence in the CNMI during such period. Absence from the CNMI for any period of more than one year during the period for which continuous residence is required shall break the continuity of such residence.

(E) *Public organization* means a CNMI public corporation or an agency of the CNMI government.

(F) *Transition period* means the period beginning on the transition program effective date and ending on December 31, 2014.

(G) *Transition program effective date* means November 28, 2009.

(iii) *Long-term investor status.* Long-term investor status under the immigration laws of the CNMI only includes the following investor classifications under CNMI immigration laws as in effect on May 8, 2008:

(A) *Long-term business investor.* An alien who has an approved investment of at least $150,000 in the CNMI, as evidenced by a Long-Term Business Certificate.

(B) *Foreign investor.* An alien in the CNMI who has invested either a minimum of $100,000 in an aggregate approved investment in excess of $2,000,000, or a minimum of $250,000 in a single approved investment, as evidenced by a Foreign Investment Certificate.

(C) *Retiree investor.* An alien in the CNMI who is:

(*1*) Over the age of 55 years who has invested a minimum of $100,000 in an approved residence on Saipan or $75,000 in an approved residence on Tinian or Rota, as evidenced by a Foreign Retiree Investment Certification; or

(*2*) Over the age of 55 years who has invested a minimum of $150,000 in an approved residence to live in the CNMI, as evidenced by a Foreign Retiree Investment Certificate.

(iv) *Maintaining investments.* An alien in long-term investor status under the immigration laws of the CNMI is maintaining his or her investments if that alien investor is in compliance with the terms upon which the investor certificate was issued.

(v) *Filing procedures.* An alien seeking classification under E–2 CNMI Investor nonimmigrant status must file an application for E–2 CNMI investor nonimmigrant status, along with accompanying evidence, with USCIS in accordance with the form instructions within two years of the transition program effective date. An application filed after the two-year period will be rejected.

(vi) *Accompanying evidence.* Documentary evidence establishing eligibility for E–2 CNMI nonimmigrant investor status is required.

(A) Required evidence of admission includes a properly endorsed, unexpired CNMI admission document (*e.g.,* entry permit, certificate, or foreign investor visa) reflecting lawful admission to the CNMI in long-term business investor, foreign investor, or retiree foreign investor status.

(B) Required evidence of long-term investor status includes:

(*1*) An unexpired Long-Term Business Certificate, in the case of an alien in long-term business investor status.

(*2*) An unexpired Foreign Investment Certificate, in the case of an alien in foreign investor status.

(*3*) A Foreign Retirees Investment Certification or a Foreign Retiree Investment Certificate, in the case of an alien in retiree investor status.

(C) Required evidence that the long-term investor is maintaining his or her investment includes all of the following, as applicable:

(*1*) An approval letter issued by the CNMI government.

(*2*) Evidence that capital has been invested, including bank statements showing amounts deposited in CNMI business accounts, invoices, receipts or contracts for assets purchased, stock purchase transaction records, loan or other borrowing agreements, land leases, financial statements, business gross tax receipts, or any other agreements supporting the application.

(*3*) Evidence that the applicant has invested at least the minimum amount required, including evidence of assets which have been purchased for use in the enterprise, evidence of property transferred from abroad for use in the enterprise, evidence of monies transferred or committed to be transferred to the new or existing enterprise in exchange for shares of stock, any loan or mortgage, promissory note, security agreement or other evidence of borrowing which is secured by assets of the applicant.

(*4*) A comprehensive business plan for new enterprises.

(*5*) Articles of incorporation, by-laws, partnership agreements, joint venture agreements, corporate minutes and annual reports, affidavits, declarations or certifications of paid-in capital.

(*6*) Current business licenses.

(*7*) Foreign business registration records, recent tax returns of any kind, evidence of other sources of capital.

(*8*) A listing of all resident and nonresident employees.

(*9*) A listing of all holders of business certificates for the business establishment.

(*10*) A listing of all corporations in which the applicant has a controlling interest.

(*11*) In the case of a holder of a certificate of foreign investment, copies of annual reports of investment activities in the CNMI containing sufficient information to determine whether the certificate holder is under continuing compliance with the standards of issuance, accompanied by annual financial audit reports performed by an independent certified public accountant.

(*12*) In the case of an applicant who is a retiree investor, evidence that he or she has an interest in property in the CNMI (*e.g.,* lease agreement), evidence of the value of the property interest (*e.g.,* an appraisal regarding the value of the property), and, as applicable, evidence of the value of the improvements on the property (*e.g.,* receipts or invoices of the costs of construction, the amount paid for a preexisting structure, or an appraisal of improvements).

(vii) *Physical presence in the CNMI.* Physical presence in the CNMI at the time of filing or during the pendency of the application is not required, but an application may not be filed by, or CNMI Investor status granted to, any alien present in U.S. territory other than in the CNMI. If an alien with CNMI long-term investor status departs the CNMI on or after the transition program effective date but before being granted E–2 CNMI Investor status, he or she may not be re-admitted to the CNMI without a visa or appropriate visa waiver under the U.S. immigration laws. If USCIS grants E–2 CNMI Investor nonimmigrant status to an alien who is not physically present in the CNMI at the time of the grant, such alien must obtain an E–2 CNMI Investor nonimmigrant visa at a consular office abroad in order to seek admission to the CNMI in E–2 CNMI Investor status.

(viii) *Biometrics.* USCIS may require an applicant for E–2 CNMI Investor status, including but not limited to any applicant for derivative status as a spouse or child, to submit biometric information. An applicant present in the CNMI must pay or obtain a waiver of the biometric service fee described in 8 CFR 103.7(b).

(ix) *Denial.* A grant of E–2 CNMI Investor status is a discretionary determination, and the application may be denied for failure of the applicant to demonstrate eligibility or for other good cause. Denial of the application may be appealed to the USCIS Administrative Appeals Office.

(x) *Spouse and children of an E–2 CNMI Investor.*

(A) *Classification.* The spouse and children of an E–2 CNMI Investor accompanying or following-to-join the principal alien, if otherwise admissible, may receive the same classification as the principal alien. The nationality of a spouse or child of an E–2 CNMI investor is not material to the classification of the spouse or child.

(B) *Employment authorization.* The spouse of an E–2 CNMI Investor lawfully admitted in the CNMI in E–2 CNMI Investor nonimmigrant status, other than the spouse of an E–2 CNMI investor who obtained such status based upon a Foreign Retiree Investment Certificate, is eligible to apply for employment authorization under 8 CFR 274a.12(c)(2) while in E–2 CNMI Investor nonimmigrant status. Employment authorization acquired under this paragraph is limited to employment in the CNMI only.

(xi) *Terms and conditions of E–2 CNMI Investor nonimmigrant status.*

(A) *Nonimmigrant status.* E–2 CNMI Investor nonimmigrant status and any derivative status are only applicable in the CNMI. Entry, employment, and residence in the rest of the United States (including Guam) require the appropriate visa or visa waiver eligibility. An E–2 CNMI Investor who enters, attempts to enter or attempts to travel to any other part of the United States without the appropriate visa or visa waiver eligibility, or who violates conditions of nonimmigrant stay applicable to any such authorized status in any other part of the United States, will be deemed to have violated the terms and conditions of his or her E–2 CNMI Investor status. An E–2 CNMI Investor who departs the CNMI will require an E–2 CNMI investor visa for reentry to the CNMI.

(B) *Employment authorization.* An alien with E–2 CNMI Investor nonimmigrant status is employment authorized in the CNMI only for the enterprise that is the basis for his or her CNMI Foreign Investment Certificate or Long Term Business Certificate, to the extent that such Certificate authorized such activity. An alien with E–2 CNMI Investor nonimmigrant status based upon a Foreign Retiree Investor Certificate is not employment authorized.

(C) *Changes in E–2 CNMI investor nonimmigrant status.* If there are any substantive changes to aliens' compliance with the terms and conditions of qualification for E–2 CNMI Investor nonimmigrant status, each subject alien must file a new application for E–2 CNMI Investor nonimmigrant status, in accordance with the instructions on Form I–129 requesting extension of stay in the United States. Prior approval is not required if corporate changes occur that do not affect a previously approved employment relationship, or are otherwise non-substantive.

(D) *Unauthorized change of employment.* An unauthorized change of employment to a new employer will constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the Act (8 U.S.C. 1227(a)(1)(C)(i)).

(E) *Periods of admission.*

(*1*) An E–2 CNMI Investor may be admitted for an initial period of not more than two years.

(*2*) The spouse and children accompanying or following-to-join an E–2 CNMI Investor may be admitted for the period during which the principal alien is in valid E–2 CNMI Investor nonimmigrant status. The temporary departure from the United States of the principal E–2 CNMI Investor shall not affect the derivative status of the dependent spouse and children, provided the familial relationship continues to exist and the principal

alien remains eligible for admission as an E–2 CNMI Investor.

(xii) *Extensions of stay.* Requests for extensions of E–2 CNMI Investor nonimmigrant status may be granted in increments of not more than two years, until the end of the transition period. To request an extension of stay, an E–2 CNMI Investor must file with USCIS an application for extension of stay, with required accompanying documents, in accordance with the instructions on Form I–129. To qualify for an extension of E–2 CNMI Investor nonimmigrant status, each alien must demonstrate:

(A) Continuous maintenance of the terms and conditions of E–2 CNMI Investor nonimmigrant status;

(B) Physical presence in the CNMI at the time of filing the application for extension of stay; and

(C) That he or she did not leave during the pendency of the application.

(xiii) *Change of status.* An alien eligible for E–2 CNMI Investor status on the transition program effective date, but who obtains another valid nonimmigrant status, may apply to change nonimmigrant status to E–2 CNMI Investor in accordance with paragraph (e)(21) of this section and within the period of time provided by paragraph (e)(23)(v).

(xiii) *Expiration of transition period.* Upon expiration of the transition period, the E–2 CNMI Investor nonimmigrant status will automatically terminate.

(xiv) *Fee waiver.* An alien applying for E–2 CNMI Investor nonimmigrant status is eligible for a waiver of the fee for Form I–129 based upon inability to pay as provided by 8 CFR 103.7(c)(1).

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

4. Section 274a.12 is amended by:

a. Removing the ''or'' at the end of paragraph (b)(20);

b. Removing the period at the end of paragraph (b)(21) and adding a ''; or'' in its place;

c. Adding a new paragraph (b)(22); and by

d. Adding a new paragraph (c)(12) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

* * * * *

(22) An alien in E–2 CNMI Investor nonimmigrant status pursuant to 8 CFR 214.2(e)(23). An alien in this status may be employed only by the qualifying company through which the alien attained the status. An alien in E–2 CNMI Investor nonimmigrant status may be employed only in the Commonwealth of the Northern Mariana Islands for a qualifying entity. An alien who attained E–2 CNMI Investor nonimmigrant status based upon a Foreign Retiree Investment Certificate or Certification is not employment-authorized. Employment authorization does not extend to the dependents of the principal investor (also designated E–2 CNMI Investor nonimmigrant) other than those specified in paragraph (c)(12) of this section;

* * * * *

(c) * * *

(12) An alien spouse of a long-term investor in the Commonwealth of the Northern Mariana Islands (E–2 CNMI Investor) other than an E–2 CNMI investor who obtained such status based upon a Foreign Retiree Investment Certificate, pursuant to 8 CFR 214.2(e)(23). An alien spouse of an E–2 CNMI Investor is eligible for employment in the CNMI only;

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. E9–21967 Filed 9–11–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. FSIS 2006–0040A]

Product Labeling: Use of the Voluntary Claim ''Natural'' in the Labeling of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is issuing this Advance Notice of Proposed Rulemaking (ANPR) to assist the Agency in defining the conditions under which it will permit the voluntary claim ''natural'' to be used in the labeling of meat and poultry products. After considering comments on the ''natural'' claim submitted by the public in response to a **Federal Register** notice that the Agency issued on December 5, 2006, and the comments presented at a public meeting held by the Agency on December 12, 2006, FSIS has decided to solicit additional public input. FSIS has concluded that a further solicitation of comments could produce information that would help to clarify and resolve the issues surrounding the ''natural'' claim. Moreover, additional comment will help FSIS to assess how best to coordinate its regulation of ''natural'' claims with the standards for voluntary marketing claims developed by the Agricultural Marketing Service (AMS), particularly with AMS's ''naturally raised'' marketing claim standard.

DATES: Comments are due by November 13, 2009.

ADDRESSES: Comments may be submitted by one of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, and then click on ''Submit.'' In the Docket ID column, select FDMS Docket Number FSIS–2006–0040A to submit or view public comments and to view supporting and related material available electronically. This docket can be viewed using the ''Advanced Search'' function in Regulations.gov.

Mail, including floppy disks or CD–ROMs, and hand or courier-delivered items: Send to FSIS, OPPD, Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, 5601 Sunnyside Avenue, Room 2–2127, Beltsville, Maryland 20705.

All submissions received by mail and electronic mail must include the Agency name and docket number FSIS–2006–0040A. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted to the regulations.gov Web site and on the Agency's Web site at: *http://www.fsis.usda.gov/regulations_&_policies/2009_Notices_Index/index.asp.*

FOR FURTHER INFORMATION CONTACT: Sally Jones, Acting Director, Labeling and Program Delivery Division, Office of Policy and Program Development USDA, FSIS, 5601 Sunnyside Avenue, Beltsville, Maryland 20705, (202) 205–0623, e-mail: *Sally.Jones@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FSIS is the public health regulatory agency in the USDA that is responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and accurately labeled and packaged. FSIS develops and implements regulations and policies to ensure that meat, poultry, and egg product labeling is not false or misleading. Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, 607) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, 457), the labels of meat and poultry products must be approved by the Secretary of Agriculture, who has delegated this authority to FSIS, before these products can enter commerce.

Pursuant to its authority under the FMIA and PPIA, FSIS has established a framework of regulations and policies within which to judge whether labels and other labeling of meat and poultry products are not false or misleading.

To guide manufacturers in the development of labeling that FSIS is likely to determine to be not false or misleading with regard to the voluntary claim ''natural,'' FSIS first issued policy guidance in the form of Standards and Labeling Policy Memorandum (Memo) 055, dated November 22, 1982. Policy Memo 055 stated that the term ''natural'' may be used in the labeling of meat and poultry products provided that the applicant for such labeling demonstrates that:

(1) The product does not contain any artificial flavor or flavoring, coloring ingredient, or chemical preservative (as defined in 21 CFR 101.22), or any other artificial or synthetic ingredient; and

(2) The product and its ingredients are not more than minimally processed. Minimal processing may include: (a) Those traditional processes used to make food edible, to preserve it, or to make it safe for human consumption, e.g., smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes that do not fundamentally alter the raw product or that only separate a whole, intact food into component parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits to produce juices. Relatively severe processes, e.g., solvent extraction, acid hydrolysis, and chemical bleaching, would clearly constitute more than minimal processing.

Policy Memo 055 also provided that the use of an ingredient that has undergone more than minimal processing in general precludes a product in which the ingredient is used from bearing an unqualified ''natural'' claim. Policy Memo 055 stated that FSIS will evaluate label submissions on a case-by-case basis, however, and may approve a label if the manufacturer of the product demonstrates that the use of such an ingredient does not significantly change the character of the product provided the ''natural'' claim is clearly and conspicuously qualified to identify the ingredient.

Policy Memo 055 also provided that all products that claim to be ''natural'' or a ''natural'' food should be accompanied by a brief statement that explains what is meant by the term ''natural,'' i.e., that the product is a ''natural'' food because it contains no artificial ingredients and is only minimally processed. In addition, the 1982 policy also stated that the decision of the Agency to approve or deny the use of a ''natural'' claim may be affected by the specific context in which the claim is made. For example claims that a product is a ''natural'' food, e.g., ''natural'' chili, would be unacceptable for a product that contains beet powder, an ingredient that has a ''natural'' source but that artificially colors the finished product. However, ''all natural ingredients'' might be an acceptable claim for such a product.

Since 1982, FSIS has updated its guidance on the use of ''natural'' claims to reflect case-by-case decisions made by the Agency and to revise references to regulations. In August 2005, FSIS rescinded Policy Memo 055 and incorporated its policy on ''natural'' claims into an entry in its Food Standards and Labeling Policy Book (the Policy Book) (available on the FSIS Web site at: *http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf.* The 2005 Policy Book entry modified FSIS's ''natural'' policy to add a note that acknowledged that ''[s]ugar, sodium lactate (from a corn source) [at certain levels], and natural flavorings from oleoresins or extractives are acceptable for 'all natural' claims.''

In late 2006, FSIS received information that raised questions about its initial judgment that the use of sodium lactate at levels consistent with those approved for flavoring (i.e., up to two percent of product formulation) was consistent with the meaning of ''natural.'' More specifically, the information provided to the Agency indicated that sodium lactate, as well as potassium lactate and calcium lactate, may provide an antimicrobial effect at levels that have been approved for flavoring. The Agency concluded that listing ''sodium lactate (from a corn source)'' in the 2005 entry may have been in error. In December 2006, FSIS modified the ''natural'' claims entry in the Policy Book to remove the 2005 reference to sodium lactate. The current entry in the Policy Book provides that the use of sodium lactate or any ingredient known to have multiple technical effects in products labeled as ''natural'' will be evaluated on a case-by-case basis at the time of label approval to assess whether the intended use, level of use, and technical function of the ingredient are consistent with the 1982 policy.

II. Hormel Petition

On October 9, 2006, Hormel Foods submitted a petition to FSIS requesting that the Agency initiate rulemaking to establish a codified definition for the voluntary claim ''natural'' and to delineate the conditions under which the claim can be used on the labels of meat and poultry products. The petition requests that, consistent with FSIS's longstanding policy on ''natural,'' a meat or poultry product should not be labeled as ''natural'' unless (1) it does not contain artificial flavorings, artificial coloring ingredients, other artificial or synthetic ingredients, or chemical preservatives; and (2) it is not more than minimally processed. The petition further states that issues of consumer confidence and consistency in labeling dictate that exceptions for specific chemical preservatives and synthetic ingredients should not be allowed. The petition focused on the 2005 Policy Book entry's references to the use of sodium lactate (from a corn source).

A copy of the 2006 Hormel petition is available for viewing by the public in the FSIS docket room and on the FSIS Web site at: *http://www.fsis.usda.gov/Regulations_&_Policies/Petition_Natural_Label_Claims/index.asp.*

III. Federal Register Notice and Public Meeting

The use of the claim ''natural'' is a marketing issue of significant interest to FSIS, to industry, and to the public. Therefore, on December 5, 2006, FSIS published in the **Federal Register** a notice to inform the public of the October 2006 petition from Hormel and to announce a public meeting to discuss the petition (71 FR 70503). The notice also requested comments on the petition and on the use of the claim ''natural'' in general. The notice explained that FSIS had removed the 2005 reference to sodium lactate (from a corn source) from its ''natural'' claims policy and that with respect to ''natural'' claims FSIS would consider the use of sodium lactate and other ingredients with multiple

functional effects on a case-by-case basis at the time of label evaluation.

The public meeting on ''natural'' was held on December 12, 2006, in Washington, DC (transcripts available for viewing by the public in the FSIS docket room and on the FSIS Web site at *http://www.fsis.usda.gov/PDF/Natural_Claims_Transcripts.pdf*). The comment period on the petition and the claim ''natural'' closed on January 11, 2007, but FSIS re-opened and extended the comment period to March 5, 2007 (72 FR 2257).

IV. Issues Raised by the Comments and Other Issues Associated With FSIS's ''Natural'' Policy

FSIS received over 12,000 comments on issues discussed in the December 2006 **Federal Register** notice and at the December 2006 public meeting. The Agency also received petitions requesting that it take action with regard to ''natural'' claims that differ from the action requested in the Hormel petition. Because the actions requested in these petitions raise the same issues as those raised by the comments, FSIS will address these petitions as if they were comments.

Most of the comments were identical letters submitted electronically by individuals that identified themselves as members of the Truthful Labeling Coalition (TLC), a coalition of chicken producers and private citizens concerned about the labeling of fresh poultry. These comments objected to the use of flavoring, tenderizing, and seasoning solutions to enhance poultry products bearing the ''natural'' claim. The TLC also submitted a petition dated July 27, 2007, that requests that FSIS take immediate action to prohibit the use of ''natural'' claims on the labels on poultry products enhanced with flavorings and other solutions.

FSIS received 92 comments and three petitions that raised additional issues associated with ''natural'' claims. The comments and petitions were submitted by industry, trade associations representing industry, animal welfare advocacy organizations, private citizens, consumer advocacy organizations, researchers, consultants, and law firms representing industry.

The comments expressed divergent views on what the claim ''natural'' as applied to meat and poultry products should mean and, in general, focused on particular ingredients, processing methods, and animal production practices that individual commenters felt should or should not be permitted for meat or poultry products labeled as ''natural.'' In addition, several comments disagreed with the request in the Hormel petition that FSIS establish a codified definition for ''natural.'' These comments suggested alternative approaches for addressing issues surrounding ''natural'' claims.

The comments indicate that there is an overall lack of consensus on both the general or common understanding of what the claim ''natural'' means to the industry and to the public and on the approach that FSIS should take to address issues associated with the use of ''natural'' claims on the labels of meat and poultry products. Nonetheless, FSIS has concluded that a further solicitation of comments could produce information that would help to clarify and resolve the issues surrounding the ''natural'' claim. Therefore, to better focus the public input submitted in response to this ANPR, FSIS is requesting comments on the issues described below.

1. The Need for Rulemaking

The comments submitted in response to the December 2006 **Federal Register** notice and presented at the 2006 public meeting indicate that there is significant disagreement on whether FSIS should resolve issues surrounding ''natural'' claims through the rulemaking process.

Some comments agreed with the Hormel petition and supported rulemaking to clarify and codify requirements for the use of ''natural'' claims. The comments stated that the only way to resolve issues associated with ''natural'' claims is to issue clear rules that can be applied consistently. Some comments stated that issues on whether certain ingredients should be allowed in meat or poultry products labeled as ''natural'' should be resolved through a transparent rulemaking process.

Other comments objected to rulemaking to address issues associated with ''natural'' claims. Several comments suggested that FSIS decline to codify the definition of ''natural,'' as requested in the Hormel petition, and maintain a flexible policy on the use of ''natural'' claims instead. Sara Lee, a manufacturer of meat and poultry products, submitted a petition requesting that FSIS adopt a flexible policy on ''natural'' claims that provides for case-by-case consideration of the use of the claims on the labeling of meat and poultry products as opposed to a static, fixed definition adopted through notice-and-comment rulemaking.

The comments that opposed rulemaking stated that determining whether a ''natural'' claim on the label of a meat or poultry product is not false or misleading often depends on the context in which the claim is used. According to the comments, because the number of uses of the claim ''natural'' that are not false or misleading cannot be captured in a single, static regulation, FSIS must maintain a flexible policy that will allow the Agency to evaluate a proposed use of the claim on a case-by-case basis.

Some comments stated that a codified definition of ''natural'' is unnecessary and would restrict FSIS's ability to update its ''natural'' claims policy to address new technologies and changes in consumer expectations. Several comments noted that prior attempts by other Federal agencies to establish regulations to define ''natural'' as it applies to foods have proven unsuccessful.

To address these concerns, it would be possible for FSIS to continue to resolve issues surrounding ''natural'' claims by maintaining its current approach based on the current, or a revised, guidance document.

As many of the comments noted above indicate, determining whether a ''natural'' claim on the label of a meat or poultry product is not false or misleading may often depend on the context in which the claim is used. Thus, these comments seem to suggest that FSIS should not define natural by adopting a rigid, static definition, but instead consider an approach that would allow manufacturers of meat and poultry products to use the ''natural'' claim on their labels in a manner consistent with Agency guidance as long as they explain clearly on the label why their proposed use of a ''natural'' claim appropriately applies to their particular product. The ''natural'' claim and explanation would continue to be subject to premarket, case-by-case approval by FSIS.

This approach would give manufacturers of meat and poultry products flexibility to use a ''natural'' claim to reflect specific characteristics of different products, so long as they accurately explain on the label why this term fairly characterizes their product. The information provided on the product label would allow consumers to determine whether the ''natural'' claim, as explained or qualified by the product label, is consistent with the characteristics that the consumer expects from a ''natural'' meat or poultry product.

2. Sodium Lactate and Other ''Multi-Functional'' Ingredients and Food Safety

FSIS received several comments on the use of sodium lactate and other multi-functional ingredients in ''natural'' meat and poultry products. As discussed above, in late 2006, FSIS

received information to indicate that sodium lactate, as well as potassium lactate and calcium lactate, may provide antimicrobial effects at levels approved for their flavoring effect. FSIS also received comments suggesting that additional multi-functional ingredients, such as sodium citrate, distilled vinegar, fruit juice concentrates, and sea salt, may present similar issues for the Agency's ''natural'' policy. Like sodium lactate, these substances serve technical purposes that at certain levels and under certain conditions would preclude the use of ''natural'' labeling under the Agency's policy on the claim.

Several comments stated that FSIS should not preclude products containing ingredients that have multi-functional effects from qualifying for the ''natural'' claim. The comments maintained that the term ''chemical preservative'' as used in FSIS's natural policy refers to synthetic or artificial preservative, not natural ingredients with preservative effects. The comments asserted that sodium lactate (from a corn source) and certain other lactates are ''natural'' ingredients that should be permitted in meat and poultry products labeled as ''natural'' regardless of their technical effects.

Some comments stated that ingredients that have both flavoring and antimicrobial effects are greatly needed in the manufacturing of large food quantities to enhance both food safety and quality. The comments stated that ingredients that have both flavoring and antimicrobial effects provide food processors with interventions that are needed to help ensure public health. Other comments acknowledged that while antimicrobial agents can serve important food safety purposes, these ingredients nonetheless raise concerns as to whether they can be used in products labeled as ''natural.''

An issue raised by the comments, therefore, is whether it would be appropriate in approving ''natural'' claims to distinguish ingredients used for their antimicrobial effects to inhibit the growth of pathogenic organisms, such as *Listeria monocytogenes*, from those used for preservative effects. This distinction is implicit in the definition of ''chemical preservative'' in 21 CFR 101.22(a)(5) and in FSIS's definition of ''chemical preservative'' in 9 CFR 301.2, which provide that a ''chemical preservative'' is ''any chemical that, when added to a food, tends to prevent or retard deterioration thereof * * *.''

The preservative technical effect is to retard or prevent deterioration of food, and this effect is achieved by preventing the outgrowth of microorganisms that produce off-odors and discolor food as the food ages. Based on data that FSIS has received, however, some companies add substances with antimicrobial effects to their products not to achieve effects on spoilage organisms but to impart flavor and to inhibit the outgrowth of the pathogen *Listeria monocytogenes* that may be present in the product.

These companies submitted data to demonstrate that the ingredient's primary purpose is for flavoring, with a potential added benefit of preventing the outgrowth of *Listeria monocytogenes*, and not to prevent or retard deterioration of the product. The data submitted show that products containing the ingredient have the same ''sell by/use by'' date as products with the same formulation except the antimicrobial ingredient, and that both products have a similar outgrowth of spoilage organisms over time. These companies have argued, therefore, that under these circumstances, the product should be eligible to bear the ''natural'' claim.

While FSIS evaluates this and other issues discussed in this notice and the comments submitted in response to it, the Agency will continue to evaluate and approve ''natural'' claims in the labeling of products that contain multi-functional ingredients on a case-by-case basis. Firms seeking FSIS approval of a ''natural'' claim for a product that includes a multi-functional ingredient like sodium lactate would need to substantiate the claim with, among other evidence, a showing that the ingredient is not being used to extend the product's shelf life.

3. Separate Claims for ''Natural'' Products and ''Natural Ingredients''

Several comments suggested that FSIS establish criteria for separate and distinct claims for (a) ''natural'' products and (b) products with ''natural ingredients.'' According to these comments, meat and poultry products that meet the conditions specified in the ''natural'' claims entry in the Policy Book should be permitted to bear the claim ''natural'' on their labels, while meat and poultry products that simply contain no artificial or synthetic ingredients should be permitted to bear the claim ''natural ingredients'' on their labels. Some comments suggested that FSIS permit meat and poultry products that contain ingredients that comply with FDA's definition of ''natural flavor'' or ''natural flavoring'' in 21 CFR 101.22(a)(3) to bear the claim ''natural ingredients'' regardless of the ingredient's technical effects or whether the ingredient is considered to be ''minimally processed.''

4. ''Non-Traditional'' Food Processing Methods

Several comments noted that many types of processing methods that are in use today did not exist 25 years ago when FSIS first established its policy on ''natural.'' The comments stated that many of these processing methods, such as steam pasteurization, ultra pasteurization, modified atmosphere packaging, and high pressure processing, enhance the safety and quality of meat and poultry product without altering the basic nature of the food and thus should be permitted to be used on products labeled as ''natural.'' The comments suggested that FSIS consider a meat or poultry product to be ''minimally processed'' based on the processing method's impact on the food rather than the complexity of the processing technology and equipment. Several comments supported allowing the use of high pressure processing on meat and poultry products labeled as ''natural.''

Other comments questioned whether advanced processing technologies, such as high-pressure pasteurization, should be considered minimally processed regardless of their effects on the composition of the finished product. Some comments presented results from focus groups and consumer surveys that, according to the comments, indicate that the consumers do not have a clear understanding of what ''minimally processed'' means. The comments suggested that FSIS either clarify what minimally processed means or eliminate the minimal processing component of its ''natural'' claims policy.

While it considers the comments submitted on this issue, FSIS will continue to evaluate the use of ''non-traditional'' processing methods on products labeled as ''natural'' on a case-by-case basis. FSIS is likely to find that a product that has undergone a ''non-traditional'' processing method to be ''minimally processed'' if the manufacturer of the product demonstrates: (1) That the processing method functions in a manner that is similar to one of the traditional processes described in ''natural'' claims entry of the Policy Book, and (2) that a meat or poultry product that has been subjected to the non-traditional process has the same basic characteristics as a product that has not undergone such a process.

5. ''Enhanced'' Products

FSIS received over 12,000 electronic form letters from individuals stating that they are members of the TLC that

expressed the view that poultry products containing added solutions (i.e., ''enhanced'' poultry) should not be labeled as ''natural'' because, according to the comments, ''natural'' products are not injected with solutions containing water, salt, flavorings, seasonings, tenderizing agents, and water-binding ingredients, such as the seaweed extract carrageenan. As noted above, the TLC also submitted a petition dated July 27, 2007, requesting that FSIS take immediate action to prohibit the use of ''natural'' claims on the labels of ''enhanced'' poultry products. The petition includes results from consumer surveys that, according to the petition, demonstrate that a majority of consumers believe that ''enhanced'' products should not be labeled as ''natural.''

Other comments suggested that FSIS establish two categories for ''natural'' claims associated with raw poultry products. The comments proposed that raw, single-ingredient poultry products that are not otherwise marinated, seasoned, injected, or otherwise ''enhanced'' could be labeled as ''natural,'' while raw poultry products that have been enhanced with ''natural'' ingredients could bear claims such as ''Made with All Natural Ingredients'' or ''Enhanced with All Natural Ingredients.''

''Enhanced'' products are products to which marinades/flavoring/tenderizing solutions have been added. Enhanced poultry products are widely sold and may bear ''natural'' claims because all of their ingredients are ''natural.'' On a commercial scale, manufacturers of poultry products are not likely to use a bowl, pan, or any of the other common household methods used by consumers to marinate poultry.

For years, meat and poultry product manufacturers have used various techniques to infuse marinade and other solutions containing flavorings, seasonings, tenderizing agents, water, salt, and other ingredients, such as starches and seaweed extractives, that help hold the moisture in the product. FSIS labeling policies have been updated over time in light of techniques in commercial operations where flavoring and seasoning marinades and solutions are added to poultry and meat products using tumbling and ''needling'' mechanisms. For example, to ensure that the labeling of meat and poultry products to which solutions are added bears a truthful, descriptive product designation as provided in 9 CFR 317.2(c)(1) and 9 CFR 381.117(a), the traditional product name must be supplemented with an adjacent qualifier that informs the consumer of the presence of the solution in the product. Examples of such statements are ''Chicken Breast with up to 15% of a Flavoring Solution'' and ''Turkey Cutlets Enhanced with 10% of water, salt, spices, and carrageenan.'' In addition, FSIS's regulations require that all ingredients added to poultry and meat products be listed in the ingredients statement on labeling (9 CFR 317.2, 9 CFR 381.118).

Thus, the labels of ''enhanced'' meat and poultry products are required to contain information to inform consumers that the product contains added solutions. However, many comments submitted on this issue, as well as the TLC petition, maintain that this required supplemental labeling feature does little to prevent consumers from believing that they are purchasing fresh, single-ingredient chicken because it is typically not prominently displayed on the product label.

6. ''Natural'' and Animal Production Conditions

Several comments stated that ''natural'' claims on the labels of meat and poultry products should reflect the conditions under which animals used to produce these products were raised. Most of these comments stated that meat and poultry products from animals that have been genetically altered, treated with hormones, or fed prophylactic antibiotics should not qualify to be labeled as ''natural.'' The comments also asserted that products from animals raised under intensive confinements that were unable to engage in their natural behavior should not be labeled as ''natural.'' FSIS received these types of comments from both consumers and producers of meat and poultry products.

In addition, Farm Sanctuary, a farm animal advocacy organization, petitioned the Agency to prohibit the claim ''natural'' on all meat and poultry products or, in the alternative, to work with USDA's Agricultural Marketing Service (AMS) to codify an expanded definition of ''natural'' that addresses the treatment and living conditions of animal raised for food before their slaughter. The petition includes the results of a nation-wide consumer survey that, according to the petition, indicates that consumers are confused about what ''natural'' claims on the labels of meat and poultry products mean and believe that the claim relates to the treatment of an animal while alive.

Several comments suggested that FSIS work with USDA's AMS to develop a ''naturally raised'' claim for meat and poultry products that reflects the animal production practices. Other comments, as well as the Farm Sanctuary petition, asserted that establishing separate claims for ''natural'' and ''naturally raised'' would be confusing to consumers, and that FSIS, in consultation with AMS, should establish a single ''natural'' claim that encompasses the treatment and living conditions of animals raised for food prior to slaughter, as well as post-slaughter processing.

FSIS has regarded the claim ''natural,'' when used on the labels of meat and poultry products, as one that is intended to reflect the characteristics of the finished product and, unlike the claim ''naturally raised,'' one that is not intended to encompass animal production practices. AMS as well has viewed ''natural'' as a distinct and different claim from its ''naturally raised'' marketing claim because ''natural'' has been considered as a post-harvest processing claim, while ''naturally raised'' has been viewed as a claim that pertains to pre-harvest production practices.

On January 21, 2009, AMS published in the **Federal Register,** a voluntary standard for ''naturally raised'' livestock and meat marketing claims (74 FR 3541). The standard addresses the circumstances in which a ''naturally raised'' claim could be made for the production of livestock used in meat and meat products. The naturally raised marketing claim standard states that livestock used for the production of meat and meat products have been raised entirely without growth promotants and antibiotics (except ionophores used as a coccidiostatic for parasite control), and have never been fed animal by-products derived from the slaughter/harvest process or from animal waste.

AMS and FSIS are carefully evaluating the comments submitted to FSIS and AMS addressing this issue, including the views expressed at the recent public meeting on animal raising claims (73 FR 60228, October 10, 2008). Several participants at the public meeting urged the agencies to work together on labeling claims such as ''natural'' and ''naturally raised,'' and AMS and FSIS are, in fact, collaborating to achieve a consistent USDA approach to these issues.

AMS' voluntary standard for ''naturally raised livestock'' was adopted to establish conditions for the raising of livestock that AMS will verify to increase the value of the livestock and of the meat and meat products derived from them. After consideration of the comments received with regard to the AMS ''naturally raised'' standard and of the views expressed at the public

meeting on ''raising'' claims held by the two agencies, AMS and FSIS have mutually determined that the application of the ''naturally raised'' claim to meat and meat products warrants further evaluation by the agencies as well as further input from all interested parties. FSIS, in cooperation with AMS, will evaluate the ''naturally raised'' claim in the context of its consideration of the broader issues presented by ''natural'' claims on meat and poultry products. Accordingly, FSIS does not intend, at this time, to approve ''naturally raised livestock'' claims for meat or meat products based solely on the AMS certification to its ''naturally raised'' standard. Nonetheless, FSIS will evaluate all requests for ''naturally raised'' claims on a case-by case basis.

AMS and FSIS continue to believe that certification by AMS to the ''naturally raised'' standard provides appropriate support for claims for livestock and thus can enhance the value of such livestock when marketed by producers. Accordingly, AMS will continue to offer livestock producers the opportunity to use the ''naturally raised'' claim, verified by AMS, to market their animals.

7. Establish a Uniform Federal Definition of ''Natural''

Many comments, as well as the petition submitted by Sara Lee, suggested that USDA and FDA work together to create a consistent meaning for the ''natural'' claim for both agencies. Some comments proposed that both FSIS and FDA define ''natural'' based on the conditions that were first described in FSIS Policy Memo 055. Other comments proposed that FSIS model its ''natural'' policy after FDA's definition of ''natural flavor'' in 21 CFR 101.22(a), which does not include a ''minimally processed'' component. One comment encouraged FSIS to coordinate with FDA in the development of its ''natural'' claims policy but stated that it is not imperative for the two agencies to have the same policy. One comment also suggested that FSIS work with the Alcohol and Tobacco Trade and Taxation Bureau (ATTB), in consultation with the Federal Trade Commission (FTC), to develop a single working definition of the term ''natural'' for food and beverage products.

8. Carbon Monoxide

Although FSIS did not receive comments on this issue, some processing establishments and producers have expressed interest in using carbon monoxide in modified atmosphere packaging systems for meat products labeled as ''natural.'' Carbon monoxide is used to stabilize the naturally occurring red color pigment of meat. Proponents of this technology have expressed support for the use of carbon monoxide in ''natural'' products because carbon monoxide is a naturally occurring gas and acts to form a naturally occurring red meat color that dissipates after the product is removed from packaging.

Although carbon monoxide is a Generally Recognized as Safe (GRAS) and suitable substance in modified packaging systems, FSIS considers the use of this technology as inconsistent with its policy on ''natural.'' The Agency's view has been that the process used to add carbon monoxide to product packages represents more than minimal processing. FSIS continues to believe that the control system required in modified atmosphere processing using carbon monoxide, such that no more than 0.4% carbon monoxide is added, is too complex to support a ''natural'' claim.

V. Issues for Comment

FSIS issued the December 5, 2006, **Federal Register** notice and held the December 12, 2006 public meeting, to solicit public comments on what the voluntary labeling claim ''natural'' should mean when applied to meat and poultry products to inform the development of a proposed rule regarding the ''natural'' claim. However, the comments demonstrate that there is a lack of industry and public consensus on the meaning of ''natural.'' Therefore, FSIS is not prepared at this time to issue a proposed rule to establish a regulatory definition for the claim. Instead, the Agency is publishing this ANPR to solicit further public comment. During the pendency of this process, the Agency will continue to apply its ''natural'' claims policy described in the Policy Book.

To inform this process, FSIS requests comments on the following issues raised in this document.

1. Alternatives to Rulemaking

- In light of the concerns expressed by the comments that disagreed that FSIS should establish a codified definition for ''natural,'' the Agency requests comments on whether it should proceed to develop a proposed regulation, or use this proceeding to develop an updated ''natural'' claims policy.
- If commenters think that FSIS should not promulgate a rule to define ''natural,'' the Agency requests comments on whether it should continue to resolve issues associated with ''natural'' claims by relying on the existing or a revised policy document on ''natural'' claims, and if so, whether it should consider adopting the more flexible approach described earlier in this document in which, instead of defining ''natural,'' the Agency would approve the labels of meat or poultry products bearing a ''natural'' claim if the claim is accompanied on the label by a truthful statement that clearly explains what ''natural'' means as applied to a particular product.

2. Sodium Lactate and Other Multifunctional Ingredients

- FSIS requests comments on whether it should develop a policy on ''natural'' claims in which the Agency would continue to distinguish products that use ingredients for their antimicrobial effects to inhibit the growth of pathogenic organisms, such as *Listeria monocytogenes*, from products that use the same ingredients for preservative effects when evaluating labels that contain ''natural'' claims.
- FSIS also requests comments on whether it would be more appropriate for the labeling of a meat or poultry product that contains multi-functional ingredients derived from ''natural'' sources, such as sodium lactate from a corn source, to bear an ''all natural ingredients'' claim rather than a ''natural'' claim.

