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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, October 20, 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.

DEPARTMENT OF ENERGY

10 CFR Part 1021

Online Posting of Certain DOE Categorical Exclusion Determinations; Policy Statement

AGENCY: Department of Energy.

ACTION: Policy statement.

SUMMARY: To further transparency and openness in its implementation of the National Environmental Policy Act (NEPA), the Department of Energy (DOE) has established a new policy with regard to the online posting of certain categorical exclusion determinations. Under the new policy, each Program and Field Office (including the National Nuclear Security Administration and the Power Marketing Administrations) will document and post online all categorical exclusion determinations involving classes of actions listed in Appendix B to Subpart D of the Department's NEPA regulations, 10 CFR Part 1021. Posted categorical exclusion determinations shall not disclose classified, confidential, or other information that DOE otherwise would not disclose pursuant to the Freedom of Information Act (5 U.S.C. Part 552). Generally, each Program and Field Office will post categorical exclusion determinations on its Web site; where this is not feasible, the Office of NEPA Policy and Compliance will post categorical exclusions on the DOE NEPA Web site (*http://www.gc.energy.gov/nepa*).

DATES: The effective date of the policy is November 2, 2009.

FOR FURTHER INFORMATION CONTACT: For general information on the policy, contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; e-mail: *askNEPA@hq.doe.gov;* telephone: 202–586–4600; leave a message at 800–472–2756; or fax: 202–586–7031.

SUPPLEMENTARY INFORMATION:

Categorical exclusions are classes of Departmental actions that DOE has, by regulation, determined do not individually or cumulatively have a significant effect on the environment and for which, therefore, neither an environmental impact statement nor an environmental assessment is normally required. Under DOE's NEPA regulations (10 CFR Part 1021), absent any extraordinary circumstances related to the proposal that may affect the significance of its environmental effects, a proposed activity can be categorically excluded from further NEPA review if it falls within any of the ''general'' agency classes of action (such as routine administrative, financial, and personnel actions) listed in Appendix A of Subpart D or ''specific'' agency actions (involving, for example, construction of bench-scale research projects or actions to promote energy efficiency) listed in Appendix B.

NEPA Compliance Officers designated for DOE's Program and Field Offices determine whether particular proposed actions fit within the defined categorical exclusions. Under the new policy announced in ''NEPA Process Transparency and Openness'' (October 2, 2009, memorandum from Deputy Secretary Daniel B. Poneman to Heads of Departmental Elements), each Program and Field Office (including the National Nuclear Security Administration and the Power Marketing Administrations) will document and post online all categorical exclusion determinations involving classes of actions listed in Appendix B. (This policy does not require posting of categorical exclusion determinations involving classes of actions listed in Appendix A.) Posted categorical exclusion determinations shall not disclose classified, confidential, or other information that DOE otherwise would not disclose pursuant to the Freedom of Information Act (5 U.S.C. 552). Generally, each Program and Field Office will post categorical exclusion determinations on its Web site; where this is not feasible, the Office of NEPA Policy and Compliance will post categorical exclusion determinations on the DOE NEPA Web site (*http://www.gc.energy.gov/nepa*). Regardless of where the categorical exclusion determination is initially posted, DOE's NEPA Web site will include links to published categorical exclusion determinations.

Neither the Council on Environmental Quality's NEPA regulations (40 CFR Parts 1500–1508) nor DOE's NEPA regulations require that categorical exclusion determinations be in writing or that the public be informed of categorical exclusion determinations. Nevertheless, DOE finds it appropriate to do so. Posting categorical exclusion determinations online is consistent with the spirit of President Obama's memorandum on ''Transparency and Open Government,'' issued in the very first hours of his presidency on January 21, 2009, which announced his commitment to creating an unprecedented level of openness in Government. The President called on Federal agency heads to make information about agency operations and decisions available to the public online, in a form that is easy to find and use, so as to encourage transparency, participation, and collaboration.

Similarly, Secretary of Energy Steven Chu, in his memorandum on the Freedom of Information Act (June 5, 2009), stated that DOE should use modern technology to inform the public about DOE operations and take affirmative steps to post information online in a systematic way. Such openness is especially important when the information relates to the Department's compliance with NEPA, as one of the primary purposes of that statute is to inform the public concerning the environmental implications of government decisions.

Issued in Washington, DC, on October 2, 2009.

Scott Blake Harris,

General Counsel, U.S. Department of Energy.