3. ''Non-Traditional'' Food Processing Methods

- Given the advances in food processing and packaging technologies that have occurred since Policy Memo 055 was first issued, FSIS requests comments on whether it should continue to permit more complex processes to be used on meat and poultry products labeled as ''natural'' if the process does not change the basic characteristics of the product.
- The Agency also requests comments on whether some of the more complex processes qualify as ''minimal processing'' under the Agency's established ''natural'' policy, and, if not, whether the Agency should revise the policy to allow the use of such processes on products labeled as ''natural.''

4. ''Enhanced'' Products

- Given the significant interest in the use of ''natural'' claims in the labeling of ''enhanced'' products, FSIS requests comments on whether it should approve a ''natural'' claim on meat and poultry products that have been enhanced with solutions that contain ''natural'' ingredients.
- FSIS also requests comments on whether it would be more appropriate

for raw meat and poultry products enhanced with ''natural'' ingredients to be allowed to bear an ''all natural ingredients'' claim instead of a ''natural'' product claim.

• Finally, because of the large number of comments that objected to the addition of ingredients to meat and poultry products labeled as ''natural,'' FSIS requests comments on whether the claim ''natural'' should refer only to raw, single-ingredient meat and poultry products, i.e., cuts of meat and poultry and ground meat and poultry.

5. Natural and Naturally Raised

• Given the number of comments that suggested that the claim ''natural'' as applied to meat and poultry products should encompass the conditions under which the source animals for these products were raised, FSIS requests comments on the issue and on how FSIS and AMS can best achieve a consistent approach to the claims ''natural'' and ''naturally raised.''

• FSIS also requests comment on whether the Agency should adhere to its traditional view that the claim ''natural'' relates only to the finished meat or poultry product and not factor in how the source livestock or poultry are raised.

6. Carbon Monoxide

• FSIS requests comments on whether the Agency's position regarding the use of carbon monoxide in the packaging of meat products is appropriate and should continue to be applied in evaluating requests for approval of ''natural'' claims.

7. Economic Effects

• FSIS requests comments on the potential economic effects and burdens of the various approaches on the use of ''natural'' claims that were presented in this document.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this document, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2009_Notices_Index/index.asp*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is available on the FSIS Web page. Through the Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service that provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices.

Customers can add or delete subscriptions themselves, and have the option to password-protect their accounts.

Done at Washington, DC, on September 9, 2009.

Alfred V. Almanza,

Administrator.

[FR Doc. E9–22036 Filed 9–11–09; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–116614–08]

RIN 1545–BH90

Disregarded Entities and Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations clarifying that a single-owner eligible entity that is disregarded as an entity separate from its owner for any purpose, but regarded as a separate entity for certain excise tax purposes, is treated as a corporation for tax administration purposes related to those excise taxes. Those regulations also make conforming changes to the tax liability rule for disregarded entities and the treatment of entity rule for disregarded entities with respect to employment taxes. The regulations affect disregarded entities in general and, in particular, disregarded entities that pay or pay over certain federal excise taxes or that are required to be registered by the IRS. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by December 14, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–116614–08), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–116614–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–116614–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael H. Beker, (202) 622–3070; concerning the submissions of comments and requests for a public hearing, Richard Hurst, (202) 622–2949 (TDD telephone) (not toll-free numbers) and his e-mail address is *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 301. The temporary regulations clarify that a single-owner eligible entity that is disregarded as an entity separate from its owner for any purpose, but regarded as a separate entity for certain excise tax purposes, is treated as a corporation for tax administrative purposes related to those excise taxes (that is, excise taxes reported on Form 720, ''Quarterly Federal Excise Tax Return;'' Form 730, ''Monthly Tax Return for Wagers;'' Form 2290, ''Heavy Highway Vehicle Use Tax Return;'' and Form 11–C, ''Occupation Tax and Registration Return for Wagering;'' excise tax refunds or payments claimed on Form 8849, ''Claim for Refund of Excise Taxes;'' and excise tax registrations on Form 637, ''Application for Registration (For Certain Excise Tax Activities).'' The temporary regulations also make conforming changes to the tax liability rule for disregarded entities in § 301.7701–2(c)(2)(iii) and the treatment of entity rule for disregarded entities with respect to employment taxes in § 301.7701–2(c)(2)(iv)(B). The text of those temporary regulations also serves as the text of these proposed

regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Michael H. Beker, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7701–2 is amended by:

1. Revising paragraphs (c)(2)(iii) and (c)(2)(iv)(B).
2. Redesignating paragraph (c)(2)(v)(B) as paragraph (c)(2)(v)(C) and adding new paragraph (c)(2)(v)(B).
3. In newly-designated paragraph (c)(2)(v)(C), *Example (iv)* is added.
4. Revising paragraphs (e)(2), (e)(5) and (e)(6).

The additions and revisions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(c) * * *

(2) * * *

(iii) [The text of this proposed amendment to § 301.7701–2(c)(2)(iii) is the same as the text of § 301.7701–2T(c)(2)(iii) published elsewhere in this issue of the **Federal Register**].

(iv) * * *

(B) [The text of this proposed amendment to § 301.7701–2(c)(2)(iv)(B) is the same as the text of § 301.7701–2T(c)(2)(iv)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(v) * * *

(B) [The text of this proposed amendment to § 301.7701–2(c)(2)(v)(B) is the same as the text of § 301.7701–2T(c)(2)(v)(B) published elsewhere in this issue of the **Federal Register**].

(C) * * * (iv) [The text of this proposed amendment to § 301.7701-2(c)(2)(v)(C) *Example (iv)* is the same as the text of § 301.7701–2T(c)(2)(v)(C) *Example (iv)* published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) * * *

(2) [The text of this proposed amendment to § 301.7701–2(e)(2) is the same as the text of § 301.7701–2T(e)(2) published elsewhere in this issue of the **Federal Register**].

* * * * *

(5) [The text of this proposed amendment to § 301.7701–2(e)(5) is the same as the text of § 301.7701–2T(e)(5) published elsewhere in this issue of the **Federal Register**].

(6) [The text of this proposed amendment to § 301.7701–2(e)(6) is the same as the text of § 301.7701–2T(e)(6) published elsewhere in this issue of the **Federal Register**].

* * * * *

L.E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–21986 Filed 9–11–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1926

[Docket OSHA–S215–2006–0063]

RIN 1218–AB67

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Limited Reopening of Record; Notice of Informal Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; limited reopening of the rulemaking record and notice of public hearing.

SUMMARY: On June 15, 2005, OSHA published a proposed rule to revise the general industry and construction standards for electric power generation, transmission, and distribution work and for electrical protective equipment. The proposed general industry and construction standards for electric power generation, transmission, and distribution work included revised minimum approach distance tables. Those tables limit how close an employee (or a conductive object he or she is contacting) may get to an energized circuit part. In light of recent changes to one of the consensus standards on which OSHA relied in formulating the proposed minimum approach distances, OSHA is reopening the record on this proposal to obtain additional comments related to the proposed minimum approach distances. The record will remain open on this limited basis until October 15, 2009. OSHA is also announcing a public hearing on the issues raised in this notice.

DATES: *Comments:* Comments must be submitted (transmitted, postmarked, or delivered) no later than October 15, 2009.

Notices of intention to appear: Interested persons who intend to present testimony or question witnesses at the public hearing must submit (transmit, postmark, or deliver) notices

of intention to appear no later than October 1, 2009.

Hearing testimony and evidence: Interested persons who request more than 10 minutes to present testimony or who intend to submit documentary evidence at the hearing must submit (transmit, postmark, or deliver) the full text of their testimony and all documentary evidence no later than October 15, 2009.

Public hearing: The informal public hearing will be held from 9:30 a.m. to 1:30 p.m. on October 28, 2009.

ADDRESSES: *Public hearing:* The informal public hearing will be held in Room N3437A, B, and C at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Comments, notices of intention to appear, hearing testimony, and documentary evidence: You may submit comments, notices of intention to appear, hearing testimony, and documentary evidence, identified by Docket No. OSHA–S215–2006–0063, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* If your comments, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.
- *Mail, hand delivery, express mail, messenger, or courier service:* You must submit two copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–S215–2006–0063, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., ET.

Instructions: All submissions must include the agency name and the docket number (Docket No. OSHA–S215–2006–0063) or regulation identifier number (RIN 1218–AB67) for this rulemaking. All comments received will be posted without change to *http://dockets.osha.gov,* including any personal information provided.

Docket: To read or download comments and materials submitted in response to this **Federal Register** notice, go to Docket OSHA–S215–2006–0063 at *http://www.regulations.gov* or at the OSHA Docket Office at the previously listed address. All comments and submissions are listed in the *http://www.regulations.gov* index. However, some information (for example, copyrighted material) is not publicly available to read or download through that Web page. All comments and submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

FOR FURTHER INFORMATION CONTACT: *Press inquiries and general information:* Ms. Jennifer Ashley, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

Technical information: David Wallis, OSHA, Office of Engineering Safety, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2277.

Hearings: Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647; 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov.*

SUPPLEMENTARY INFORMATION: On June 15, 2005, OSHA issued a proposed rule to revise the general industry and construction standards for electric power generation, transmission, and distribution work and for electrical protective equipment (70 FR 34822). The Agency solicited public comments, and held a public hearing on March 6 through 14, 2006. Administrative Law Judge William Colwell set a deadline of July 14, 2006, for filing written comments, summations, position statements, and briefs.

The proposed requirements for electric power generation, transmission, and distribution work for general industry and construction would be contained in 29 CFR 1910.269 and 29 CFR part 1926, subpart V (§§ 1926.950 through 1926.968), respectively. Proposed § 1926.960(c)(1) would require employees to maintain minimum approach distances from exposed energized parts. The minimum approach distances are specified in proposed Tables V–2 through V–6. Existing § 1910.269(l)(2) and proposed Tables R–6 through R–10 contain equivalent requirements for general industry. OSHA developed the minimum approach distance tables in the proposal using principles adopted from the 1993 National Electrical Safety Code (NESC, ANSI [1] C2–1993) [2] and ANSI/IEEE [3] Standard 516–1987. (See 70 FR 34822, at 34861 (June 15, 2005) and 73 FR 62942 (Oct. 22, 2008) for a detailed description of the methods OSHA used to calculate the proposed minimum approach distances.)

On October 22, 2008, OSHA published a **Federal Register** notice to reopen the record on a limited basis for a period of 30 days, or until November 21, 2008, because the IEEE technical committee responsible for revising IEEE Standard 516 identified what in its view was an error in the calculations of phase-to-phase minimum approach distances for nominal voltages 230 kV and higher (73 FR 62942). The equation used to calculate the electrical component of the minimum approach distance for voltages over 72.5 kV included a term, *a,* that represented the saturation factor for the transient overvoltage involved. This factor, which was taken from a graph,[4] increased substantially with increasing voltage. The minimum approach distances for phase-to-phase exposures were calculated using an *a* factor corresponding to the phase-to-ground transient overvoltage rather than for the higher phase-to-phase transient overvoltage. Because the minimum approach distances in OSHA's 2005 proposal were based on the same equations called into question by the IEEE technical committee, the same issue potentially affected the minimum approach distances in OSHA's proposal.

At the time the Agency published the reopening notice in October 2008, the IEEE committee was voting on a draft revised IEEE standard that would have

[1] ANSI is the American National Standards Institute.

[2] In promulgating the general industry standard at § 1910.269 in 1994, OSHA used minimum approach distances that matched the corresponding values in the 1993 NESC. The NESC subcommittee subsequently revised their distances in a tentative interim amendment correcting the tables in the 1993 NESC. The minimum approach distances in the pending proposal for both subpart V and § 1910.269 are identical to the minimum approach distances that appeared in the NESC through the 2002 edition. For the 2007 edition, the NESC adopted minimum approach distances that were the same for voltages of 72.5 kV and lower, but that were larger for voltages of 72.6 kV and higher. The increase in minimum approach distances for voltages of 72.6 kV and higher was due to the use of minimum tool insulation distance rather than minimum air insulation distance as described later in this notice.

[3] IEEE is the Institute of Electrical and Electronics Engineers, Inc.

[4] The graph, which was published in IEEE Committee Report, ''Recommendations for safety in live-line maintenance'' (IEEE T&D, vol. PAS–87, no. 2, pp. 346–352, Feb. 1968), was taken from test data. However, the underlying test data were lost. Consequently, the *a* factor had to be read from the published graph.

corrected the perceived error by (1) using a formula to calculate the *a* factor to avoid errors that could be made in reading values from the graph; and (2) extrapolating values for the *a* factor beyond the range of the underlying test data. In its reopening notice, OSHA asked for comments on IEEE's proposed approach for resolving this issue and raised several questions related to whether the final rule should reflect any elements of the draft IEEE standard.[5] The reopening notice limited comments to issues related to minimum approach distances for voltages of 72.6 kV and higher (73 FR 62942).

OSHA received only eight responses to the 2008 reopening notice. Most commenters generally supported the idea of incorporating into the final rule IEEE's proposed approach for calculating phase-to-phase minimum approach distances for voltages of 72.6 kV and higher. Two commenters, the International Brotherhood of Electrical Workers and Edison Electric Institute (EEI), recommended that OSHA open the record again when the IEEE committee adopted a final standard (see Document IDs:[6] OSHA–S215–2006–0063–0526, OSHA–S215–2006–0063–0527). EEI also requested an extension of the comment period, an expansion of the scope of the reopening to cover minimum approach distances for voltages below 72.6 kV, and a public hearing (see Document ID: OSHA–S215–2006–0063–0530). This notice resolves all of EEI's pending requests.

A. Minimum Approach Distances for Phase-to-Phase Exposures for Voltages of 72.6 kV and Higher

The IEEE committee recently adopted and published a new edition of IEEE Standard 516.[7] The revised standard adopts a new methodology, using a different set of formulas, for calculating phase-to-phase minimum approach distances for voltages of 72.6 kV and higher.[8] These formulas are derived from testing for line configurations (that is, for system design) rather than for live-line work. In other words, the underlying formulas are intended to be used for determining appropriate conductor spacing rather than for determining minimum approach distances appropriate for employees performing live-line work. To account for the presence of the employee working in an aerial lift bucket within the air gap between the two phase conductors, the committee incorporated the concept of a floating electrode in the air gap. The committee's approach to determining the electrical component of the minimum approach distance can be summarized as follows:

1. Start with a formula to calculate the critical sparkover voltage[9] for the distance between two conductors.
2. Modify the formula to account for a 3.3-meter floating electrode to represent an employee working within an aerial lift bucket between the phase conductors.
3. Modify the formula to convert the critical sparkover voltage to a withstand voltage.[10]
4. Determine the maximum transient overvoltage on the line and substitute that value for the withstand voltage.
5. Rearrange the equation to solve for distance.

In more technical detail, this approach is as follows:

1. The equation for calculating the critical sparkover voltage for a given distance between two conductors includes a gap factor, *k*. This factor depends on several variables:

alpha = the proportion of the negative switching impulse voltage to the total phase-to-phase impulse voltage.
$D_{design\ L-L}$ = the design phase-to-phase clearance
H = the average height of the phase above the ground

Table 1 shows the values recommended by IEEE Standard 516–2009 for these variables and the resultant gap factors.

TABLE 1—RECOMMENDED GAP FACTORS (k)

Phase-to-phase voltage	*Alpha*	$D_{design\ L-L}/H$	*k*
≤ 242 kV	0.33	0.8	1.451
> 242 kV	0.41	0.8	1.530

IEEE Standard 516–2009 uses the following equation to calculate the critical sparkover voltage for the designed gap between two phase conductors:

$$V_{50} = \frac{3400(k)}{1+\frac{8}{D_{l-l}}}$$

Where:

V_{50} = the critical sparkover voltage in kilovolts
k = the gap factor from Table 1
D_{l-l} = the sparkover distance in meters

2. When live-line bare-hand work[11] is performed, the employee is typically positioned between two or more phase conductors. The employee could be working, for example, from an aerial lift platform or a conductor cart. These devices and the worker are both conductive. The presence of a conductive object in the air gap reduces its dielectric strength. IEEE Standard 516–2009 introduces a constant, K_F, to account for the presence of the employee and other conductive objects in the air gap. IEEE Standard 516–2009 uses K_F equal to 0.9 to accommodate a 3.3-meter conductive object in the air gap. This value is equivalent to a 10 percent reduction in the dielectric strength of the gap.

With this factor included, the equation for the critical sparkover voltage is:

$$V_{50} = \frac{3400(k)(K_F)}{1+\frac{8}{D_{l-l}}}$$

3. IEEE sets the withstand voltage at a level that is 3σ lower than the critical

[5] OSHA is repeating, in this notice, several of these questions in slightly different form now that IEEE has formally published a new version of Standard 516.

[6] These are the Document IDs on the Federal eRulemaking Portal, *http://www.regulations.gov.*

[7] This document, IEEE Standard 516–2009, is available for inspection and copying in the Docket Office at the address listed in the **ADDRESSES** section of this notice.

[8] The approach for extrapolating values for the *a* factor that the IEEE committee was considering at the time of the 2008 reopening notice, which assumed that the value continued to increase in a linear fashion, failed to achieve consensus (73 FR 62942).

[9] The critical sparkover voltage, or V_{50}, is the voltage that will sparkover a specified distance 50 percent of the time.

[10] The withstand voltage is the voltage at which sparkover is not likely to occur across a specified distance. It is the voltage taken at the 3σ point below the sparkover voltage, assuming that the sparkover curve follows a normal distribution.

[11] This is work performed with the employee at the same potential as one of the phase conductors. The employee is insulated, by air or another insulating medium, from the other phase conductors and from ground.

sparkover voltage, as indicated in the following equation:

$V_W = (1—3\sigma)V_{50}$

Where:

V_W = the withstand voltage
V_{50} = the critical sparkover voltage
σ = 5 percent for a normal distribution

4. To solve for the electrical component of the clearance, the maximum transient overvoltage is substituted for the withstand voltage. The IEEE committee used the following equation to calculate the maximum transient overvoltage on the line:

$T_{L-L} = 1.35T_{L-G} + 0.45$

Where:

T_{L-L} = the phase-to-phase maximum transient overvoltage in per unit
T_{L-G} = the phase-to-ground maximum transient overvoltage in per unit

5. Substituting the values of the various constants and solving these equations for distance, IEEE Standard 516–2009 uses the following equations to calculate the minimum air insulation distance:

For voltages less than or equal to 242 kV:

$$D_{L-L} = \frac{8}{\left(\frac{4621}{\left((1.35T_{L-G})+0.45\right)V_{L-L}}\right)}$$

For voltages more than 242 kV:

$$D_{L-L} = \frac{8}{\left(\frac{4875}{\left((1.35T_{L-G})+0.45\right)V_{L-L}}\right)}$$

Where:

D_{L-L} = the minimum air insulation distance (the minimum distance needed to prevent sparkover with air alone as the insulating medium)
T_{L-G} = the phase-to-ground maximum transient overvoltage in per unit
V_{L-L} = the rms phase-to-phase system voltage

Tools in the air gap. The presence of an insulated tool in the air gap reduces the air gap's dielectric strength. IEEE Standard 516–2009 generally gives two values for the electrical component of the minimum approach distance: One in air (called MAID [12]) and one with a tool in the air gap (called MTID [13]).[14] Unlike the most recent edition of the NESC,[15] which uses the tool distance plus an ergonomic component (0.31 or 0.61 meters) in setting minimum approach distances, IEEE Standard 516–2009 does not provide either the tool distance or a means of calculating it for phase-to-phase exposures. Section 4.5.2.3 justifies this as follows:

> The definition of MTID applies only to line-to-ground application. It is rare that a worker would be at the potential of one phase while working on another phase. If a nonconductive object, such as an insulated tool, is placed in the air gap joining two phases, an engineering study should be performed. [Additional] testing is required to develop a line-to-line MTID. If a line-to-line MTID is required, the same factor as used in the line-to-ground distance may be used. Industry practices normally use an MTID that is the same as or greater than the MAID.

B. Minimum Approach Distances for Voltages Up to 72.5 kV

IEEE Standard 516–2009 contains a slightly revised methodology for calculating minimum approach distances for voltages up to 72.5 kV. In the past, IEEE Standard 516 calculated these distances using sparkover distances in IEEE Standard 4–1995, which are based on 60-Hz rod-to-rod sparkover voltages. The IEEE committee identified, in its view, two problems with continuing to use these distances without further adjustment. First, the distances are based on testing with 60-Hz voltages, not transient impulses. The sparkover voltage for a given distance is higher for a transient overvoltage than for an equal 60-Hz voltage. Second, the voltages in IEEE Standard 4–1995 are sparkover voltages, not withstand voltages. The withstand voltage for a given distance is smaller than the corresponding sparkover voltage. Thus, the two problems identified by the IEEE committee work in opposite directions. The first one would decrease the minimum approach distance; the second would increase it. IEEE Standard 516–2009 resolves both problems with resultant minimum approach distances that are slightly smaller than those in earlier editions. To overcome the first problem, IEEE Standard 516–2009 applies an impulse test factor of 1.3 to convert 60-Hz sparkover voltage to the critical sparkover voltage for a transient overvoltage. The standard then uses a 3σ margin (0.85) to convert the critical sparkover voltage to a withstand voltage. This addresses the second problem.

Table 2 shows a comparison of the 60-Hz sparkover voltage with the transient overvoltage withstand voltage for different rod-to-rod air gaps. This table shows that a given air gap can withstand a somewhat higher transient overvoltage than it can a 60-Hz voltage. The relationship between the electrical component of the minimum approach distance and the maximum transient overvoltage in this range is linear and, in IEEE Standard 516–2009, is represented by the following linear formula for phase-to-ground exposures:[16]

$$D_M = \frac{\left(\left(\frac{TOV-36.7}{5.6}\right)+2.75\right)}{100}$$

Where:

D_M = Distance in meters
TOV = Maximum phase-to-ground transient overvoltage (peak)

The corresponding formula for phase-to-phase exposures is:

$$D_M = \frac{\left(\left(\frac{TOV-63.6}{5.15}\right)+5.65\right)}{100}$$

Where:

D_M = Distance in meters
TOV = Maximum phase-to-phase transient overvoltage (peak)

TABLE 2—COMPARISON OF 60-HZ SPARKOVER WITH TRANSIENT OVERVOLTAGE WITHSTAND

Impulse transient overvoltage rod-to-rod withstand (kV peak)*	60-Hz rod-to-rod sparkover (kV peak)	Gap spacing from IEEE Std 4–1995 (cm)
27.6	25	2
39.8	36	3
50.8	46	4
58.6	53	5
66.3	60	6
77.4	70	8
87.3	79	10
95	86	12
105	95	14
115	104	16
123.8	112	18
132.6	120	20
158	143	25
184.5	167	30
212.2	192	35
240.9	218	40
268.5	243	45
298.4	270	50
355.8	322	60

* The voltage in this column equals the voltage in the second column × 1.3 × 0.85.

[12] MAID is the minimum air insulation distance.

[13] MTID is the minimum tool insulation distance.

[14] IEEE Standard 516–2009 increases the electrical component of the minimum approach distance by 10 percent (6 percent for the tool and 4 percent for intangibles) before the saturation factor is applied.

[15] This document, NESC, ANSI C2–2007, is available for inspection and copying in the Docket Office at the address listed in the **ADDRESSES** section of this notice.

[16] IEEE Standard 516 uses this equation for voltages more than 27.00 kV but less than or equal to 72.5 kV. For voltages less than 27.00 kV, IEEE Standard 516 uses a distance of 0.02 meters, with the following explanation: "When the TOV_{Peak} is less than 27.00 kV, sufficient test data are not available to calculate the MAID, which is less than 2 cm or 0.06 ft."

C. Comparison of the Revised IEEE Minimum Approach Distances With OSHA's Proposed Minimum Approach Distances

Table 3 compares OSHA's proposed minimum approach distances with distances resulting from the application of the changes described earlier in IEEE Standard 516–2009.

TABLE 3—COMPARISON OF MINIMUM APPROACH DISTANCES

Nominal voltage in kilovolts phase to phase*	Distance (m)			
	Phase-to-ground exposure		Phase-to-phase exposure	
	IEEE 516–2009	Proposed tables R–6 and V–2†	IEEE 516–2009	Proposed tables R–6 and V–2†
0.051 to 0.300	Avoid contact		Avoid contact	
0.301 to 0.750	0.32	0.31	0.32	0.31
0.751 to 15.0	0.64	0.65	0.67	0.67
15.1 to 36.0	0.73	0.77	0.84	0.86
36.1 to 46.0	0.79	0.84	0.94	0.96
46.1 to 72.5	0.89	1.00	1.15	1.20
72.6 to 121	1.01	0.95	1.37	1.29
138 to 145	1.15	1.09	1.62	1.50
161 to 169	1.29	1.22	1.88	1.71
230 to 242	1.71	1.59	2.77	2.27
345 to 362	2.75	2.59	4.32	3.80
500 to 550	3.61	3.42	6.01	5.50
765 to 800	4.82	4.53	8.87	7.91

*The voltage ranges correspond to those in OSHA's 2005 proposal. IEEE Standard 516–2009 has additional voltage ranges below 72.5 kV and has one additional higher voltage range, 362.1 to 420 kV. The distances shown in this table for IEEE Standard 516–2009 correspond to the minimum approach distance for the highest voltage in the range.

† See 70 FR 34822, June 15, 2005.

As can be seen from Table 3, the IEEE's approach in the new version of Standard 516 results in the following relative differences in minimum distances:

(1) *Phase-to-ground and phase-to-phase exposures at voltages from 751 volts to 72.5 kV.* The minimum approach distances in IEEE Standard 516–2009 for voltages from 751 volts to 72.5 kV are approximately 10 percent smaller than the corresponding values in OSHA's 2005 proposal. It should be noted that, at these voltages, the minimum approach distances in both OSHA's proposal and IEEE Standard 516–2009 reflect minimum air insulation distances, not minimum tool insulation distances.

(2) *Phase-to-phase exposures at 72.6 kV and higher.* The revised IEEE standard results in increases in minimum approach distances compared to OSHA's 2005 proposal, with substantial increases at voltages of 230 kV and higher.

(3) *Phase-to-ground exposures at 72.6 kV and higher.* Smaller increases in the revised IEEE standard compared to OSHA's 2005 proposal are evident for phase-to-ground exposures at voltages of 72.6 kV and higher. The increased minimum approach distances are due to the IEEE's use of minimum tool insulation distance rather than minimum air insulation distance as the electrical component in determining the minimum approach distance for phase-to-ground exposures.

D. Issues on Which Comment Is Requested

OSHA continues to support the text of its 2005 proposal and has not yet come to any conclusions as to whether the minimum approach distances in that proposal are based on faulty principles or calculations. In light of IEEE's recently published revisions, OSHA is reopening the record on the electric power generation, transmission, and distribution standard to invite additional comments, evidence, and data on the minimum approach distances proposed in 2005. In light of the changes made in the new IEEE standard, OSHA is now seeking additional public comment on the proposed minimum approach distances for all voltages. OSHA is interested in public feedback on the proposed minimum approach distances insofar as any party has specific comments about perceived problems or concerns with the calculation methods described in the 2005 proposal. The Agency strives to adopt a final rule that is based on sound and up-to-date engineering and scientific principles. Therefore, in developing the final rule based on these principles, OSHA will review the comments received in response to this notice, as well as evidence and other information gathered at the public hearing and in any posthearing comment period, including information provided in response to the following questions:

1. Should OSHA adopt minimum approach distances that are different from those proposed in subpart V Tables V–2 through V–6 and proposed § 1910.269 Tables R–6 through R–10 and, if so, what criteria and methodology are reasonably necessary to protect employees from hazards associated with sparkover?

2. Is there any scientific basis for not extrapolating the saturation factor, *a,* beyond the limits of the test data on which earlier (that is, pre-2009) versions of IEEE Standard 516 relied? Is there any test data that can be used to validate or invalidate the use of extrapolated values for *a*?

3. Does the new IEEE methodology for calculating minimum approach distances for phase-to-phase exposures at voltages of 72.6 kV and higher represent employee exposure conditions better than the methodology OSHA used to generate the minimum approach

distances in the 2005 proposal? In particular, is the use of conductor-to-conductor test data modified with the use of a 3.3-meter floating electrode preferable to the use of rod-to-rod test data for representing the range of employee exposure conditions?

4. All of the minimum approach distances in the 2005 proposed rule are based on the minimum air insulation distance. Should the minimum approach distances for voltages of 72.6 kV and higher be based on the minimum tool insulation distance, as is the case in the 2007 NESC? Should the minimum approach distances for voltages of 72.5 kV and lower also be based on the minimum tool insulation distance?

5. IEEE Standard 516–2009 does not provide minimum tool insulation distances for phase-to-phase exposures. Using an insulated boom on the top or middle conductor in a vertical configuration and using a live-line rope in a similar position involve the use of an insulator across the air gap between two phases. Are there any other situations in which an insulator or a live-line tool is used between two phase conductors during live-line work? If, in the final rule, OSHA bases minimum approach distances on minimum tool insulation distances, but adopts IEEE's methodology to calculate phase-to-phase minimum approach distances, how, if at all, should the final rule address situations in which insulation is present across the air gap?

6. Existing § 1910.269 and OSHA's 2005 proposal set maximum transient overvoltages of 3.0 per unit for voltages up to 362 kV, 2.4 per unit for voltages in the 552-kV range, and 2.0 per unit for voltages in the 800-kV range. The committee and the electric utility industry, as reflected in the NESC and earlier editions of IEEE Standard 516, believed that these were the highest possible transient overvoltages. However, IEEE Standard 516–2009 now recognizes that even higher maximum per-unit transient overvoltages can exist. How, if at all, should the final rule address the possibility of higher maximum transient overvoltages given that the proposed rule did not address this possibility?

7. In drafting the final rule, should OSHA include the 362.1- to 420-kV voltage range appearing in IEEE Standard 516–2009 in addition to the voltage ranges in the proposed rule? Do any existing systems operate at these voltages?

8. OSHA does not anticipate that revising the minimum approach distances using one of the methods outlined in this notice will have a substantial impact on compliance costs. However, the Agency realizes that some companies might be affected by revised minimum approach distances. Would revised minimum approach distances in accordance with one or more of the methods described in this notice impose additional compliance costs? If so, explain the reasons for these costs and the frequency with which they will be incurred.

OSHA is reopening the record solely on issues related to minimum approach distances. The record is not being reopened on any other issue.

E. Informal Public Hearing

As previously noted, OSHA received a request to conduct a public hearing from EEI in response to the October 2008 reopening notice (see Document ID: OSHA–S215–2006–0063–0530). Based on this request, the Agency is scheduling an informal public hearing to address the limited issues related to the minimum approach distances described in this notice. OSHA will make witnesses available at the hearing to provide testimony and to take questions about the minimum approach distances proposed in 2005. The Agency is relying on the public to provide testimony and evidence on the strengths and weaknesses of the principles, calculations, and minimum approach distances set forth in IEEE Standard 516–2009. The public must use the following procedures to participate in the hearing.

Informal public hearings—purpose, rules, and procedures. Pursuant to section 6(b)(3) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 655), OSHA invites interested persons to participate in this rulemaking by attending the public hearing and providing oral testimony and documentary evidence on the limited issues related to minimum approach distances raised in this notice. OSHA also welcomes any data or other evidence that will assist the Agency in developing a complete and accurate record on these issues.

The informal public hearing on minimum approach distances will be held on October 28, 2009, from 9:30 a.m. to 1:30 p.m., ET, in Room N3437A, B, and C at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. An administrative law judge (ALJ) will preside over the hearing and will be responsible for resolving any procedural matters that arise.

The legislative history of Section 6 of the OSH Act, as well as OSHA's rules governing public hearings (29 CFR 1911.15), establish the purpose and procedures of informal public hearings. Although the presiding officer of such hearings is an ALJ and questioning witnesses is allowed on crucial issues, the proceeding is largely informal and essentially legislative in purpose. Therefore, the hearing provides interested persons with an opportunity to make oral presentations in the absence of procedural restraints or rigid procedures that could impede or protract the rulemaking process. In addition, the primary purpose of the hearing is to gather information and clarify the record; the hearing will be an informal administrative proceeding rather than an adjudicative one in which the technical rules of evidence apply. OSHA's rules governing public hearings and the prehearing guidelines that the ALJ issues for the hearings will ensure fairness and due process for participants, as well as facilitate the development of a clear, accurate, and complete record. Accordingly, application of these rules and guidelines will be such that questions of relevance, procedure, and participation generally will be resolved in favor of development of the record.

The conduct of the hearing will conform to OSHA's Rules of Procedure for Promulgating, Modifying, or Revoking Occupational Safety and Health Standards (29 CFR part 1911). The rules also specify that the Assistant Secretary may, on reasonable notice, issue additional or alternative procedures to expedite the proceedings, to provide greater procedural protections to interested persons or to further any other good cause consistent with applicable law (29 CFR 1911.4). Although the ALJs who preside over the hearings make no decisions or recommendations on the merits of OSHA proposed rules, they do have the responsibility and authority necessary to ensure that the hearing progresses at a reasonable pace and in an orderly manner and to ensure that interested persons receive a full and fair hearing. Accordingly, ALJs have the power to regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine presentations to matters pertinent to the issues this reopening notice raises; use appropriate means to regulate the conduct of persons present at the hearing; question witnesses and permit others to do so; limit the time for such questioning; and leave the record open for a reasonable time after the hearing for the submission of additional data, evidence, comments and arguments (29 CFR 1911.16).

Notice of intention to appear at the hearing. Interested persons who intend

to participate in and provide oral testimony or documentary evidence at the hearing must file a written notice of intention to appear by October 1, 2009. To testify or question witnesses at the hearing, interested persons must submit (transmit, postmark, or deliver) a notice by October 1, 2009, providing the following information:

- Name, address, and telephone number of each individual who will give oral testimony;
- Name of the establishment or organization each individual represents, if any;
- Occupational title and position of each individual testifying;
- Approximate amount of time required for each individual's testimony;
- A brief statement of the position each individual will take with respect to the issues identified in this notice; and
- A brief summary of documentary evidence each individual intends to present.

OSHA emphasizes that the hearings are open to the public; however, only individuals who file a notice of intention to appear may question witnesses and participate fully at the hearing. If time permits, and at the discretion of the ALJ, an individual who did not file a notice of intention to appear may be allowed to testify at the hearing, but for no more than 10 minutes.

Hearing testimony and documentary evidence. Individuals who request more than 10 minutes to present their oral testimony at the hearing or who will submit documentary evidence at the hearing must submit (transmit, postmark, or deliver) the full text of their testimony and all documentary evidence no later than October 15, 2009.

The Agency will review each submission and determine if the information it contains warrants the amount of time the individual requested for the presentation. If OSHA believes the requested time is excessive, the Agency will allocate an appropriate amount of time for the presentation and will notify the individual of that action, and the reasons for that action, before the hearing. The Agency may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements, and may request that the participant return for questioning later. Before the hearing, OSHA will notify all participants of the time the Agency is allowing for their presentations and will provide them with prehearing guidelines and a hearing schedule.

Certification of the hearing record and Agency final determination. Following the close of the hearing and any posthearing comment periods, the ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The record will consist of all of the written comments, oral testimony, and documentary evidence received during the proceeding. The ALJ, however, will not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review the record and issue the final rule based on the record as a whole.

List of Subjects in 29 CFR Parts 1910 and 1926

Electric power, Fire prevention, Hazardous substances, Occupational safety and health, Safety.

Authority and Signature

This document was prepared under the direction of Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary's Order 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, this 8th day of September 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–22002 Filed 9–11–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

46 CFR Part 162

[USCG–2001–10486]

RIN 1625–AA32

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meetings.

SUMMARY: The Coast Guard announces a series of public meetings to receive comments on a notice of proposed rulemaking (NPRM) entitled ''Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters'' that published in the **Federal Register** on Friday, August 28, 2009.

DATES: Public meetings will be held in the Seattle, WA (September 28, 2009), New Orleans, LA (September 30, 2009), Chicago, IL (October 2, 2009), Washington, DC (October 8, 2009), Oakland, CA (October 27, 2009), and New York, NY (October 29, 2009) areas to provide opportunities for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at those meetings for inclusion in the official docket for this rulemaking. The comment period for the NPRM closes on November 27, 2009. All comments and related material submitted after the meeting must either be submitted to our online docket via *http://www.regulations.gov* on or before November 27, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: The public meetings will be held in the Seattle, WA (September 28, 2009), New Orleans, LA (September 30, 2009), Chicago, IL (October 2, 2009), Washington, DC (October 8, 2009), Oakland, CA (October 27, 2009), and New York, NY (October 29, 2009) areas. The specific locations and details will be announced in the **Federal Register** when they are finalized.

You may submit written comments identified by docket number USCG–2001–10486 before or after the meetings 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. Our online docket for this rulemaking is available on the Internet at *http://www.regulations.gov* under docket number USCG–2001–10486.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rulemaking, call or e-mail Mr. John Morris, Project Manager, Environmental Standards Division, U.S. Coast Guard Headquarters, telephone 202–372–1433, e-mail: *John.C.Morris@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** on Friday, August 28, 2009 (74 FR 44632), entitled ''Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters.'' In it, we stated our intention to hold public meetings, and to publish a notice with additional details regarding those public meetings as soon as the information was available. 74 FR 44632. This notice informs the public of the date for each public meeting, as well as the city in which those meetings will be held. Additional notice(s) will be published in the **Federal Register** as specific locations and details for these meetings are finalized. We plan to record these meetings and provide written transcripts of the oral comments made at the meetings and will place those transcripts in the docket for this rulemaking.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meetings, contact Mr. John Morris at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: September 4, 2009.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. E9–21975 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0815; FRL–8954–6]

Approval and Promulgation of Implementation Plans; New Mexico; Excess Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the New Mexico State Implementation Plan (SIP) submitted by the Governor of New Mexico on behalf of the New Mexico Environment Department (NMED) in a letter dated October 7, 2008 (the October 7, 2008 SIP submittal). The October 7, 2008 SIP submittal concerns revisions to New Mexico Administrative Code Title 20, Chapter 2, Part 7 Excess Emissions (20.2.7 NMAC—Excess Emissions) occurring during startup, shutdown, and malfunction related activities. We are proposing to approve the October 7, 2008 SIP submittal because the rule is consistent with the Clean Air Act (the Act). This action is in accordance with section 110 of the Act.

DATES: Written comments must be received on or before *October 14, 2009.*

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6691, fax (214) 665–7263, e-mail address *shar.alan@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: August 28, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–21830 Filed 9–11–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2008–0131; MO–9221050083–B2]

Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition To List 206 Species in the Midwest and Western United States as Threatened or Endangered With Critical Habitat; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding; correction.

SUMMARY: On Tuesday, August 18, 2009, we, the U.S. Fish and Wildlife Service, announced a 90-day finding on 38 species from a petition to list 206 species in the mountain-prairie region of the United States as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). In that notice, we used an incorrect docket number, and asked commenters to refer to this docket number in their comments. The correct docket number is [FWS–R6–ES–2008–0131]. However, comments we received under the incorrect docket number will be routed to the correct docket. If you already submitted a comment, even with the incorrect docket number, you need not resubmit it.

DATES: To allow us adequate time to conduct a status review, we request that we receive information on or before October 19, 2009.

ADDRESSES: You may submit information by one of the following methods:

- *Federal rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket no. FWS–R6–ES–2008–0131.
- *U.S. Mail or hand delivery:* Public Comments Processing, Attn: FWS–R6–ES–2008–0131, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* ''Information Solicited'' in our original notice—74 FR 41649—for more information).

FOR FURTHER INFORMATION CONTACT: Ann Carlson, Listing Coordinator, Mountain-Prairie Regional Ecological Services Office (*see* **ADDRESSES**); telephone 303–236–4264. If you use a

telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: On Tuesday, August 18, 2009, we announced a 90-day finding on 38 species from a petition we received to list 206 species in the mountain-prairie region of the United States as threatened or endangered under the Act (16 U.S.C. 1531 *et seq.*) (74 FR 41649). For 9 of the 38 species, we found that the petition did not present substantial information indicating that listing may be warranted. For 29 of the 38 species, we found that the petition does present substantial scientific or commercial information indicating that listing may be warranted. Therefore, with the publication of the August 18, 2009, notice, we initiated a status review of the 29 species to determine if listing is warranted. To ensure that the review is comprehensive, we requested scientific and commercial information regarding these 29 species, and opened a comment period that is still open at this time (*see* **DATES**). For more information about the species, background, and our finding, see our original notice at 74 FR 41649.

Sara Prigan,

Federal Register Liaison.

[FR Doc. E9–21995 Filed 9–11–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 74, No. 176

Monday, September 14, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 9, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Fee Envelope; Rules of Occupancy for Short-Term, Non-Commercial Use of Government Facilities.

OMB Control Number: 0596–0106.

Summary of Collection: The Federal Lands Recreation and Enhancement Act (16 U.S.C. 6801–6814) authorizes the Forest Service (FS) to collect recreation fees for use of government facilities and services. Every year millions of people visit National Forest System recreations sites. At some of these sites, the public is required to pay a fee to use the site. Fees are charged to help cover the costs of operating and maintaining fee sites, areas, and facilities such as campgrounds. The Forest Service (FS) used the Recreation Fee Permit Envelope for collection of these fees. Two forms (FS 2300–26, Fee Envelopes and FS 2300–43, Permit for Short-Term, Non-commercial Use of Government-Owned Cabins and Lookouts) are used to collect information from visitors.

Need and Use of the Information: Personal information such as names, addresses, telephone number, length of stay, amount paid, requested dates of occupancy, party size and vehicle registration are collected. FS will collect information from the forms to document when visitors pay a required recreation fee and to schedule requests for use and occupancy of government owned facilities.

Description of Respondents: Individuals or households.

Number of Respondents: 2,100,500.

Frequency of Responses: Reporting: Other (per visit).

Total Burden Hours: 105,125.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–22031 Filed 9–11–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Secure Rural Schools and Community Self-Determination Act of 2000

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, ''Secure Rural Schools Act, County Certification of Title III Expenditures.''

DATES: Comments must be received at the address below in writing on or before November 13, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Rick Alexander, Secure Rural Schools Act National Program Manager, USFS, 10600 N.E. 51st Circle, Vancouver, WA 98682. Comments also may be submitted via facsimile to 360–891–5045 or by e-mail to: *secure_rural_schools@fs.fed.us.* The public may inspect comments received on the World Wide Web at *http://www.fs.fed.us/srs/title-III.shtml.*

FOR FURTHER INFORMATION CONTACT: Rick Alexander, phone (360) 891–5162 or e-mail at: *secure_rural_schools@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Title: Secure Rural Schools Act, County Certification of Title III Expenditures.

OMB Number: 0596—NEW.

Expiration Date of Approval: 3 years from OMB approval date.

Type of Request: New.

Abstract: The Secure Rural Schools and Community Self-Determination Act of 2000 (the Act), as reauthorized in Public Law 110–343 requires the appropriate official of a county that receives funds under Title III of the Act to submit to the respective Secretary (the Secretary of Agriculture or the Secretary of the Interior), an annual certification that funds have been expended for the uses authorized under section 302(a) of the Act.

The appropriate official of each participating county will be required to report the amount of Title III funds expended in the applicable calendar year in these categories, as described in the Act:

(1) To carry out activities under the Firewise Communities program.

(2) To reimburse the participating county for emergency services performed on Federal land and paid for by the participating county.

(3) To develop community wildfire protection plans in coordination with the appropriate Secretary.

This information collection will identify the participating county and the year in which the expenditures were made, and will include the name, title, and signature of the certifying official, and the date of the certification. The certification will include a statement that all expenditures were for proposals that had a publication and comment period, and were submitted to any resource advisory committee for the county, as described in section 302(b) of the Act.

This information will be collected in the form of conventional correspondence such as a letter, and at the respondent's option, attached tables, or similar graphic display. At the respondent's discretion, the information may be submitted by hard copy, and/or electronically scanned, and included as an attachment to electronic mail.

The determination of the appropriate certifying official is at the discretion of the county or borough and will vary depending on county or borough organization. For unorganized boroughs in Alaska, the appropriate State official may provide the information.

The Forest Service, U.S. Department of Agriculture, and the Bureau of Land Management, Department of the Interior, will collect this information from counties that participate in Title III of the State payment made by the Forest Service and the Bureau of Land Management as described in the Act. Under the Act, responses are required by February 1, following each year Title III funds are expended. The first response is required by February 1, 2010, for funds expended in calendar year 2009. Because the authority to obligate county funds under Title III expires September 30, 2012, most of the expenditures are expected to be made by the following year, and the certifications concerning those expenditures would be required by February 1, 2014. The information will be reviewed by the respective Secretary, or designee, to verify that participating counties have certified that Title III funds were expended as authorized in the Act.

Estimated Annual Burden per Respondent: The estimated time required for each response is 24 hours per year, including an estimated 20 hours for collection and 4 hours for preparation and submission.

Type of Respondents: Respondents are county officials.

Estimated Annual Number of Respondents: 360.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8,640 hours.

	Counties responding to the USDA Forest Service	Counties responding to the Department of the Interior
Estimated Annual Number of Responses	344	16
Estimated Burden Hours per Response	24	24
Estimated Total Annual Burden Hours	8,256	384

This table includes 13 counties in Oregon that will be required to make separate reports to the Department of Agriculture and to the Department of the Interior because those counties receive separate payments from each Department.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments will be summarized and included in the request for Office of Management and Budget approval of the information collection.

Dated: September 8, 2009.

Hank Kashdan,

Associate Chief, U.S. Forest Service.

[FR Doc. E9–22024 Filed 9–11–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, September 30, 2009 and October 14, 2009. The purpose of these meetings is to discuss potential projects under the Secure Rural Schools and Community Self Determination Act of 2008.

DATES: The meetings will be held September 30, 2009 and October 14, 2009 at 6 p.m.

ADDRESSES: The meetings will be held at the Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to Diane Daniels, RAC Coordinator at *ddaniels@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Diane Daniels, RAC Coordinator Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4105.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: September 2, 2009.

Forrest Cole,

Forest Supervisor.

[FR Doc. E9–21934 Filed 9–11–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Estuaries Restoration Inventory.

OMB Control Number: 0648–0479.

Form Number(s): NA.

Type of Request: Regular submission.

Number of Respondents: 32.

Average Hours per Response: Entry of new projects into inventory database, 4 hours; updates to existing projects, 2 hours.

Burden Hours: 103.

Needs and Uses: Collection of estuary habitat restoration project information (e.g., location, habitat type, goals, status, monitoring information) will be undertaken in order to populate a restoration project database mandated by the Estuary Restoration Act of 2000. The database is intended to provide information to improve restoration methods, provide the basis for required reports to Congress, and track estuary habitat acreage restored. Estuary habitat restoration project information will be submitted by habitat restoration project managers through an interactive Web site, and will be accessible to the public via the Internet for data queries and project reports.

Affected Public: Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 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 David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: September 8, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–21970 Filed 9–11–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA).

Title: Survey of Ocean Freight Revenues and Foreign Expenses of United States Carriers (BE–30) and Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE–37).

OMB Control Number: 0608–0011.

Form Number(s): BE–30 and BE–37.

Type of Request: Extension of a currently approved collection.

Burden Hours: 864 (BE–30: 560 hours; BE–37: 304 hours).

Number of Respondents: 54 per quarter; 216 annually (BE–30: 35 per quarter; 140 annually; BE–37: 19 per quarter; 76 annually).

Average Hours per Response: 4.

Needs and Uses: The BEA is responsible for the compilation of the U.S. international transactions accounts (ITAs), which it publishes quarterly in news releases, on its Web site, and in its monthly journal, the *Survey of Current Business*. These accounts provide a statistical summary of all U.S. international transactions and, as such, are one of the major statistical products of BEA. In addition, they provide input into other U.S. economic measures and accounts, contributing particularly to the National Income and Product Accounts. The ITAs are used extensively by both government and private organizations for national and international economic policy formulation and for analytical purposes. The information collected in these surveys is used to develop the ''transportation'' portion of the ITAs. Without this information, an integral component of the ITAs would be omitted. No other Government agency collects comprehensive quarterly data on U.S. ocean carriers' freight revenues and foreign expenses or U.S. airline operators' foreign revenues and expenses.

These surveys request information from U.S. ocean and air carriers engaged in international transportation of goods and/or passengers. The information is collected on a quarterly basis from U.S. ocean and air carriers whose total annual covered revenues or total annual covered expenses are, or are expected to be, $500,000 or more. U.S. ocean and air carriers whose total annual covered revenues and total annual covered expenses are, or are expected to be, each below $500,000 are exempt from reporting.

Affected Public: Business or other for-profit organizations.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by writing Departmental Paperwork Clearance Officer, Diana Hynek, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dHynek@doc.gov*.

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, via e-mail at *pbugg@omb.eop.gov*, or by FAX at 202–395–7245.

Dated: September 8, 2009.

Gwellnar Banks,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E9–21971 Filed 9–11–09; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management

and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA).

Title: Survey of Foreign Ocean Carriers' Expenses in the United States.

OMB Control Number: 0608–0012.

Form Number(s): BE–29.

Type of Request: Extension of a currently approved collection.

Burden Hours: 330.

Number of Respondents: 110.

Average Hours per Response: 3 hours.

Needs and Uses: The BEA is responsible for the compilation of the U.S. international transactions accounts (ITAs), which it publishes quarterly in news releases, on its Web site, and in its monthly journal, the *Survey of Current Business.* These accounts provide a statistical summary of all U.S. international transactions and, as such, are one of the major statistical products of BEA. In addition, they provide input into other U.S. economic measures and accounts, contributing particularly to the National Income and Product Accounts. The ITAs are used extensively by both government and private organizations for national and international economic policy formulation and for analytical purposes. The information collected in this survey is used to develop the ''transportation'' portion of the ITAs. Without this information, an integral component of the ITAs would be omitted. No other Government agency collects comprehensive annual data on foreign ocean carriers' expenses in the United States.

The survey requests information from U.S. agents of foreign ocean carriers operating in the United States. The information is collected on an annual basis from U.S. agents that handle 40 or more port calls in the reporting period by foreign ocean vessels, and covered expenses for all foreign ocean vessels handled by the U.S. agent were $250,000 or more. A report is not required if the total number of port calls by foreign ocean vessels handled by the U.S. agent in the reporting period is fewer than 40, or total annual covered expenses for all foreign ocean vessels handled by the U.S. agent are below $250,000.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

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 Paul Bugg, OMB Desk Officer, via e-mail at *pbugg@omb.eop.gov,* or by FAX at 202–395–7245.

Dated: September 8, 2009.

Gwellnar Banks,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E9–21972 Filed 9–11–09; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA).

Title: Survey of Foreign Airline Operators' Revenues and Expenses in the United States.

OMB Control Number: 0608–0068.

Form Number(s): BE–9.

Type of Request: Extension of a currently approved collection.

Burden Hours: 1,680.

Number of Respondents: 280.

Average Hours per Response: 6 hours.

Needs and Uses: The BEA is responsible for the compilation of the U.S. international transactions accounts (ITAs), which it publishes quarterly in news releases, on its Web site, and in its monthly journal, the *Survey of Current Business.* These accounts provide a statistical summary of all U.S. international transactions and, as such, are one of the major statistical products of BEA. In addition, they provide input into other U.S. economic measures and accounts, contributing particularly to the National Income and Product Accounts. The ITAs are used extensively by both government and private organizations for national and international economic policy formulation and for analytical purposes. The information collected in this survey is used to develop the ''transportation'' portion of the ITAs.

The survey requests information from U.S. agents of foreign air carriers operating in the United States. The information is collected on a quarterly basis from foreign air carriers whose total annual covered revenues or total annual covered expenses incurred in the United States are, or are expected to be, $5,000,000 or more. Foreign air carriers whose total annual covered revenues and total annual covered expenses are, or are expected to be, each below $5,000,000 are exempt from reporting.

Without this information, an integral component of the ITAs would be omitted. No other Government agency collects comprehensive quarterly data on foreign airline operators' revenues and expenses in the United States.

Affected Public: Business or other for-profit organizations.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by writing Departmental Paperwork Clearance Officer, Diana Hynek, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dHynek@doc.gov.*

Written comments and recommendations on the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, via e-mail at *pbugg@omb.eop.gov,* or by FAX at 202–395–7245.

Dated: September 8, 2009.

Gwellnar Banks,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E9–21973 Filed 9–11–09; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–941

Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on certain kitchen appliance shelving and racks from the People's Republic of China (''PRC''). On September 2, 2009, the ITC notified the Department of its affirmative determination of material injury to a U.S. industry. *See Certain Kitchen Appliance Shelving and Racks from China* (Investigation No. 731–TA–1154 (Final), USITC Publication 4098, (August 2009).

EFFECTIVE DATE: September 14, 2009.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Kathleen Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–1394 or (202) 482–7906, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, (''Act''), the Department published the final determination of sales at less than fair value (''LTFV'') in the antidumping investigation of certain kitchen appliance shelving and racks from the People's Republic of China (''PRC''). *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009) (''*Final Determination*'').

Scope of the Order

The scope of this order consists of shelving and racks for refrigerators, freezers, combined refrigerator–freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (''certain kitchen appliance shelving and racks'' or ''the merchandise under order''). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- -- shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- -- baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- -- side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or
- -- subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The merchandise under order is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The merchandise under order may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this order is shelving in which the support surface is glass.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8418.99.8050, 8418.99.8060, 7321.90.5000, 7321.90.6090, and 8516.90.8000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Amendment to the Final Determination

On July 27, 2009, New King Shan (Zhu Hai) Co., Ltd. (''New King Shan'') filed timely allegations that the Department made various ministerial errors in the *Final Determination* and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial errors in the calculation of its margin. Specifically, New King Shan alleged that (1) the Department failed to adjust for different currencies in calculating its indirect selling expenses (''ISEs''); (2) the Department miscalculated the ISE ratios; and (3) the Department's decision to value steel wire rod using the JPC data for 6mm and 8mm steel wire rod was based on a failure to examine all of the data on the record. On August 3, 2009, Petitioners submitted comments in rebuttal to New King Shan's ministerial error comments. No other parties in this proceeding submitted comments on the Department's final margin calculations.

A ministerial error is defined as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the {Department} considers ministerial.'' *See* section 735(e) of the Act; *see also* 19 CFR 351.224(f).

After analyzing all interested party comments and rebuttals, we have determined, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that we made a ministerial error in our calculations for the *Final Determination* with respect to New King Shan. For a detailed discussion of this ministerial error, as well as the Department's analysis of this error and other allegations raised, *see* Memorandum to James C. Doyle, Director, Office 9, through Catherine Bertrand, Program Manager, from Kathleen Marksberry, Case Analyst: Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Analysis of Ministerial Error Allegations, dated concurrent with this **Federal Register** notice.

Additionally, in the *Final Determination*, we determined that several companies qualified for a separate rate. *See Final Determination*, 74 FR 36660. Because the only other mandatory respondent, Guangdong Wireking Housewares & Hardwares Co., Ltd. (''Wireking''), received a margin based on total adverse facts available (''AFA'') in the *Final Determination*, the separate rate for these companies was New King Shan's calculated rate. *See id.; see also* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Issues and Decision Memorandum for the *Final Determination*, (July 20, 2009) at Comment 17A (''Issues and Decision Memo''). Therefore, because the margin for New King Shan has changed since the Final Determination the separate rate has changed as well, it is now 43.09 percent. The revised dumping margins are listed in the chart below. *See*

Memorandum to the File through Catherine Bertrand, Program Manager, from Kathleen Marksberry, Analyst; Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Analysis of New King Shan (Zhu Hai) Co., Ltd., dated concurrent with this **Federal Register** notice.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation on all entries of subject merchandise from the PRC. We will also instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Additionally, in the *Final Determination*, the Department noted that it has continued to find in its *CVD Final* that the products under investigation, exported and produced by Wireking, benefitted from an export subsidy. See Final Determination, 74 FR at 36660–61; *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (''*CVD Final*''). The following subsidies were determined in the *CVD Final*: Income Tax reduction for Export Oriented FIEs: countervailable subsidy of 0.94 percent; and Local Income Tax Reduction for ''Productive'' FIEs: countervailable subsidy of 0.23 percent. In the *CVD Final*, Wireking's rate was assigned to the All–Others rate as it was the only rate that was not zero, de minimis, or based on total facts available. Accordingly, as the countervailing duty rate for New King Shan, Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., Jiangsu Weixi Group Co., is the All–Others rate, which includes two countervailable export subsidies, we will instruct CBP to require an antidumping duty cash deposit or the posting of a bond for each entry equal to the weighted–average margin indicated above for these companies adjusted for the countervailing duties imposed to offset export subsidies determined in the *CVD Final*. The adjusted cash deposit rate for New King Shan is 41.92 percent and, as the antidumping duty cash deposit rate assigned to the separate rate companies is New King Shan's rate, the adjusted cash deposit rate for Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., Jiangsu Weixi Group Co. also is 41.92 percent.

ANTIDUMPING DUTY ORDER

Antidumping Duty Order

On September 2, 2009, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination in this investigation. In its determination, the ITC found two domestic like products: (1) refrigeration shelving; and (2) oven racks, covering the scope of subject merchandise subject to the investigation. The ITC determined that imports of refrigeration shelving from the PRC caused material injury to a domestic industry, and oven racks from the PRC threaten material injury to a domestic industry. Since the ITC made different affirmative injury determinations for both domestic like products, the Department must instruct U.S. Customs and Border protection to assess antidumping duties on entries of oven racks separately from refrigerator shelves. When we make a determination, either for one or more than one class or kind of merchandise, our determination that there is dumping or subsidization is specific to each class or kind of merchandise. In this case, we calculated final determination dumping margins for a single class or kind of merchandise.

Refrigeration Shelving

Because the ITC determined that imports of refrigeration shelving from the PRC are materially injuring a U.S. industry, all unliquidated entries of such refrigeration shelving from the PRC, entered or withdrawn from warehouse, are also subject to the assessment of antidumping duties.

In accordance with section 736 of the Act, the Department will also direct CBP to assess antidumping duties on all unliquidated entries of refrigeration shelving from the PRC entered, or withdrawn from warehouse, for consumption on or after March 5, 2009, the date on which the Department published its preliminary determination notice in the **Federal Register** (74 FR 9591).

Oven Racks

According to section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted without the imposition of suspension of liquidation of entries since the Department's preliminary determination. In addition, section 736(b)(2) of the Act requires CBP to refund any cash deposits or bonds of estimated antidumping duties posted since the preliminary antidumping determination if the ITC's final determination is threat–based.

Because the ITC's final determination for oven racks is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 74 FR 9591 (March 5, 2009) (''*Preliminary Determination*''), section 736(b)(2) of the Act is applicable. Therefore, the Department will direct CBP to assess, upon further advice, antidumping duties on all unliquidated entries of oven racks from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register**. *See 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from India and the People's Republic of China: Antidumping Duty Orders*, 74 FR 19197, 19198 (April 28, 2009). In addition, section 736(b)(2) of the Act requires CBP to refund any cash deposits or bonds of estimated antidumping duties posted since the preliminary antidumping determination and prior to the ITC's notice of final determination.

Therefore, the Department will direct CBP to terminate the suspension of liquidation for entries of oven racks from the PRC entered, or withdrawn from warehouse, for consumption before the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

In accordance with section 736 of the Act, the Department will also direct CBP to assess antidumping duties on all unliquidated entries of oven racks from the PRC entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**.

Effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise (e.g., both refrigeration shelving and oven racks), a cash deposit

equal to the estimated weighted–average antidumping duty margins as listed below. See section 735(c)(3) of the Act. The ''PRC–wide'' rate applies to all exporters of subject merchandise not specifically listed. The weighted–average dumping margins are as follows:

Exporter	Producer	WA Margin
Guangdong Wireking Housewares & Hardware Co., Ltd. (a/k/a Foshan Shunde Wireking Housewares & Hardware Co., Ltd.)	Guangdong Wireking Housewares & Hardware Co., Ltd.	95.99
New King Shan (Zhu Hai) Co., Ltd.	New King Shan (Zhu Hai) Co., Ltd.	43.09
Marmon Retail Services Asia	Leader Metal Industry Co., Ltd. (a/k/a Marmon Retail Services Asia)	43.09
Hangzhou Dunli Import & Export Co., Ltd.	Hangzhou Dunli Industry Co., Ltd.	43.09
Jiangsu Weixi Group Co.	Jiangsu Weixi Group Co.	43.09
PRC–wide Entity (including Asber Enterprise Co., Ltd. (China))		95.99

This notice constitutes the antidumping duty order with respect to certain kitchen appliance shelving and racks from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: September 8, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–22023 Filed 9–9–09; 4:15 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before October 5, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09–048. Applicant: North Dakota State University, 1301 12th Ave. North, Fargo, ND 58102. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to inspect semiconductor devices and micro sensors; study nanoparticles, nanotubes, polymers and composites; and to create micro to nanoscale channels for fluidics research. Justification for Duty–Free Entry: No instruments of same general category are manufactured in the United States. Application accepted by Commissioner of Customs: August 18, 2009.

Docket Number: 09–049. Applicant: Washington State University, 220 French Administration Building, P.O. Box 641020, Pullman, WA 99164. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to inspect semiconductor devices and micro sensors; study nanoparticles, nanotubes, polymers and composites; and to create micro to nanoscale channels for fluidics research. Justification for Duty–Free Entry: No instruments of same general category are manufactured in the United States. Application accepted by Commissioner of Customs: August 18, 2009.

Docket Number: 09–050. Applicant: Stanford University, 450 Serra Mall, Stanford, CA 94305. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used for ''spectrum imaging'' of elemental distributions at the sub–nano level, to gather three–dimensional structural information of nano–sized crystals as well as to measure electrostatic and magnetic fields in a variety of samples. Justification for Duty–Free Entry: No instruments of same general category are manufactured in the United States. Application accepted by Commissioner of Customs: August 18, 2009.

Dated: September 8, 2009.

Christopher Cassel,

Director, IA Subsidies Enforcement Office.

[FR Doc. E9–22049 Filed 9–11–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–942]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 2, 2009, the U.S. International Trade Commission (''ITC'') notified the Department of Commerce (''Department'') of its affirmative determinations of material injury to the U.S. refrigeration shelving industry and threat of material injury to the U.S. oven racks industry. *See Certain Kitchen Appliance Shelving and Racks from China,* USITC Pub. 4098, Investigation 701–TA–458 and 731–TA–1154 (Final) (August 2009). Based on affirmative final determinations by the Department and the ITC, the Department is issuing this countervailing duty order on certain kitchen appliance shelving and racks from the People's Republic of China (''PRC'').

DATES: *Effective Date:* September 14, 2009.

FOR FURTHER INFORMATION CONTACT: Yasmin Nair or Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3813 and (202) 482–1279, respectively.

Background

On July 27, 2009, the Department published its final determination in the countervailing duty investigation of certain kitchen appliance shelving and racks from the PRC. *See Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative*

Countervailing Duty Determination, 74 FR 37012 (July 27, 2009).

On August 18, 2009, the ITC found in its final vote that there are two separate like products, refrigeration shelving and oven racks, and thus two separate domestic industries. The ITC further found that the U.S. industry producing refrigeration shelving is materially injured or threatened with material injury by imports of kitchen appliance shelving and racks from the PRC. For oven racks, the ITC found a threat of material injury. On September 2, 2009, the ITC notified the Department of its final determination pursuant to section 705(b)(1)(A)(i) of the Tariff Act of 1930, as amended (''the Act''). *See Certain Kitchen Appliance Shelving and Racks from China,* USITC Pub. 4098, Investigation 701–TA–458 and 731–TA–1154 (Final) (August 2009).

Scope of the Order

The scope of this order consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (''certain kitchen appliance shelving and racks'' or ''the subject merchandise''). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- Shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- Baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- Side racks from 6 inches by 8 inches by 0.10 inch to 16 inches by 30 inches by 4 inches; or
- Subframes from 6 inches by 10 inches by 0.10 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.20 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this order is shelving in which the support surface is glass.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.90, 8418.99.80.60, and 8516.90.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Countervailing Duty Order

On September 2, 2009, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination in this investigation. In its determination, the ITC found two domestic like products: (1) Refrigeration shelving; and (2) oven racks, covering the scope of subject merchandise subject to the investigation. The ITC determined that imports of refrigeration shelving from the PRC caused material injury to a domestic industry, and oven racks from the PRC threaten material injury to a domestic industry. Since the ITC made different affirmative injury determinations for both domestic like products, the Department must instruct U.S. Customs and Border protection to assess countervailing duties on entries of oven racks separately from refrigerator shelves. When we make a determination, either for one or more than one class or kind of merchandise, our determination that there is dumping or subsidization is specific to each class or kind of merchandise. In this case, we calculated final determination countervailing duty margins for a single class or kind of merchandise.

Refrigeration Shelving

Countervailing duties will be assessed on all unliquidated entries of certain refrigeration shelving from the PRC entered, or withdrawn from warehouse, for consumption on or after January 7, 2009, the date on which the Department published its preliminary affirmative countervailing duty determination in the **Federal Register**,[1] and before May 7, 2009, the date the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of certain refrigeration shelving made on or after May 7, 2009, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties due to the Department's discontinuation, effective May 7, 2009, of the suspension of liquidation.

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation for certain refrigeration shelving from the PRC, effective the date of publication of the ITC's notice of final determination in the **Federal Register** and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of certain refrigeration shelving in an amount based on the net countervailable subsidy rates for the subject merchandise as noted below.

Oven Racks

According to section 706(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based upon the threat of material injury. Section 706(b)(1) of the Act states,

> If the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(2), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(2), shall be subject to the imposition of countervailing duties under section 701(a).

In addition, section 706(b)(2) of the Act requires CBP to refund any cash deposits or bonds of estimated countervailing duties posted since the Department's preliminary countervailing duty determination, if the ITC's final determination is threat-based.

Because the ITC's final determination in this case is based on the threat of material injury to the oven racks industry and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination

[1] *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination,* 74 FR 683 (January 7, 2009) (''*Shelving and Racks Preliminary Results*'').

was published in the **Federal Register**,[2] section 706(b)(2) of the Act is applicable.

Therefore, the Department will direct CBP to reinstitute suspension of liquidation,[3] and to assess, upon further instruction from the Department, countervailing duties in an amount based on the net countervailable subsidy rates for the subject merchandise as noted below, on all unliquidated entries of certain oven racks from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**.

Exporter/manufacturer	Net subsidy rate
Guangdong Wire King Co., Ltd. (formerly known as Foshan Shunde Wireking Housewares & Hardware)	13.30
Asber Enterprises Co., Ltd. (China)	170.82
Changzhou Yixiong Metal Products Co., Ltd.	149.91
Foshan Winleader Metal Products Co., Ltd.	149.91
Kingsun Enterprises Group Co, Ltd.	149.91
Yuyao Hanjun Metal Work Co./Yuyao Hanjun Metal Products Co., Ltd.	149.91
Zhongshan Iwatani Co., Ltd.	149.91
All-Others	13.30

This notice constitutes the countervailing duty order with respect to certain kitchen appliance shelving and racks from the PRC, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: September 8, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–22020 Filed 9–9–09; 4:15 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 20–2009 and 22–2009)

Foreign–Trade Zones 29 and 203, Applications for Subzone Authority, Dow Corning Corporation and REC Silicon, Extension of Comment Period

The comment period for the applications for subzone status at the Dow Corning Corporation (Dow Corning) facilities in Carrollton, Elizabethtown and Shepherdsville, Kentucky (74 FR 21621–21622, 5/8/09) and at the REC Silicon facility in Moses Lake, Washington (74 FR 25488–25489, 5/28/09) is being extended to September 30, 2009 to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15-day period, until October 15, 2009. Submissions (original and one electronic copy) shall be addressed to the Board's Executive Secretary at: Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth__Whiteman@ita.doc.gov or (202) 482–0473.

Dated: September 4, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–22045 Filed 9–11–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR51

Marine Mammals; File Nos. 774–1847 and 1032–1917

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

ACTION: Notice; issuance of permit amendments.

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center, Antarctic Marine Living Resources Program (Michael Goebel, PhD, Principal Investigator), 3333 N Torrey Pines Ct, La Jolla CA, 92037 and Robert A. Garrott, Ph.D, Ecology Department, Montana State University, 310 Lewis Hall, Bozeman, MT, 59717 have been issued amendments to scientific research permits 774–1847–03 and 1032–1917, respectively.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 1, 2009 and June 16, 2009, notice was published in the **Federal Register** (74 FR 31413 and 74 FR 29179) that an amendment to Permit No. 774–1847–03 and an amendment to Permit No. 1032–1917 had been requested by the above-named individuals. The requested amendments have been granted 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).

The amendment to Permit No. 774–1847–03 authorizes a Weddell seal (Leptonychotes weddellii) study to understand movements, site fidelity, and demographics of this species in Antarctica. Up to 60 Weddell seals will be taken annually. Seals will be instrumented and sampled (blood, vibrissae, muscle/blubber, milk, and tissue). Up to 4 research-related mortalities of Weddell seals (2 adults and 2 juveniles) are authorized annually. The holder is also authorized to deploy microprocessors attached to flipper tags on Antarctic fur seals (*Arctophalus gazella*), increase the number of tissue samples collected from

[2] *See Shelving and Racks Preliminary Results.*

[3] The Department instructed CBP to discontinue the suspension of liquidation on May 7, 2009, in accordance with section 703(a) of the Act. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months.

fur seals, increase the number of leopard seals (*Hydrurga leptonyx*) and fur seals tagged (for the purposes of retagging), and use an unmanned aircraft system for aerial photography. These activities are authorized for the duration of the permit, which expires on September 30, 2011.

The amendment to Permit No. 1032–1917 authorizes the use of a small temperature logging tag on Weddell seal pups in the Erebus Bay, McMurdo Sound, Ross Sea, and White Island areas of Antarctica.. The additional tag will be used to measure the amount of time pups spend in the water. This information will be used as part of the mass dynamics studies. This activity is authorized for the duration of the permit, which expires on October 1, 2012.

Dated: September 9, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–22037 Filed 9–11–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR50

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject programmatic Exempted Fishing Permit (EFP) application for the Study Fleet Program contains all of the required information and warrants further consideration. Study Fleet projects are managed by the University of Massachusetts Dartmouth School of Marine Science and Technology (SMAST). The programmatic EFP would grant exemptions from minimum fish sizes, and possession and landing limits. However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to issue a programmatic EFP that would allow seven vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before September 29, 2009.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *NERO.EFP@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on SMAST Study Fleet Programmatic EFP.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on SMAST Study Fleet Programmatic EFP.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Management Specialist, phone: 978–281–9122.

SUPPLEMENTARY INFORMATION: A complete application for an EFP was submitted by SMAST on May 26, 2009. The EFP would exempt federally permitted commercial fishing vessels from the regulations detailed below while participating in the following projects managed by SMAST:

(1) Georges Bank (GB) Multispecies Otter Trawl Net Study Fleet (seven vessels);

(2) Skate and Monkfish Age Validation Research and American Lobster Shell Disease Research (seven vessels).

The primary goal of the GB Multispecies Otter Trawl Net study fleet is to characterize catch on an effort level and collect size distributions of kept and discarded catch by: 1) Training fishermen to representatively sample their catch, measuring 100 kept and 100 discarded fish for each statistical area fished per trip for each species that is assessed using an analytical stock assessment; 2) developing data protocols to integrate biological sampling into study fleet databases, including application of electronic measuring onboard; 3) measuring 100 kept and 100 discarded skates for each statistical area fished per trip for each species; and 4) measuring Atlantic wolffish when available.

The project is a continuation of research conducted since 2000 by SMAST, and which is now in its third phase of incorporating electronic reporting and EFPs for vessels collecting data. While fishing under Northeast (NE) multispecies day-at-sea (DAS), catch estimations would be derived by one of three methods: 1) Measuring actual weight using an electronic scale; 2) using basket weight, calculated by using a standard weight for a basket and counting the number of baskets filled; or 3) by using hail weight that is estimated by the crew. Length and weight measurements of 100 kept and 100 discarded fish, by statistical area, would be taken from a predetermined list of species (see Table 1). The landing of fish for sale at authorized dealers would be conducted according to each vessel's fishing permits and within current regulations. Temporary exemptions from the NE multispecies possession limits at § 648.86, and NE multispecies minimum fish sizes at § 648.83(a)(3), are necessary to obtain the proposed data from undersized individuals, prohibited species, and/or fish in excess of trip limits. Similarly, temporary exemptions from monkfish possession limits at § 648.94(a) and (b), and monkfish minimum fish sizes at § 648.93, are necessary to obtain data from undersized individuals in excess of trip limits. Exemptions from skate possession restrictions at § 648.322(a)(1), and prohibitions on possession of skates at § 648.322(c)(1), are also necessary, as these species may be encountered when catch estimation is being completed. Vessels would be prohibited from landing undersized fish or amounts of fish greater than the allowable landing limits.

TABLE 1. LIST OF SPECIES FOR BIOLOGICAL LENGTH FREQUENCY SAMPLES

Species	Proposed Sample Size
Southern New England (SNE) Yellowtail Flounder	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.

TABLE 1. LIST OF SPECIES FOR BIOLOGICAL LENGTH FREQUENCY SAMPLES—Continued

Species	Proposed Sample Size
Georges Bank (GB) Yellowtail Flounder	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.
Cape Cod/GOM Yellowtail Flounder	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.
SNE Winter Flounder	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.
GB Winter Flounder	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.
GB Haddock	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.
GB Atlantic Cod	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.
GOM Atlantic Cod	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.
Monkfish	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.
American Plaice	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.
Witch Flounder	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.
Atlantic Wolffish	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.
Northeast Skate Complex (each species)	100 kept fish per statistical area per trip, 100 discarded fish per statistical area per trip.

Sampling would be conducted aboard seven fishing vessels that intend to fish on GB from the date of issuance through April 2010, with a minimum of two trips per month and an average trip duration of 7 days. All vessels would utilize otter trawl gear, with gear configuration and mesh size dictated by current fishery regulations.

The primary goals of the laboratory research are to validate the age of multiple skate species and monkfish using ocytetracycline markers and to examine the relationship between trophic feeding levels and American lobster epizootic shell disease (ESD).

A target of 6–10 individuals of each skate species (see Table 1) would be caught and maintained in the SMAST seawater laboratory, and given an injection of ocytetracycline. Most individuals would be maintained for a minimum of 1 year prior to sacrifice. Skates would then be immediately dissected, and vertebra would be removed for further processing. In addition, egg cases would be collected and injected with tetracycline to determine whether there is a difference between the birth mark and the hatch mark. Exemptions from skate possession restrictions at § 648.322(a)(1) and prohibitions on possession of skates at § 648.322(c)(1) are necessary to collect specimens for laboratory research. Vessels would be prohibited from landing undersized fish or amounts of fish greater than the allowable landing limits.

Monkfish (see Table 2) would be collected by the study fleet fishing under a monkfish DAS and transport techniques would be tested. Monkfish would be marked with ocytetracycline, and most would be cultured for 1 year to allow for growth. Temporary exemptions from monkfish possession limits at § 648.94(a) and (b), and monkfish minimum fish sizes at § 648.93, are necessary to obtain specimens for laboratory research. Vessels would be prohibited from landing undersized fish or amounts of fish greater than the allowable landing limits.

TABLE 2. LIST OF SPECIES FOR BIOLOGICAL LENGTH FREQUENCY SAMPLES

Species	Proposed Sample Size
Northern Monkfish	10 fish/month
Southern Monkfish	10 fish/month
Thorny Skate	10 fish/month
Smooth Skate	10 fish/month
Clearnose Skate	10 fish/month
Barndoor Skate	10 fish/month
Rosette Skate	10 fish/month
Little Skate	10 fish/month
Winter Skate	10 fish/month
American Lobster	10 animals/month

Laboratory feeding experiments would be conducted on American lobster to determine the trophic levels from which they feed. The isotope ?948;15N would be measured, with the theoretical basis that the higher the trophic level an animal feeds, the higher the level of the isotope. Exemptions from lobster restrictions at §§ 697.7(c)(1)(xxiii) and 697.17(a) are necessary to collect specimens for laboratory research.

Samples for the laboratory research would be collected aboard the same seven fishing vessels participating in the Otter Trawl study fleet, which intend to fish on GB from the date of issuance through April 2010, with a minimum of two trips per month and an average trip duration of 7 days. All vessels would utilize otter trawl gear, with gear configuration and mesh size dictated by current fishery regulations.

Based on preliminary review of this project, and in accordance with NOAA Administrative Order 216–6, a Categorical Exclusion from requirements to prepare either an Environmental Impact Statement or an Environmental Assessment under the National Environmental Policy Act appears to be justified. The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request.

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

Dated: September 8, 2009.

Emily H. Menashes,

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

[FR Doc. E9–21981 Filed 9–11–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–953)

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 14, 2009.

FOR FURTHER INFORMATION CONTACT: Scott Holland or Shelly Atkinson, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1279 and (202) 482–0166, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2009, the Department of Commerce (the ''Department'') initiated an investigation of narrow woven ribbons with woven selvedge from the People's Republic of China (''PRC''). *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 39298 (August 6, 2009). Currently, the preliminary determination is due no later than October 2, 2009.

Postponement of Due Date for Preliminary Determination

Under section 703(c)(1)(B) of the Tariff Act of 1930, as amended (the ''Act''), the Department may extend the period for reaching a preliminary determination in a countervailing duty investigation until no later than the 130th day after the date on which the investigation is initiated, if the Department determines that the parties are cooperating and the case is extraordinarily complicated. The Department finds that the instant case is extraordinarily complicated by reason of the number and complexity of the alleged countervailable subsidy practices, the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters, and the number of firms whose activities must be investigated. Accordingly, we are fully extending the due date for the preliminary determination to no later than 130 days after the day on which the investigation was initiated (i.e., December 6, 2009). As December 6, 2009, is a Sunday, we will issue the preliminary determination no later than the next business day (*i.e.*, December 7, 2009).

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: September 8, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–22046 Filed 9–11–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In–Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 14, 2009.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–3338.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in–quota rate of duty, as defined in section 701(c)(1) of the Act, and to publish an annual list and quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period April 1, 2009, through

June 30, 2009.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the Act and section 771(5) of the Tariff Act of 1930, as amended (''Tariff Act''), being provided either directly or indirectly by foreign governments on articles of cheese subject to an in–quota rate of duty.

The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in–quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th

Street and Constitution Ave., NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a)(2) of the Act.

Dated: September 8, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

APPENDIX

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN–QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
27 European Union Member States[3]	European Union Restitution Payments	$ 0.00	$0.00
Canada	Export Assistance on Certain Types of Cheese	$ 0.29	$ 0.29
Norway	Indirect (Milk) Subsidy	$ 0.00	$ 0.00
	Consumer Subsidy Total	$ 0.00	$ 0.00
	Total	$ 0.00	$ 0.00
Switzerland	Deficiency Payments	$ 0.00	$ 0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

[FR Doc. E9–22066 Filed 9–11–09; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Revised Proposal for Changes to the Format of Annual Reports Submitted to the Foreign-Trade Zones Board

Summary: On May 15, 2009, the Foreign-Trade Zones (FTZ) Board published a notice seeking comments on proposed revisions to the format of annual reports that are submitted by grantees to the FTZ Board. Based on comments received, the FTZ Board has made further revisions to the proposed annual report format. The most significant revision is a proposed shift from reporting on a Federal fiscal year basis to reporting on a calendar-year basis. The Board is inviting public comment on the latest proposal. Comments and questions regarding the original proposal are summarized and addressed below by general topic. The revised format follows the discussion of the comments.

Summary of Comments Received

Comments on Terminology

(1) One comment requested that the term ''inactive'' be removed from the report format and replaced with the terms ''never activated'' or ''deactivated''. The comment noted that this revision would harmonize the language in the report with that used by CBP. This change has been made.

(2) Comments were also received on specific terminology in the section of the report for oil refinery operators. As a result, questions regarding indirect exports, tank storage capacity and shipments to affiliated plants have been modified.

(3) One comment requested that clarification be added to the FTZ Board's Annual Report to Congress on the treatment of zone-to-zone transfers. That comment will be considered separately as the proposal below is specific to the information submitted to the Board by grantees.

(4) A comment was received suggesting that part 1, Question 2 be modified to remove the phrase ''promotion and marketing'' and better reflect the full integration that should exist between the zone and local economic development plans. While it is noted that the zone should be incorporated into the overall economic development plan of a region, as written the question should provide the latitude that a grantee needs to include all efforts that have been taken regarding the zone.