[FR Doc. E9–24220 Filed 10–8–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0512; Airspace Docket No. 09–AGL–9]

Amendment of Class E Airspace; Platteville, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Platteville, WI. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Platteville Municipal Airport, Platteville, WI. This action also reflects the name change of the airport from Grant County Airport and updates the geographic coordinates to coincide with the FAAs National Aeronautical Charting Office. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Platteville Municipal Airport.

DATES: 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On July 27, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Platteville, WI, adding additional controlled airspace extending upward from 700 feet above the surface, at Platteville Municipal Airport, Platteville, WI. (74 FR 36971, Docket No. FAA–2009–0512). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface at Platteville Municipal Airport, Platteville, WI, for the safety and management of IFR operations at the airport. This action also reflects the name change of the airport from Grant County Airport and updates the geographic coordinates to coincide with the FAAs National Aeronautical Charting Office.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it adds additional controlled airspace at Platteville Municipal Airport, Platteville, WI.

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 14 CFR 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 Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

AGL WI E5 Platteville, WI [Amended]

Platteville Municipal Airport, WI
(Lat. 42°41′22″ N., long. 90°26′40″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Platteville Municipal Airport and within 4 miles each side of the 145° bearing from the airport extending from the 7.4-mile radius to 10.2 miles southeast of the airport.

* * * * *

Issued in Fort Worth, Texas, on September 21, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–24226 Filed 10–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0617; Airspace Docket No. 09–AWP–5]

Establishment of Class E Airspace; Little River, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Little River, CA. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Little River Airport, Little River, CA. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV (GPS) SIAP at Little River Airport, Little River, CA.

DATES: *Effective Date:* 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On July 30, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Little River, CA (74 FR 37970). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Little River, CA. Controlled airspace extending upward from 700 feet above the surface is necessary to accommodate IFR aircraft executing a new RNAV (GPS) approach procedure at Little River Airport, Little River, CA.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses 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 controlled airspace at Little River Airport, Little River, CA.

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 14 CFR 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 the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

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

* * * * *

AWP CA E5 Little River, CA [New]

Little River Airport, CA

(Lat. 39°15′43″ N., long. 123°45′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Little River Airport.

* * * * *

Issued in Seattle, Washington, on September 25, 2009.

Robert E. Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–24166 Filed 10–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0349; Airspace Docket No. 09–ANM–6]

Modification of Class E Airspace; Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will modify Class E airspace at Pueblo, CO. Additional controlled airspace is necessary to facilitate vectoring of Instrument Flight Rules (IFR) traffic from en route airspace to Pueblo Memorial Airport, CO. The FAA is taking this action to enhance the safety and management of aircraft operations at Pueblo Memorial Airport, CO.

DATES: *Effective Date:* 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On August 5, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at Pueblo, CO, (74 FR 39002). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace at Pueblo, CO. Additional controlled airspace is necessary to accommodate IFR aircraft from en route airspace to Pueblo Memorial Airport, CO.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses 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 additional controlled airspace at Pueblo Memorial Airport, CO.

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 amends14 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 14 CFR 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 the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

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

* * * * *

ANM CO E5 Pueblo, CO [Modified]

Pueblo Memorial Airport, CO
(Lat. 38°17′21″ N., long. 104°29′48″ W.)

That airspace extending upward from 700 feet above the surface within 21.8-mile radius of the Pueblo Memorial Airport, and within the 28.8-mile radius of Pueblo Memorial Airport clockwise between the 070° and 133° bearing from the airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 38°30′00″ N., on the east by V–169, on the south by V–210, on the west by a line from lat. 37°38′00″ N., long. 105°00′02″ W.; to lat. 38°09′25″ N., long. 105°08′06″ W.; to lat. 38°05′51″ N., long. 105°30′49″ W.; to lat. 38°10′00″ N., long. 105°33′02″ W.; to lat. 38°30′00″ N., long. 105°33′02″ W.; that airspace extending upward from 13,700 feet MSL bounded by a line beginning at lat. 38°09′25″ N., long. 105°08′06″ W.; to lat. 37°38′00″ N., long. 105°00′02″ W.; to lat. 37°34′00″ N., long. 105°12′02″ W.; to lat. 38°05′51″ N., long. 105°30′49″ W.; thence to point of beginning, excluding that airspace within Federal airways and the Colorado Springs, CO, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on September 25, 2009.

Robert E. Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–24168 Filed 10–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2006–25709; Amendment No. 93–92]

RIN 2120–AJ49

Congestion Management Rule for LaGuardia Airport

AGENCY: Federal Aviation Administration (FAA).

ACTION: Final rule; rescission.

SUMMARY: The FAA is rescinding the final rule *Congestion Management Rule for LaGuardia Airport.* The final rule established procedures to address congestion in the New York City area by assigning slots at LaGuardia Airport (LaGuardia), assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum usage, requiring reservations for unscheduled operations, and withdrawal for operational need. The rule was scheduled to sunset in ten years.

DATES: *Effective Date:* October 9, 2009.

FOR FURTHER INFORMATION CONTACT: For questions concerning this rulemaking, contact: Molly W. Smith, Office of Aviation Policy and Plans, APO–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3275; e-mail *molly.w.smith@faa.gov.* For legal questions concerning this rulemaking, contact: Rebecca MacPherson, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073; e-mail *rebecca.macpherson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA has broad authority under 49 U.S.C. 40103 to regulate the use of the navigable airspace of the United States. This section authorizes the FAA to develop plans and policy for the use of navigable airspace and to assign the use that the FAA deems necessary for its safe and efficient utilization. It further directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

I. Background

The final rule *Congestion Management Rule for LaGuardia Airport* was published in the **Federal Register** on October 10, 2008 (73 FR 60574) (2008 final rule). The final rule established procedures to address congestion in the New York City area by assigning slots for scheduled services at LaGuardia Airport (LaGuardia), assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum slot usage, withdrawal of slots for operational need, and requiring reservations for unscheduled operations. The rule was scheduled to sunset in ten years and added to the Code of Federal Regulations December 9, 2008. The rulemaking was highly controversial. The final rule was challenged by several parties before it could take effect. On December 8, 2008, the United States Court of Appeals for the District of Columbia Circuit stayed the rule. On January 22, 2009, the ATA requested the Secretary of Transportation, Ray LaHood, withdraw

the final rule in light of the court's stay. While the regulations were incorporated into the Code of Federal Regulations, due to the courts ruling, they had no force and effect.

On March 11, 2009, the President signed Public Law 111–8, Omnibus Appropriations Act, 2009. That legislation provides several departments within the executive branch, including the Department of Transportation, with the funds to operate until the end of this fiscal year. That legislation also contains a provision in Division I, section 115 that prohibits the Secretary of Transportation from promulgating regulations or taking any action regarding the scheduling of airline operations that involve auctioning rights or permission to conduct airline operations at such an airport or withdrawing a right or permission to conduct operations at such an airport (except when the withdrawal is for operational reasons or pursuant to the terms or conditions of such operating right or permission). The prohibition is limited to this fiscal year.

At present, operations at LaGuardia remain limited by order at 71 scheduled operations and three unscheduled operations per hour until October 2009.[1] The FAA published a proposal on June 17, 2009 to extend this order until October 2010 while the agency considers its options with regard to managing congestion at the airport on a longer-term basis (74 FR 28772). Options under consideration would provide a means for carriers to either commence or expand operations at the airport, thereby introducing more competition and service options to benefit the traveling public.

On May 14, 2009 the FAA published a notice proposing to rescind the 2008 final rule citing the impact of the Omnibus Appropriations Act on the rule and the state of the economy in general. The comment period closed June 15, 2009. The FAA received five sets of comments, all of which supported rescission of the rule.

For the reasons stated in the NPRM, the FAA has decided to rescind the 2008 final rule effective immediately. The FAA has determined that good cause exists for implementing this rule immediately. As discussed above, the rule has been stayed by court action and has not been implemented. Accordingly, no further action is required by the regulated parties and delaying the effective date serves no useful purpose. The agency will consider its options with regard to managing congestion at the airport in ways that provide a means for carriers either to commence or expand operations at the airport in future rulemaking.

II. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 4 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

The FAA conducted all of these analyses when it originally issued the 2008 final rule. The agency has determined the rescission does not require any further economic analysis. Practically speaking, due to the rescission, the status quo remains in effect, and neither costs nor benefits anticipated by the final rule will accrue. Likewise, the paperwork burden anticipated under the 2008 final rule will not be imposed on any parties. The FAA has already determined that the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Rescission of the 2008 final rule likewise imposes no such burden. As the rescission of the rule does not impose any standard on any party, the FAA has assessed the potential effect of this rescission and determined that it will impose no costs on international entities and thus have a no trade impact. Nor will the rescission impose a Federal mandate that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, and the requirements of Title II of the Unfunded Mandate Reform Act of 1995 do not apply.