Comments on Employment Numbers

(1) One comment requested that employment numbers be collected for both approved and activated zone space. Currently, the annual report requests information on the number of full-time equivalent employees within activated FTZ sites. There are currently a significant number of approved zone sites where no FTZ related activity if occurring, as grantees have sought to include sites in their zone project where future zone activity may arise. Including employment numbers for companies located within those sites in a report on FTZ activity would increase the reporting burden on grantees while not providing an accurate reflection of the employment related to FTZ activity within a zone. For similar reasons, the movement of merchandise in approved zone sites that have no zone activity is not requested.

(2) One comment included suggested criteria for calculating the employment numbers. The suggested criteria would essentially have defined employees as those engaged in zone activity with foreign status merchandise within the active zone operation. In many instances, however, companies will comingle domestic and foreign status merchandise within the zone, with employees handling either status of merchandise, and the percent of foreign and domestic merchandise changing throughout the year. As a result, calculating the suggested employment criteria could be overly burdensome for many operations. In addition, although a portion of the activity may involve domestic status merchandise, the FTZ savings could be impacting the viability of the facility as a whole, and as such, the employment related to the domestic status merchandise is then tied to the use of the zone. On balance, the current policy of requesting employment numbers for the active portions of the zone provides a number that is useful to the FTZ Board while not overly burdensome to zone users.

(3) One comment also suggested that temporary and contract employees be reported on a full-time equivalent basis. This clarification on reporting employment numbers had been included in part 1, and has now also been added to Part 2.

Comments on Value-Added

(1) One comment suggested that the request for value-added activity in part 2 be broken down by each category of merchandise forwarded (exports, entries for consumption and zone-to-zone transfers). The revised annual report

format, as proposed, requests the total value-added in the zone for manufacturing/processing operations. Requiring a further breakdown would create an additional burden on zone operators, while not providing a significant benefit in terms of data that would be useful for oversight purposes. This proposed format maintains the request for the total value-added for the zone activity.

(2) A question has also been added to part 2 for oil refinery operators requesting the total value-added for those zone operations. The questions on value-added also include a description of how the number should be calculated.

Comments on Scope

(1) Two comments were received on the questions in part 2 that relate to the scope of authority approved by the FTZ Board. These questions are included in the annual report to ensure that zone operators with manufacturing/processing activity from the FTZ Board are aware of and assessing how the current activity relates to that approved by the Board. However, realizing that further clarification is needed generally on issues of the scope of authority, and that guidance and clarification on scope should occur more broadly, question 8 in part 2 for manufacturing/processing operators has been modified. The modifications should address the concerns raised while providing the FTZ Board with needed information to assist its monitoring of manufacturing and processing activity within zones. The questions in part 2 for oil refinery operators were taken from the current annual report guidelines for oil refinery subzones and were not changed in this revision.

Comments on the Reporting Period

(1) Two comments noted that although the current annual report format is based on the Federal fiscal year, use of the fiscal year is not required in the FTZ Act or Regulations. In addition, the comments noted that moving to a calendar year reporting cycle would be consistent with other government agency requirements and reports. One comment noted that synchronizing the reporting cycle with other required reports would ease the reporting burden on zone operators by standardizing the values and timeframes for the submission of reports to the Federal government. Based on the comments received, the revised proposal below includes a shift from the Federal fiscal year to the calendar year. Under this revised format, the reporting cycle for the annual report would be January 1 to December 31 and the report from the grantee to the FTZ Board would be due April 30.

Comments on the Public Nature of the Annual Report

(1) One comment included a request to have the data included in the annual report considered business proprietary. In the format proposed, the data for all warehouse and distribution operators within a zone project (in general-purpose sites and subzones) will be combined and reported as a single number in part 1. In addition, the names of the warehouse and distribution operators are not requested, so the data provided would not be linked to specific firms. In the case of manufacturing/processing operators, the data will be requested specific to each approved manufacturing/processing operation (whether in a general-purpose site or a subzone). Unlike the examples of CBP and Census that are cited in the comment and involve the mandatory reporting of data for all shipments into and out of the U.S., FTZ manufacturing and processing operations are approved through a public process when found to be in the public interest and the activity occurring within them must remain within the public interest. The FTZ Board has always made a practice of providing its report to Congress on the use of the program, which includes a summary of zone operations, as a public document. In addition, members of the trade community and grantee organizations depend on the information provided in the annual report for their own efforts to assess the impact of the program, and restricting such parties' access to the information would have a negative impact on those efforts. However, based on a recognition of concerns about the sensitivity of certain information, it will continue to be our practice to allow for the submission of rounded numbers in the movement of merchandise sections.

Comments on Potential Automation of the Annual Report Format

(1) A comment was also received on the interaction between the proposed annual report format and the potential for future electronic submission of the report. The FTZ staff is currently in the initial phases of developing a Web-based submission system for the annual report. As that system is further developed and implemented, information and training will be made available to the public. The implementation of an electronic system will incorporate any changes that are ultimately made to the annual report format.

The revised proposed annual report format is as follows:

Part 1: Zone Project Summary for January 1–December 31

1. Was foreign-status merchandise stored within the zone under zone procedures during the year?

If the answer is no, complete questions 2–3 below:

2. Describe the promotion and marketing efforts that are being undertaken to provide local companies with information on using the zone.

3. Has the zone ever been used for the admission and storage of zone status merchandise? If yes, indicate when.

If the answer is yes, complete questions 4–12 of part 1 below for all warehouse and distribution operations within the general-purpose zone and any subzones. In addition, complete a separate part 2 (Manufacturing/Processing GPZ and Subzone Operations) for *each* general-purpose or subzone operation involved in manufacturing/processing.

4. Provide a summary of the warehouse and distribution activity that occurred within the zone project. Specifically discuss any developments or trends in shipments or activity and any value added activity that occurred within active zone space.

5. Discuss how the zone project contributes to the local economy and local economic development efforts, including the FTZ impact on local employment, port activity, industrial development, international trade and investment. If applicable, describe in what ways the zone has been used locally by the logistics industry and other companies to address supply chain issues.

6. The general-purpose zone served_____ zone users during the calendar year.

The number employed by zone users within activated general-purpose zone areas was_____persons.

Employment figures should include both direct and contract persons. For part time workers, please report a full time equivalent (*e.g.,* 60 contract employees working for 6 months would equal a full time equivalent of 30 workers).

7. Activity Summary

Provide a list of general-purpose zone sites and indicate the number of acres that are activated at each site. Also indicate if the site is subject to a time or sunset limit.

Provide a list of approved subzones and indicate the activation status of each subzone. If the subzone is active, provide the employment (includes direct and contract, reported on a full

time equivalent basis)) for the subzone. If the subzone has never been active, indicate if it has lapsed.

8. Movement of Merchandise

This section should include the movement of merchandise for all general-purpose and subzone operations that did *not* require FTZ Board manufacturing/processing authority. (There is a separate section below where manufacturing/processing operations that occurred within the general-purpose zone or any subzone will be reported individually.)

Zone reports should reflect only activity within activated portions of zones/subzones. Foreign and domestic merchandise handled within activated FTZ areas should be reported.

MERCHANDISE IN THE ZONE AT BEGINNING AND END OF CALENDAR YEAR

	Beginning value	End value
Domestic Status	$	$
Foreign Status		
Total	$	$
Merchandise Received	*Value*	
Domestic Status	$	
Foreign Status		
From Other U.S. FTZ's:		
Domestic Status		
Foreign Status		
Total	$	
Merchandise Forwarded	*Value*	
To The U.S. Market	$	
To Foreign Countries (Exports)		
To Other U.S. FTZ's		
Total	$	
Merchandise Destroyed	$	

Explanation of Discrepancies:

a. Does Beginning Inventory + Total Merchandise Received − Total Merchandise Forwarded − Merchandise Destroyed = Ending Inventory? If not, explain.

b. Is the level of Merchandise Received this year significantly different from the previous year? If yes, explain.

c. Is the Ending Inventory from the previous year equal to the Beginning Inventory for this year?

9. *Main Categories of Foreign Status Merchandise Received (Top Five)*

Category	*Value*	*Main countries of origin*
_____	$_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total	$_____	

10. *Foreign Status Merchandise Received:*

Nonprivileged Foreign *$.*

Privileged Foreign *$*_____.

11. Customs duties collected on merchandise entered from the zone during the calendar year amounted to *$*_____.

12. *(Optional) Attachment field:* You may attach any photographs of the zone or any information you feel may be useful.

Part 2: Manufacturing/Processing GPZ and Subzone Operators for January 1–December 31

A separate part 2, questions 2–18 should be included for each manufacturing/processing operation that occurred within the general-purpose zone or any subzone. This reporting of manufacturing/processing applies to any activity requiring FTZ Board approval under the Board's regulations (15 CFR part 400). (Note that any oil refinery operations should use the oil refinery-specific part 2 that follows this section.)

Zone reports should reflect only activity within activated portions of zones/subzones. Foreign and domestic merchandise handled within activated FTZ areas should be reported.

1. The grantee shall provide a list of each FTZ Board approved manufacturing/processing operation within the general-purpose zone or subzones, and indicate whether or not activity was conducted under zone procedures at each operation during the calendar year. Note that separate information for questions 2–18 below is required for each active manufacturing/processing operation.

2. Site/Subzone Number.

3. Company Name.

4. Activated Acres.

5. Briefly describe the activity at the subzone/GPZ operation that is occurring under zone procedures. Have there been any changes to the activity or facilities within the past year?

6. Employment within the FTZ operation (includes direct and contract, reported on a full time equivalent basis).

7. Provide the current year's level of production _____ and the level of production approved by the FTZ Board _____.

8. Is the current activity consistent with the plan that was presented to and approved by the FTZ Board? Explain how the activity is consistent.

9. Provide an estimate for the value-added activity that takes place under zone procedures (labor, profit, overhead, etc.). One way to estimate value-added is: Value of Sales from Plant minus Value of merchandise Received at Plant. Value-added should not be included in

the Movement of Merchandise figures below.

10. Explain the extent to which FTZ status has helped your facility compete with plants abroad (this includes competition with other company facilities located abroad to expand or maintain product lines in the U.S.).

11. Provide the percent of total production that is directly or indirectly exported _____%. The indirect exports to be reported are shipments that are entered for consumption prior to subsequent re-exportation or shipments to a customer or related facility that are later exported (whenever known). You may rely on estimates for indirect exports but it is important that each operator do its best to account for all export activity that is supported by their FTZ operation.

12. If the manufacturing activity is subject to restriction, list the restriction(s) and describe the method of compliance.

13. *Movement of Merchandise*

MERCHANDISE IN THE ZONE AT BEGINNING AND END OF CALENDAR YEAR

	Beginning value	End value
Domestic Status	$	$
Foreign Status		
Total	$	$
Merchandise Received	*Value*	
Domestic Status	$	
Foreign Status		
From Other U.S. FTZ's:		
Domestic Status		
Foreign Status		
Total	$	
Merchandise Forwarded	*Value*	
To The U.S. Market	$	
To Foreign Countries (Exports)		
To Other U.S. FTZ's		
Total	$	
Merchandise Destroyed	$	

Explanation of Discrepancies:

a. Does Beginning Inventory + Total Merchandise Received − Total Merchandise Forwarded − Merchandise Destroyed = Ending Inventory? If not, explain.

b. Is the level of Merchandise Received this year significantly different from the previous year? If yes, explain.

c. Is the Ending Inventory from the previous year equal to the Beginning Inventory for this year?

14. *Main Categories of Foreign Status Merchandise Received (Top Five)*

Category	Value	Main countries of origin
_____	$_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Total	$_____	

15. *Main Categories of Merchandise Forwarded (Top Five)*

Category	Value
$_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
Total	$_____

16. *Foreign Status Merchandise Received:*

Nonprivileged Foreign *$* .
Privileged Foreign *$*.

17. Customs duties collected on merchandise entered into U.S. Customs territory from the operation during the calendar year amounted to $ _____.

18. *(Optional) Attachment field:* You may attach any photographs of the operation or any information you feel may be useful.

Part 2 for Oil Refinery Operators for January 1–December 31

Zone reports should reflect only activity within activated portions of zones/subzones. Foreign and domestic merchandise handled within activated FTZ areas should be reported.

1. The grantee shall provide a list of each FTZ Board approved oil refinery operation within the general-purpose zone or subzones, and indicate whether or not activity was conducted under zone procedures at the subzone or GPZ site during the calendar year. Note that separate information for questions 2–36 below is required for each active oil refinery operator.

2. Site/Subzone Number.

3. Company Name.

4. Activated Acres.

5. Activation Date.

6. Total number of tanks/storage capacity in barrels.

7. Employment—direct and indirect (including contract employees), reported on a full time equivalent basis.

8. List primary non-crude receipts on an average daily basis.

9. What percent of the primary non-crude receipts are sourced from abroad?

10. List primary non-NPF attributed products (fuels, lubricants, etc.).

11. The primary non-NPF attributed products account for _____% of total output.

12. Provide a description of types of customers for non-NPF products shipped from the refinery. In describing customers, do not provide customer names or specific customer information. We are seeking general information

about general types or categories of customers by industry and/or by use.

13. Identify exports by product and volume.

14. List primary products produced from NPF attributed feedstocks.

15. NPF attributed products account for _____ % of total output.

16. Provide a description of types of customers for petrochemical products.

17. Indicate approximate percentage of total shipments from the refinery that are to affiliated plants.

18. Provide the percent of total production that is directly or indirectly exported _____ %. The indirect exports to be reported are shipments that are entered for consumption prior to subsequent re-exportation or shipments to a customer or related facility that are later exported (whenever known). You may rely on estimates for indirect exports but it is important that each operator do its best to account for all export activity that is supported by their FTZ operation.

19. Current rated crude distillation capacity (BPD).

20. Volume of total crude oil receipts on an average daily basis (BPD).

21. Volume of foreign crude oil receipts on an average daily basis (BPD).

22. Estimated percentage of foreign crude receipts under 25 degrees API.

23. Provide the number and date of the most recent Board Order.

24. What capacity (BPD or BPD equivalent) was approved by the Board in the above order?

Grants of authority are approved for a given level of activity. In the case of oil refineries, the levels of activity are stated in terms of current rated crude distillation capacity. A plant may increase its capacity, but the level of approved zone activity for the plant remains at the level approved under the refinery's current Board Order. Significant increases in activity above Board-approved levels require an expanded authorization.

25. Is the refinery operating within the approved scope of authority? Explain.

26. Indicate how zone savings assist the company in its international competitiveness efforts (*e.g.,* reduce operating costs, improve margins, help make exports more competitive, maintain or increase refinery capacity through processing unit upgrades or additions at U.S. refinery versus foreign refinery in a global industry).

In describing how FTZ status has affected the refinery, please give examples and anecdotal information that you feel relevant. We recognize that FTZ status may be only a contributing factor.

27. Current estimate of annual zone duty savings.

28. Provide an estimate for the value-added activity that takes place under zone procedures (labor, profit, overhead, etc.). One way to estimate value-added is: Value of Sales from Plant minus Value of merchandise Received at Plant. Value-added should not be included in the Movement of Merchandise figures below.

29. Describe public-type benefits (both direct and indirect) to the local and national economy. Please give specific examples. As it applies to your plant, you may describe with any or all of the following:

a. Affected domestic production employment and refinery capacity.

b. Helped to offset environmental compliance costs.

c. Helped to preserve U.S. refining capacity.

d. Contributed to increased investment in U.S. refining.

In describing industry impact, information may be presented to the FTZ Board on a company-wide or industry-wide basis (rather than from individual refineries). In this manner the accumulated impact of all of a company's facilities or the use of zone procedures in the industry as a whole may be discussed rather than on an individual basis.

30. If the operation is subject to restriction, please describe method of compliance.

31. *Movement of Merchandise*

MERCHANDISE IN THE ZONE AT BEGINNING AND END OF CALENDAR YEAR

	Beginning value	End value
Domestic Status	$	$
Foreign Status		
Total	$	$
Merchandise Received:	*Value*	
Domestic Status	$	$
Foreign Status		
From Other U.S. FTZ's:		
Domestic Status		
Foreign Status		
Total	$	$
Merchandise Forwarded:	*Value*	
To The U.S. Market	$	
To Foreign Countries (Exports)		
To Other U.S. FTZ's		
Total	$	$
Merchandise Destroyed	$	

Explanation of Discrepancies:

a. Does Beginning Inventory + Total Merchandise Received − Total Merchandise Forwarded − Merchandise Destroyed = Ending Inventory? If not, explain.

b. Is the level of Merchandise Received this year significantly different from the previous year? If yes, explain.

c. Is the Ending Inventory from the previous year equal to the Beginning Inventory for this year?

32. *Main Categories of Foreign Status Merchandise Received (Top Five)*

Category	Value	Main countries of origin
_____	$_____	_____
_____	_____	_____

Category	Value	Main countries of origin
Total	$	

33. *Main Categories of Merchandise Forwarded (Top Five)*

Category	Value
	$
Total	$

34. *Foreign Status Merchandise Received:*

Nonprivileged Foreign *$.*

Privileged Foreign *$.*

35. Customs duties collected on merchandise entered into U.S. Customs territory from the operation during the year amounted to *$*_____.

36. *(Optional) Attachment field:* You may attach any photographs of the operation or any information you feel may be useful.

Public comment on this proposal is invited from interested parties. We ask that parties fax a copy of their comments, addressed to the Board's Executive Secretary, to (202) 482–0002 or e-mail comments to *ftz@ita.doc.gov.* We also ask that parties submit the original of their comments to the Board's Executive Secretary at the following address: U.S. Department of Commerce, Room 2111, 1401 Constitution Ave., NW., Washington, DC 20230. The closing period for the receipt of public comments is October 16, 2009. Any questions about this proposal should be directed to Elizabeth Whiteman at *Elizabeth_Whiteman@ita.doc.gov* or (202) 482–0473.

Dated: September 3, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–22064 Filed 9–11–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–00XX]

Federal Acquisition Regulation; Information Collection; Hubzone Program

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding HUBZone Program revisions.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 13, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 9000–XXXX, HUBZone Program, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Program Analyst, Contract Policy Division, GSA, (202) 219–1813, or via e-mail to *rhonda.cundiff@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection facilitates implementation of a HUBZone Program Federal Acquisition Regulation (FAR) revision as a result of revisions to the Small Business Administration regulations. The revision to the FAR requires the HUBZone offeror to provide the Contracting Officer a copy of the notice required by 13 CFR 126.601 if material changes occur before contract award that could affect its HUBZone eligibility. This notification to the contracting officer ensures that the offeror is still eligible for the award of a HUBZone contract.

B. Annual Reporting Burden

Number of Respondents: 8,000.
Responses Per Respondent: 1.
Hours Per Response: .25.
Total Burden Hours: 2,000.
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–XXXX, HUBZone Program, in all correspondence.

Dated: September 8, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–22060 Filed 9–11–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) for Stationing and Training of Increased Aviation Assets Within U.S. Army Alaska

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of an FEIS for the implementation of the decision to

increase numbers and types of aviation assets and training at Fort Wainwright, Fort Richardson, or other military installations in Alaska. The proposed aviation unit, an Aviation Task Force or Combat Aviation Brigade, would potentially consist of up to 62 medium and heavy lift helicopters, 30 combat scout helicopters, 24 attack helicopters, and between 1,200 to 2,850 Soldiers.

DATES: The waiting period for the FEIS will end 30 days after the publication of an NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments should be forwarded to Ms. Carrie McEnteer, Directorate of Public Works, Attention: IMPA–FWA–PWE, 1060 Gaffney Road #4500, Fort Wainwright, AK 99703–4500, by fax at (907) 361–9867, or by e-mail at *carrie.mcenteer@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Linda L. Douglass, Public Affairs Office, 1060 Gaffney Road #5900, Fort Wainwright, AK 99703–5900; telephone: (907) 353–6701, e-mail: *linda.douglass@us.army.mil.*

SUPPLEMENTARY INFORMATION: The Proposed Action and analysis in the FElS includes the reorganization of existing aviation assets (approximately 490 Soldiers and 32 medium and heavy lift helicopters) in U.S. Army Alaska (USARAK) to become a frontline aviation unit with an increased capacity that could range in size from an Aviation Task Force (approximately 1,200 Soldiers, 42 medium and heavy lift helicopters and 30 combat scout helicopters) to a Combat Aviation Brigade (approximately 2,850 Soldiers, 62 medium and heavy lift helicopters, 30 combat scout helicopters, and 24 attack aviation helicopters).

While USARAK has historically supported unit training activities within Alaska with rotary-winged aircraft (helicopters), the types and numbers of current assets are not sufficient to provide the full range of integrated tactical training required by the modern Brigade Combat Team. The proposed increase and reorganization of USARAK's aviation assets would resolve this shortcoming. The new aviation unit would provide key aviation assets for operational deployment abroad and would serve to enhance the training capability of USARAK's two Brigade Combat Teams by providing a local opportunity to conduct integrated training with multiple types of Army aviation assets.

In addition to consideration of a No Action Alternative (use of existing aviation assets and infrastructure to support USARAK Brigade Combat Team training with no increase to current integrated land-air training capability), two additional alternatives are proposed as possible scenarios for the reorganization of existing USARAK aviation assets. The alternatives vary by aviation unit size, aviation asset composition, and stationing location. Alternatives include: (1) Expansion of Existing Aviation Units into an Aviation Task Force—convert existing USARAK aviation assets into an Aviation Task Force (station 710 additional Soldiers and 40 additional helicopters, build sufficient new infrastructure to support the new aviation inventory at Fort Wainwright, and conduct increased aviation training on existing Alaska military training lands and ranges); and (2) Expansion of Existing Aviation Assets into a Combat Aviation Brigade with stationing of Soldiers and helicopters at Fort Wainwright, Fort Richardson, and Eielson Air Force Base—convert existing USARAK aviation assets into a Combat Aviation Brigade (station 2,360 additional Soldiers and an additional 84 helicopters (30 medium and heavy lift type, 30 combat scout type, and 24 attack type) at the three military installations, build sufficient new infrastructure only at Fort Wainwright to support the new aviation inventory, and conduct increased aviation training on existing Alaska military training lands and ranges). After reviewing the alternatives presented in the FEIS, the Army has selected the Aviation Task Force alternative as its preferred alternative.

Implementation of this proposed action is expected to result in direct, indirect and cumulative impacts as a result of troop stationing, facilities construction and helicopter training exercises at USARAK. The principal environmental impacts discussed in the EIS are airspace management, cultural and visual resources, noise, hazardous materials and hazardous waste, and wildlife. Although additional helicopters would be stationed in Alaska, existing airspace aviation travel routes would be utilized resulting in minor increases in air traffic. Significant adverse impacts would occur to the Ladd Field National Historic Landmark as a result of facility construction at Fort Wainwright. Adverse impacts would be the result of the new construction being out of scale with historic buildings, historical view-shed obstruction and change in use of two historic buildings. Temporary minor noise impacts would occur due to facility construction. Noise associated with helicopter training would increase but not to a level that would significantly increase annoyance levels at Fort Wainwright or surrounding lands. Hazardous materials and waste, both existing sources and those created by the stationing and operation of an aviation unit, will be managed under existing programs and agreements. Facility construction is proposed within known areas of contamination. USARAK will continue to consult with the appropriate State and Federal agencies as outlined in existing agreements in order to protect human health and the environment. Various wildlife species would be affected by increased military training (specifically moose, bison, caribou, trumpeter swan and bear); however, population level impacts would not occur. In addition, increased hunting pressure on game mammals could result from increased stationing of Soldiers.

Copies of the FEIS are available for public review at local libraries and at the following Web site: *http://www.usarak.army.mil/conservation/NEPA_home.html.* Comments from the public will be considered before any final decision is made.

Dated: September 2, 2009.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. E9–21933 Filed 9–11–09; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Environmental Impact Statement (DEIS) for Grow the Army Actions at Fort Lewis and the Yakima Training Center (YTC), WA

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of a DEIS that analyzes the environmental and socioeconomic impacts of implementing the stationing and realignment decisions in the 2007 ''Grow the Army'' Programmatic EIS (GTA PEIS) and other ongoing Army realignment and stationing initiatives pertaining to Fort Lewis and YTC. The GTA PEIS Record of Decision (ROD) specified the stationing of additional units at Fort Lewis including an Expeditionary Sustainment Command, and directed unit restructuring actions that would increase active duty strength at Fort Lewis by approximately 1,900 Soldiers. The DEIS also analyzes Fort Lewis and YTC as potential locations for the

stationing of approximately 1,000 combat service support (CSS) Soldiers consisting of quartermaster, medical, transportation, headquarters or other CSS units to support combat operations, and the potential stationing of a medium Combat Aviation Brigade (CAB) consisting of approximately 2,800 soldiers and 110 helicopters.

DATES: The public comment period for the DEIS will end 45 days after publication of an NOA in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: Questions or comments regarding the DEIS should be forwarded to: Department of the Army, Directorate of Public Works, Attention: IMWE–LEW–PWE (Mr. Paul T. Steucke, Jr.), Building 2012, Liggett Avenue, Box 339500 MS 17, Fort Lewis, WA 98433–9500.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Van Hoesen, Fort Lewis National Environmental Policy Act (NEPA) Coordinator, at (253) 966–1780 during business hours (8 a.m. to 4 p.m. PDT, Monday through Friday).

SUPPLEMENTARY INFORMATION: Fort Lewis is an 86,176 acre major Army installation in western Washington (approximately 35 miles south of Seattle) and is one of 15 U.S. power projection platforms. The 327,231 acre YTC is a subinstallation of Fort Lewis located about 7 miles northeast of the City of Yakima in central Washington. Fort Lewis and YTC are important Army facilities for weapons qualification and field training. In addition to the units stationed there, Reserve and National Guard units, as well as units from allied nations, train at Fort Lewis and YTC.

The DEIS evaluates the potential impacts of the site-specific actions for the alternatives to implement the Proposed Action. These actions include troop stationing, maneuver and live-fire training, and construction. The following alternatives are evaluated:

(1) The No Action alternative assumes that the Army GTA decisions would not be implemented. It is not a viable alternative because the Army GTA decisions have already been made, and the decisions need to be implemented. Analysis of the No Action alternative serves as a baseline for comparison of the other alternatives. Under this alternative, planned construction that is not part of the GTA decisions includes troop barracks, recreational facilities, traffic flow improvements and other infrastructure upgrades at Fort Lewis.

(2) The GTA alternative implements the Army GTA decisions affecting Fort Lewis and YTC. Maneuver and live-fire training of an additional 1,900 Soldiers will occur at Fort Lewis and YTC. This alternative also includes the training of three Stryker Brigade Combat Teams (SBCT5) present simultaneously at Fort Lewis and YTC. Planned new construction includes brigade barracks complexes, the upgrade of sub-standard SBCT facilities to meet Army standards, and additional firing ranges at Fort Lewis and YTC.

(3) The CSS alternative represents the potential stationing at Fort Lewis of up to 1,000 CSS Soldiers in addition to Alternative 2. Maneuver and live-fire training of up to 2,900 new Soldiers would occur at Fort Lewis and YTC. Specific construction projects cannot be identified until the types and numbers of CSS units are known, but new construction would include barracks, motor pools, classrooms and administrative facilities.

(4) The CAB alternative represents the potential stationing at Fort Lewis of a medium CAB in addition to Alternative 3. Maneuver and live-fire training of up include the air and ground assets of the CAB. New construction facilities to support the CAB would be similar to those required for Alternative 3.

Major impacts expected from implementing the Proposed Action include noise from the increased frequency of demolitions and live-fire training, which would extend further beyond the boundaries of Fort Lewis into the surrounding communities. Additional traffic volume from the potential stationing of the medium CAB would increase the delays and congestion at key intersections during peak traffic hours. Although the additional number of schoolchildren from each alternative would increase the number of schoolchildren in the local school systems, the potential CAB stationing would significantly impact the local school systems that support Fort Lewis. At YTC, increased use of training lands and firing ranges for maneuver and live-fire training would increase the risk of damage to wildlife and wildlife habitat.

A copy of the DEIS may be accessed at the following Web site: *http://www.lewis.army.mil/publicworks/sites/envir/EIA_2.htm.* Comments from the public will be considered before any decision is made regarding implementation of the Proposed Action.

Dated: September 2, 2009.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. E9–21932 Filed 9–11–09; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement (DEIS) for the Base Realignment and Closure (BRAC) 05 Actions at Fort Monroe, VA

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of the DEIS, which evaluates the potential environmental and socioeconomic impacts of BRAC actions at Fort Monroe, Virginia.

DATES: The public comment period for the DEIS will end 45 days after publication of an NOA in the **Federal Register** by the U.S. Environmental Protection Agency. Public meeting date is: October 6, 2009, 7 p.m. to 9 p.m., Hampton Roads Convention Center, 1610 Coliseum Drive, Hampton, VA.

ADDRESSES: Please send written comments on the DEIS to: Ms. Robin Mills, Chief, Directorate of Public Works, 318 Cornog Lane, Fort Monroe, VA 23651. E-mail comments should be sent to *monr.post.nepapublic@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Robin Mills, Chief, Directorate of Public Works, 318 Cornog Lane, Fort Monroe, VA 23651. E-mail comments should be sent to *monr.post.nepapublic@us.army.mil.*

SUPPLEMENTARY INFORMATION: The DEIS covers activities associated with the BRAC actions at Fort Monroe, Virginia. The 2005 BRAC Commission recommended the closure of Fort Monroe and the relocation of the U.S. Army Training and Doctrine Command (TRADOC) Headquarters; the Installation Management Agency (IMA) Northeast Region Headquarters; the U.S. Army Network Enterprise Technology Command (NETCOM) Northeast Region Headquarters; and the Army Contracting Agency Northern Region Office to Fort Eustis, VA. The 2005 BRAC Commission also recommended the U.S. Army Accessions Command and U.S. Army Cadet Command relocate to Fort Knox, KY. Under BRAC, closure will be no later than September 15, 2011.

Following closure, Fort Monroe will be surplus to Army needs and the Army will dispose of its real property interests. The Army has recognized the Fort Monroe Federal Area Development Authority (FMFADA) as the local reuse authority for reuse planning. The FMFADA Fort Monroe Reuse Plan was approved by the Governor in August

2008 and is available at: *http://www.fmfada.com/business/reuse_planning/.*

Fort Monroe is a 570-acre U.S. Army Garrison located on Old Point Comfort at the southeastern tip of the Virginia Lower Peninsula between Hampton Roads and the Lower Chesapeake Bay. The Fort Monroe property is still almost completely surrounded by the waters of the lower Chesapeake Bay, the harbor of Hampton Roads, and Mill Creek. The installation's northern extension ties into land in the city of Hampton and the community of Buckroe Beach.

The primary Army action is to dispose of the surplus Federal property generated by the BRAC-mandated closure of Fort Monroe. Reuse of Federal property at Fort Monroe by others is a secondary action resulting from disposal. The Army identified two disposal alternatives (early transfer and traditional disposal), a caretaker status alternative and the no action alternative. The reuse scenarios encompass the FMFADA's Reuse Plan and include higher and lower levels of development intensities. The Army expresses no preference with respect to reuse scenarios. The EIS analyzes each alternative's impact upon the natural and cultural environments in the surrounding vicinity.

Four alternatives are analyzed in the DEIS: (1) An early transfer alternative, under which transfer and reuse of the property would occur before environmental remedial action has been completed; (2) a traditional disposal alternative, under which transfer and reuse of the property would occur once environmental remediation is complete for individual parcels of the installation; (3) a caretaker status alternative, which would arise in the event that the Army is unable to dispose of all or portions of the property within the period of time defined for initial caretaking, after which time the maintenance of the property would be reduced to minimal activities necessary to ensure security, health, and safety, and to avoid physical deterioration of facilities; and (4) a no action alternative, under which the Army would continue operations at Fort Monroe at levels similar to those occurring prior to the BRAC Commission's recommendation for closure. Three reuse scenarios (based on low, middle, and upper bracket intensity scenarios of reuse) are evaluated as secondary actions of disposal of Fort Monroe. These reuse scenarios bracket the intensity of reuse expected under the FMFADA's reuse plan.

The evaluated resource areas include land use, aesthetics and visual resources, air quality, noise, geology and soils, water resources, biological resources, cultural resources, socioeconomics, transportation, utilities, and hazardous and toxic substances. Direct and indirect impacts of each disposal alternative on the resource areas include a variety of short- and long-term impacts, both adverse and beneficial. Under the early transfer and traditional disposal alternatives, minor to significant adverse effects would be expected in the areas of noise and transportation. For the caretaker status alternative, minor adverse effects would be expected to occur for all resources areas with the exception of minor beneficial effects estimated for air quality and noise. The no action alternative would result in no new adverse direct, indirect, or cumulative impacts. The three reuse scenarios evaluated have the potential for a variety of adverse and beneficial short- and long-term effects.

The Army invites the public, local governments, and state and Federal agencies to submit written comments or suggestions concerning the alternatives and analyses addressed in the DEIS. The public and government agencies also are invited to participate in a public meeting where oral and written comments and suggestions will be received. Copies of the DEIS will be available for review at Hampton, VA, libraries prior to the public meeting. The DEIS may also be viewed online at: *http://www.hqda.army.mil/acsimweb/brac/nepa_eis_docs.htm.*

Dated: September 2, 2009.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).

[FR Doc. E9–21931 Filed 9–11–09; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent Application Number 12/460,172 filed on July 9, 2009, Navy Case Number PAX 30 entitled ''Human Behavioral Simulator for Cognitive Decision-Making.''

ADDRESSES: Requests for data and inventor interviews should be directed to Mrs. Asuncion L. Simmonds, Naval Air Warfare Center Training Systems Division, Code 4.6T, 12350 Research Parkway, Orlando, FL 32826–3275 or e-mail *asuncion.simmonds@navy.mil.*

DATES: Request for data, samples, and inventor interviews should be made prior to October 24, 2009.

FOR FUTHER INFORMATION CONTACT: Mrs. Asuncion L. Simmonds, Naval Air Warfare Center Training Systems Division, Code 4.6T, 12350 Research Parkway, Orlando, FL. 32826–3275, 407–380–4699 or e-mail *asuncion.simmonds@navy.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these inventions. All licensing application packages and commercialization plans must be returned to Commanding Officer, Naval Air Warfare Center Training Systems Division, Attn: Asuncion Simmonds, Code 4.6T, 12350 Research Parkway, Orlando, FL 32826–3275, or e-mail *asuncion.simmonds@navy.mil.*

The Navy, in its decisions concerning the granting of licenses, will give special consideration to existing licensees, small business firms, and consortia involving small business firms. The Navy intends to ensure that its licensed inventions are broadly commercialized throughout the United States.

PCT application may be filed for the patent as noted above. The Navy intends that licensees interested in a license in territories outside of the United States will assume foreign prosecution and pay the cost of such prosecution.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: September 4, 2009.

T.M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. E9–21990 Filed 9–11–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0077]

Federal Acquisition Regulation; Submission for OMB Review; Quality Assurance Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of reinstatement request for an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning quality assurance requirements. A request for public comments was published at 74 FR 32166 on July 7, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 14, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Contract Policy Division, GSA (202) 501–4082 or e-mail *jeritta.parnell@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

Supplies and services acquired under Government contracts must conform to the contract's quality and quantity requirements. FAR Part 46 prescribes inspection, acceptance, warranty, and other measures associated with quality requirements. Standard clauses related to inspection require the contractor to provide and maintain an inspection system that is acceptable to the Government; give the Government the right to make inspections and test while work is in process; and require the contractor to keep complete, and make available to the Government, records of its inspection work.

B. Annual Reporting Burden

Respondents: 850.
Responses per Respondent: 1.
Total Responses: 850.
Hours per Response: .25.
Total Burden Hours: 213.

C. Annual Recordkeeping Burden

Recordkeepers: 52,254.
Hours per Recordkeeper: .68.
Total Burden Hours: 35,533.
Total Annual Burden: 213 + 35,533 = 35,746.

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. 9000–0077, Quality Assurance Requirements, in all correspondence.

Dated: September 8, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–22063 Filed 9–11–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0045]

Federal Acquisition Regulation; Submission for OMB Review; Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of reinstatement request for an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning bid guarantees, performance and payment bonds, and alternative payment protections. A request for public comments was published at 74 FR 27024, June 5, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 14, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: William Clark, Procurement Analyst, GSA (202) 219–1813 or email *William.clark@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

These regulations implement the statutory requirements of the Miller Act (40 U.S.C. 3131 to 3134), which requires performance and payment bonds for any construction contract exceeding $100,000, unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. In addition, the regulations implement the note to 40 U.S.C. 3132, entitled ''Alternatives to Payment Bonds Provided by the Federal

Acquisition Regulation,'' which requires alternative payment protection for construction contracts that exceed $30,000 but do not exceed $100,000. Although not required by statute, under certain circumstances the FAR permits the Government to require bonds on other than construction contracts.

B. Annual Reporting Burden

Respondents: 11,304.
Responses per Respondent: 5.
Total Responses: 56,520.
Hours per Response: .42.
Total Burden Hours: 23,738.
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. 9000–0045, Bid, Performance, and Payment Bonds, in all correspondence.

Dated: September 8, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–22067 Filed 9–11–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 14, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 8, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for the EU–U.S. Atlantis Program.
Frequency: Annually.
Affected Public: Businesses or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:

Responses: 60.
Burden Hours: 1,800.

Abstract: The EU/U.S. Atlantis Program will support new types of cooperation in curriculum development and student exchanges between the U.S. and the European Union (EU). Consistent with the provisions of Public Law 105–244 (Title VII, Part B, Section 741 of the Higher Education Act as amended), the Fund for the Improvement of Postsecondary Education (FIPSE) works to improve postsecondary education through grants to postsecondary educational institutions and agencies. Such grants are awarded on the basis of competitively reviewed applications submitted to FIPSE under its Comprehensive and Special Focus grant competitions. The U.S. Department of Education is requesting approval of the grant application guidelines used to solicit applications for new grants under the Special Focus Program: EU–U.S. Atlantis Program. The EU–U.S. Atlantis Program has been funded annually since fiscal year 1996.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4106. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–22032 Filed 9–11–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 14, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early

opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 9, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: New.

Title: Strengthening America's Competitiveness through Math Instruction-Teacher Training Field Test.

Frequency: Once.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 67.

Burden Hours: 67.

Abstract: This initiative involves three Adult Numeracy Instruction (ANI) Professional Development Institutes. Twenty teachers and ten program administrators from ten adult education programs from each of two states will participate in a field test of the professional development Institutes. The goals of the institutes are to:

- Enhance teacher knowledge and use of research-based adult education mathematics standards.
- Increase and deepen mathematics content knowledge among teacher participants.
- Increase the repertoire of instructional skills among teachers working with adults in ABE, pre-GED, and GED classes.
- Increase state capacity to support teachers in the area of mathematics instruction.

The study will involve the administration of the following instruments:

- Pre/Post surveys of participants.
- Pre/Post administration of a cognitive assessment to participating teachers.
- Post-professional development interviews with participating teachers and program administrators.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4022. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–22034 Filed 9–11–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 09–92–LNG]

ConocoPhillips Company; Application for Blanket Authorization To Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on August 31, 2009 by ConocoPhillips Company (ConocoPhillips), requesting blanket authorization to export liquefied natural gas (LNG) that previously had been imported from foreign sources on their own behalf or as agent for others on a short-term or spot market basis from existing facilities on Quintana Island, Texas in an amount up to the equivalent of 500 Billion cubic feet (Bcf) of natural gas to the United Kingdom, Belgium, Spain, Portugal, Turkey, Brazil, Argentina, Chile, Mexico, the Dominican Republic, Japan, South Korea, India, China, Taiwan, France, and/or Italy, as well as any country with the capacity to import ocean-going LNG, with which trade is not prohibited by U.S. law or policy. ConocoPhillips seeks to export the LNG over a two year period commencing on the date of the authorization.

The application is filed under section 3 of the Natural Gas Act (15 U.S.C. 717b), as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102–486), DOE Delegation Order No. 00–002.00G (Jan. 29, 2007) and DOE Redelegation Order No. 00–002.04D (Nov. 6, 2007). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, October 14, 2009.