The rescission of the 2008 final rule is a ''significant regulatory action'' under Executive Order 12866 and is ''significant'' as defined in DOT's Regulatory Policies and Procedures. Accordingly, it has been reviewed by DOT and OMB.

Executive Order 13132, Federalism

The FAA has analyzed this rescission under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action 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, and, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' identifies FAA actions that are normally categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances The FAA previously determined that the final rule qualified for the categorical exclusions identified in paragraph 312d ''Issuance of regulatory documents (*e.g.,* Notices of Proposed Rulemaking and issuance of Final Rules) covering administration or procedural requirements (does not include Air Traffic procedures; specific Air traffic procedures that are categorically excluded are identified under paragraph 311 of this Order)'' and paragraph 312f, ''Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment.'' It has further been determined that no extraordinary circumstances exist that may cause a significant impact and therefore no further environmental review is required. The FAA documented this categorical exclusion determination. A copy of the determination and underlying documents has been included in the Docket for the rule. The FAA has determined that the rescission of the 2008 final rule also qualifies for a categorical exclusion since it will have no impact on the environment.

[1] *Operating Limitations at New York LaGuardia Airport* (LaGuardia Order), December 27, 2006 (71 FR 77854), as amended November 8, 2007 (72 FR 63224), August 19, 2008 (73 FR 48248), January 8, 2009 (74 FR 845), and January 15, 2009 (74 FR 2646).

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this rescission under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order because while a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

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

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

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

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

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

You may access all documents the FAA considered in developing this rescission from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (air), Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 93—SPECIAL AIR TRAFFIC RULES

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

Subpart C—[Removed and Reserved]

■ 2. Remove and reserve Subpart C of Part 93.

Issued in Washington, DC, on October 1, 2009.

J. Randolph Babbitt,

Administrator.

[FR Doc. E9–24232 Filed 10–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2008–0517; Notice No. 93–93]

RIN 2120–AJ48

Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA).

ACTION: Final rule; rescission.

SUMMARY: The FAA is rescinding the final rule *Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport.* The final rule established procedures to address congestion in the New York City area by assigning slots for scheduled services at John F. Kennedy (JFK) and Newark Liberty (Newark) International Airports, assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum usage, requiring reservations for unscheduled operations, and withdrawal for operational need. The rule was scheduled to sunset in ten years.

DATES: *Effective Date:* October 9, 2009.

FOR FURTHER INFORMATION CONTACT: For questions concerning this rulemaking, contact: Molly W. Smith, Office of Aviation Policy and Plans, APO–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3275; e-mail *molly.w.smith@faa.gov*. For legal questions concerning this rulemaking, contact: Rebecca MacPherson, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073; e-mail *rebecca.macpherson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA has broad authority under 49 U.S.C. 40103 to regulate the use of the navigable airspace of the United States. This section authorizes the FAA to develop plans and policy for the use of navigable airspace and to assign the use that the FAA deems necessary for its safe and efficient utilization. It further directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of thenavigable airspace.

I. Background

The final rule *Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport* was published in the **Federal Register** on October 10, 2008 (73 FR 60544) (2008 final rule). The 2008 final rule established procedures to address congestion in the New York City area by assigning slots at John F. Kennedy (JFK) and Newark Liberty (Newark) International Airports, assigning to existing operators the majority of slots at the airports, and creating a market by annually auctioning off a limited number of slots in each of the first five years of the rule. The final rule also contained provisions for minimum slot usage, withdrawal of slots for operational need, and requiring reservations for unscheduled operations. The rule was scheduled to sunset in ten years and added to the Code of Federal Regulations December 9, 2008. The rulemaking was highly controversial. The final rule was challenged by several parties before it could take effect. On December 8, 2008, the United States Court of Appeals for the District of Columbia Circuit stayed the rule. On January 22, 2009, the ATA requested the Secretary of Transportation, Ray LaHood, withdraw the final rule in light of the court's stay. While the regulations were incorporated into the Code of Federal Regulations, due to the courts ruling, they had no force and effect.

On March 11, 2009, the President signed Public Law 111–8, Omnibus Appropriations Act, 2009. That legislation provides several departments within the executive branch, including the Department of Transportation, with the funds to operate until the end of this fiscal year. That legislation also contains a provision in Division I, section 115 that prohibits the Secretary of Transportation from promulgating regulations or taking any action regarding the scheduling of airline operations that involve auctioning rights or permission to conduct airline operations at such an airport or withdrawing a right or permission to conduct operations at such an airport (except when the withdrawal is for operational reasons or pursuant to the

terms or conditions of such operating right or permission). The prohibition is limited to this fiscal year.

At present, both airports remain limited by order at 81 scheduled operations per hour until October 2009. *Order Limiting Scheduled Operations at John F. Kennedy International Airport* (73 FR 3519 (Jan. 18, 2008), as amended 73 FR 8737 (Feb. 14, 2008)); *Order Limiting Scheduled Operations at Newark Liberty International Airport* (73 FR 29550 (May 21, 2008)).

On May 14, 2009 the FAA published a notice proposing to rescind the 2008 final rule citing the impact of the Omnibus Appropriations Act on the rule and the state of the economy in general. The comment period closed June 15, 2009. The FAA received six sets of comments, all of which supported rescission of the rule.

For the reasons stated in the NPRM, the FAA has decided to rescind the 2008 final rule effective immediately. The FAA has determined that good cause exists for implementing this rule immediately. As discussed above, the rule has been stayed by court action and has not been implemented. Accordingly, no further action is required by the regulated parties and delaying the effective date serves no useful purpose. The agency will consider its options with regard to managing congestion at the airport in ways that provide a means for carriers either to commence or expand operations at the airport in future rulemaking.

In order to prevent over-scheduling at JFK and Newark while the agency considers alternative congestion management options the FAA has published orders to show cause proposing to extend the existing orders until October 2010. 74 FR 27059 (June 5, 2009); 74 FR 27060 (June 5, 2009).

II. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 4 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

The FAA conducted all of these analyses when it originally issued the 2008 final rule. The agency has determined the rescission does not require any further economic analysis. Practically speaking, due to the rescission, the status quo remains in effect, and neither costs nor benefits anticipated by the final rule will accrue. Likewise, the paperwork burden anticipated under the rule will not be imposed on any parties. The FAA has already determined that the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Rescission of the 2008 final rule likewise imposes no such burden. As the rescission of the 2008 final rule does not impose any standard on any party, the FAA has assessed the potential effect of this rescission and determined that it will impose no costs on international entities and thus have a no trade impact. Nor will the rescission impose a Federal mandate that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, and the requirements of Title II of the Unfunded Mandate Reform Act of 1995 do not apply.

The rescission of the 2008 final rule is a ''significant regulatory action'' under Executive Order 12866 and is ''significant'' as defined in DOT's Regulatory Policies and Procedures. Accordingly, it has been reviewed by DOT and OMB.

Executive Order 13132, Federalism

The FAA has analyzed this rescission under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action 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, and, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' identifies FAA actions that are normally categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances The FAA previously determined that the final rule qualified for the categorical exclusions identified in paragraph 312d ''Issuance of regulatory documents (*e.g.,* Notices of Proposed Rulemaking and issuance of Final Rules) covering administration or procedural requirements (does not include Air Traffic procedures; specific Air traffic procedures that are categorically excluded are identified under paragraph 311 of this Order)'' and paragraph 312f, ''Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment.'' It has further been determined that no extraordinary circumstances exist that may cause a significant impact and therefore no further environmental review is required. The FAA documented this categorical exclusion determination. A copy of the determination and underlying documents has been included in the Docket for the rule. The FAA has determined that the rescission of the 2008 final rule also qualifies for a categorical exclusion since it will have no impact on the environment.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this rescission under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order because while a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

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

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

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

You may access all documents the FAA considered in developing this resission from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (air), Recordkeeping and reporting requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 93—SPECIAL AIR TRAFFIC RULES

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

Subpart N—[Removed and Reserved]

■ 2. Remove and reserve Subpart N of Part 93.

Issued in Washington, DC, on October 1, 2009.

J. Randolph Babbitt,

Administrator.