ADDRESSES:

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Beverly Howard, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478; (202) 586–9387.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Fossil Energy and Energy Efficiency, Forrestal Building, Room 6B–159, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

ConocoPhillips is a Delaware corporation with its principal place of business in Houston, Texas. ConocoPhillips is an independent producer and seller of natural gas and an importer of LNG into the U.S. ConocoPhillips requests that the proposed authorization to export LNG requested herein be applicable to exports from the Freeport LNG Development, L.P. (FLNG) terminal. FLNG has previously received authorization from the Federal Energy Regulatory Commission (FERC) to site, construct and operate a new LNG import, storage, and vaporization terminal on Quintana Island, Texas and an associated 9.6-mile long send-out

pipeline.[1] On July 1, 2008, FERC issued a letter Order granting FLNG's request to commence service at its Quintana Island import terminal. FLNG also received FERC authorization to modify its facilities so as to enable exports of LNG in addition to imports of LNG.[2] ConocoPhillips has a long-term terminal use agreement with FLNG for 0.9 Bcf per day of LNG storage and regasification capacity. No additional facility modifications will be required to enable ConocoPhillips to also export LNG from the FLNG terminal.

On July 24, 2009, FE granted ConocoPhillips blanket authorization to import up to 500 Bcf of LNG from various international sources for a two-year term which began on August 1, 2009 and extends through July 30, 2011.[3]

Current Application

In the instant application, ConocoPhillips is seeking blanket authorization to export LNG over a two-year period, on a short-term or spot market basis, in an amount up to the equivalent of 500 Bcf of natural gas, which has been imported into the U.S. ConocoPhillips is seeking this authorization so that it may sell in non-U.S. markets any LNG it has previously imported should U.S. market prices not support the sale of such imported LNG domestically.

Public Interest Considerations

In support of its application, ConocoPhillips states that there is no domestic reliance on the LNG that it seeks to export. Due to global LNG market conditions, U.S. natural gas demand and prices do not currently support the importation of LNG into the U.S, and export authorization is needed in order to enable the applicant to economically import LNG should U.S. market conditions change.

ConocoPhillips also states in its application that local natural gas supplies will not be reduced. The applicant states that it intends to export only foreign sourced LNG, and does not intend to export domestically produced natural gas. Additionally, ConocoPhillips states that granting the requested authorization would make the importation of LNG into the U.S. more attractive because, once imported, ConocoPhillips will have the option of either selling into U.S. markets or exporting to other markets based upon prevailing market conditions.

DOE/FE Evaluation

This export application will be reviewed pursuant to section 3 of the Natural Gas Act, as amended, and the authority contained in DOE Delegation Order No. 00–002.00G (Jan. 29, 2007) and DOE Redelegation Order No. 00–002.04D (Nov. 6, 2007). In reviewing this LNG export application, DOE will consider domestic need for the gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

ConocoPhillips asserts the proposed authorization is in the public interest. Under section 3 of the Natural Gas Act, as amended, an LNG export from the U.S. to a foreign country must be authorized unless ''the proposed exportation will not be consistent with the public interest.'' Section 3 thus creates a statutory presumption in favor of approval of this application, and parties opposing the authorization bear the burden of overcoming this presumption.

Additionally, the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as a basis for any decision on the application must file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to the application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Oil and Gas Global Security and Supply at the address listed above.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no additional procedures are adopted, a final Opinion and Order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The application filed by ConocoPhillips Company is available for inspection and copying in the Office of Oil and Gas Global Security and Supply docket room, 3E–042, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The application is also available electronically by going to the following Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on September 8, 2009.

Robert F. Corbin,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. E9–21996 Filed 9–11–09; 8:45 am]

BILLING CODE 6450–01–P

[1] *Freeport LNG Development, L.P.,* Order Granting Authorization Under Section 3 of the Natural Gas Act, 107 FERC ¶ 61,278 (2004); Order Granting Requests for Rehearing and Clarification, 108 FERC ¶ 61,253 (2004); and Order Amending Section 3 Authorization, 112 FERC ¶ 61,194 (2005).

[2] *See Freeport LNG Development, L.P.,* 127 FERC ¶ 61,105 (2009); *Sabine Pass LNG, L.P.,* 127 FERC ¶ 61,200 (2009).

[3] *ConocoPhillips Company,* DOE/FE Order No. 2673, issued July 24, 2009.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8956–2]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Good Neighbor Environmental Board (Board). The Board meets three times each calendar year, twice at different locations along the U.S. border with Mexico, and once in Washington, DC. It was created in 1992 by the Enterprise for the Americas Initiative Act, Public Law 102–532,7 U.S.C. 5404. Implementing authority was delegated to the Administrator of EPA under Executive Order 12916. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the States of Arizona, California New Mexico and Texas; and Tribal and private organizations to provide advice on environmental and infrastructure issues along the U.S./Mexico Border.

The purpose of the meeting is to continue discussion and drafting the Board's 13th report. Presentations will also be heard on regional planning, water, and air quality issues along the Ambos Nogales Region. The meeting will include a planning session, a business meeting and a public comment session. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/gneb.*

DATES: The Good Neighbor Environmental Board will hold an open meeting on Wednesday, September 23, from 8:30 a.m. (registration at 8 a.m.) to 5:30 p.m. The following day, September 24, the Board will hold a business meeting from 8 a.m. until 12 p.m. Due to logistical circumstances, EPA is announcing this meeting with less than 15 calendar days public notice.

ADDRESSES: The meeting will be held at Esplendor Resort, 1069 Camino Caralampi, Rio Rico, AZ 85648, phone number: 520–281–1901. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Dolores Wesson, Designated Federal Officer, *wesson.dolores@epa.gov,* 202–564–1351, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Dolores Wesson at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *http://www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individuals with disabilities; please contact Dolores Wesson at 202–564–1351 or by e-mail at *wesson.dolores@epa.gov.* To request accommodation of a disability, please contact Dolores Wesson at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: September 3, 2009.

Dolores Wesson,

Designated Federal Officer.

[FR Doc. E9–21947 Filed 9–11–09; 8:45 am]

BILLING CODE M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Thursday, September 17, 2009, 9:30 a.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 ''M'' Street, NE., Washington, DC 20507.

STATUS: The meeting will be open to the public.

Matters To Be Considered

Open Session:

1. Announcement of Notation Votes, and
2. Notice of Proposed Rulemaking to Implement the Americans with Disabilities Act (ADA) Amendments Act of 2008.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. Seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register,** the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Executive Officer on (202) 663–4070.

This Notice Issued September 10, 2009.

Dated: September 10, 2009.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. E9–22157 Filed 9–10–09; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted to the Office of Management and Budget for Review and Approval, Comments Requested

September 8, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments on October 14, 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, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), SW, Washington, DC 20554. To submit your comments by e–mail send then to: PRA@fcc.gov and to Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward–pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Numbers: 3060–1086.

Title: Section 74.786, Digital Channel Assignments; Section 74.787, Digital Licensing; Section 74.790, Permissible Service of Digital TV Translator and LPTV Stations; Section 74.794, Digital Emissions, and Section 74.796, Modification of Digital Transmission Systems and Analog Transmission Systems for Digital Operation.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 8,533 respondents; 34,790 responses.

Estimated Hours per Response: 0.50–4 hours.

Frequency of Response: Recordkeeping requirement; One–time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 55,542 hours.

Total Annual Cost: $95,767,200.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 301 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: On May 8, 2009, the Commission adopted the Report and Order, In the Matter of Amendments of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations; MB Docket No. 08–253, FCC 09–36 (released May 8, 2009).

In this Report and Order, the Commission created a new ''replacement'' digital television translator service to permit full–service television stations to continue to provide service to viewers within their analog coverage areas who have lost service as a result of those stations' digital transition. Replacement digital translators can be licensed solely on digital television channels 2 through 51 and with secondary frequency status. Unlike other television translator licenses, the replacement digital television translator license will be associated with the full–service station's main license and will have the same four letter call sign as its associated main station. As a result, a replacement digital television translator license may not be separately assigned or transferred and will be renewed or assigned along with the full–service station's main license. Almost all other rules associated with television translator stations are applied to replacement digital television translators.

Moreover, the Report and Order adopts an information collection requirement contained in 47 CFR 74.787(a)(5)(i). 47 CFR 74.787(a)(5)(i) states that an application for a replacement digital television translator may be filed by a full–service television station that can demonstrate that a portion of its analog service area will not be served by its full, post–transition digital facilities. The service area of the replacement digital television translators shall be limited to only a demonstrated loss area. However, an applicant for a replacement digital television translator may propose a de minimis expansion of its full–service pre–transition analog service area upon demonstrating that it is necessary to replace its post–transition analog loss area.

Congress has mandated that after June 12, 2009, full–power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. Therefore, this collection of information will allow full–power DTV stations to use replacement digital television translators to meet their statutory responsibilities and begin operations on their final, post–transition (digital) channels by their construction deadlines. Replacement digital television translators will provide DTV broadcasters with an important tool for providing optimum signal coverage to their pre–transition analog viewers. For some broadcasters, replacement digital television translators may offer the only option for continuing to provide over–the–air service to pre–transition analog viewers.

The DTV information collection requirement contained in the Report and Order and 47 CFR 74.787(a)(5)(i) must stay in effect after June 12, 2009, the date of the Congressionally mandated full–power digital transition, and for the full OMB three–year approval period. Full–power broadcast stations may require additional adjustments in their facilities, including the new construction of replacement digital translators, as their transition to digital mode is optimized, and they come to better comprehend their new digital service contours. The extent of these adjustments, including the new construction of replacement digital translators, is not fully known at this time because of the new nature of the full–power digital television service.

The following information collection requirements are also contained in this information collection:

47 CFR 74.786(d) requires that digital LPTV and TV translator stations assigned to these channels as a companion digital channel demonstrate *32158 that a suitable in–core channel is not available. The demonstration will require that the licensee conduct a study to verify that an in–core channel is not available.

47 CFR 74.786(d) further requires that digital LPTV and TV translator stations proposing use of channels 52–59 notify all potentially affected 700 MHz wireless licensees of their proposed operation not less than 30 days prior to the submission of their application. These applicants must notify wireless licensees of the 700 MHz bands comprising the same TV channel and the adjacent channel within who licensed geographic boundaries the digital LPTV or TV translator station is proposed to be located, and they must also notify licensees of co–channel and adjacent channel spectrum whose service boundaries lie within 75 miles and 50 miles respectively of their proposed station location.

47 CFR 74.786(e) allows assignment of UHF channels 60 to 69 to digital LPTV or TV translator stations for use

as a digital conversion channel provided that stations proposing use of these channels notify all potentially affected 700 MHz wireless licensees of their proposed operation not later than 30 days prior to the submission of their application.

47 CFR 74.786(e) further provides that digital LPTV and TV translator stations proposing use of UHF channel 63, 64, 68, and 69 (public safety frequencies) as a digital conversion channel must secure a coordinated spectrum use agreement with the pertinent 700 MHz public safety regional planning committee and state administrator prior to the submission of their application.

47 CFR 74.786(e) requires Digital LPTV and TV translator stations proposing use of channels 62, 65, and 67 must notify the pertinent regional planning committee and state administrator of their proposed operation not later than 30 days prior to submission of their application.

47 CFR Section 74.787(a)(2)(iii) provides that mutually exclusive LPTV and TV translator applicants for companion digital stations will be afforded an opportunity to submit in writing to the Commission, settlements and engineering solutions to resolve their situation.

47 CFR 74.787(a)(3) provides that mutually exclusive applicants applying for construction permits for new digital stations and for major changes to existing stations in the LPTV service will similarly be allowed to submit in writing to the Commission, settlements and engineering solutions to rectify the problem.

47 CFR 74.787(a)(4) provides that mutually exclusive displacement relief applicants filing applications for digital LPTV and TV translator stations may be resolved by submitting settlements and engineering solutions in writing to the Commission.

47 CFR 74.790(f) permits digital TV translator stations to originate emergency warnings over the air deemed necessary to protect and safeguard life and property, and to originate local public service announcements (PSAs) or messages seeking or acknowledging financial support necessary for its continued operation. These announcements or messages shall not exceed 30 seconds each, and be broadcast no more than once per hour.

47 CFR 74.790(e) requires that a digital TV translator station shall not retransmit the programs and signal of any TV broadcast or DTV broadcast station(s) without prior written consent of such station(s). A digital TV translator operator electing to multiplex signals must negotiate arrangements and obtain written consent of involved DTV station licensee(s).

47 CFR 74.790(g) requires a digital LPTV station who transmits the programming of a TV broadcast or DTV broadcast station received prior written consent of the station whose signal is being transmitted.

47 CFR 74.794 mandates that digital LPTV and TV translator stations operating on TV channels 22–24, 32–36, 38, and 65–69 with a digital transmitter not specifically FCC–certificated for the channel purchase and utilize a low pass filter or equivalent device rated by its manufacturer to have an attenuation of at least 85 dB in the GPS band. The licensees must retain with their station license a description of the low pass filter or equivalent device with the manufacturer's rating or a report of measurements by a qualified individual.

47 CFR 74.796(b)(5) requires digital LPTV or TV translator station licensees that modify their existing transmitter by use of a manufacturer–provided modification kit would need to purchase the kit and must notify the Commission upon completion of the transmitter modifications. In addition, digital LPTV or TV translator station licensees that modify their existing transmitter and do not use a manufacturer–provided modification kit, but instead perform custom modification (those not related to installation of manufacturer–supplied and FCC–certified equipment) must notify the Commission upon completion of the transmitter modifications and shall certify compliance with all applicable transmission system requirements.

47 CFR 74.796(b)(6) provides that operators who modify their existing transmitter by use of a manufacturer–provided modification kit must maintain with the station's records for a period of not less than two years, and will make available to the Commission upon request, a description of the nature of the modifications, installation and test instructions, and other material provided by the manufacturer, the results of performance–tests and measurements on the modified transmitter, and copies of related correspondence with the Commission. In addition, digital LPTV and TV translator operators who custom modify their transmitter must maintain with the station's records for a period of not less than two years, and will make available to the Commission upon request, a description of the modifications performed and performance tests, the results of performance–tests and measurements on the modified transmitter, and copies of related correspondence with the Commission.

Protection of Analog LPTV. In situations where protection of an existing analog LPTV or translator station without a frequency offset prevents acceptance of a proposed new or modified LPTV, TV translator, or Class A station, the Commission requires that the existing non–offset station install at its expense offset equipment and notify the Commission that it has done so, or, alternatively, negotiate an interference agreement with the new station and notify the Commission of that agreement.

Resolving Channel Conflict. The Commission requires that wireless licensees operating on channels 52–59 and 60–69 notify (by certified mail, return receipt requested) a digital LPTV or TV translator licensee operating on the same channel of first adjacent channel of its intention to initiate or change wireless operations and the likelihood of interference from the LPTV or translator station within its licensed geographic service area. This notification should describe the facilities, associated service area, and operation of the wireless licensee with sufficient detail to permit an evaluation of the likelihood of interference.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–22021 Filed 9-11-09; 8:45 am]

BILLING CODE 6712-01-S

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 September 29, 2009.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200

North Pearl Street, Dallas, Texas 75201–2272:

1. Robert B. Dunkin, Sr., Harlingen, Texas; Gilbert Garza, San Benito, Texas; and Fred L. Cole, Jr., Harlingen, Texas, as Trustees of a Voting Trust Agreement (''Agreement'') with respect to First San Benito Bancshares Corporation (the ''Company''), San Benito, Texas, along with the shareholders that are parties to the Agreement: James S. Benson; Fred and Martha Cole, Jr.; Elizabeth Ann Cole, all of Harlingen, Texas; Charles A. Cox, Tampico, Tamaulipas, Mexico; Wendell J. Cox, Rockwall, Texas; Betty Joyce DeCarriere, San Benito, Texas; Annette Dillard; Lee Roy Dillard Jr., both of Georgetown, Texas; Robert B. Dunkin, Sr., Harlingen, Texas; Robert B. Dunkin, II, West Palm Beach, Florida; Charles O. Eubanks, Harlingen, Texas; Gilbert Garza, San Benito, Texas; Sue Ann Holloman, Harlingen, Texas; Estate of Warren Jackson; Angelia G. Leal, both of San Benito, Texas; Tracey M. Longshore, Friendswood, Texas; Elisa or Joe E. Lopez, Harlingen, Texas; Joaquin L. Lopez, McAllen, Texas; F.L. or Concepcion Lopez, Jr.; Carlos Muniz, both of Harlingen, Texas; Janet Miles Murphy, Birmingham, Alabama; John F. and Ann K. Phillips, Jr., Harlingen, Texas; Beto and Carmen Ramirez, San Benito, Texas; Phyllis M. Robinson, Burlington, Iowa; Beatriz Rodriguez, San Benito, Texas; Harry Shimotsu, La Feria, Texas; Kenneth Shimotsu; Robert L. Tumberlinson, both of San Benito, Texas; Thomas C. Washmon, Austin, Texas; Lucy Ann Wolthoff, Harlingen, Texas; and Joe C. Weaver, Dallas, Texas; to acquire voting shares of the Company, and thereby indirectly acquire voting shares of First Community Bank, National Association, San Benito, Texas.

Board of Governors of the Federal Reserve System, September 9, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–22016 Filed 9–11–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 11 and 12, 2009

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 11 and 12, 2009.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range of 0 to ¼ percent. The Committee directs the Desk to purchase agency debt, agency MBS, and longer–term Treasury securities during the intermeeting period with the aim of providing support to private credit markets and economic activity. The timing and pace of these purchases should depend on conditions in the markets for such securities and on a broader assessment of private credit market conditions. The Desk is expected to purchase up to $200 billion in housing–related agency debt and up to $1.25 trillion of agency MBS by the end of the year. The Desk is expected to purchase about $300 billion of longer–term Treasury securities by the end of October, gradually slowing the pace of these purchases until they are completed. The Committee anticipates that outright purchaes of securities will cause the size of the Federal Reserve's balance sheet to expand significanly in coming months. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, September 8, 2009.

Brian F. Madigan,

Secretary, Federal Open Market Committee.

[FR Doc. E9–22013 Filed 9–11–09; 8:45 am]

BILLING CODE 6210–01–S

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on August 11 and 12, 2009, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting Notice

TIME AND DATE: 9:30 a.m. (Eastern Time). September 24, 2009.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

Matters To Be Considered

Parts Open to the Public

1. Approval of the minutes of the August 17, 2009 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Monthly Investment Performance Report.
   c. Legislative Report.
3. Annual Budget Report.
   a. Fiscal Year 2009 Results.
   b. Fiscal Year 2010 Budget.
   c. Fiscal Year 2011 Estimate.

Parts Closed to the Public

4. Proprietary Information.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: September 10, 2009.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. E9–22191 Filed 9–10–09; 4:15 pm]

BILLING CODE 6760–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site *(http://www.fmc.gov)* or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012079.

Title: CMA CGM AG/CSAV Gulf Bridge Express Space Charter Agreement.

Parties: CMA CGM Antilles Guyane and Compania Sud Americana de Vapores S.A.

Filing Party: Mark E. Newcomb, Esquire, CMA CGM (America) LLC, 5701 Lake Wright Drive, Norfolk, VA 23502–1868.

Synopsis: The agreement authorizes CMA to charter space to CSAV in the trade between U.S. Gulf ports and ports in Mexico, Jamaica, Colombia, and Venezuela.

Agreement No.: 012080.

Title: HMM/Hanjin Reciprocal Space Charter Agreement.

Parties: Hyundai Merchant Marine Co., Ltd. and Hanjin Shipping Co., Ltd.

Filing Parties: Robert B. Yoshitomi, Esq., Nixon Peabody LLP, 555 West 5th Street, 46th Floor, Los Angeles, CA 90013–1025 and David F. Smith, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The agreement authorizes the parties to share vessel space in the trade between U.S. East Coast ports, on the one hand, and ports in the Indian Subcontinent, Middle East, and Asia, on the other. The parties requested expedited review.

By Order of the Federal Maritime Commission.

Dated: September 3, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–22055 Filed 9–11–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0395]

Draft Guidance for Industry and Food and Drug Administration Staff; Clinical Study Designs for Surgical Ablation Devices for Treatment of Atrial Fibrillation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Clinical Study Designs for Surgical Ablation Devices for Treatment of Atrial Fibrillation.'' This draft guidance provides FDA's proposed recommendations on clinical trial designs for surgical ablation devices intended for the treatment of atrial fibrillation. This draft guidance is not final nor is it in effect at this time.

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 on the draft guidance by December 14, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Clinical Study Designs for Surgical Ablation Devices for Treatment of Atrial Fibrillation'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written comments concerning this 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 to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elias Mallis, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1312, Silver Spring, MD 20993, 301–796–6216.

SUPPLEMENTARY INFORMATION:

I. Background

Atrial fibrillation (AF) is a complex arrhythmia of the heart. Its precise mechanisms remain unclear. This draft guidance describes elements of suggested clinical study design for surgical ablation devices used to treat patients with longstanding persistent AF and patients with symptomatic paroxysmal AF, such as inclusion and exclusion criteria and assessment of effectiveness, which may differ for these patient populations.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on clinical study designs for surgical ablation devices for treatment of atrial fibrillation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive ''Clinical Study Designs for Surgical Ablation Devices for Treatment of Atrial Fibrillation,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1676 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR 50 and 21 CFR 56 have been approved under OMB control number 0910–0130; and the collections of information under 21 CFR part 814 have been approved under OMB control number 0910–0231.

V. 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.

Dated: August 28, 2009.

Catherine M. Cook,

Associate Director for Regulations and Policy, Center for Devices and Radiological Health.

[FR Doc. E9–22019 Filed 9–11–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: October 15–16, 2009.

Time: October 15, 2009, 8:15 a.m. to 3:50 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Conference Room 9S235, Bethesda, MD 20892.

Time: October 16, 2009, 8:15 a.m. to 4:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Conference Room 9S235 Bethesda, MD 20892.

Contact Person: Ira W. Levin, PhD, Director, Division of Intramural Research, National Institute of Diabetes and Digestive and Kidney Diseases, NIH, Bethesda, MD 20892, 301–496–6844, *iwl@helix.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21997 Filed 9–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Cell Bank.

Date: October 8, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Alicja L Markowska, PhD, DSC, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. 301–496–9666. *markowska@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Genetics of Aging in Drosophila.

Date: October 20, 2009.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Lewis, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301–402–7707. *elainelewis@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Neuroendocrine and Reproductive Aging.

Date: December 2, 2009.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301–402–7703. *ferrellrj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21999 Filed 9–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC announces the following meeting of the aforementioned committee:

Times and Dates: 8 a.m.–5 p.m., October 13, 2009 (Closed). 8 a.m.–5 p.m., October 14, 2009 (Closed).

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone (703) 684–5900, Fax (703) 684–1403.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Purpose: The Safety and Occupational Health Study section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be Discussed: The meeting will convene to address matters related to the conduct of Study section business and for the study section to consider safety and occupational health-related grant applications. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Price Connor, PhD, NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, Telephone (404) 498–2511, Fax (404) 498–2571.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 3, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–21991 Filed 9–11–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Public Forums

Notice is hereby given of two forums of the working groups of the NIH Scientific Management Review Board: Deliberating Organizational Changes and Effectiveness Working Group and Substance Use, Abuse and Addition Working Group. The forums will serve as the first among a series of sessions for gathering information on the agency's organizational structure and recommendations for enhancing the NIH mission through greater agency flexibility and responsiveness.

The forums will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The input from these meetings will be summarized in a report that will be presented to the Scientific Management Review Board in open session at an upcoming meeting.

Name of Committee: Substance Use, Abuse, and Addiction Working Group of the Scientific Management Review Board.

Date: September 23, 2009.

Open: 8 a.m. to 3 p.m.

Agenda: Presentation and discussion will include an overview of the science of substance use, abuse, and addiction and the public health needs in this area of research.

Place: National Institutes of Health, Building 60, Chapel and Lecture Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Name of Committee: Deliberating Organizational Change and Effectiveness Working Group of the Scientific Management Review Board.

Date: September 24, 2009.

Open: 8 a.m. to 3 p.m.

Agenda: Presentations and discussion will include an overview of NIH mission and function from scientific and stakeholder perspectives, including elaboration upon the principles and attributes fundamental to its success.

Place: National Institutes of Health, Building 60, Chapel and Lecture Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Dr. Lyric Jorgenson, PhD, NIH–AAAS Science and Technology Policy Fellow, Office of Science Policy, Office of the Director, NIH, National Institutes of Health, Building 1, Room 218, MSC 0166, 9000 Rockville Pike, Bethesda, MD 20892, *smrb@mail.nih.gov*, (301) 496–6837.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. The meeting will also be webcast. The draft meeting agenda and other information about the SMRB, including information about access to the webcast, will be available at *http://smrb.od.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: August 28, 2009.

Lynn Hudson,

Acting Director, Office of Biotechnology Activities.

[FR Doc. E9–22000 Filed 9–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Child Health and Human Development Council, September 21, 2009, 8 a.m. to September 21, 2009, 5 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 1, 2009, 74 FR 54224.

This notice is being amended to provide additional attendee viewing and Videocast access instructions for open session of Council. In order to facilitate public attendance at the open session of Council, reserve seating will be made available to the first five individuals reserving seats in the main meeting room, Conference Room 6. Please Contact Ms. Lisa Kaeser, Program and Public Liaison Office, NICHD, at 301–496–0536 to make your reservation. Additional seating will be available in the meeting overflow rooms, Conference Rooms 7 and 8. Individuals will also be able to view the meeting via NIH Videocast. Please go to the following link for Videocast access instructions at: *http://www.nichd.nih.gov/about/overview/advisory/nachhd/virtual-meeting-200910.cfm.* The meeting is partially closed to the public.

Dated: September 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21998 Filed 9–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0667]
[FDA 225–09–0010]

Memorandum of Understanding With Duke University

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Food and Drug Administration and Duke University. The purpose of this MOU is to establish a framework for collaboration between the Parties and for pursuing specific collaborative projects. This collaboration between the Parties shall be known as the Cardiac Safety Research Consortium.

DATES: The agreement became effective August 4, 2009.

FOR FURTHER INFORMATION CONTACT: Wendy R. Sanhai, Office of the Commissioner (HZ–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7867, FAX: 301–827–5891.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c),

which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: August 31, 2009.

David Horowitz,

Assitant Commissioner for Policy.

BILLING CODE 4160–01–S

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

FOOD AND DRUG ADMINISTRATION

AND

DUKE UNIVERSITY

FOR THE

CARDIAC SAFETY RESEARCH CONSORTIUM

Whereas extensive cross-sector and multi-disciplinary efforts are needed to develop and to understand the clinical utility of a new generation of biomarkers[1] and other technologies, which can be used for detection, early diagnosis, prognosis and clinical assessment tools in cardiovascular research and clinical decision-making;

Whereas such new cardiovascular assessment tools, including biomarkers, if clinically qualified to predict and assess therapeutic response in clinical trials and have the potential to be adopted for use in patient management, medical product[2] development and for regulatory decision making by the Food And Drug Administration (FDA);

Whereas Duke University, a nonprofit, research, education and healthcare institution is an organization (Duke) for and on behalf of its Duke Clinical Research Institute, (DCRI)whose mission it is to develop and share knowledge that improves the care of patients around the world through innovative clinical research;

Whereas Duke started and maintains one of the nation's first cardiovascular computerized clinical databases, said cardiovascular database being sustained for over 30 years as one of the world's largest repositories of follow-up on patients with carefully documented coronary heart disease;

Whereas Duke's DCRI has evolved into an organization with major efforts in clinical trials, outcomes research, and health policy;

Whereas FDA, with its unique perspective on research and development activities and in-depth understanding of clinical trial design, regulatory policy, and scientific know-how in reviewing medical products, is interested in working with stakeholders, under its public health mission to improve patient care and stimulate innovation in medical product development , and in the context of biomarker development for use in assessing the safety and efficacy of products under its regulatory jurisdiction.

Whereas FDA, under the terms and conditions of a Cooperative Research and Development Agreement (CRADA), is collaborating with Mortara Instrument, Inc, a CRADA partner, to design and build an ECG Warehouse to hold digital electrocardiograms (ECGs) obtained in clinical studies to assess proarrhythmic risk;

Whereas said ECG Warehouse is now operational and capable of supporting multiple research and regulatory functions;

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[1] Biological marker (biomarker) is a characteristic that is objectively measured and evaluated as an indicator of normal biological processes, pathogenic processes, or pharmacologic responses to a therapeutic intervention. Clin Pharmacol Ther 2001;69:89-95.

[2] Medical Products Includes Drug and Biological Products and Medical Devices

Whereas FDA and Duke (the Parties) have agreed to each leverage their existing resources and expertise, working with multiple public and private partners to further research and the development of pre-competitive diagnostic and assessment tools in cardiovascular disease to advance public health;

Whereas the private sector, including industry, academia, non-profit organizations and others have expressed interest in working with the Parties to further development of cardiovascular biomarkers and associated technologies to enhance diagnostics and therapeutic development of medical products;

Now, therefore, the Parties agree to collaborate under the terms and conditions of this Memorandum of Understanding (MOU), through steering committees and technical working groups, to develop strategic plans, set priorities, and leverage resources and expertise from multiple stakeholders, toward the goals of identifying indicators of cardiovascular risk, predicting adverse cardiovascular events associated with therapeutic interventions, improving the clinical utility of biomarker technologies as diagnostic and assessment tools that facilitate the development of safer and more effective cardiovascular therapies, diagnostic and assessment tools. This MOU sets forth the framework for collaboration between the Parties and for pursuing specific collaborative projects that may involve additional partners and will be implemented through separate agreements, as needed. This collaboration between the Parties shall be known as the Cardiac Safety Research Consortium (CSRC).

The Parties anticipate that ideas and concepts, from multiple sources, will be developed by the steering committees and research teams. Such concepts and ideas may lead to partnerships that will be approved by an Executive Committee (EC) and implemented through separate agreements.

The Parties agree as follows:

RESPONSIBILITIES OF THE PARTIES

In order to pursue the goals described above, the Parties agree to work through the process described below.

1. **Goals of CSRC**. The Parties will form steering committees, technical working groups, and an Executive Committee (EC) to develop concepts for implementation as CSRC projects. Under the framework of this MOU, these collaborative efforts will be developed under separate agreements that specify policies, terms, and responsibilities of each party. The EC, steering committees and research teams shall consider approaches for the development and application of diagnostic and/or clinical assessment tools or biomarker technologies that enhance diagnostic or therapeutic strategies for various forms of cardiovascular disease. Specific areas of scientific activities will include, but will not be limited to, the following:

a. To create an ECG library from clinical trials that could be used for identifying early predictors of cardiac risk (Cardiac Risk ECG Library;)
b. To utilize the Cardiac Risk ECG Library to qualify new ECG biomarkers of cardiac risk and create a set of ECG reference standards;
c. To solicit feedback from the scientific community, generate consensus, and publish consensus statements regarding critical cross-cutting public health issues related to cardiac safety of medical products;
d. To develop additional predictive and evaluative tools to facilitate regulatory and clinical decision-making and future medical product development in the interest of public health; and
e. To develop standards, nomenclature and tools to facilitate and accelerate the development of standards, and the evidence base for, new diagnostics and assessment tools, and develop educational tools to make this information more widely available to researchers, clinicians and patients.

2. **Scientific Oversight Committee and Research Teams.** The Scientific Oversight Committee (SOC)and research teams shall be responsible for developing and prioritizing concepts, developing feasibility plans for specific projects, preparing white papers on scientific rationale, evaluating existing knowledge gaps and availably technologies, addressing general concepts in experimental design, preparing protocols to evaluate biomarkers in clinical trials, developing milestones and outlining approaches for assessing progress. Moreover, the SOC and research teams shall consider development of standards, nomenclature and tools to facilitate and accelerate the development of, and evidence base for, new diagnostics, assessment tools, and medical products. As a result of this process, the SOC and research teams will aim to increase the scientific knowledge base for cardiovascular disease and public health and enhance the cardiovascular safety of medical products. The steering committees and research teams will include representatives from each Party as well as public and private partners and will meet or teleconference monthly. The SOC and research team chairs will report to the EC, which will make the final decisions on projects that will be implemented. A meeting (face-to face or teleconference) of the steering committees and working groups will be held al least quarterly to discuss progress, develop consensus on working group activities, and foster communications and directions for facilitating the project(s).

3. **Priority Projects**. Priority projects that emerge from the SOC and research teams will be publicized as areas of interest of the CSRC with the intention of involving participation and input from public and private sector partners. Through this process, the CSRC will seek to engage the private sector in the implementation of the research. Numerous implementation strategies are anticipated and available. These strategies may include the following:

- The FDA may perform certain research projects directly, with DCRI or through other collaborations through separate agreements.

- The private sector may perform projects directly, or may fund the research that may be administered, managed and facilitated through DCRI, and governed by separate agreements. To the extent that Federal agencies are involved in the implementation of any project, each agency is bound by all applicable federal statutes, regulations and policies and required to act within its statutory authority.[3]

4. **Special Projects**. To the extent that implementation of specific projects involves working with the non-federal sector, the Parties will, consistent with all applicable statutes, regulations, and policies and their legal authorities, facilitate dialogue with the appropriate potential collaborators or other partners of interest. Such interactions, facilitated and governed by separate agreements, may include a range of stakeholders, such as private non-profit organizations, industry, industry trade organizations, academic institutions, professional organizations, and patient advocacy groups.

GENERAL PROVISIONS

Proprietary and/or nonpublic information will not be disclosed under this MOU, unless such disclosure is governed by appropriate confidentiality disclosure agreements, or to the extent such disclosure is permitted by law.

Any notice or other communication required or permitted under this MOU shall be in writing and will be deemed given as of the date it is received and accepted by the receiving party.

[3] To the extent that Federal employees are involved in the implementation of specific projects, federal employee participation will be governed by all applicable statutes, regulations and policies on interactions with outside organizations, and reviewed for permissibility by the appropriate authority within the employee's agency on a case-by-case basis.

CONTACTS

Notices or formal communications pursuant to this MOU should be sent to:

For FDA:	Wendy R. Sanhai, Ph.D. Senior Scientific Advisor Office of the Commissioner, FDA 5600 Fishers Lane, 6A-08, HF-18 Rockville, MD. 20857 Phone: (301) 827-7867, Fax (301) 827-5891
Copy to:	Benjamin C. Eloff, Ph.D. Senior Scientific Program Manager Office of the Commissioner, FDA 5600 Fishers Lane, 6A-08, HF-18 Rockville, MD. 20857 Phone: (301) 827-0156, Fax (301) 827-5891
For DCRI:	Mitchell Krucoff, M.D. Professor of Medicine Division of Cardiology Department of Medicine Duke University School of Medicine DUMC Box 3968 Durham, NC 27710 Phone:919-286-6860; Fax 919-286-6861
For Duke:	Office of Research Administration Duke University Medical Center 2200 W. Main Street, Suite 820 Durham, NC 27705 Attn: Director Phone: 919-684-5175, Fax: 919-684-6278

TERM, TERMINATION AND MODIFICATIONS

1. This MOU constitutes the entire agreement between the Parties pertaining to the CSRC.
2. There are no representations, warranties, agreements or understandings, express or implied, written or oral between the Parties hereto relating to the subject matter of this MOU that are not fully expressed herein.
3. No supplements, amendments or modifications to this MOU shall be binding unless executed in writing by the Parties; such modifications are to take the form of amendments.

4. This MOU, when accepted by the Parties, will have an effective date from date of the last to sign (Effective date) and will remain in effect for three (3) calendar years from the Effective date unless modified or terminated. Either Party may terminate this MOU upon sixty (60) days written notice.

SIGNATURES OF RESPONSIBLE PARTIES

We, the undersigned, agree to abide by the terms and conditions of this MOU.

APPROVED AND ACCEPTED FOR:

FOOD AND DRUG ADMINISTRATION

Date 8/4/09

Jesse L. Goodman, M.D., MPH
Chief Scientist and Deputy Commissioner (Acting) for
Scientific and Medical Programs
US Food and Drug Administration

DUKE UNIVERSITY

Date July 20 2009

H. Gilbert Smith, Ph.D.
Director, Office of Corporate
Research Collaborations

[FR Doc. E9–22001 Filed 9–11–09; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0407]

Pediatric Clinical Trials Workshop: Unmet Needs, Trial Designs and Clinically Meaningful Safety and Effectiveness Outcomes

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Pediatric Clinical Trials Workshop: Unmet Needs, Trial Designs and Clinically Meaningful Safety and Effectiveness Outcomes.'' The purpose of the public workshop is to solicit information from primary and secondary health care providers, academia, industry, and professional societies on various aspects of device clinical trials involving pediatric diseases and patients. Information from this public workshop will help stimulate interest in pediatric device clinical trial research methods, and develop topics for further discussion regarding the safety of pediatric device clinical trials. The information gathered in this and future workshops will help to develop future guidance for developing safe clinical trials for devices intended for pediatric patients. We encourage participation and comments from workshop attendees on the topics and questions discussed. Please see instructions for registration and for providing comments in the sections of this document entitled ''*Registration*'' and ''*Comments*.''

Dates and Times: The public workshop will be held on October 29, 2009, from 8 a.m. to 5:30 p.m. and October 30, 2009, from 8 a.m. to 12 noon.

Location: The public workshop will be held at the Holiday Inn College Park located off I–95 at 10000 Baltimore Ave., College Park, MD 20740. The hotel front desk number is 1–301–345–6700. For directions, please refer to the meeting Web page: *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm170938.htm*

Contact Person: Barbara Buch, Center For Devices and Radiological Health, Food and Drug Administration, Bldg. 66, rm. 1406, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–5650, FAX: 301–847–8117, e-mail: *barbara.buch@fda.hhs.gov*. If you need special accommodations due to a disability, (such as wheelchair access or a sign language interpreter), please notify Barbara Buch by September 30, 2009.

Registration: Registration and seating will be on a first-come, first-served basis and discussion preference will be afforded to clinical research investigators involved in pediatric clinical device trials, health care givers, and patient advocates. Please provide your name, title, organization affiliation, address, and e-mail contact information. There is no registration fee to attend the workshop. There will be no onsite registration. Please register electronically at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* by September 30, 2009. Due to limited space, and to maximize participation, attendees are asked to delegate one or two representatives from their organizations to participate in the general sessions. A report of The Workshop and The Information presented will be available following the meeting via a link on the meeting Web page. If you wish to make an oral comment during or to attend the public workshop, please note this in your registration information. The online registration form will instruct you as to the information you should provide prior to the meeting. In general, a summary of the presentation and an electronic copy of the presentation should be submitted by October 1, 2009. We will try to accommodate all persons who wish to make oral comments during the general sessions. However, we strongly recommend that you provide written comments as instructed in this document to ensure that your opinion, comments, and suggestions are captured. Please refer to the section, ''*Comments*'' for instructions on how to submit written comments.

Comments: The deadline for submitting comments regarding this public workshop is November 30, 2009.

Regardless of attendance at the public workshop, interested persons may submit written or electronic comments. Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Electronic comments should be submitted to *http://www.regulations.gov*. Comments should 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.

SUPPLEMENTARY INFORMATION:

I. Why Are We Holding This Public Workshop?

The purpose of the public workshop is to solicit expert input on topics related to pediatric device clinical trials. The agency seeks discussion between FDA and other interested parties regarding the conduct of clinical trials to investigate device use in pediatric populations. Other purposes of the public workshop are, to identify any gaps in such research, and to provide information about evaluating the short- and long-term safety and effectiveness of pediatric medical devices using valid and sound scientific methods. Since the 2007 Food and Drug Administration Amendments Act was signed into law, there has been increased interest in conducting scientifically sound clinical research related to pediatric populations. It is hoped that this meeting will provide a forum for open discussion and information exchange among interested parties, FDA, and other stakeholders to lay a framework for further research into the use of devices to treat disorders and diseases that affect pediatric patients.

II. What Will Be the Format for the Meeting?

The format for the meeting will include a general session in the morning on the first day. Invited expert speakers will present information regarding current needs and concerns about clinical trials that involve pediatric patients. These presentations will provide the topics for the small breakout groups, which will begin in the afternoon session of day one and continue through the morning of day two of the public workshop. Each of the smaller breakout group discussion sessions will be led and moderated by a panel of experts in each of the specialty focus areas listed in section III of this document. Each small group session will begin with an invited presentation to describe the issues of concern in the specific specialty. This will be followed by a moderated question and comment session including both prespecified questions posed to the assembled group and any that arise during the workshop's discussions. Those in attendance will have the opportunity in these small group discussions to participate in the discussion, ask questions, and provide comments for consideration. Small group discussions will be concluded in the morning of day two. Small group participation will be limited by space and will be available on a first-come, first-served basis. When registering for

the meeting, you should also designate which small group discussion you would like to attend because each participant may register for only one of the small group sessions.

At the conclusion of day two's small group discussions, the general session will reconvene. After the general session reconvenes, each small group will report to the general session the results of the discussions related to the general questions posed to each group in outline form.