[FR Doc. E9–24235 Filed 10–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2009–N–0119]

Medical Devices; Immunology and Microbiology Devices; Classification of Respiratory Viral Panel Multiplex Nucleic Acid Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the classification of the respiratory viral panel multiplex nucleic acid assay into class II (special controls). The special controls that will apply to the device are three guidance documents entitled: ''Class II Special Controls Guidance Document: Respiratory Viral Panel Multiplex Nucleic Acid Assay,'' as applicable, ''Class II Special Controls Guidance Document: Testing for Human Metapneumovirus (hMPV) Using Nucleic Acid Assays,'' and as applicable,''Class II Special Controls Guidance Document: Testing for Detection and Differentiation of Influenza A Virus Subtypes Using Multiplex Nucleic Acid Assays.'' The agency classified the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance documents that will serve as the special controls for this device.

DATES: This final rule is effective November 9, 2009. The classification was effective January 3, 2008.

FOR FURTHER INFORMATION CONTACT: Zivana Tezak, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5550, Silver Spring, MD 20993, 301–796–6204.

SUPPLEMENTARY INFORMATION:

I. What Is the Background of This Rulemaking?

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k) and part 807 (21 CFR part 807) of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1), request FDA to classify the device under the criteria set forth in section 513(a)(1). FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued an order on November 30, 2007, classifying the Luminex Molecular Diagnostics, Inc., xTAG™ RVP (Respiratory Viral Panel) as class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or class II. On December 1, 2007, Luminex Molecular Diagnostics, Inc., submitted a petition requesting classification of the xTAG™ RVP under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II.

In accordance with section 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the Luminex Molecular Diagnostics, Inc., xTAG™ RVP can be classified in class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of safety and effectiveness of the device.

The device is assigned the generic name ''respiratory viral panel multiplex nucleic acid assay.'' It is identified as a qualitative in vitro diagnostic device that is intended to simultaneously detect and identify multiple viral nucleic acids extracted from human respiratory specimens or viral culture. The detection and identification of a specific viral nucleic acid from individuals exhibiting signs and symptoms of respiratory infection aids in the diagnosis of respiratory viral infection when used in conjunction with other clinical and laboratory findings.

Respiratory illness caused by various commonly circulating respiratory viruses (e.g., Influenza A, RSV) can cause high morbidity and mortality, particularly in at-risk populations such as the elderly and the very young. Therefore, FDA has identified the following issues of safety or effectiveness requiring special controls for a respiratory viral panel multiplex nucleic acid assay, i.e. potential risks to health associated with this assay. These include (1) Failure of the device to perform as indicated, leading to inaccurate results or lack of results and (2) incorrect interpretation of results; both of these potential risks may lead to incorrect patient management decisions. For example, a false positive result could lead to unnecessary or inappropriate treatment for the misidentified viral illness, as well as delayed treatment of the actual infection, which may potentially be a more serious infection caused by bacteria or other pathogens. A false negative result could lead to failure to provide a diagnosis and the correct treatment, and may contribute to unnecessary treatment. A lack of result could lead to delayed diagnosis and inadequate treatment. Additionally, for assays that both detect Influenza A and differentiate between Influenza A subtypes, if a specimen yields a positive test result for Influenza A, but produces negative test results for all specific influenza A subtypes intended to be differentiated (i.e., H1 or H3), then local, state or federal public health authorities should be notified to determine whether the specimen represents a novel strain of Influenza A, in accordance with the Morbidity and Mortality Weekly Report (*http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5613a4.htm* and *http://www.cste.org/ps/2007pdfs/novelfluanndssjan10final23.pdf*).[1] Therefore, inaccurate results for influenza types and subtypes included in the respiratory viral panel may lead to inappropriate public health responses. Failure to interpret assay results in the context of the other laboratory results and the clinical presentation could lead to inappropriate or delayed treatment. The virus or viruses detected may not necessarily be the cause of the clinical symptoms, therefore positive assay results do not rule out bacterial co-infection, or co-infection with other viruses.

FDA believes the class II special controls guidance documents will help mitigate potential risks by providing recommendations for performance evaluation, labeling, and measures to address the effects of ancillary reagents (specific reagents required under instructions for use of the assay but not provided) on safety and effectiveness of respiratory viral panel multiplex nucleic acid assays. The guidance documents also provide information on how to meet premarket (510(k)) submission requirements for the device. FDA believes that following the class II special controls guidance documents generally addresses the risks to health identified in the previous paragraph. Therefore, on January 3, 2008, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification by adding 21 CFR 866.3980.

Any firm submitting a 510(k) premarket notification for a respiratory viral panel multiplex nucleic acid assay will need to address the issues covered in the special controls guidances. However, the firm need only show that its device meets the recommendations of the guidances, or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, however, FDA has determined that premarket review of the system's key performance characteristics, test methodology, labeling, and other requirements as outlined in § 807.87, will provide reasonable assurance that acceptable levels of performance for both safety and effectiveness will be addressed before marketing clearance. Thus, persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the respiratory viral panel multiplex nucleic acid assay they intend to market.

II. What Is the Environmental Impact of This Rule?

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. What Is the Economic Impact of This Rule?

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of these devices into class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $130 million, using the most current (2007) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Does This Final Rule Have Federalism Implications?

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the

[1] (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts certain state requirements ''different from or in addition to'' certain federal requirements applicable to devices. 21 U.S.C. 360k; *Medtronic* v. *Lohr*, 518 U.S. 470 (1996); *Riegel* v. *Medtronic*, 128 S. Ct. 999 (2008). The special controls established by this final rule create ''requirements'' for specific medical devices under 21 U.S.C. 360k, even though product sponsors have some flexibility in how they meet those requirements. (*Papike* v. *Tambrands, Inc.*, 107 F.3d 737, 740–42 (9th Cir. 1997)).

V. How Does This Rule Comply With the Paperwork Reduction Act of 1995?

This final rule establishes as special controls three guidance documents that refer to previously approved collections of information found in other 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 part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control no. 0910–0120. The collections of information in 21 CFR part 801 and 21 CFR 809.10, regarding labeling, have been approved under OMB control no. 0910–0485.

VI. What References Are on Display?

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Luminex Molecular Diagnostics, Inc., dated December 1, 2007.

List of Subjects in 21 CFR Part 866

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 866.3980 is added to subpart D to read as follows:

§ 866.3980 Respiratory viral panel multiplex nucleic acid assay.

(a) *Identification*. A respiratory viral panel multiplex nucleic acid assay is a qualitative in vitro diagnostic device intended to simultaneously detect and identify multiple viral nucleic acids extracted from human respiratory specimens or viral culture. The detection and identification of a specific viral nucleic acid from individuals exhibiting signs and symptoms of respiratory infection aids in the diagnosis of respiratory viral infection when used in conjunction with other clinical and laboratory findings. The device is intended for detection and identification of a combination of the following viruses:

(1) Influenza A and Influenza B;

(2) Influenza A subtype H1 and Influenza A subtype H3;

(3) Respiratory Syncytial Virus subtype A and Respiratory Syncytial Virus subtype B;

(4) Parainfluenza 1, Parainfluenza 2, and Parainfluenza 3 virus;

(5) Human Metapneumovirus;

(6) Rhinovirus; and

(7) Adenovirus.

(b) *Classification*. Class II (special controls). The special controls are:

(1) FDA's guidance document entitled ''Class II Special Controls Guidance Document: Respiratory Viral Panel Multiplex Nucleic Acid Assay;''

(2) For a device that detects and identifies Human Metapneumovirus, FDA's guidance document entitled ''Class II Special Controls Guidance Document: Testing for Human Metapneumovirus (hMPV) Using Nucleic Acid Assays;'' and

(3) For a device that detects and differentiates Influenza A subtype H1 and subtype H3, FDA's guidance document entitled ''Class II Special Controls Guidance Document: Testing for Detection and Differentiation of Influenza A Virus Subtypes Using Multiplex Nucleic Acid Assays.'' See § 866.1(e) for the availability of these guidance documents.

Dated: October 1, 2009.

Jeffrey Shuren,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. E9–24432 Filed 10–8–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 542 and 543

RIN 3141–AA–37

Minimum Internal Control Standards for Class II Gaming

AGENCY: National Indian Gaming Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: The National Indian Gaming Commission (''NIGC'') announces the extension of the effective date on the final rule for Minimum Internal Control Standards for Class II Gaming. The final rule was published in the **Federal Register** on October 10, 2008. The Commission has changed the effective date for the amendments to §§ 542.7 and 542.16 as well as the date for operations to implement tribal internal controls found in 543.3(c)(3) to October 13, 2010, in order to extend the transition time.

DATES: *Effective Date:* The effective date for the amendments to §§ 542.7 and 542.16 for the final rule published October 10, 2008, at 73 FR 60492, is delayed from October 13, 2009, until October 13, 2010. The effective date for the amendment to § 543.3(c)(3) is October 9, 2009.