III. What Are the General Topic Areas We Intend to Address at the Public Workshop?

We plan to discuss a number of general disease/anatomical topical issues at the conference, including the following issues:

- Musculoskeletal disease,
- Cardiovascular disease,
- Abdominal disorders and gastrointestinal (GI) diseases,
- Neurologic disorders and conditions,
- Renal diseases, and
- Audiologic disorders.

The challenges posed by developing diagnostic tests for pediatric patients will be addressed as a part of discussion under each topical area breakout session. For each of the general disease/anatomical topic areas, we will pose questions to elicit and solicit scientific and clinical discussion in the breakout sessions. These include, but are not limited to the following questions:

What are the most urgent unmet needs?

What are the best practices for conduct of clinical research, including clinical trial design?

What are specific patient/caregiver issues to consider?

What are the surrogate endpoints for lifelong patient safety and effectiveness?

What are appropriate clinical assessments?

What are appropriate endpoints that determine clinical success?

The questions, listed in section IV of this document, will be the focus of the expert-moderated breakout discussions in the afternoon of day one and the morning of day two.

IV. What Are the Issues That Will Be Discussed and Considered?

Questions for Discussion Regarding Pediatric Device Clinical Trials

1. What Are the Five Most Important Unmet Research Needs in Each Specific Disease/Anatomic Category? (musculoskeletal disease, cardiovascular disease, abdominal disorders and GI diseases, neurologic disorders and conditions, renal diseases, and audiologic disorders)

Although there are obvious barriers to clinical trials such as concerns about the effects on child development, there are significant needs in both rare and common diseases or disorders that have not been met with modifications of adult devices. We will start by asking questions such as:

a. What are the most important unmet device needs in each category?

b. What are the scientific or clinical barriers or other potential barriers to developing devices to meet those needs?

2. What Are Some Clinical Trial Designs That Encourage Enrollment of Pediatric Patients While Providing Quality Data to Support Safety and Effectiveness of Devices?

We need to understand:

a. What are appropriate controls to use in pediatric trials to satisfy the legal regulatory definitions of valid scientific evidence as described in 21 CFR 860.7?

b. How can followup be maximized?

c. What timeframes are needed given the age of patients and the expected lifetime of the device/disease being treated?

d. How do we understand the long term effect on development and growth in a short clinical trial?

3. Preclinical and Animal Studies

Although there are examples of immature and fetal animal studies that are well established for pharmaceuticals, how do we translate those concepts for devices?

a. What types of endpoints and timeframes translate into outcomes in the human population? How do we know that?

b. How do we set a standard to judge subsequent trial outcomes as acceptable and safe?

c. What animal models exist or are appropriate for studying each of the diseases or disorders we identify as significant unmet needs?

4. How Do We Measure Safety and Effectiveness in a Pediatric Population?

The pediatric population cannot always describe symptoms or functional problems in the same way that adults can. It therefore follows that the same assessment tools and surrogate endpoints will not apply to a pediatric population.

Therefore we are striving to understand:

a. What validated assessments are needed or exist for the pediatric population being treated?

b. What surrogate markers or endpoints are needed for each disease?

c. What surrogates are needed or are available to determine long-term outcomes?

d. How do we validate surrogate endpoints?

5. How Do We Know That the Study and the Treatment Are Successful?

Assessment and judgment of patient outcomes varies considerably for a pediatric population. The needs of the patient and his caregiver or parent must be considered. The longevity of, and durability of, devices captures a new meaning when the lifespan is 50 to 60 years; remaining lifespan in adults is very different. We are soliciting feedback on:

a. What constitutes successful or unsuccessful treatment outcomes?

b. What criteria should be used to determine successful or unsuccessful treatment outcomes?

c. What human factors in each case need to be considered?

d. What patient factors unique to the pediatric population have to be considered?

e. What criteria are required to acknowledge that successful treatment for a patient has been achieved?

f. What constitutes a successful clinical trial?

g. How long should a device or treatment last to be considered effective?

Please note funding options for research have already been discussed at prior public meetings and will not be discussed at this workshop. Information regarding funding sources is available on government Web sites as well as other public Web sites dedicated to pediatric health.

V. Where Can I Find Out More About This Public Workshop?

Background information on the public workshop, registration information, the agenda, information about lodging, and other relevant information will be posted, as it becomes available, on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*.

Organization and Basic Instructions for Comments

To facilitate information gathering, we invite written comments on the questions presented in section IV of this document. We intend to discuss and expand on these same questions during the small group discussions. If you wish to comment in writing on a particular question, please identify the question that you are addressing before providing your response to the question. For example, your comment could take the following format:

''Question 1—[Quote the question].''

''Response—[Insert your response].''

You do not have to address each question. Additionally, for those questions pertaining to the prevalence of a particular need, problem or scientific question, please provide data and/or references so that we may understand the basis for your comment, figures, and any assumptions that you used. Additionally, the goal of this public workshop is to gain a greater understanding of treatment needs and needs for innovative solutions to those needs. Accordingly, we look forward to participation and comments from manufacturers, innovators, and organizations that either market or have in development technologies that could be used to treat pediatric patients.

Dated: September 3, 2009.

Catherine M. Cook,

Associate Director for Regulations and Policy, Center for Devices and Radiological Health.

[FR Doc. E9–22012 Filed 9–11–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate; Methodology Technical Implementation Functional Survey

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60–Day notice and request for comments; new information collection request, 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate, has submitted the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until November 13, 2009. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to Lisa Hormann, Infrastructure Information Collection Division, DHS/NPPD/IP/IICD, *Lisa.hormann@associates.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Methodology Technical Implementation (MTI) Project Office supports the 18 critical infrastructure and key resource (CIKR) sectors by integrating risk and vulnerability assessment methodologies into automated tools. MTI efforts address the unique needs and requirements of each sector by working with sector partners to develop tailored solutions that enable the identification, analysis, and management of sector-specific security risks. The MTI team collaborates with Sector-Specific Agencies (SSAs), Sector and Government Coordinating Councils (SCCs and GCCs), and divisions within the Department of Homeland Security's Office of Infrastructure Protection. The MTI team also works with sector specialists, risk analysts, private sector individuals, and Federal agency representatives. Efficient and effective use of the MTI tools helps all CIKR sectors nationwide reach their goal of making their sectors safer and provides a way to comply with recommendations in the National Infrastructure Protection Plan (NIPP). To ensure that interested stakeholders achieve this mission, MTI requests opinions and information from users of the tool regarding tool functions and improvements.

The MTI Project Office is administered out of the Infrastructure Information Collection Division (IICD) in the Office of Infrastructure Protection (IP). The survey data collected is for internal MTI, IICD and IP use only. The MTI Project Office will use the results of the Functional Survey to determine levels of customer satisfaction with the MTI tools and prioritize future improvements of key tool functions. The results will also allow the program to appropriate funds cost-effectively based on user need, and cost savings while improving the tool.

The Office of Management and Budget is particularly interested in comments which:

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

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: MTI Functional Survey.

OMB Number: 1670–NEW.

Frequency: Annual.

Affected Public: Business or other for profit.

Number of Respondents: 5,500.

Estimated Time Per Respondent: 15 minutes (.25 hours).

Total Burden Hours: 1375 annual burden hours.

Total Burden Cost (operating/maintaining): $20,520.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–22053 Filed 9–11–09; 8:45 am]

BILLING CODE 9910–9P–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate; Assessment Questionnaire—Risk Self Assessment Tool (R–SAT)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day notice and request for comments; new information collection request, 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate, has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until November 13, 2009. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Comments and questions about this Information Collection

Request should be forwarded to (Amanda Norman, Program Analyst, DHS/NPPD/IP/IICD) *Amanda.norman@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: In order to identify and assess the vulnerabilities and risks pertaining to a specific public assembly venue, such as a stadium or arena, owner-operators and/or security managers often volunteer to conduct an R–SAT assessment. The requested questionnaire information is necessary in order to facilitate electronic execution of the Commercial Facilities Sector's risk assessment to focus protection resources and activities on those assets, systems, networks, and functions with the highest risk profiles. Currently, there is no known data collection that includes multiple facilities within the Commercial Facilities Sector.

After the user logs into the R–SAT system the user will be prompted with the R–SAT Assessment questionnaire and will answer various questions to input the data. Once the user begins the assessment, the only information required to be submitted to (and shared with) the U.S. Department of Homeland Security (DHS) before completing the assessment is venue identification information (*e.g.,* Point-of-Contact information, address, latitude/longitude, venue type, capacity, etc.). A user can elect to share their entire completed assessment with DHS, which will protect the information as Protected Critical Infrastructure Information (PCII). The information from the assessment will be used to assess the risk of the evaluated entity (*e.g.,* calculate a vulnerability score by threat, evaluate protective/mitigation measures relative to vulnerability, calculate a risk score, report threats presenting highest risks, etc.). The information will also be combined with data from other respondents to provide an overall sector perspective (*e.g.,* report additional relevant protective/mitigation measures for consideration, etc.).

The Office of Management and Budget is particularly interested in comments which:

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

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: Assessment Questionnaire—Risk Self Assessment Tool (R–SAT).

DHS Form: Not Applicable.

OMB Number: 1670—NEW.

Affected Public: Business or other for-profit.

Number of Respondents: 200.

Estimated Time per Respondent: 40 hours.

Total Burden Hours: 8,000 annual burden hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–22054 Filed 9–11–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate; Assessment Questionnaire—Voluntary Chemical Assessment Tool (VCAT)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day notice and request for comments; new information collection request, 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate, has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until November 13, 2009. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Comments and questions about this Information Collection Request should be forwarded to Amanda Norman, Program Analyst, DHS/NPPD/IP/IICD, *Amanda.norman@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Chemical Facility Anti-Terrorism Standards (CFATS), issued by the Department of Homeland Security (DHS) in April 2007, mandates that chemical facilities conduct a security vulnerability assessment (SVA) and then develop a site security plan (SSP) to implement security measures that adhere to standards specified by the Department. All facilities complete a top-screen process that determines whether or not completion of an SVA is required. Those facilities that do not meet the threshold do not conduct an SVA, however there is no means by which they can assess the risks and/or vulnerabilities of their facility. To fill this gap, the Methodology Technical Implementation (MTI) office, within the Infrastructure Information Collection Division (IICD), in the Office of Infrastructure Protection (IP), National Protection and Program Directorate (NPPD), supports the automation of sector-approved risk and vulnerability assessment methodologies that are compliant with the criteria outlined in the National Infrastructure Protection Plan (NIPP). The method is to provide a Web-based, automated assessment tool to the Chemical Sector for voluntary use by chemical facilities that allow owners/operators to identify their current vulnerability and risk levels through an all-hazards approach. The application, titled Voluntary Chemical Assessment Tool (VCAT), will enable owners/operators to evaluate the theoretical vulnerability and risk associated with the effects of the selected threats, thus allowing the Chemical Sector to more thoroughly understand, prioritize and analyze its assets or systems. This application will facilitate cost benefit analysis, allowing owners/operators to select the best combination of physical security countermeasures and mitigation strategies to reduce overall risk. Collection of this information is directed and supported by Homeland Security Presidential Directive (HSPD) 7, ''Critical Infrastructure Identification, Prioritization, and Protection,'' December 17, 2003.

After Chemical sector specific agency (SSA) and private sector partners access the VCAT system (*see* supporting statement for VCAT User Accounts), the user will be prompted with the VCAT Assessment questionnaire and will answer various questions to input the data. This information will be used to supplement existing CIKR protection

activities conducted by DHS NPPD. More specifically, the information will be used to address facility assessments, response planning, and risk mitigation execution and related CIKR protection and incident management activities.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: Assessment Questionnaire—Voluntary Chemical Assessment Tool (VCAT).

DHS Form: Not Applicable.

OMB Number: 1670—NEW.

Affected Public: Business or other for-profit, Federal Government.

Number of Respondents: 50.

Estimated Time per Respondent: 8 hours.

Total Burden Hours: 400 annual burden hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–22056 Filed 9–11–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate; Infrastructure Protection Data Call Survey

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day Notice and request for comments; new information collection request: 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate, has submitted the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until November 13, 2009. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to NPPD/IP/IICD, *Attn.:* Mary Matheny-Rushdan, *mary.matheny-rushdan@dhs.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Homeland Security (DHS) is the lead coordinator in the national effort to identify and prioritize the country's critical infrastructure and key resources (CIKR). At DHS, this responsibility is managed by the Office of Infrastructure Protection (IP) in the National Protection and Programs Directorate (NPPD). In FY2006, IP engaged in the annual development of a list of CIKR assets and systems to improve IP's CIKR prioritization efforts; this list is called the Critical Infrastructure List. The Critical Infrastructure List includes assets and systems that, if destroyed, damaged or otherwise compromised, could result in significant consequences on a regional or national scale.

The IP Data Call is administered out of the Infrastructure Information Collection Division (IICD) in the Office of Infrastructure Protection (IP). The IP Data Call provides opportunities for States and territories to collaborate with DHS and its Federal partners in CIKR protection. DHS, State and territorial Homeland Security Advisors (HSA), Sector Specific Agencies (SSA), and territories build their CIKR data using the IP Data Call application. To ensure that HSAs, SSAs and territories are able to achieve this mission, IP requests opinions and information in a survey from IP Data Call participants regarding the IP Data Call process and the Web-based application used to collect the CIKR data. The survey data collected is for internal IICD and IP use only.

IICD and IP will use the results of the IP Data Call Survey to determine levels of customer satisfaction with the IP Data Call process and the IP Data Call application and prioritize future improvements. The results will also allow IP to appropriate funds cost-effectively based on user need, and improve the process and application.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: IP Data Call Survey.

Form: Not Applicable.

OMB Number: 1670—NEW.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 138.

Estimated Time per Respondent: 2 hours.

Total Burden Hours: 276.

Total Burden Cost (operating/maintaining): $25,513.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–22052 Filed 9–11–09; 8:45 am]

BILLING CODE 9910–9P–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate; User Account Creation—Risk Self Assessment Tool (R–SAT)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day Notice and request for comments; new information collection request, 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and

Programs Directorate, has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until November 13, 2009. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Comments and questions about this Information Collection Request should be forwarded to (Amanda Norman, Program Analyst, DHS/NPPD/IP/IICD) *Amanda.Norman@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: In order to identify and assess the vulnerabilities and risks pertaining to a specific public assembly venue, such as a stadium or arena, owner-operators and/or security managers often volunteer to conduct an R–SAT assessment. The requested user information is necessary in order to establish a user account for individuals so that they are able to access the system and conduct the assessment. To establish a user account, the user will need to provide their name, contact information, and venue information, which will be used to set-up the account.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: User Account Creation—Risk Self Assessment Tool (R–SAT).

DHS Form: Not Applicable.

OMB Number: 1670—NEW.

Affected Public: Business or other for-profit.

Number of Respondents: 200.

Estimated Time per Respondent: 5 minutes (0.08 hours).

Total Burden Hours: 17 annual burden hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–22057 Filed 9–11–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate; CAPTAP Train the Trainer Survey

AGENCY: National Protection and Programs Directorate.

ACTION: 60–Day notice and request for comments; new information collection request 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate, has submitted the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until November 13, 2009. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Protection, *Attn.:* Veronica Heller, Team Lead, Planning and Policy Integration, Ballston One, 4601 N. Fairfax Drive 5th Floor, Arlington, Virginia 22203.

SUPPLEMENTARY INFORMATION: The Critical Infrastructure Key Resources (CIKR) Asset Protection Technical Assistance Program (CAPTAP) offers State and local first responders, emergency managers, and other homeland security officials training to develop comprehensive CIKR protection programs in their respective jurisdictions; access to the Constellation/Automated Critical Asset Management System (C/ACAMS) tools for using CIKR asset data, prevention and protection information; and incident response and recovery plans to make their communities safer. To ensure that interested parties appropriately advance this mission, C/ACAMS provides CAPTAP Train-the-Trainer (TTT) sessions to State and local government officials to so that they may then train their colleagues through CAPTAP services. The survey measures customer satisfaction with the training provided through the CAPTAP TTT course. The C/ACAMS Program Management Office (PMO) is administered out of the Infrastructure Information Collection Division (IICD) in the Office of Infrastructure Protection (IP).

The survey data collected is for internal C/ACAMS PMO, IICD and IP use only. The C/ACAMS PMO evaluates the CAPTAP TTT customer survey to determine levels of customer satisfaction with the CAPTAP TTT training and areas in need of improvement. The survey supports data-based decision-making because it evaluates quantitative and qualitative data to identify improvements and identify significant issues based on what customers' experience. Obtaining current fact-based actionable data about the training allows the program to recalibrate its resources to address new or emerging issues.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: CAPTAP Train the Trainer Survey.

Form: Not Applicable.
OMB Number: 1670–NEW.
Frequency: Once.
Affected Public: Federal, State, Local, Tribal.
Number of Respondents: 150.
Estimated Time Per Respondent: 12 minutes.
Total Burden Hours: 30 annual burden hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintaining): None.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–22048 Filed 9–11–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate

Constellation Automated Critical Asset Management System Functional Survey

AGENCY: National Protection and Programs Directorate, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; new information collection request 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate, has submitted the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until November 13, 2009. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Protection, Attn.: Veronica Heller, Team Lead, Planning and Policy Integration, Ballston One, 4601 N. Fairfax Drive 5th Floor, Arlington, Virginia 22203.

SUPPLEMENTARY INFORMATION: The C/ACAMS program offers State and local first responders, emergency managers, and other homeland security officials access to the Constellation/Automated Critical Asset Management System (C/ACAMS) tools for using CIKR asset data, prevention and protection information, and incident response and recovery plans to make their communities safer. Efficient and effective use of the C/ACAMS tools helps all State and local first responders and emergency managers nationwide reach their goal of making their communities safer. To ensure that interested stakeholders achieve this mission, C/ACAMS requests supporting information from users seeking to use its tool.

The C/ACAMS Program Management Office (PMO) evaluates the Functional Survey to determine levels of customers' satisfaction with the user experience with the C/ACAMS tool. The survey supports data-based decision-making because it evaluates quantitative and qualitative data to identify improvements and identify significant issues based on experienced customer assessments of key tool functions. Obtaining current fact-based actionable data about tool features allows the program to appropriate funds cost-effectively based on user need, saving costs while improving the tool.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.
Title: Constellation Automated Critical Asset Management System Functional Survey.
Form: Not Applicable.
OMB Number: 1670–NEW.
Affected Public: Federal, State, Local, Tribal.
Number of Respondents: 650.
Estimated Time Per Respondent: 15 minutes.
Total Burden Hours: 163 annual burden hours.
Total Burden Cost (capital/startup): $1,800.00.
Total Burden Cost (operating/maintaining): $1,250.00.

Dated: August 28, 2009.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–22047 Filed 9–11–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Foreign Trade Zone and/or Status Designation, and Application for Foreign Trade Zone Activity Permit

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Revision of an existing collection of information: 1651–0029.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Foreign Trade Zone Admission and/or Status Designation, and Application for Foreign Trade Zone Activity Permit. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 13, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information

collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Foreign Trade Zone Admission and/or Status Designation, and Application for Foreign Trade Zone Activity Permit.

OMB Number: 1651–0029.

Form Number: CBP Forms 214, 214A, 214B, 214C, and 216.

Abstract: CBP Forms 214, 214A, 214B, and 214C, Application for Foreign-Trade Zone Admission and/or Status Designation, are used by companies that bring merchandise into a foreign trade zone to register the admission of such merchandise into zones, and to apply for the appropriate zone status. Form CBP–216, Foreign-Trade Zone Activity Permit, is used by companies to request approval to manipulate, manufacture, exhibit or destroy merchandise in a foreign trade zone.

Current Actions: CBP is proposing to decrease the burden hours associated with this collection of information as a result of better estimates of the total number of annual responses for Form 214.

Type of Review: Extension (with change).

Affected Public: Businesses.

Form 214, Application for Foreign-Trade Zone Admission and/or Status Designation

Estimated Number of Respondents: 6,749.

Estimated Number of Annual Responses per Respondent: 25.

Estimated Total Annual Responses: 168,725.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 42,182.

Form 216, Application for Foreign-Trade Zone Activity Permit

Estimated Number of Respondents: 2,500.

Estimated Number of Annual Responses per Respondent: 10.

Estimated Total Annual Responses: 25,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4,167.

Dated: September 9, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–22041 Filed 9–11–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Secret Service

30-day Notice and request for comments

SUMMARY: The Department of Homeland Security (DHS) has submitted the following information collection requests (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995: 1620–0001. This information collection was previously published in the **Federal Register** on June 18, 2009 at 74 FR 28941, allowing for OMB review and a 60-day public comment period. No comments were received. This notice allows for an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 14, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for United States Secret Service, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov;* or faxed to 202–395–5806.

The Office of Management and Budget is particularly interested in comments which:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to: United States Secret Service, Security Clearance Division, Attn: Althea Washington, Communications Center (SCD), 345 Murray Lane, SW., Building T5, Washington, DC 20223. Telephone number: (202) 406–6658.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires each Federal agency to provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The notice for this proposed information collection contains the following: (1) The name of the component of the U.S. Department of Homeland Security; (2) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (3) OMB Control Number, if applicable; (4) Title; (5) Summary of the collection; (6) Description of the need for, and proposed use of, the information; (7) Respondents and frequency of collection; and (8) Reporting and/or Recordkeeping burden. The Department of Homeland Security invites public comment. The Department of Homeland Security is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, including whether the information will have practical utility; (2) Is the estimate of burden for this information collection accurate; (3) How might the Department enhance the quality, utility, and clarity of the information to be collected; and (4) How might the Department minimize the burden of this collection on the respondents, including through the use of information technology. All comments will become a matter of

public record. In this document the U.S. Secret Service is soliciting comments concerning the following information collection:

Title: Supplemental Investigative Data.

OMB No.: 1620–0001.

Form Number: SSF 86A.

Abstract: Respondents are all Secret Service applicants. These applicants, if approved for hire, will require a Top Secret Clearance, and possible SCI Access. Responses to questions on the SSF 86A yield information necessary for the adjudication for eligibility of the clearance, as well as ensure that the applicant meets all internal agency requirements.

Agency: Department of Homeland Security, United States Secret Service.

Frequency: On occasion.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 10,000 respondents.

Estimated Time Per Respondent: 3 hours per response.

Total Burden Hours: 30,000.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Dated: September 9, 2009.

Sharon Johnson,

Chief—Policy Analysis and Organizational Development Branch, U.S. Secret Service, U.S. Department of Homeland Security.

[FR Doc. E9–22082 Filed 9–11–09; 8:45 am]

BILLING CODE 4810–42–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5323–N–01]

Request for Comments on Ending ''Hold Harmless'' Policy in Calculating Income Limits Under Section 8 of the United States Housing Act of 1937

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: For Fiscal Year (FY) 2009, HUD has continued its policy of maintaining Section 8 income limits at the previously published level in cases where HUD's estimate of area median family income (MFI) or housing cost adjustment data, or changes in calculation methodology, would lead to a lower income limit than was previously published. The policy was adopted to ensure that Multifamily Tax Subsidy Projects (MTSPs) would not be subject to income-limit and rent decreases when the data underlying income limits otherwise indicated decreases. The Housing and Economic Recovery Act of 2008 (Pub. L. 110–289) changed the tax code to protect existing MTSPs from decreases in income limits and rents, should HUD decide to discontinue this policy. However, maintaining artificially high income limits may have an adverse impact on other federal programs. HUD is requesting public comment on whether HUD should discontinue the practice with respect to Section 8 income limits such that income limits generally would be allowed to decrease.

DATES: *Comments Due Date:* October 14, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

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

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop income limits and median family income estimates, please call the HUD USER information line at 800–245–2691 or access the information on the HUD Web site, *http://www.huduser.org/datasets/il.html.* That Web site has current and historical income limits. Furthermore, HUD maintains an interactive on-line documentation system for income limits and median family income estimates. The documentation system will provide interested users with their income limits prior to the application of the hold-harmless policy in areas currently designated as ''historical exception'' areas. The FY 2009 documentation system may be accessed at *http://www.huduser.org/datasets/il/il09/index.html.* Questions may be addressed to Marie L. Lihn or Lynn A. Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone number 202–708–0590. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. *Electronic Data Availability:* This **Federal Register** notice is available electronically from the HUD news page: *http://www.hud.gov/offices/adm/hudclips/index.cfm.* **Federal Register** notices also are available electronically from the U.S. Government Printing Office Web site: *http://www.gpoaccess.gov/fr/index.html.* This **Federal Register** notice also will be posted on the following HUD Web site: *http://www.huduser.org/datasets/il.html.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States Housing Act of 1937 (the 1937 Act) provides for assisted housing for ''low income families'' and ''very low income families.'' Section 3(b)(2) of the 1937

Act defines ''low-income families'' and ''very low-income families'' as families whose incomes are below 80 percent and 50 percent, respectively, of the median family income for the area, with adjustments for family size. These income limits are referred to as ''Section 8 income limits'' because of the historical and statutory links with that program, although the same income limits are also used as eligibility criteria by several other federal programs. The 1937 Act specifies conditions under which Section 8 income limits are to be adjusted either on a designated area basis or because of family incomes or housing-cost-to-income relationships that are unusually high or low. Section 8 income limits are calculated using Section 8 Fair Market Rent (FMR) area definitions, which in turn are based on Office of Management and Budget (OMB) metropolitan statistical area definitions.

It has been HUD's policy to maintain Section 8 income limits for certain areas at previously published levels when reductions would otherwise have resulted from changes in median family income estimates, housing cost adjustment data, median family income update methodology, income limit methodology, or metropolitan area definitions. This policy is commonly referred to as the ''hold harmless'' policy and was implemented to avoid jeopardizing the financial feasibility of existing housing projects in instances where program rents were tied to Section 8 income limits. Section 8 income limits have been maintained at the same level until such time as income limit calculations produced increases.

II. MTSPs

The primary federal housing programs that rely on HUD's Section 8 income limits for the determination of maximum rental rates are MTSPs, which include multifamily projects financed with Internal Revenue Code (IRC) section 42 Low-Income Housing Tax Credits and IRC section 142 tax-exempt private activity bonds. Maximum rents for units in MTSPs are generally 30 percent of the HUD-published Section 8 income limit, multiplied by a factor that is based on the number of bedrooms in a unit. Absent a hold-harmless policy, when Section 8 income limits fall, the maximum rent that a private owner can charge low-income tenants in MTSPs falls. This can place a financial strain on existing MTSPs. Accordingly, HUD has maintained Section 8 income limits at their existing levels when the normal calculation would otherwise result in a decrease. Section 3009 of Division C, Title I, Subtitle A, Part III of the Housing and Economic Recovery Act of 2008, Public Law 110–289, statutorily implements a project-level hold-harmless provision for existing MTSPs at 26 U.S.C. 142 (note), obviating the need for HUD to continue the policy for the benefit of MTSPs.

III. Other Programs

Maintaining artificially high income limits has had an adverse impact on other federal programs. Higher income limits increase the number of eligible participants, making it harder to target limited HUD resources to those most in need. Accordingly, HUD is considering whether to end its hold-harmless policy in calculating Section 8 income limits, since the policy is no longer needed to protect existing MTSPs. More than 99 percent of HUD assisted households have incomes below the extremely low-income level (30 percent of area median), so modest decreases in the Section 8 income limits resulting from this change would have minimal impact on families residing in assisted housing. However, other programs that use HUD's Section 8 income limits to determine program eligibility may be affected. These programs include, but may not be limited to, the Treasury Department's Tax-exempt Mortgage Revenue Bonds for Homeownership Financing; the Department of Agriculture's Rental and Ownership Assistance programs; the Federal Deposit Insurance Corporation's Disposition of Multifamily Housing to Non-profit and Public Agencies and the Disposition of Single Family Housing; the Federal Housing Finance Agency's Rental Program Funding Priorities and Homeownership Funding Priorities; the Veterans Administration's Eligibility for Disability Income Support Payments; and the HUD-administered, governmentwide Uniform Relocation Act to determine the extent of replacement housing assistance. Applicable income limits are modified to meet the requirements of each of these programs, but each starts with the Section 8 Very Low-Income Limit that incorporates high and low housing cost adjustments and the state nonmetropolitan median as a minimum. Additional details about the specific limits used by each of these programs can be found at: *http://www.huduser.org/datasets/il/il09/IncomeLimitsBriefingMaterial_FY09.pdf*.

In addition, determinations of Difficult Development Areas (DDAs) under IRC section 42 will be affected by this policy proposal. DDAs are areas with high ratios of construction, land, and utility costs to area median gross income and, collectively, may not include more than 20 percent of the population of all areas evaluated under the statutory formula. The hold-harmless policy may prevent increases in this ratio for areas that would otherwise experience decreasing income limits, making them less likely to be designated as a DDA.

HUD specifically invites public comment on whether these programs would better target persons and communities with the most need if HUD discontinued the hold-harmless policy and allowed Section 8 income limits to fall in accordance with the statutory and regulatory formula.

HUD also specifically invites comments on whether the hold-harmless policy should be maintained with respect to Section 8 income limits used for calculating HOME program rents, while discontinuing the hold-harmless policy with respect to eligibility requirements under the HOME program and other programs. The language defining income limits in the HOME program is parallel to that in Section 3(b)(2) of the 1937 Act, but does not refer specifically to that or any other section in setting income limits. Therefore, HUD may, for the HOME program's income limits and rents, use a process like that used to create the Section 3(b)(2) income limits, but with variations like a hold-harmless policy, if needed. Maintaining the hold-harmless policy for HOME program rents would prevent such rents from falling in areas where incomes may be falling, while discontinuing the hold-harmless policy with respect to eligibility requirements would help target HOME funds for use by families with lower incomes and greater need.

Any change in HUD's policy in this regard would become effective only upon publication of a future notice by HUD.

Dated: September 4, 2009.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. E9–22077 Filed 9–11–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2009–N191; 94300–1122–0000–Z2]

Wind Turbine Guidelines Advisory Committee; Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), will host a Wind Turbine Guidelines Advisory Committee (Committee) meeting September 29 through October 1, 2009. The meeting is open to the public. The meeting agenda will include discussion of the current draft Recommendations to the Secretary.

DATES: The meeting is scheduled for September 29 through October 1, 2009. For session times, see ''Session Times'' under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: We will hold the meeting at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 530, Arlington, VA 22203. For more information, see ''Meeting Location Information.''

FOR FURTHER INFORMATION CONTACT: Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2007, the Secretary of the Interior (Secretary) established the Committee to provide advice and recommendations to the Secretary on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities. The Committee is made up of 22 members representing the varied interests associated with wind energy development and its potential impacts to wildlife species and their habitats. All Committee meetings are open to the public.

Meeting Location Information

Please note that the meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us as soon as possible in advance of the meeting. All persons planning to attend the meeting will be required to present photo identification when entering the building.

Persons planning to attend the meeting must register at *http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html,* by September 22, 2009. Seating is limited due to room capacity. We will give preference to registrants based on date and time of registration. Limited standing room will be available if all seats are filled.

SESSION TIMES

Meeting days:	Start time:	End time:
September 29, 2009	1 p.m	5:30 p.m.
September 30 and October 1, 2009	8 a.m	5:30 p.m.

Dated: September 9, 2009.

Rachel London,

Alternate Designated Federal Officer, Wind Turbine Guidelines Advisory Committee.

[FR Doc. E9–22080 Filed 9–11–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 29, 2009. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 29, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARKANSAS

Faulkner County

Hardy Cemetery, 722 AR 225 E., Centerville, 09000798

Washington County

Stokenbury Cemetery, AR 16, Elkins, 09000799

Taylor-Swanson-Gifford House, 930 S. California Blvd., Fayetteville, 09000800

Woodruff County

Morris, Dr. John William, Clinic, 118 W. Main St., McCrory, 09000801

CALIFORNIA

Los Angeles County

Stevens House, 23524 Malibu Colony Rd., Malibu, 09000802

Nevada County

Commercial Row—Brickelltown Historic District, Roughly the N. side of Donner Pass Rd. from Bridge St. westwards approx. 1,700 ft., Truckee, 09000803

San Bernardino County

Shady Point, 778 Shelter Cove Dr., Lake Arrowhead, 09000804

San Francisco County

Roos House, 3500 Jackson St., San Francisco, 09000805

Tobin House, 1969 California St., San Francisco, 09000806

Tuolumne County

Sonora Youth Center, 732 S. Barretta St., Sonora, 09000807

FLORIDA

Orange County

Warlow, Thomas Picton, Sr., House, 701 Driver Ave., Winter Park, 09000808

KANSAS

Leavenworth County

Helmers Manufacturing Company Building, 300 Santa Fe St./2500 2nd St., Leavenworth, 09000809

Republic County

Cuba Blacksmith Shop, ½ block W. of Baird St. on the Lynn St., Cuba, 09000810

Sedgwick County

Wichita High School, (Public Schools of Kansas MPS) 324 N. Emporia, Wichita, 09000811

MISSOURI

Greene County

Pythian Home of Missouri, 1451 E. Pythian St., Springfield, 09000812

Jefferson County

Central Campus, 221 S. 3rd. St., De Soto, 09000813

Madison County

Fredericktown United States Post Office, 155 S. Main St., Fredericktown, 09000814

MONTANA

Petroleum County

Winnett Block, 301 E. Main St., Winnett, 09000815

NEW HAMPSHIRE

Rockingham County

Portsmouth Harbor Light, (Light Stations of the United States MPS) .3 mi. E. of Rt. 1B jct. with Wentworth Rd., Ft. Constitution SE corner, New Castle, 09000816

NEW MEXICO

Cibola County

Acoma Curio Shop, (Route 66 through New Mexico MPS) 1090 NM 124, San Fidel, 09000817

SOUTH CAROLINA

Pickens County

Easley Mill, 601 S. 5th St., Easley, 09000818

Richland County

Benson, Florence C., Elementary School, (Segregation in Columbia, South Carolina MPS) 226 Bull St., Columbia, 09000819

WISCONSIN

Kenosha County

WISCONSIN shipwreck (iron steamer), (Great Lakes Shipwreck Sites of Wisconsin MPS) Address Restricted, Kenosha, 09000820

Oneida County

Sutliff, Solon and Mathilda, House, 306 Dahl St., Rhinelander, 09000821

Request for REMOVAL has been made for the following resources:

ARKANSAS

Benton County

Springfield to Fayetteville Rd—Brightwater Segment (Cherokee Trail of Tears MPS) N Old Wire Rd./Benton Cty Rd. 67, S of US 62 Brightwater, 04001513

Prairie County

Barrett-Rogers Building 100 N. Hazen Ave. Hazen, 98000881

Sebastian County

Sebastian County Road 5G Bridge (Historic Bridges of Arkansas MPS) Co. Rd. 5G over tributary of W. Cr. Hartford, 95000567

Washington County

Dodson Memorial Building (Public Schools in the Ozarks MPS) Jct. Of Pleasant St. And Emma Ave., NE corner Springdale, 92001118

KANSAS

Jackson County

Shedd and Marshall Store 3rd and Whiting Sts. Whiting, 77000582

[FR Doc. E9–21968 Filed 9–11–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36CFR60.13(b,c)) and (36CFR63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from July 6, to July 10, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St. NW., Washington, DC 20240; in person (by appointment), 1201 Eye St. NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: September 2, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

Key: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name.

ARIZONA

Pima County

Agua Caliente Ranch Rural Historic Landscape, 12325 E. Roger Rd., Tucson vicinity, 04001246, LISTED, 7/09/09. (Cattle Ranching in Arizona MPS.)

CALIFORNIA

Orange County

Cogged Stone Site—CA–ORA–83, Address Restricted, Huntington Beach vicinity, 01001455, DETERMINED ELIGIBLE, 7/10/09.

COLORADO

El Paso County

North Cheyenne Canon Park, 2120 N. Cheyenne Canon Rd., Colorado Springs, 09000489, LISTED, 7/08/09.

Grand County

Little Buckaroo Ranch Barn, 20631 Trail Ridge Rd., Rocky Mountain National Park, Grand Lake vicinity, 09000490, LISTED, 7/08/09.

GEORGIA

Chatham County

Eureka Club—Farr's Point, 2326 E. Blvd., Savannah vicinity, 09000491, LISTED, 7/08/09.

Jasper County

Pope-Talmadge House, 2560 Calvin Rd., Monticello vicinity, 09000492, LISTED, 7/08/09.

KANSAS

Butler County

Loomis-Parry House, 1003 State St., Augusta, 09000495, LISTED, 7/08/09.

Crawford County

First Presbyterian Church, 202 N. Summit, Girard, 09000496, LISTED, 7/08/09.

Douglas County

Mackie, George K., House, 1941 Massachusetts St., Lawrence, 09000497, LISTED, 7/08/09. (Lawrence, Kansas MPS.)

Sedgwick County

Pryor House, 263 S. Pershing, Wichita, 09000499, LISTED, 7/08/09. (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957.)

Van Arsdale, W.O., House, 201 N. Broadway, Wichita, 09000500, LISTED, 7/08/09. (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957.)

Winders Historic District, 1038–1040, 1044, and 1045 S. Topeka Ave., Wichita, 09000498, LISTED, 7/08/09. (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957.)

Trego County

Lipp Barn, 17054 103th Ave., Collyer, 09000501, LISTED, 7/08/09. (Agriculture-Related Resources of Kansas.)

MISSOURI

Cape Girardeau County

Erlbacher Buildings, 1105 and 1107 Broadway, Cape Girardeau, 09000502, LISTED, 7/08/09.

Madison County

Fredericktown Courthouse Square Historic District, 110–145 E. Main St., 106–125 W. Main St., 110–120 S. Main St. and Court

Square, Fredericktown, 09000503, LISTED, 7/08/09.

PENNSYLVANIA

Luzerne County

Search, George W., House, 56 S. Main St., Shickshinny, 09000387, LISTED, 7/10/09.

TENNESSEE

Carter County

Shelving Rock Encampment, TN 143 and Smith Branch Rd., Roan Mountain vicinity, 09000533, LISTED, 7/10/09.

Jackson County

Jackson County High School, 707 School Dr., Gainesboro, 09000535, LISTED, 7/08/09.

McMinn County

Trinity United Methodist Church, 100 E. College St., Athens, 09000537, LISTED, 7/07/09.

Shelby County

Idlewild Presbyterian Church, 1750 Union Ave., Memphis, 09000539, LISTED, 7/07/09. (Memphis MPS.)

WASHINGTON

King County

Naval Reserve Armory, 860 Terry Ave. N., Seattle, 09000506, LISTED, 7/08/09.

Women's University Club of Seattle, 1105 6th Ave., Seattle, 09000507, LISTED, 7/10/09.

WISCONSIN

Columbia County

Zion Evangelical Lutheran Church and Parsonage, 236 and 254 W. Mill St., Columbus, 09000509, LISTED, 7/08/09.

[FR Doc. E9–21969 Filed 9–11–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0083]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application for Limited Permit.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until November 13, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Chris Reeves, Chief, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Limited Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. Any person who intends to acquire explosives materials from a licensee or permittee in the State in which that person resides on no more than 6 occasions per year, must obtain a limited permit from ATF.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 40,000 respondents will take 30 seconds to submit the required information.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,000 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–22040 Filed 9–11–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0080]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Notification of Change of Mailing or Premise Address.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until November 13, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Debra Satkowiak, Chief, Explosives Industry Programs Branch, Room 6E405, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notification of Change of Mailing or Premise Address.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. Other: Business or other for-profit. Licensees and permittees whose mailing address will change must notify the Chief, Federal Explosives Licensing Center, at least 10 days before the change. The information is used by ATF to identify correct locations of storage of explosives licensees/permittees and location of storage of explosives materials for purposes of inspection as well as to notify permitee/licensees of any change in regulations or laws that may affect their business activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,000 respondents will take 10 minutes to respond via letter to the Federal Explosives Licensing Center.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 170 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–22042 Filed 9–11–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–326P]

Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2010: Proposed

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed annual assessment of needs for 2010.

SUMMARY: This notice proposes the initial year 2010 Assessment of Annual Needs for certain List I chemicals in accordance with the Combat Methamphetamine Epidemic Act (CMEA) of 2005, enacted on March 9, 2006. The CMEA requires DEA to establish production quotas and import quotas for ephedrine, pseudoephedrine, and phenylpropanolamine. The CMEA places additional regulatory controls upon the manufacture, distribution, importation, and exportation of the three List I chemicals.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before October 14, 2009.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–326P'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov*. However, persons wishing to request a hearing should note that such requests must be written and manually signed; requests for a hearing will not be accepted via electronic means. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, Virginia 22152, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 713 of the Combat Methamphetamine Epidemic Act of 2005 (Title VII of Pub. L. 109–177) (CMEA) amended Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) by adding ephedrine, pseudoephedrine, and phenylpropanolamine to existing language to read as follows: ''The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.'' Further, section 715 of CMEA amended 21 U.S.C. 952 ''Importation of controlled substances'' by adding the same List I chemicals to the existing language in paragraph (a), and by adding a new paragraph (d) to read as follows:

(a) Controlled substances in schedule I or II and narcotic drugs in schedule III, IV, or V; exceptions

It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V of subchapter I of this chapter, or ephedrine, pseudoephedrine, and phenylpropanolamine, except that—

(1) such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves, and of ephedrine, pseudoephedrine, and phenylpropanolamine, as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes * * *

may be so imported under such regulations as the Attorney General shall prescribe.

* * *

(d)(1) With respect to a registrant under section 958 who is authorized under subsection (a)(1) to import ephedrine, pseudoephedrine, or phenylpropanolamine,

at any time during the year the registrant may apply for an increase in the amount of such chemical that the registrant is authorized to import, and the Attorney General may approve the application if the Attorney General determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical.

Editor's Note: This excerpt of the amendment is published for the convenience of the reader. The official text is published at 21 U.S.C. 952(a) and (d)(1).

The proposed 2010 Assessment of Annual Needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and/or imported into the United States to provide adequate supplies of each substance to meet the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks.

As of August 4, 2009, the DEA had received a total of 134 applications for 2010 import, procurement and manufacturing quotas for ephedrine, pseudoephedrine and phenylpropanolamine. As a comparison, for the 2009 quota year DEA has received 201 applications for import, procurement and manufacturing quotas. DEA calculated the 2010 Assessment of Annual Needs for the List I chemicals using the calculation methodology described in both the interim and final 2009 Assessment of Annual Needs (73 FR 79508 and 74 FR 32954, respectively). The phenylpropanolamine (for conversion) calculation has been modified to account for additional information. These calculations take into account the criteria that DEA is required to consider in accordance with 21 U.S.C. 826 and its implementing regulations (21 CFR 1315.11).

In finalizing the assessments for these List I chemicals, DEA will consider the information contained in additional applications for 2010 import, manufacturing and procurement quotas from DEA registered manufacturers and importers that DEA receives after August 4, 2009, as well as the comments that DEA receives in response to this proposal.

Underlying Data and DEA's Analysis

In determining the proposed 2010 assessments, DEA has considered the total net disposals (*i.e.* sales) of the list I chemicals for the current and preceding two years, actual and estimated inventories, projected demand (2010), industrial use, and export requirements from data provided by DEA registered manufacturers and importers in procurement quota applications (DEA 250), from manufacturing quota applications (DEA 189), and from import quota applications (DEA 488).[1]

DEA further considered trends as derived from information provided in applications for import, manufacturing, and procurement quotas and in import and export declarations. DEA notes that the inventory, acquisitions (purchases) and disposition (sales) data provided by DEA registered manufacturers and importers reflects the most current information available.

Ephedrine Data

EPHEDRINE (FOR SALE) DATA FOR 2010 ASSESSMENT OF ANNUAL NEEDS

(Kilograms)

Ephedrine	2007	2008	2009	2010 Request
Sales* (DEA 250)	1,509	1,988	2,107	2,486
Imports** (DEA 488)	1	3	42	17
Export Declarations (DEA 486)	168	91	10	n/a
Inventory* (DEA 250)	714	421	176	n/a
IMS*** (NSP)	1,235	1,460	n/a	n/a

*Reported sales and inventory from applications for 2010 procurement quotas (DEA 250)

**Reported imports from applications for 2010 import quotas (DEA 488)

***IMS Health, IMS National Sales Perspectives™, January 2007 to December 2008, Retail and Non-Retail Channels, Data Extracted August 4, 2009.

Ephedrine Analysis

DEA calculated the proposed 2010 Assessment of Annual Needs for ephedrine using the calculation developed to determine the 2009 Assessment of Annual Needs. This calculation considers the criteria defined in 21 U.S.C. 826: estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks.

As of August 4, 2009, DEA registered manufacturers of dosage form products containing ephedrine requested the authority to purchase a total of 2,486 kg ephedrine (for sale) in 2010. DEA registered manufacturers of ephedrine reported sales totaling approximately 1,988 kg in 2008 and 2,107 kg in 2009; this represents a 6 percent increase in sales reported by these firms from 2008 to 2009. Additionally, exports of ephedrine products from the United States as reported on export declarations (DEA 486) totaled 91 kg in 2008 and 10 kg in 2009; this represents a 90 percent decrease from levels observed in 2008. The average of the 2008 and 2009 exports of ephedrine products is approximately 51 kg. DEA also considered information on trends in the national rate of net disposals from sales data provided by IMS Health's NSP database. IMS NSP data reported the average sales volume of ephedrine for the calendar years 2007 and 2008 to be approximately 1,348 kg. DEA notes that the 2009 sales figure reported by manufacturers (2,107 kg) is higher than the average sales reported by IMS for the previous two years (1,348 kg). This is expected because a manufacturer's reported sales include quantities which are necessary to provide reserve stocks for distributors and retailers. DEA, in considering the manufacturer's reported sales, thus believes that 2,107 kg fairly represents the U.S. sales of ephedrine for 2010 and that 51 kg fairly represents the export requirements of ephedrine.

For the establishment and maintenance of reserve stocks, DEA notes that 21 CFR 1315.24 allows for an inventory allowance (reserve stock) of 50 percent of a manufacturer's estimated

[1] Applications and instructions for procurement, import and manufacturing quotas can be found at *http://www.deadiversion.usdoj.gov/quotas/quota_apps.htm.*

sales. DEA also considered the estimated 2009 year end inventory as reported by DEA registrants in determining the inventory allowance.

DEA calculated the ephedrine (for sale) assessment by the following methodology:

2009 sales + reserve stock + export requirement − existing inventory = AAN

2,107 + (50%*2,107) + 51 − 176 = 3,036 kg ephedrine (for sale) for 2010

This calculation suggests that DEA's Assessment of Annual Needs for ephedrine should be proposed to be 3,100 kg. Accordingly, DEA is proposing the 2010 Assessment of Annual Needs for ephedrine (for sale) at 3,100 kg.

Phenylpropanolamine (for Sale) Data

PHENYLPROPANOLAMINE (FOR SALE) DATA FOR 2010 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Phenylpropanolamine (for sale)	2007	2008	2009	2010 Request
Sales * (DEA 250)	3,674	4,119	4,452	5,680
Imports ** (DEA 488)	73	79	134	263
Export Declarations (DEA 486)	1,002	0	3	n/a
Inventory * (DEA 250)	3,498	2,045	573	n/a

* Reported sales and inventory from applications for 2010 procurement quotas (DEA 250) received as of August 4, 2009.
** Reported imports from applications for 2010 import quotas (DEA 488) received as of August 4, 2009.

Phenylpropanolamine (for Sale) Analysis

DEA utilized the same general methodology and calculation to establish the assessment for phenylpropanolamine (for sale) as was described for the assessment of ephedrine (for sale), above.

As of August 4, 2009, DEA registered manufacturers of dosage form products containing phenylpropanolamine requested the authority to purchase 5,680 kg phenylpropanolamine (for sale) in 2010. DEA registered manufacturers of phenylpropanolamine reported sales totaling approximately 4,119 kg in 2008 and 4,452 kg in 2009; this represents a 7.5% increase in sales reported by these firms from 2008 to 2009. Additionally, exports of phenylpropanolamine products from the U.S. as reported on export declarations (DEA 486) totaled 0 kg in 2008 and 3 kg in 2009; this represents a 3 kg increase from levels observed in 2008. The average of the 2008 and 2009 exports of phenylpropanolamine products is approximately 2 kg. DEA thus believes that 4,452 kg fairly represents the U.S. sales of phenylpropanolamine for 2010 and that 2 kg fairly represents the export requirements of phenylpropanolamine. DEA notes that phenylpropanolamine is sold primarily as a veterinary product for the treatment for canine incontinence and is not approved for human consumption. IMS Health's NSP Data does not capture sales of phenylpropanolamine to these channels and is therefore not included.

DEA calculated the phenylpropanolamine (for sale) assessment by the following methodology:

2009 sales + reserve stock + export requirement − existing inventory = AAN

4,452 + (50%*4,452) + 2 − 573 = 6,107 kg phenylpropanolamine (for sale) for 2010

This calculation suggests that DEA's 2010 Assessment of Annual Needs for phenylpropanolamine (for sale) should be proposed at 6,100 kg. Accordingly, DEA is proposing the 2010 Assessment of Annual Needs for phenylpropanolamine (for sale) at 6,100 kg.

Pseudoephedrine (for Sale) Data

PSEUDOEPHEDRINE (FOR SALE) DATA FOR 2010 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Pseudoephedrine (for sale)	2007	2008	2009	2010 Request
Sales * (DEA 250)	204,028	179,566	236,650	196,912
Sales * (DEA 189)	100,300	64,781	33,600	32,760
Imports ** (DEA 488)	44,499	60,300	147,002	78,884
Export Declarations (DEA 486)	42,142	85,757	18,974	n/a
Inventory * (DEA 250)	132,838	114,795	61,613	n/a
IMS *** (NSP)	180,172	149,110	n/a	n/a

* Reported sales and inventory from applications for 2010 procurement quotas (DEA 250) and manufacturing quotas (DEA 189) received as of August 4, 2009.
** Reported imports from applications for 2010 import quotas (DEA 488) received as of August 4, 2009.
*** IMS Health, IMS National Sales Perspectives ™, January 2007 to December 2008, Retail and Non-Retail Channels, Data Extracted August 4, 2009.

Pseudoephedrine (for Sale) Analysis

DEA utilized the same general methodology and calculations to establish the assessment for pseudoephedrine (for sale) as were described for the assessment of ephedrine (for sale), above.

As of August 4, 2009, DEA registered manufacturers of dosage form products containing pseudoephedrine requested the authority to purchase 196,912 kg pseudoephedrine. DEA registered manufacturers of pseudoephedrine reported sales totaling approximately 179,566 kg in 2008 and 236,650 kg in 2009; this represents a 24 percent increase in sales reported by these firms from 2008 to 2009. During the same period exports of pseudoephedrine products from the U.S. as reported on export declarations (DEA 486) totaled 85,757 kg in 2008 and 18,974 kg in 2009; this represents a 78 percent

decrease from levels observed in 2008. The average of the 2008 and 2009 exports is 52,366 kg. Additionally, DEA considered information on trends in the national rate of net disposals from sales data provided by IMS Health. IMS NSP data reported the average retail sales volume of pseudoephedrine for the calendar years 2007 and 2008 to be approximately 164,641 kg. DEA thus believes that 236,650 kg of sales reported by manufacturers fairly represents the U.S. sales of pseudoephedrine for 2010 and that 52,366 kg fairly represents the export requirements of pseudoephedrine. DEA notes that manufacturer reported sales for 2009 (236,650 kg) are higher than the average retail sales reported by IMS for the previous two years (164,641 kg). This is expected because a manufacturer's reported sales include quantities which are necessary to provide reserve stocks for distributors and retailers.

DEA calculated the pseudoephedrine (for sale) assessment by the following methodology:

2009 sales + reserve stock + export requirement − existing inventory = AAN

236,650 + (50%*236,650) + 52,366 − 61,613 = 345,728 kg pseudoephedrine (for sale) for 2010.

This calculation suggests that DEA's 2010 Assessment of Annual Needs for pseudoephedrine (for sale) should be proposed at 346,000 kg. Accordingly, DEA is proposing the 2010 Assessment of Annual Needs for pseudoephedrine (for sale) at 346,000 kg.

Phenylpropanolamine (for Conversion) Data

PHENYLPROPANOLAMINE (FOR CONVERSION) DATA FOR 2010 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Phenylpropanolamine (for conversion)	2007	2008	2009	2010 Request
Sales * (DEA 250)	3,621	10,834	13,582	14,900
Imports ** (DEA 488)	1,000	3,225	6,514	6,108
Export Declarations (DEA 486)	0	0	0	n/a
Inventory * (DEA 250)	3,581	5,533	4,103	n/a
APQ Amphetamine ***	17,000	22,000	22,000	n/a

* Reported sales and inventory from applications for 2010 procurement quotas (DEA 250) received as of August 4, 2009.
** Reported imports from applications for 2010 import quotas (DEA 488) received as of August 4, 2009.
*** Amphetamine Aggregate Production Quota History *http://www.deadiversion.usdoj.gov/quotas/quota_history.htm.*

Phenylpropanolamine (for Conversion) Analysis

As of August 4, 2009, DEA registered manufacturers of phenylpropanolamine (for conversion) requested the authority to purchase a total of 14,900 kg phenylpropanolamine for the manufacture of amphetamine. DEA registered manufacturers of phenylpropanolamine reported sales of phenylpropanolamine totaling approximately 10,834 kg in 2008 and 13,582 kg in 2009; this represent a 20 percent increase in sales reported by these firms from 2008 to 2009. There were no reported exports of phenylpropanolamine (for conversion). DEA has not received any requests to synthesize phenylpropanolamine in 2010. DEA has concluded that the 2009 sales of phenylpropanolamine (for conversion), 13,582 kg, fairly represents U.S. requirements for 2010 and zero kg fairly represents the export requirements of phenylpropanolamine (for conversion).

Phenylpropanolamine is used in the production of legitimate amphetamine products. DEA has established an Aggregate Production Quota (APQ) for amphetamine of 22,000 kg for 2009. DEA notes amphetamine is primarily manufactured by the conversion of the schedule II controlled substance phenylacetone to amphetamine. DEA did not consider this alternative synthesis route in the 2009 Assessment of Annual Needs for phenylpropanolamine (for conversion).

DEA calculated the phenylpropanolamine (for conversion) for the manufacture of amphetamine as follows:

(2009 sales) + reserve stock + export requirement − inventory = AAN (13,582) +

50%*(13,582) + 0 − 4,103 = 16,270 kg PPA (for conversion) for 2009

This calculation suggests that DEA's 2009 Assessment of Annual Needs for phenylpropanolamine (for conversion) should be proposed at 16,500 kg. Accordingly, DEA is proposing the 2010 Assessment of Annual Needs for phenylpropanolamine (for conversion) at 16,500 kg.

Ephedrine (for Conversion) Data

EPHEDRINE (FOR CONVERSION) DATA FOR 2010 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Ephedrine (for conversion)	2007	2008	2009	2010 Request
Sales * (DEA 250)	99,622	64,522	40,403	40,646
Imports ** (DEA 488)	99,594	64,128	39,897	40,000
Inventory * (DEA 250)	13	160	254	n/a
APQ Methamphetamine ***	3,130	3,130	3,130	n/a

* Reported sales and inventory from applications for 2010 procurement quotas (DEA 250) and manufacturing quotas (DEA 189) received as of August 4, 2009.
** Reported imports from applications for 2010 import quotas (DEA 488) received as of August 4, 2009.
*** Methamphetamine Aggregate Production Quota History *http://www.deadiversion.usdoj.gov/quotas/quota_history.htm.*

Ephedrine (for Conversion) Analysis

As of August 4, 2009, DEA registered manufacturers of ephedrine (for conversion) requested the authority to purchase a total of 40,646 kg ephedrine (for conversion) for the manufacture of two substances: methamphetamine and pseudoephedrine.

DEA considered the ephedrine (for conversion) requirements for the manufacture of methamphetamine and pseudoephedrine. DEA has determined that the established assessments for the manufacture of these two substances are the best indicators of the need for ephedrine (for conversion). The assessment of need for methamphetamine was determined by DEA as the Aggregate Production Quota (APQ) for methamphetamine. DEA determined that the estimated sales of pseudoephedrine, as referenced in the Assessment of Annual Needs (AAN) for pseudoephedrine, represents the need for pseudoephedrine. Reported sales of ephedrine (for conversion) are included as reference to DEA's methodology.

DEA further considered the reported conversion yields of these substances. DEA registered manufacturers reported a conversion yield of 39 percent for the synthesis of methamphetamine from ephedrine. DEA cannot disclose the conversion yield for the synthesis of pseudoephedrine because this information is proprietary to the one manufacturer involved in this type of manufacturing.

DEA calculated the ephedrine (for conversion) assessment by the following methodology:

methamphetamine requirement + pseudoephedrine requirement = AAN

DEA calculated the ephedrine (for conversion) requirement for the manufacture of methamphetamine as follows:

(2009 APQ methamphetamine/39% yield) + reserve stock − inventory = ephedrine (for manufacture of methamphetamine)

(3,130/39% yield) + 50%*(3,130/39% yield) − 46 = 11,993 kg

The calculation for the ephedrine (for conversion) requirement for the manufacture of pseudoephedrine leads to a result of 63,157 kg. DEA cannot provide the details of the calculation because this would reveal the conversion yield for the synthesis of pseudoephedrine, which is proprietary to the one manufacturer involved in this type of manufacturing. Therefore, the assessment for ephedrine was determined by the sum total of the ephedrine (for conversion) requirements as described by the following methodology:

methamphetamine requirement + pseudoephedrine requirement = AAN

11,993 + 63,157 = 75,150 kg ephedrine (for conversion) for 2010

This calculation suggests that DEA's 2010 Assessment of Annual Needs for ephedrine (for conversion) should be proposed at 75,000 kg. Accordingly, DEA is proposing the 2010 Assessment of Annual Needs for ephedrine (for conversion) at 75,000 kg.

Conclusion

In finalizing the 2010 assessments for these list I chemicals, DEA will use the methodology and calculations presented above. The numbers used in the calculations may be adjusted upwards or downwards based on the additional applications for 2010 import, manufacturing and procurement quotas received after August 4, 2009. DEA urges registered importers and manufacturers to submit applications for 2010 import, manufacturing and procurement quota so that DEA may include information from those applications when finalizing these assessments in accordance with 21 CFR 1315.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes the following 2010 Assessment of Annual Needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine for 2010, expressed in kilograms of anhydrous base:

List I Chemicals	Proposed Year 2010 Assessment of Annual Needs
Ephedrine (for sale) ..	3,100 kg.
Phenylpropanolamine (for sale).	6,100 kg.
Pseudoephedrine (for sale).	346,000 kg.
Phenylpropanolamine (for conversion).	16,500 kg.
Ephedrine (for conversion).	75,000 kg.

Ephedrine (for conversion) refers to the industrial use of ephedrine, *i.e.*, that which will be converted to another basic drug class such as pseudoephedrine or methamphetamine used for the manufacture of prescription weight loss drug. Phenylpropanolamine (for conversion) refers to the industrial use of phenylpropanolamine, *i.e.*, that which will be converted to another basic drug class such as amphetamine for the manufacture of drug products. The ''for sale'' assessments refer to the amount of ephedrine, pseudoephedrine, and phenylpropanolamine intended for ultimate use in products containing these List I chemicals.

All interested persons are invited to submit their comments in writing or electronically regarding this proposal following the procedures in the **ADDRESSES** section of this document. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief. Persons wishing to request a hearing should note that such requests must be written and manually signed; requests for a hearing will not be accepted via electronic means. In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1315.13(e).

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this action will not have a significant economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601–612. The establishment of the Assessment of Annual Needs for ephedrine, pseudoephedrine and phenylpropanolamine is mandated by law. The assessments are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for lawful export requirements, and the establishment and maintenance of reserve stocks. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Executive Order 12866

The Office of Management and Budget has determined that notices of Assessment of Annual Needs are not subject to centralized review under Executive Order 12866.

Executive Order 13132

This action does not preempt or modify any provision of state law; nor does it impose enforcement

responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 12988

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: September 2, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–22043 Filed 9–11–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

148th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Advisory Council on Employee Welfare and Pension Benefit Plans will hold a public teleconference meeting on September 29, 2009.

The meeting will take place in Room N3437 A–B, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Public access is available only in this room (i.e. not by telephone). The meeting will run from 11:30 a.m. to approximately 5:30 p.m. The purpose of the open meeting is to discuss reports/recommendations for the Secretary of Labor on the issues of (1) Stable Value Funds and Retirement Security in the Current Economic Conditions, (2) Promoting Retirement Literacy and Security by Streamlining Disclosures to Participants and Beneficiaries, and (3) Approaches for Retirement Security in the United States. Descriptions of these topics are available on the Advisory Council page of the EBSA Web site at *http://www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html.*

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 30 copies on or before September 22, 2009 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW., Washington, DC 20210. Statements also may be submitted as e-mail attachments in text or pdf format transmitted to *good.larry@dol.gov*. It is requested that statements not be included in the body of the e-mail. Statements received on or before September 22, 2009 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by September 22 at the address indicated.

Signed at Washington, DC, this 10th day of September, 2009.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E9–22108 Filed 9–11–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Nos. OSHA–2005–022, OSHA–2006–0028, OSHA–2006–0029, OSHA–2006–0040, OSHA–2006–0042, OSHA–2007–0039, OSHA–2007–0041, OSHA–2007–0042, OSHA–2009–0025, OSHA–2009–0026, OSHA–2009–0027]

Modifications to the Scope of NRTL Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice modifies the scopes of recognition of several Nationally Recognized Testing Laboratories resulting from the withdrawal of test standards by standards-developing organizations.

DATES: *Effective Date:* The effective date of this notice is September 14, 2009.

FOR FURTHER INFORMATION CONTACT: MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210; phone: (202) 693–2110.

SUPPLEMENTARY INFORMATION:

I. Notice of Modifications

In this notice, the Occupational Safety and Health Administration (OSHA) is modifying the scopes of recognition of several Nationally Recognized Testing Laboratories (NRTLs). Specifically, one or more of the test standards that OSHA currently includes in the scopes of recognition of these NRTLs are no longer ''appropriate test standards'' under 29 CFR 1910.07(c) because the standards-developing organizations that wrote and published the standards withdrew the standards. Consequently, OSHA is deleting the test standards from the scope of recognition of each affected NRTL. Section IV of this notice (''Modifications to Each NRTL's Scope of Recognition'') identifies the affected NRTLs.

To substitute other test standards for the standards being removed, OSHA's policy permits NRTLs to request, or OSHA to provide, recognition for comparable test standards, i.e., other appropriate test standards covering comparable product testing. The table in Section III (''Withdrawn Test Standards and Replacement Test Standards'') identifies the test standards removed from the scopes of recognition of the affected NRTL, under the heading

''Withdrawn Standards,'' while the replacement standards for the withdrawn standards, if applicable, are provided under the heading ''Replacement Standards.'' As shown in this table, many of the test standards being removed have no comparable replacement standard. In these cases, if an NRTL or other party has information that a comparable replacement standard exists, it may provide this information to OSHA; if OSHA concurs, it will add the standard to the scope of recognition of the affected NRTL(s).

OSHA will incorporate the modifications specified by this notice on its informational Web page for each NRTL. This page details OSHA's official scope of recognition for the NRTL, including the standards the NRTL may use to certify products under OSHA's NRTL Program. Access to these Web pages is available through *http://www.osha.gov/dts/otpca/nrtl/index.html.*

II. Summary of OSHA's NRTL Requirements

OSHA recognition of any NRTL signifies that the organization meets the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (i.e., 29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition; recognition is not a delegation or grant of government authority. Recognition allows employers to use products certified by an NRTL to meet OSHA standards that require testing and certification.

OSHA specifies a scope of recognition for each NRTL that includes a list of product-safety test standards that the NRTL may use in testing and certifying (i.e., approving) products; NRTLs must demonstrate that the products conform to ''appropriate test standards,'' as defined under 29 CFR 1910.7(c). ''Appropriate test standards'' are consensus-based product-safety test standards developed and maintained by U.S.-based standards-developing organizations (SDOs). These test standards differ from OSHA standards in that OSHA standards are general requirements that employers must meet, while test standards specify technical safety requirements that particular types of products must meet.

Occasionally, an SDO withdraws existing test standards or adopts replacement test standards. In such cases, OSHA can no longer consider the withdrawn standards as ''appropriate,'' and, therefore, can no longer include these standards in the NRTLs' scopes of recognition.

III. Withdrawn Test Standards and Replacement Test Standards

The table below lists the withdrawn standards and the replacement standards identified by the SDO for the withdrawn standards, as applicable.

Withdrawn test standards	Replacement test standards
ANSI C37.38—Gas Insulated, Metal Enclosed Disconnecting, Interrupter and Grounding Switches.	None known.
ANSI C37.72—Manually Operated Dead Front, Pad-Mounted Switchgear with Load Interrupting Switches and Separable Connectors for Alternating Current System.	None known.
ANSI C57.12.28—Switchgear and Transformers Pad-Mounted Equipment Enclosure Integrity.	None known.
ANSI ICS 2—Industrial Control Devices, Controllers and Assemblies	None known.
UL 3—Flexible Nonmetallic Tubing for Electric Wiring	None known.
ANSI/NFPA 11A—Medium and High Expansion Foam Systems	None known.
UL 45—Portable Electric Tools	UL 60745–1—Hand-Held Motor-Operated Electric Tools—Safety—Part 1: General Requirements.
ANSI/NFPA 72—Installation, Maintenance, and Use of Protective Signaling Systems.	None known.
UL 298—Portable Electric Hand Lamps	UL 153—Portable Electric Luminaires [1]
UL 351—Rosettes	None known.
UL 486B—Wire Connectors.	UL 486A–486B—Wire Connectors.
UL 511—Porcelain Electrical Cleats, Knobs, and Tubes	None known.
UL 1004A—Fire Pump Motors	UL 1004–1—Rotating Electrical Machines—General Requirements [2]; and UL 1004–5—Fire Pump Motors.
UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components.	UL 60691—Thermal-Links—Requirements and Application Guide.
UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations	None known.
UL 1262—Laboratory Equipment	UL 61010A–1 [1]—Electrical Equipment For Laboratory Use; Part 1: General Requirements.
UL 1585—Class 2 and Class 3 Transformers.	UL 5085–1—Low Voltage Transformers—Part 1: General Requirements; and UL 5085–3—Low Voltage Transformers—Part 3: Class 2 and Class 3 Transformers.
UL 2083—Halon 1301 Recovery/Recycling Equipment	None known.
UL 2125—Motor Operated Air Compressors for Use in Sprinkler Systems.	None known.
UL 3044—Surveillance Closed Circuit Television Equipment	None known.

[1] OSHA already includes this standard in the scopes of recognition of many NRTLs. It is listed below in section IV of this notice as a Replacement Standard only when an NRTL's scope does not now include the standard.

[2] NRTLs currently recognized for UL 1004—Electric Motors may request recognition for UL 1004–1 by providing the necessary documentation that demonstrates their technical capability to perform any testing and evaluation covered in UL 1004–1 but not in UL 1004. If it determines that the NRTL has the capability, OSHA will grant the request and update the NRTL's scope of recognition.

IV. Modificationsto Each NRTL's Scope of Recognition

Canadian Standards Association (CSA)

(Docket No. OSHA–2006–0042)

Withdrawn Test Standards

UL 3—Flexible Nonmetallic Tubing for Electric Wiring
UL 45—Portable Electric Tools
UL 298—Portable Electric Hand Lamps
UL 351—Electrical Rosettes
UL 486B—Wire Connectors
UL 511—Porcelain Electrical Cleats, Knobs, and Tubes
UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
UL 1262—Laboratory Equipment
UL 1585—Class 2 and Class 3 Transformers
UL 2083—Halon 1301 Recovery/Recycling Equipment
UL 2125—Motor-Operated Air Compressors for Use in Sprinkler Systems (Note: The title in OSHA's web page is shown incorrectly as Vehicle Battery Adapters.)

Replacement Test Standards

UL 486A–486B—Wire Connectors
UL 5085–1—Low Voltage Transformers—Part 1: General Requirements
UL 5085–3—Low Voltage Transformers—Part 3: Class 2 and Class 3 Transformers
UL 60745–1—Hand-Held Motor-Operated Electric Tools—Safety—Part 1: General Requirements
UL 60691—Thermal-Links—Requirements and Application Guide

Curtis-Straus LLC

(Docket No. OSHA–2009–0026)

Withdrawn Test Standard

UL 3111–1—Electrical Measuring and Test Equipment, Part 1: General Requirements

Replacement Test Standard

UL 61010B–1—Electrical Measuring and Test Equipment; Part 1: General Requirements

FM Approvals LLC

(Docket No. OSHA–2007–0041)

Withdrawn Test Standards

ANSI ICS 2—Industrial Control Devices, Controllers and Assemblies
ANSI/NFPA 11A—Medium and High Expansion Foam Systems
ANSI/NFPA 72—Installation, Maintenance, and Use of Protective Signaling Systems
UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
UL 1262—Laboratory Equipment

Replacement Test Standard

UL 61010A–1—Electrical Equipment For Laboratory Use; Part 1: General Requirements

Intertek Testing Services NA, Inc.

(Docket No. OSHA–2007–0039)

Withdrawn Test Standards

ANSI C37.38—Gas-Insulated, Metal-Enclosed Disconnecting, Interrupter and Grounding Switches
ANSI ICS 2—Industrial Control Devices, Controllers and Assemblies
UL 3—Flexible Nonmetallic Tubing for Electric Wiring
ANSI/NFPA 11A—Medium and High Expansion Foam Systems
UL 45—Portable Electric Tools
ANSI/NFPA 72—Installation, Maintenance, and Use of Protective Signaling Systems
UL 298—Portable Electric Hand Lamps
UL 486B—Wire Connectors
UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
UL 1262—Laboratory Equipment
UL 1585—Class 2 and Class 3 Transformers
UL 2083—Halon 1301 Recovery/Recycling
UL 2125—Motor-Operated Air Compressors for Use in Sprinkler Systems
UL 3044—Surveillance Closed Circuit Television Equipment

Replacement Test Standards

UL 486A–486B—Wire Connectors
UL 5085–1—Low Voltage Transformers—Part 1: General Requirements
UL 5085–3—Low Voltage Transformers—Part 3: Class 2 and Class 3 Transformers
UL 60745–1—Hand-Held Motor-Operated Electric Tools—Safety—Part 1: General
UL 60691—Thermal-Links—Requirements and Application Guide (for UL 1020)

MET Laboratories, Inc.

(Docket No. OSHA–2006–0028)

Withdrawn Test Standards

UL 45—Portable Electric Tools
UL 298—Portable Electric Hand Lamps
UL 1262—Laboratory Equipment
UL 1585—Class 2 and Class 3 Transformers
UL 3044—Surveillance Closed Circuit Television Equipment

Replacement Test Standards

UL 5085–1—Low Voltage Transformers—Part 1: General Requirements
UL 5085–3—Low Voltage Transformers—Part 3: Class 2 and Class 3 Transformers
UL 60745–1—Hand-Held Motor-Operated Electric Tools—Safety—Part 1: General

SGS U.S. Testing Company, Inc.

(Docket No. OSHA–2006–0040)

Withdrawn Test Standard

UL 3—Flexible Nonmetallic Tubing for Electric Wiring

Replacement Test Standards

None

TUV America, Inc.

(Docket No. OSHA–2009–0027)

Withdrawn Test Standards

UL 45—Portable Electric Tools
UL 1585—Class 2 and Class 3 Transformers

Replacement Standards

UL 5085–1—Low Voltage Transformers—Part 1: General Requirements
UL 5085–3—Low Voltage Transformers—Part 3: Class 2 and Class 3 Transformers
UL 60745–1—Already in TUVAM's scope

TUV Product Services GmbH

(Docket No. OSHA–2005–022)

Withdrawn Test Standards

UL 298—Portable Electric Hand Lamps
UL 1585—Class 2 and Class 3 Transformers

Replacement Test Standards

UL 153—Portable Electric Luminaires
UL 5085–1—Low Voltage Transformers—Part 1: General Requirements
UL 5085–3—Low Voltage Transformers—Part 3: Class 2 and Class 3 Transformers

TUV Rheinland of North America, Inc.

(Docket No. OSHA–2007–0042)

Withdrawn Test Standards

UL 45—Portable Electric Tools
ANSI/NFPA 72—Installation, Maintenance, and Use of Protective Signaling Systems
UL 298—Portable Electric Hand Lamps
UL 1262—Laboratory Equipment
UL 1585—Class 2 and Class 3 Transformers
UL 3044—Surveillance Closed Circuit Television Equipment

UL 60730–1—Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements [3]

Replacement Test Standards

UL 5085–1—Low Voltage Transformers—Part 1: General Requirements
UL 5085–3—Low Voltage Transformers—Part 3: Class 2 and Class 3 Transformers
UL 60745–1—Hand-Held Motor-Operated Electric Tools—Safety—Part 1: General Requirements

Underwriters Laboratories Inc.

(Docket No. OSHA–2009–0025)

Withdrawn Test Standards

ANSI/IEEE C37.38—Gas-Insulated, Metal-Enclosed Disconnecting, Interrupter and Grounding Switches
ANSI C37.72—Manually-Operated Dead-Front, Pad-Mounted Switchgear with Load-Interrupting Switches and Separable Connectors for Alternating-Current System
ANSI C57.12.28—Switchgear and Transformers—Pad-Mounted Equipment—Enclosure Integrity
UL 3—Flexible Nonmetallic Tubing for Electric Wiring
ANSI/NFPA 11A—Medium and High Expansion Foam Systems
UL 45—Portable Electric Tools
ANSI/NFPA 72—Installation, Maintenance, and Use of Protective Signaling Systems
UL 298—Portable Electric Hand Lamps
UL 351—Electrical Rosettes
UL 486B—Wire Connectors
UL 511—Porcelain Electrical Cleats, Knobs, and Tubes
UL 1004A—Fire Pump Motors
UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
UL 1262—Laboratory Equipment
UL 1585—Class 2 and Class 3 Transformers
UL 2083—Halon 1301 Recovery/Recycling Equipment
UL 2125—Motor-Operated Air Compressors for Use in Sprinkler Systems
UL 3044—Surveillance Closed Circuit Television Equipment

Replacement Test Standards

UL 486A–486B—Wire Connectors
UL 1004–5—Fire Pump Motors
UL 5085–1—Low Voltage Transformers—Part 1: General Requirements
UL 5085–3—Low Voltage Transformers—Part 3: Class 2 and Class 3 Transformers
UL 60745–1—Hand-Held Motor-Operated Electric Tools—Safety—Part 1: General Requirements
UL 60691—Thermal-Links—Requirements and Application Guide

Wyle Laboratories, Inc.

(Docket No. OSHA–2006–0029)

Withdrawn Test Standards

UL 45—Portable Electric Tools
UL 486B—Wire Connectors
UL 1262—Laboratory Equipment
UL 1585—Class 2 and Class 3 Transformers

Replacement Test Standards

UL 486A–486B—Wire Connectors
UL 5085–1—Low Voltage Transformers—Part 1: General Requirements
UL 5085–3—Low Voltage Transformers—Part 3: Class 2 and Class 3 Transformers
UL 60745–1—Hand-Held Motor-Operated Electric Tools—Safety—Part 1: General Requirements

V. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR Part 1911.

Signed at Washington, DC, on September 4th, 2009.

Jordan Barab,

Acting Assistant Secretary for Occupational Safety and Health.

[FR Doc. E9–22004 Filed 9–11–09; 8:45 am]

BILLING CODE 4510–26–P

[3] Previously withdrawn—see *http://www.osha.gov/dts/otpca/nrtl/stdsderecgn.html*, Note "*" concerning notice published on January 6, 2003 (68 FR 579–583).

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TYPE: Quarterly Meeting.

DATES AND TIMES:
October 26, 2009, 8:30 a.m.–4:30 p.m.
October 27, 2009, 9 a.m.–5 p.m.
October 28, 2009, 8:30 a.m.–11 a.m.

LOCATION: Holiday Inn Express, 920 Broadway, Nashville, TN 37203.

STATUS:
October 26, 2009, 8:30 a.m.–4:30 p.m.—Open
October 27, 2009, 9 a.m.–5 p.m.—Open
October 28, 2009, 8 a.m.–8:30 a.m.—Closed Executive Session
October 28, 2009, 8:30 a.m.–11 a.m.—Open

AGENDA: Public Comment Sessions; Emergency Preparedness; Housing; Health Care; Developmental Disabilities and Bill of Rights Act, Workforce Infrastructure, International Development, National Summit on Disability Policy 2010, United States Marine Corps Research Project, 2011 Strategic Planning, Reports from the Chairperson, Council Members, and the Executive Director; Unfinished Business; New Business; Announcements; Adjournment.

SUNSHINE ACT MEETING CONTACT: Mark S. Quigley, Director of External Affairs, NCD, 1331 F Street, NW., suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax).

AGENCY MISSION: NCD is an independent federal agency, composed of 15 members appointed by the President, by and with the consent of the U.S. Senate. The purpose of the NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, and that empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society. To carry out this mandate we gather public and stakeholder input, including that received at our public meetings held around the country; review and evaluate federal programs and legislation; and provide the President, Congress and federal agencies with advice and recommendations.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD immediately.

Dated: September 3, 2009.

Michael C. Collins,

Executive Director.

[FR Doc. E9–21989 Filed 9–11–09; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following Astronomy and Astrophysics Advisory Committee (#13883) meeting:

Date and Time: October 15–16, 2009, 8:30 a.m.–5 p.m.

Place: National Science Foundation, Room 375, Stafford I Building, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Craig Foltz, Acting Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4909.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: September 9, 2009.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. E9–22050 Filed 9–11–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298; NRC–2009–0398]

Nebraska Public Power District: Cooper Nuclear Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR), paragraph 50.54(o), and 10 CFR Part 50, Appendix J, Option B, Sections III.A and III.B, for Facility Operating License No. DPR–46, issued to Nebraska Public Power District (NPPD, the licensee), for operation of the Cooper Nuclear Station (CNS), located in Nemaha County, Nebraska. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would permit exclusion of the main steam (MS) pathway leakage contribution (1) from the overall integrated leakage rate Type A test measurement required by Appendix J, Option B, Section III.A, and (2) from the sum of the leakage rates from Type B and Type C test measurements required by Appendix J, Option B, Section III.B.

The proposed action is in accordance with the licensee's application dated October 13, 2008, as supplemented by letters dated April 8, May 29, June 12, and September 1, 2009. The licensee's application included a corresponding license amendment request, which has been evaluated by the NRC staff separately from the exemption request.

The Need for the Proposed Action

Paragraph 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water-cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J specifies the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the primary reactor containment, and of systems and components which penetrate the containment. Option B, Section III.A requires that the overall integrated leak rate not exceed the allowable leakage (La) with margin, as specified in the Technical Specifications (TSs). The overall integrated leak rate, as specified in the 10 CFR Part 50, Appendix J definitions, includes the contribution from MS pathway leakage. The MS pathway includes the leakage from the four MS line penetrations plus the leakage from the MS inboard drain line. By letter dated October 30, 2006, and corresponding License Amendment No. 226, dated October 31, 2006, the NRC previously granted the licensee an exemption for the four MS line penetrations from the requirements of 10 CFR 50.54(o) and 10 CFR 50, Appendix J, Option B, Sections III.A and III.B. By letter dated October 13, 2008, the licensee has requested an exemption from Option B, Section III.A, requirements to permit exclusion of the entire MS pathway leakage (the MS line penetrations and the MS inboard drain line leakage) from the overall integrated leak rate test measurement. Option B, Section III.B of 10 CFR Part 50, Appendix J, requires that the sum of the leakage rates of Type B and Type C local leak rate tests be less than the performance criterion (La) with margin, as specified in the TSs. The licensee's letter also requests an exemption from this requirement, to permit exclusion of the MS pathway contribution to the sum of the Type B and Type C test measurements.

The above-cited requirements of Appendix J require that MS pathway leakage measurements be grouped with the leakage measurements of other containment penetrations when containment leakage tests are performed. These requirements are inconsistent with the design of the CNS and the analytical models used to calculate the radiological consequences of design-basis accidents. At CNS, and similar facilities, the leakage from primary containment penetrations, under accident conditions, is collected and treated by the secondary containment system, or would bypass the secondary containment. However, the leakage from the MS pathway is collected and treated via an Alternative Leakage Treatment (ALT) path having different mitigation characteristics. In performing accident analyses, it is appropriate to group various leakage effluents according to the treatment they receive before being released to the environment (*i.e.,* bypass leakage is grouped, leakage into secondary containment is grouped, and ALT leakage is grouped), with specific limits for each group defined in the TSs. The proposed exemption would permit ALT path leakage to be independently grouped with its unique leakage limits.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the environmental impacts would not be significant.

The details of the staff's safety evaluation will be provided in the exemption and corresponding license amendment that will be issued as part of the letters to the licensee approving the exemption to the regulation and the license amendment.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to land, air, or water resources, including impacts to biota. In addition, there are no known socioeconomic or environmental justice impacts associated with the proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Cooper Nuclear Station dated February 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on March 30, 2009, the staff consulted with the Nebraska State official, Ms. Julia Schmitt of the Office of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 13, 2008, as supplemented by letters dated April 8, May 29, June 12, and September 1, 2009. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 2nd day of September 2009.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–21974 Filed 9–11–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of September 14, 21, 28, October 5, 12, 19, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 14, 2009

There are no meetings scheduled for the week of September 14, 2009.

Week of September 21, 2009—Tentative

Tuesday, September 22, 2009

9:25 a.m.

Affirmation Session (Public Meeting) (Tentative). Final Rule Establishing Criminal Penalties for the Unauthorized Introduction of Weapons into Facilities Designated by the Nuclear Regulatory Commission. (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

9:30 a.m.

Periodic Briefing on New Reactor Issues—Progress in Resolving Inspections, Tests, Analysis, and Acceptance Criteria (ITAAC) Closure (Public Meeting). (Contact: Debby Johnson, 301–415–1415.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of September 28, 2009—Tentative

Wednesday, September 30, 2009

9:30 a.m.

Discussion of Management Issues (Closed—Ex. 2).

Week of October 5, 2009—Tentative

There are no meetings scheduled for the week of October 5, 2009.

Week of October 12, 2009—Tentative

There are no meetings scheduled for the week of October 12, 2009.

Week of October 19, 2009—Tentative

There are no meetings scheduled for the week of October 19, 2009.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: September 9, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–22211 Filed 9–10–09; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an open meeting on September 16, 2009 at 10 a.m., in the Auditorium, Room L–002, and a closed meeting on September 16, 2009 at 11 a.m.

The subject matter of the September 16, 2009 open meeting will be:

The Commission will hear oral argument in an appeal by Rodney R. Schoemann, a Louisiana resident, from the decision of an administrative law judge. The law judge found that Schoemann violated Sections 5(a) and 5(c) of the Securities Act of 1933 in November 2004 by offering and selling the securities of Stinger Systems, Inc.

when no registration statement was filed or in effect with respect to those securities and no exemption from registration was available. The law judge ordered Schoemann to cease and desist from committing or causing any violations or future violations of Sections 5(a) and 5(c) of the Securities Act, and ordered Schoemann to disgorge $967,901 in profits, plus prejudgment interest, from his sales of the securities.

Among the issues likely to be argued are

1. Whether Schoemann's sales of the securities at issue violated the Securities Act; and

2. Whether sanctions should be imposed in the public interest.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the September 16, 2009 closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Other matters relating to enforcement proceedings; and

An opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 9, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–22105 Filed 9–10–09; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60627; File No. SR–Phlx–2009–78]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the FLEX Minimum Size Pilot Program

September 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on September 3, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 to amend its Rule 1079 (FLEX Index, Equity and Currency Options), to amend its Rule 1079 (FLEX Index, Equity and Currency Options), [sic] to extend through September 4, 2010, the Exchange's pilot program that reduced from 250 contracts to 150 contracts the minimum value size for an opening transaction (other than FLEX Quotes responsive to a FLEX Request for Quotes) [5] in any FLEX Equity Option [6] series in which there is no open interest at the time a FLEX Request for Quotes (''RFQ'') is submitted (the ''Pilot Program'').[7]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program through September 4, 2010.

On or about May 15, 2008, the Exchange filed SR–Phlx-2008–35 with the Commission to establish the Pilot Program. The Pilot Program reduced the minimum value size for an opening transaction (other than FLEX Quotes responsive to a FLEX RFQ) in any FLEX Equity Option series in which there is no open interest at the time an RFQ is submitted.[8] The proposed extension of the Pilot Program for opening FLEX option transactions should provide members that use FLEX Equity Options greater flexibility in structuring the terms of such options to better comport with the particular needs of the members and their customers.

Prior to the Pilot Program, Phlx Rule 1079(a)(8)(A) set the minimum opening transaction value size in the case of a FLEX Equity Option in a newly

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] FLEX Quotes responsive to a FLEX Request for Quote (''RFQ'') have different parameters that were not changed by the pilot program proposal. *See* Phlx Rule 1079(a)(8)(C).

[6] FLEX Equity Options are flexible exchange-traded options contracts that overlie equity securities. FLEX Equity Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Equity Options (as also FLEX index options) may have expiration dates within five years. *See* Phlx Rule 1079.

[7] *See* Securities Exchange Act Release No. 57824 (May 15, 2008), 73 FR 29805 (May 22, 2008) (SR–Phlx–2008–35) (notice of filing and immediate effectiveness establishing the Pilot Program).

[8] *See* Securities Exchange Act Release No. 57824 (May 15, 2008), 73 FR 29805 (May 22, 2008) (SR–Phlx–2008–35) (notice of filing and immediate effectiveness establishing the Pilot Program). The filing also modified the minimum value size for an opening transaction in a currently-opened FLEX Equity series (other than FLEX Quotes responsive to a RFQ) to the lesser of 100 contracts or the number of contracts overlying $1 million in the underlying securities. Other options exchanges have established FLEX pilot programs that are similar to the Exchange's. *See, e.g.*, Securities Exchange Act Release No. 57429 (March 4, 2008), 73 FR 13058 (March 11, 2008) (SR–CBOE–2006–36) (approval order).

established series as the lesser of (i) 250 contracts or (ii) the number of contracts overlying $1 million in the underlying securities. Under the Pilot Program, the Exchange reduced the ''250 contracts'' component to ''150 contracts''; the $1 million underlying value component continued to apply unchanged.[9]

The Exchange now proposes to extend the Pilot Program.

Given that FLEX Equity Option transactions can occur in increments of 100 or more contracts in subsequent opening transactions,[10] the Exchange believes it is reasonable to permit the initial series opening transaction size to be 150 contracts (or $1 million in underlying value, whichever is less). The Exchange notes that the opening size requirement for FLEX Equity Options was originally put in place to limit participation in FLEX Equity Options to sophisticated, high net worth investors rather than retail investors.[11] The Exchange believes that the reduction of the minimum value size for opening a series, per the Pilot Program, provides FLEX-participating members and their customers with greater flexibility in structuring the terms of FLEX Equity Options to better suit the FLEX traders' particular needs. The Exchange believes that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions; increased market transparency; and heightened contra-party creditworthiness due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Equity Options.

In support of extending the Pilot Program, the Exchange has submitted to the Commission a FLEX Pilot Program Report (''Report'') detailing the Exchange's experience with the Pilot Program. Specifically, the Report contains data and written analysis regarding: (i) The open interest and trading volume in FLEX Equity Options for which series were opened with a minimum opening size of 150 to 249 contracts and less than $1 million in underlying value; and (ii) analysis on the types of investors that initiated opening FLEX Equity Options transactions (i.e., institutional, high net worth, or retail, if any). The Report was submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

The Exchange believes there is sufficient investor interest and demand in the Pilot Program to warrant its extension. The Exchange believes that, during the time that the Pilot Program has been in operation, it has afforded investors with additional means of managing their risk exposures and carrying out their investment objectives. The Exchange represents that it has the necessary system capacity to continue to support the option series listed under the Pilot Program.

Should the Exchange desire to propose an extension, expansion, or permanent implementation of the Pilot Program, the Exchange would submit, along with a filing proposing any necessary amendments to the Pilot Program, a pilot program Report for the extended period during which the Pilot Program is in effect.[12] The Report, along with any filing to extend or permanently implement the Pilot Program, would be submitted to the Commission at least forty-five days prior to the expiration date of the Pilot Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(5) of the Act[14] 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 extending the Exchange's Pilot Program in respect of FLEX options. The Exchange believes that extension of the Pilot Program will result in a continuing benefit to investors by allowing them additional means to manage their risk exposure and carry out their investment objectives, and will allow the Exchange to further study investor interest in the Pilot Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[17] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[18] The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing, thereby allowing the Exchange to seamlessly continue the Pilot Program in respect of FLEX options.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of

[9] Under the Pilot Program, an opening transaction in a FLEX Equity series in a stock priced at approximately $66.67 or more would reach the $1 million limit before it would reach the contract size limit, *i.e.*, 150 contracts times the multiplier (100) times the stock price ($66.67) equals just over $1 million in underlying value. For a FLEX Equity series in a stock priced at less than $66.67, the 150 contract size limit would apply.

[10] Specifically, for FLEX Equity Options the minimum value size for a transaction in any currently-opened FLEX series is the lesser of 100 contracts or the number of contracts overlying $1 million in the underlying securities; or the lesser of 25 contracts or the remaining size in the case of a closing transaction. Additionally, the minimum value size for a FLEX Quote entered in response to a RFQ in FLEX Equity Options is the lesser of 25 contracts or the remaining size in a closing transaction. *See* Phlx Rules 1079(a)(8)(B)(ii) and 1079(a)(8)(C)(ii).

[11] The existing customer base for FLEX Options includes institutional investors, retail investors, and high net worth individuals.

[12] The report would provide: (i) Data and analysis on the open interest and trading volume in FLEX Equity Options for which series were opened with a minimum opening size of 150 to 249 contracts and less than $1 million in underlying value; and (ii) analysis on the types of investors that initiated opening FLEX Equity Options transactions (*i.e.*, institutional, high net worth, or retail, if any).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 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.

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *See id.*

investors and the public interest because such waiver will allow the Exchange to continue its Pilot Program without interruption in its current form. The Commission notes that the Exchange did not provide a pilot program report to the Commission at least ninety days prior to the expiration date of the Pilot Program as the Exchange had undertaken to do as part of its original proposal.[19] Waiving the operative delay to accommodate an extension of the Pilot Program will provide investors with a continued ability to utilize the lower minimum value size for an opening transaction in a FLEX Equity Option series on Phlx and also will provide the Exchange with additional time to collect data and prepare and submit to the Commission a pilot program report in the event that it seeks to extend or permanently implement the Pilot Program.[20] For these reasons, the Commission designates the proposed rule change as operative upon filing.[21]

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.[22]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx-2009–78 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-2009–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–78 and should be submitted on or before October 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21993 Filed 9–11–09; 8:45 am]

BILLING CODE 8010–01–P

[19] *See* Securities Exchange Act Release No. 57824 (May 15, 2008), 73 FR 29805, 29806 (May 22, 2008) (SR–Phlx–2008–35).

[20] The Commission notes that the Exchange has undertaken in this filing to submit a pilot program report at least forty-five days prior to the expiration date of the Pilot Program.

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78s(b)(3)(C).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60629; File No. SR–CBOE–2009–063]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

September 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 31, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''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 CBOE. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,[1] and Rule 19b–4(f)(2) thereunder,[2] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (i) the monthly access fee for persons granted temporary CBOE membership status (''Temporary Members'') pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (''Rule 3.19.02'') and (ii) the monthly access fee for Interim Trading Permit (''ITP'') holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

(a) Purpose

The current access fee for Temporary Members under Rule 3.19.02[3] and the

[1] 15 U.S.C. 78s(b)(3)(A)(ii).

[2] 17 CFR 240.19b–4(f)(2).

[3] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24,

current access fee for ITP holders under Rule 3.27[4] are both $11,310 per month. Both access fees are currently set at the indicative lease rate (as defined below) for August 2009. The Exchange proposes to adjust both access fees effective at the beginning of September 2009 to be equal to the indicative lease rate for September 2009 (which is $11,287). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be $11,287 per month commencing on September 1, 2009.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate[5] of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.[6] The Exchange determined the indicative lease rate for September 2009 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of September 2009 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of August 2009 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of September 2009.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 with respect to the original Temporary Member access fee.[7] Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–77 with respect to the original ITP access fee.[8]

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act[9] to modify the applicable access fee or the applicable status (*i.e.*, the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may, and likely will, further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(2) of Rule 19b–4[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–063 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–CBOE–2009–063. 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

2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[4] *See* Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR–CBOE–2008–40) for a description of the Interim Trading Permits under Rule 3.27.

[5] Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

[6] The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

[7] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

[8] *See* Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR–CBOE–2008–77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

Section, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m.. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–063 and should be submitted on or before October 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21994 Filed 9–11–09; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 C.F.R. 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0005]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Department of Veterans Affairs/Veterans Benefits Administration (VA/VBA))—Match Number 1008

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that is scheduled to expire on October 8, 2009.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with VA/VBA.

DATES: We will file a report of the subject 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). Renewal of the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 965–0201 or writing to the Deputy Commissioner for Budget, Finance and Management, 800 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Deputy Commissioner for Budget, Finance and Management as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for, and receiving, Federal benefits. Section 7201of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates 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. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: July 2, 2009.

Mary Glenn-Croft,

Deputy Commissioner for Budget, Finance and Management.

Notice of Computer Matching Program, Social Security Administration (SSA) With the Department of Veterans Affairs/Veterans Benefits Administration (VA/VBA)

A. Participating Agencies

SSA and VA/VBA.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions under which VA agrees to disclose VA compensation and pension payment data to us for the purpose of identifying certain Supplemental Security Income and Special Veterans Benefit recipients under titles XVI and VIII of the Social Security Act (Act) respectively, who receive VA administered benefits. The disclosure will also enable us to efficiently implement a Medicare outreach program mandated by section 1144 of title XI of the Act.

C. Authority for Conducting the Matching Program

The legal authority for us to conduct this computer matching is found in sections 1631(e)(1)(B) and 1631(f) of the Act, 42 U.S.C. 1383(e)(1)(B) and 1383(f), section 806(b) of the Act, 42 U.S.C. 1006(b), and section 1144 of the Act, 42 U.S.C. 1320b–14.

The legal authority for VA to disclose information for this computer matching is found in section 1631(f) of the Act, 42 U.S.C. 1383(f).

D. Categories of Records and Individuals Covered by the Matching Program

On the basis of certain identifying information as provided by us to VA, VA will provide us with electronic files containing compensation and pension payment data from its system of records entitled the ''Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA (58VA21/22/28),'' first published at 74 FR 29275 (June 19, 2009). We will match the VA data with SSI/SVB payment information maintained in our system of records entitled ''Supplemental Security Income Record and Special Veterans Benefits (SSA/OASSIS 60–0103).''

E. Inclusive Dates of the Matching Program

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after

publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. E9–22079 Filed 9–11–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Delegation of Authority 327]

Re-Delegation to Maura M. Pally of the Authorities of the Assistant Secretary of State for Educational and Cultural Affairs

By virtue of the authority vested in me as the Under Secretary of State for Public Diplomacy and Public Affairs by law, including by Delegation of Authority No. 234 of October 1, 1999, and the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), and to the extent authorized by law, I hereby delegate to Maura M. Pally the functions and authorities of the Assistant Secretary of State for Educational and Cultural Affairs.

The Secretary of State, the Deputy Secretary of State, the Deputy Secretary of State for Management and Resources, and the Under Secretary of State for Public Diplomacy and Public Affairs may at any time exercise the functions and authorities re-delegated herein. The functions and authorities re-delegated herein may not be further delegated without my approval.

All actions related to the functions and authorities described herein that have been taken by Maura M. Pally prior to the date of this delegation of authority are hereby confirmed and ratified. Such actions shall remain in force as if taken under this delegation of authority, unless or until such actions are rescinded, amended or superseded.

This delegation shall expire upon either the appointment and entry upon duty of an individual to serve as the Assistant Secretary of State for Educational and Cultural Affairs, or the selection and entry upon duty of an individual to serve as the Principal Deputy Assistant Secretary of State for Educational and Cultural Affairs, whichever shall occur first.

This delegation of authority shall be published in the **Federal Register**.

Dated: September 1, 2009.

Judith A. McHale,

Under Secretary for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. E9–22076 Filed 9–11–09; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Intent To Prepare a Supplemental Draft Environmental Impact Statement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this notice to advise that a Supplemental Draft Environmental Impact Statement will be prepared for a proposed highway improvement project on State Trunk Highway 23 in Fond du Lac and Sheboygan Counties, Wisconsin.

FOR FURTHER INFORMATIOIN CONTACT: David D. Platz, FHWA, Suite 8000, 525 Junction Road, Madison, WI 53717–2157; *Telephone:* (608) 829–7509 or Eugene Johnson, Director, Bureau of Equity & Environmental Services, Wisconsin Department of Transportation, P.O. Box 7965; Rm 451; Madison, WI 53707–7965; Telephone (608) 266–8216.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (WisDOT), will prepare a Supplemental Draft Environmental Impact Statement (SEIS) for a capacity expansion on State Trunk Highway 23 in Fond du Lac and Sheboygan Counties. The proposed facility may consist of adding two lanes of roadway adjacent to the existing facility, constructing interchanges and frontage roads, constructing a bicycle pedestrian trail, or a combination there of. The proposed project begins southeast of the City of Fond du Lac, near the intersection of Johnson Street and the USH 151 Bypass of Fond du Lac. Existing STH 23 travels nearly 20 miles east through the Towns of Empire and Forest in Fond du Lac County, and the Towns of Greenbush and Plymouth in Sheboygan County ending near the intersection of CTH P and WIS 23. The completion of such a proposed highway facility on STH 23 would implement the recommendations of the long-term Corridors 2020 State Plan. These recommendations include addressing the facility deficiencies, providing for additional capacity, accommodating local and through traffic, improving safety and operations, providing adequate regional mobility, allowing adequate access to current and future growth/development. The STH 23 Draft Environmental Impact Statement (DEIS) was completed in November 2004 and documents the need for the STH 23 expansion and includes the evaluation of several alternatives. Upon completion of the DEIS, WisDOT met with local public officials and has met often with the public to gather as much input as possible on the project scope. This local coordination and public involvement has developed a scope that includes an extension of the Old Plank Trail to Fond du Lac as well as future interchange locations, including a system to system interchange between USH 151 and STH 23 that will be evaluated in the Supplemental DEIS.

Authority: 23 U.S.C. 315; 49 CFR 1.48

Issued on: September 3, 2009.

David J. Scott,

Field Operations/Major Projects Team Leader, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. E9–21992 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Plenary Meeting, Special Committee 214/EUROCAE: Standards for Air Traffic; Data Communication Services, Working Group 78 (WG–78)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 214, Standards for Air Traffic Data Communication Services.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Special Committee 214, Standards for Air Traffic Data Communication Services.

DATES: The meeting will be held September 21–25, 2009 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at AIRBUS, Sites Clément Ader, Jean-Luc Lagardére, Avenue d'Aéroconstellation, 31700 Blagnac, Toulouse, France.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 214, Standards for Air Traffic Data Communication Services meeting. The agenda will include:

Meeting Objectives

- Acceptance of the following documents to complete further SPR work by Dec 09:
  - First draft of D–TAXI Graphic OSD
  - First draft of 4DTRAD OSD
  - First draft of FLIPINT OSD
  - First draft of D–RVR
  - First draft of D–HXWZ

- Acceptance of the proposed resolution of WP1 Open issues
- Review of Oceanic position paper
- Review ATS functions Section position paper
- Review the ATSA–ITP position paper
- Progress on WP2 OSA & OPA
- Progress on WP2 Material integration into Integrated SPR
- Progress on interoperability material
- Review and update the work plan as required

Agenda

Day 1: Joint Sub-Group Meetings

Morning & Afternoon

- Sub-Groups coordination
- SG meetings

Days 2, 3: SG Comment Resolution Working Sessions

Morning & Afternoon

- WP1 Sub-group:
  - D–TAXI Graphics OSD sub-Group
  - WP1 Open issues sub-group
- WP2 Sub-Group:
  - WP2 OSA & OPA sub-group
  - WP2 material Integration sub-group
- Interop Sub-Group

Day 4: Plenary

- Welcome/Introductions/ Administrative Remarks
  - Election of European Co-Chair
- Approval of the Agenda
- Approval of the Minutes of Plenary 7
  - Review Actions
- Review of the work so far
  - SC–214/WG–78 Work Plan and TORs
  - SC–206/WG–76 Coordination
  - SC–186/WG–51 Coordination
- Sub-Group Progress reports
- Review of Oceanic Position paper
- Review of ATS Function definition Position paper
- Review of ATSA–ITP Position paper
- Subgroups progress reports
- Document Approvals
- Review Committee Plan—Master Schedule
- Review Dates, Location and Agenda for Next Meeting
- Any Other Business (GOLD paper)

Day 5: SGs Meetings

Morning & Afternoon

- Implementation of Plenary agreed actions

Additional Information: All the documents to be reviewed can be found at the website *http://www.faa.gov/go/SC214* under the Plenary 8 folder.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 8, 2009

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–22025 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Plenary Meeting, Special Committee 214/EUROCAE: Standards for Air Traffic; Data Communication Services, Working Group 78 (WG–78)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 214, Standards for Air Traffic Data Communication Services.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Special Committee 214, Standards for Air Traffic Data Communication Services.

DATES: The meeting will be held September 21–25, 2009 from 9 a.m.–5 p.m.

ADDRESS: The meeting will be held at AIRBUS, Sites Clément Ader, Jean-Luc Lagardére, Avenue d'Aéroconstellation, 31700 Blagnac, Toulouse, France.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 214, Standards for Air Traffic Data Communication Services meeting. The agenda will include:

Meeting Objectives

- Acceptance of the following documents to complete further SPR work by Dec 09:
  - First draft of D–TAXI Graphic OSD
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  - First draft of FLIPINT OSD
  - First draft of D–RVR
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Agenda

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Days 2, 3: SG Comment Resolution Working Sessions

Morning & Afternoon

- WP1 Sub-group
  - D–TAXI Graphics OSD sub-Group
  - WP1 Open issues sub-group
- WP2 Sub-Group:
  - WP2 OSA & OPA sub-group
  - WP2 material Integration sub-group
- Interop Sub-Group

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- Welcome/Introductions/ Administrative Remarks
  - Election of European Co-Chair
- Approval of the Agenda
- Approval of the Minutes of Plenary 7
  - Review Actions
- Review of the work so far
  - SC–214/WG–78 Work Plan and TORs
  - SC–206/WG–76 Coordination
  - SC–186/WG–51 Coordination
- Sub-Group Progress reports
- Review of Oceanic Position paper
- Review of ATS Function definition Position paper
- Review of ATSA–ITP Position paper
- Subgroups progress reports
- Document Approvals
- Review Committee Plan—Master Schedule
- Review Dates, Location and Agenda for Next Meeting
- Any Other Business (GOLD paper)

Day 5: SGs Meetings

Morning & Afternoon

- Implementation of Plenary agreed actions

Additional Information: All the documents to be reviewed can be found at the Web site *http://www.faa.gov/go/SC214* under the Plenary 8 folder.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 8, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–22026 Filed 9–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: October 15, 2009, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free number and pass code needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on September 8, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–22145 Filed 9–10–09; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 4, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 14, 2009 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0089.

Type of Review: Extension.

Title: Liquors and Articles from Puerto Rico or the Virgin Islands (TTB REC 5530/3).

Description: The information collection requirements for persons bring non-beverage products into the United States from Puerto Rico and the Virgin Islands are necessary for the verification of claims for drawback of distilled spirts excise taxes paid on such products.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 160 hours.

OMB Number: 1513–0074.

Type of Review: Extension.

Title: Airlines Withdrawing Stock from Customs Custody (TTB REC 5620/2).

Description: Airlines may withdraw tax exempt distilled spirts, wine, and beer from Customs custody for foreign flights. Required record shows amount of spirits and wine withdrawn and flight identification; also has Customs certification; enables TTB to verify that tax is not due; allows spirts and wines to be traced and maintains accountability. Protects tax revenue. The collection of information is contained 27 CFR 28.280 and 28.281.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 2,500 hours.

OMB Number: 1513–0047.

Type of Review: Extension.

Form: TTB F 5110.40.

Title: Distilled Spirts Records (TTB REC 5110/01) and Monthly Report of Production Operations.

Description: The information collected in used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, and plan efficient allocation of field resources audit plant operations, and compilation of statistics for government economic analysis.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 3,600 hours.

OMB Number: 1513–0010.

Type of Review: Extension.

Form: TTB F 5120.29.

Title: Formula and Process for Wine.

Description: TTB F 5120.29 is used to determine the classification of wines for labeling and consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is also used to audit a product.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,200 hours.

OMB Number: 1513–0004.

Type of Review: Extension.

Title: Authorization to Furnish Financial Information and Certificate of Compliance.

Description: The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. TTB F 5030.6 serves as both a customer authorization for TTB to receive information and as the required certification to the financial institution.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 500 hours.

Clearance Officer: Frank Foote (202) 927–9347. Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

OMB Reviewer: Shagufta Ahmed (202) 395–7873. Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–21982 Filed 9–11–09; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 8, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before October 14, 2009 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–0046.
Type of Review: Revision.
Form: 982.
Title: Reduction of Tax Attributes Due to Discharge of Indebtedness (and section 1082 Basis Adjustment).
Description: Internal Revenue Code section 108 allows taxpayers to exclude from gross income amounts attributable to discharge of indebtedness in title 11 cases, insolvency, or qualified farm indebtedness. Code section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data used to verify adjustments to basis of property and reduction of tax attributes.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 7,491 hours.

OMB Number: 1545–0144.
Type of Review: Revision.
Form: 2438.
Title: Undistributed Capital Gains Tax Return.
Description: Form 2438 is used by regulated investment companies to figure capital gains tax on undistributed capital gains designated under IRC section 852(b)3(D). IRS uses this information to determine the correct tax.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 976 hours.

OMB Number: 1545–2005.
Type of Review: Extension.
Title: Restaurant Tips —Attributed Tip Income Program (ATIP).
Description: This revenue procedure sets forth the requirements for participating in the Attributed Tip Income Program (ATIP). ATIP provides benefits to employers and employees similar to those offered under previous tip reporting agreements without requiring one-on-one meetings with the Service to determine tip rates or eligibility.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 6,100 hours.

OMB Number: 1545–1543.
Type of Review: Extension.
Title: Revenue Procedure 97–29 Model Amendments and Prototype Program for SIMPLE IRAs.
Description: The revenue procedure provides guidance to drafters of prototype SIMPLE IRAs on obtaining opinion letter and provides permissive amendments to sponsors of non SIMPLE IRAs.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 25,870 hours.

OMB Number: 1545–1809.
Type of Review: Extension.
Form: 8882.
Title: Credit for Employer-Provided Child Care Facilities and Services.
Description: Qualified employers use Form 8882 to request a credit for employer-provided child care facilities and services. Section 45F provides credit based on costs incurred by an employer in providing childcare facilities and resource and referral services. The credit is 25% of the qualified childcare expenditures plus 10% of the qualified childcare resource and referral expenditures for the tax year, up to a maximum credit of $150,000 per tax year.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 2,459,998 hours.

Clearance Officer: R. Joseph Durbala (202) 622–3634. Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Shagufta Ahmed (202) 395–7873. Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,
Treasury PRA Clearance Officer.

[FR Doc. E9–21983 Filed 9–11–09; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form CT–2

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 CT–2, Employee Representative's Quarterly Railroad Tax Return.

DATES: Written comments should be received on or before November 13, 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: Employee Representative's Quarterly Railroad Tax Return.
OMB Number: 1545–0002.
Form Number: Form CT–2.
Abstract: Employee representatives file Form CT–2 quarterly to report compensation on which railroad retirement taxes are due. The IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT–2 also transmits the tax payment.
Current Actions: Form CT–2 has increased by 7 lines. These lines were added to capture paid preparer's information.
Type of Review: Revision of a currently approved collection.
Affected Public: Individuals or households.
Estimated Number of Respondents: 112.
Estimated Time Per Respondent: 1 hour, 17 minutes.
Estimated Total Annual Burden Hours: 145.

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 September 2, 2009.

R. Joseph Durbala,

IRS Reports Clearance Office.

[FR Doc. E9–21985 Filed 9–11–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of two additional entities and six additional individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Secretary of the Treasury of the two entities and six individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on September 3, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property subject to U.S. jurisdiction which are owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On September 3, 2009, OFAC designated an additional two entities and six individuals whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees follows:

Entities

1. INSUMOS ECOLOGICOS DE ORIENTE, S.A. DE C.V., Jose I Solorzano 746, Colonia Jardines Alcalde, Guadalajara, Jalisco 44290, Mexico; R.F.C. IEO0806245A3 (Mexico); (ENTITY) [SDNTK].
2. ALIMENTOS SELECTOS SAN FRANCISCO S.P.R. DE R.L., Chicharo 2680, Colonia Mercado de Abastos, Guadalajara, Jalisco 44530, Mexico; Rinconada de la Floresta 1243, Colonia Rinconada del Bosque, Guadalajara, Jalisco 44530, Mexico; R.F.C. ASS040427676 (Mexico); (ENTITY) [SDNTK].

Individuals

1. BRAMBILA MARTINEZ, Aurora, c/o PRODUCTOS FARMACEUTICOS COLLINS, S.A. DE C.V., Zapopan, Jalisco, Mexico; c/o INSUMOS ECOLOGICOS DEL ORIENTE, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Avenida Obregon 180, Colonia Puente Grande, Jalisco, Mexico; DOB 15 Dec 1965; POB Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. BAMA651215MJCRRR05 (Mexico); C.U.R.P. BAMA651215MMCRRR04 (Mexico); R.F.C. BAMA651215DI7 (Mexico); Contadora Publica; (INDIVIDUAL) [SDNTK].
2. ESPINOSA DE LOS MONTEROS RICO, Felipe De Jesus (a.k.a. ESPINOSA DE LOS RICO, Felipe de Jesus; a.k.a. ESPINOZA DE LOS MONTEROS, Felipe); c/o PRODUCTOS FARMACEUTICOS COLLINS, S.A. DE C.V., Zapopan, Jalisco, Mexico; c/o INSUMOS ECOLOGICOS DEL ORIENTE, S.A. DE C.V., Guadalajara, Jalisco, Mexico; c/o SALUD NATURAL MEXICANA, S.A. DE C.V., Zapopan, Jalisco, Mexico; Mexico; Avenida Naciones Unidas 5989, Cond. Ibiza Casa 34, Zapopan, Jalisco 45110, Mexico; DOB 15 Jun 1962; Alt. DOB 15 Jan 1962; POB Mexico City; Citizen Mexico; Nationality Mexico; Passport 00140030868 (Mexico); (INDIVIDUAL) [SDNTK].
3. DIAZ CASTRO, Maria Teresa (a.k.a. DIAZ DE TIRADO, Maria Teresa); c/o PRODUCTOS FARMACEUTICOS COLLINS, S.A. DE C.V., Zapopan, Jalisco, Mexico; c/o INSUMOS ECOLOGICOS DEL ORIENTE, S.A. DE C.V., Guadalajara, Jalisco, Mexico; DOB 23 Jan 1948; POB Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. DICT480123MSLZSR05 (Mexico); R.F.C. DICT480123I37 (Mexico); (INDIVIDUAL) [SDNTK].
4. TIRADO DIAZ, Maria Teresa, c/o ALIMENTOS SELECTOS SAN FRANCISCO S.P.R. DE R.L., Guadalajara, Jalisco, Mexico; Alvaro Obregon 250, Colonia Agua Blanca Sur, Zapopan, Jalisco 45235, Mexico; DOB 08 Dec 1976; POB Mexico; Citizen Mexico; Nationality Mexico; Electoral Registry No. TRDZTR76120814M700 (Mexico) issued: 1997; (INDIVIDUAL) [SDNTK].
5. TIRADO DIAZ, Baltazar, c/o ALIMENTOS SELECTOS SAN FRANCISCO S.P.R. DE R.L., Guadalajara, Jalisco, Mexico; c/o PRODUCTOS FARMACEUTICOS COLLINS, S.A. DE C.V., Zapopan, Jalisco, Mexico; DOB 27 Aug 1967; POB Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. TIDB670827HJCRZL07 (Mexico); (INDIVIDUAL) [SDNTK].
6. TIRADO DIAZ, Liliana Guadalupe, c/o ALIMENTOS SELECTOS SAN

FRANCISCO S.P.R. DE R.L., Guadalajara, Jalisco, Mexico; DOB 23 Jul 1966; POB Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. TIDL660723MJCRZL07 (Mexico); (INDIVIDUAL) [SDNTK].

Dated: September 3, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–21984 Filed 9–11–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0649]

Proposed Information Collection (National Registry of Veterans With Amyotrophic Lateral Sclerosis); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), 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 maintain a national registry on veterans diagnosed with amyotrophic lateral sclerosis (ALS).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 13, 2009.

ADDRESSES: Submit written comments on the collection of information through the 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: *http://mary.stout@va.gov*. Please refer to ''OMB Control No. 2900–0649 in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout at (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.

Titles:

a. ALS Registry Screening Form, VA Form, 10–21047.

b. Biannual Telephone National Registry of Veterans with ALS, VA Form 10–21047a.

c. Verbal Informed Consent VIA Telephone, National Registry of Veterans with ALS, VA Form 10–21047b.

OMB Control Number: 2900–0649.

Type of Review: Extension of a currently approved collection.

Abstract: ALS is a disease of high priority to the Department of Veterans Affairs because of ongoing concerns about the health of veterans who served in the Gulf War. The creation of the registry will have significance both for VA and for the larger U.S. society in understanding the natural history of ALS. It will provide VA with crucial epidemiological data on the current population of veterans with ALS, as well as the ongoing identification of new cases. The data will help VA to understand how veterans are affected by ALS and may assist with early identification of new ALS clusters. This registry will provide a mechanism for informing veterans with ALS of new clinical drug trials and other studies.

Affected Public: Individuals or households.

Estimated Annual Burden: 882.

Estimated Average Burden per Respondent: 29 minutes.

Frequency of Response: Semi-annually.

Estimated Number of Respondents: 1,808.

Dated: September 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–21959 Filed 9–11–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (21–526c)]

Pre-Discharge Compensation Claim; Correction

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), published two collection of information notices in the **Federal Register** announcing an opportunity for public comment on information collection requirements. Each notice solicited comments on the information required for service members to participate in the discharge claims program. Both notices contained a typographical error in the VA form number referenced and the OMB control number. This document corrects those errors in each notice.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at 202–461–7485.

Correction

In FR Doc. E9–12301, published on May 26, 2009, at 74 FR 24902, make the following corrections. On page 24902, in the third column, at the end of ''Title: Pre-Discharge Compensation Claim, VA Form 21–0842'' remove ''21–0842'' and add, in its place, ''21–526c'', and at the end of ''OMB Control Number: 2900—New (21–0842)'', remove ''(21–0842)'' and add, in its place ''(21–526c)''.

In FR Doc E9–18627, published on August 4, 2009, at 74 FR 38684, make the following corrections. On page 38684, in the second column, at the end of ''Title: Pre-Discharge Compensation Claim, VA Form 21–0842'' remove ''21–0842'' and add, in it place, ''21–526c'', and at the end of ''OMB Control Number: 2900—New (21–0842)'' remove ''(21–0842)'' and add, in its place ''(21–526c)''.

Approved: September 8, 2009.

William F. Russo,

Director of Regulations Management.

[FR Doc. E9–22044 Filed 9–11–09; 8:45 am]

BILLING CODE P

Federal Register

Monday,
September 14, 2009

Part II

The President

Proclamation 8413—Patriot Day and National Day of Service and Remembrance, 2009

Federal Register
Vol. 74, No. 176
Monday, September 14, 2009

Presidential Documents

Title 3—

The President

Proclamation 8413 of September 10, 2009

Patriot Day and National Day of Service and Remembrance, 2009

By the President of the United States of America

A Proclamation

Through the twisted steel of the twin towers of the World Trade Center, the scarred walls of the Pentagon, and the smoky wreckage in a field in southwest Pennsylvania, the patriotism and resiliency of the American people shone brightly on September 11, 2001. We stood as one people, united in our common humanity and shared sorrow. We grieved for those who perished and remembered what brought us together as Americans.

Today, we honor the lives we lost 8 years ago. On a bright September day, innocent men, women, and children boarded planes and set off for work as they had so many times before. Unthinkable acts of terrorism brought tragedy, destruction, pain, and loss for people across our Nation and the world.

As we pay tribute to loved ones, friends, fellow citizens, and all who died, we reaffirm our commitment to the ideas and ideals that united Americans in the aftermath of the attacks. We must apprehend all those who perpetrated these heinous crimes, seek justice for those who were killed, and defend against all threats to our national security. We must also recommit ourselves to our founding principles. September 11 reminds us that our fate as individuals is tied to that of our Nation. Our democracy is strengthened when we uphold the freedoms upon which our Nation was built: equality, justice, liberty, and democracy. These values exemplify the patriotism and sacrifice we commemorate today.

In that same spirit of patriotism, I call upon all Americans to join in service and honor the lives we lost, the heroes who responded in our hour of need, and the brave men and women in uniform who continue to protect our country at home and abroad. In April, I was proud to sign the bipartisan Edward M. Kennedy Serve America Act, which recognizes September 11 as a National Day of Service and Remembrance. Originated by the family members of those who lost loved ones on 9/11, the National Day of Service and Remembrance is an opportunity to salute the heroes of 9/11, recapture the spirit of unity and compassion that inspired our Nation following the attacks, and rededicate ourselves to sustained service to our communities.

Throughout the summer, people of all ages and backgrounds came together to lend a helping hand in their communities through United We Serve. As this summer of service draws to an end, we renew the call to engage in meaningful service activities and stay engaged with those projects throughout the year. Working together, we can usher in a new era in which volunteering and service is a way of life for all Americans. Deriving strength from tragedy, we can write the next great chapter in our Nation's history and ensure that future generations continue to enjoy the promise of America.

By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has designated September 11 of each year as Patriot Day, and by Public Law 111–13, approved April 21, 2009, has requested the

observance of September 11 as an annually recognized National Day of Service and Remembrance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 11, 2009, as Patriot Day and National Day of Service and Remembrance. I call upon all departments, agencies, and instrumentalities of the United States to display the flag of the United States at half-staff on Patriot Day and National Day of Service and Remembrance in honor of the individuals who lost their lives as a result of the terrorist attacks against the United States that occurred on September 11, 2001. I invite the Governors of the United States and the Commonwealth of Puerto Rico and interested organizations and individuals to join in this observance. I call upon the people of the United States to participate in community service in honor of those our Nation lost, to observe this day with other ceremonies and activities, including remembrance services, and to observe a moment of silence beginning at 8:46 a.m. eastern daylight time to honor the innocent victims who perished as a result of the terrorist attacks of September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of September, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–22262
Filed 9–11–09; 11:15 am]
Billing code 3195–W9–P

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H.R. 774/P.L. 111–50

To designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the "Geraldine Ferraro Post Office Building". (Aug. 19, 2009; 123 Stat. 1979)

H.R. 987/P.L. 111–51

To designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the "John Scott Challis, Jr. Post Office". (Aug. 19, 2009; 123 Stat. 1980)

H.R. 1271/P.L. 111–52

To designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the "Elijah Pat Larkins Post Office Building". (Aug. 19, 2009; 123 Stat. 1981)

H.R. 1275/P.L. 111–53

Utah Recreational Land Exchange Act of 2009 (Aug. 19, 2009; 123 Stat. 1982)

H.R. 1397/P.L. 111–54

To designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the "Caroline O'Day Post Office Building". (Aug. 19, 2009; 123 Stat. 1989)

H.R. 2090/P.L. 111–55

To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the "Frederic Remington Post Office Building". (Aug. 19, 2009; 123 Stat. 1990)

H.R. 2162/P.L. 111–56

To designate the facility of the United States Postal Service located at 123 11th Avenue South in Nampa, Idaho, as the "Herbert A Littleton Postal Station". (Aug. 19, 2009; 123 Stat. 1991)

H.R. 2325/P.L. 111–57

To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the "Laredo Veterans Post Office". (Aug. 19, 2009; 123 Stat. 1992)

H.R. 2422/P.L. 111–58

To designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the "Kile G. West Post Office Building". (Aug. 19, 2009; 123 Stat. 1993)

H.R. 2470/P.L. 111–59

To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the "Lieutenant Commander Roy H. Boehm Post Office Building". (Aug. 19, 2009; 123 Stat. 1994)

H.R. 2938/P.L. 111–60

To extend the deadline for commencement of construction of a hydroelectric project. (Aug. 19, 2009; 123 Stat. 1995)

H.J. Res. 44/P.L. 111–61

Recognizing the service, sacrifice, honor, and professionalism of the Noncommissioned Officers of the United States Army. (Aug. 19, 2009; 123 Stat. 1996)

S.J. Res. 19/P.L. 111–62

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Aug. 19, 2009; 123 Stat. 1998)

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