FOR FURTHER INFORMATION CONTACT: John R. Hay, Attorney, Office of General Counsel, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Congress established the National Indian Gaming Commission under the Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2701–21) (''IGRA'') to regulate gaming on Indian lands. The NIGC issued a final rule that superseded specified sections of established Minimum Internal Control Standards and replaced them with a new part titled Minimum Internal Control Standards Class II Gaming, that was published in the **Federal Register** on October 10, 2008 (73 FR 60492). The final rule provided an effective date for amendments to §§ 542.7 and 542.16 of October 13, 2009. The NIGC is extending the effective date for these amendments to October 13, 2010. The rule at § 543.3(c)(3) also set a deadline of within six months of the date the tribal gaming regulatory authorities' enactment of tribal internal controls for tribal operators to come into compliance with tribal internal controls. This deadline has likewise been extended to October 13, 2010.

List of Subjects in 25 CFR Part 543

Administrative practice and procedure, Gambling, Indians—lands, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, under the authority at 25 U.S.C. 2701, 2702, 2706, *et seq.,* the effective date for the amendments to §§ 542.7 and 542.16 for the final rule published October 10, 2008, at 73 FR 60492, is delayed from October 13, 2009, until October 13, 2010 and 25 CFR Part 543.3 is amended as set forth below:

PART 543—MINIMUM INTERNAL CONTROL STANDARDS FOR CLASS II GAMING

■ 1. The authority citation for Part 543 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

■ 2. Section 543.3 is amended by revising paragraph (c)(3) to read as follows:

§ 543.3 How do tribal governments comply with this part?

* * * * *

(c) * * *

(3) Establish a deadline, no later than October 13, 2010, by which a gaming operation must come into compliance with the tribal internal control standards. However, the tribal gaming regulatory authority may extend the deadline by six months if written notice citing justification is provided to the Commission no later than two weeks before the deadline.

* * * * *

Dated: October 5, 2009.

George T. Skibine,

Acting Chairman.

Norman H. DesRosiers,

Vice Chairman.

[FR Doc. E9–24434 Filed 10–8–09; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 117, 147, and 165

[USCG–2009–0909]

Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, Regulated Navigation Areas, and Drawbridge Operation Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of expired temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between February 2006 and January 2008, that expired before they could be published in the **Federal Register**. This notice lists temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules between February 9, 2006 and January 12, 2008 that became effective and were terminated before they could be published in the **Federal Register**.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be 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: For questions on this notice contact Yeoman First Class Denise Johnson, Office of Regulations and Administrative Law, telephone (202) 372–3862. For questions on viewing, or on submitting material to the docket, contact Ms. Angie Ames, Docket Operations, telephone 202–366–5115.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities and may also describe a zone around a vessel in motion. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events. *Drawbridge operation regulations* authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. *Regulated Navigation Areas* are water areas within a defined boundary for which regulations for vessels navigating within the area have been established by the regional Coast Guard District Commander. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials' on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register.**

Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The temporary rules listed in this notice have been exempted from review under Executive Order 12666, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following unpublished rules were placed in effect temporarily during the period between February 2006 and January 2008, unless otherwise indicated.

Dated: September 30, 2009.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

4TH QUARTER 2008 LISTING

Docket No.	Location	Type	Effective date
CGD01–06–029	Bridgeport, CT	Special Local Regulation (Parts 100)	6/30/2006
CGD01–06–039	North Kingstown, RI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD01–06–047	Amagansett, NY	Special Local Regulation (Parts 100)	7/1/2006
CGD01–06–048	Stamford, CT	Special Local Regulation (Parts 100)	7/3/2006
CGD01–06–050	Nantucket Island, MA	Safety Zones (Parts 147 and 165)	6/21/2006
CGD01–06–058	Cape Neddick, ME	Safety Zones (Parts 147 and 165)	5/16/2006
CGD01–06–075	North Kingstown, RI	Safety Zones (Parts 147 and 165)	6/24/2006
CGD01–06–094	Rever, MA	Safety Zones (Parts 147 and 165)	7/15/2006
CGD01–06–101	South Bristol, ME	Safety Zones (Parts 147 and 165)	7/20/2006
CGD01–06–106	Water Mill, NY	Safety Zones (Parts 147 and 165)	8/19/2006
CGD01–06–125	Bay Shore, NY	Safety Zones (Parts 147 and 165)	10/22/2006
CGD01–06–136	Danvers, MA	Safety and Security Zones (Parts 147 and 165)	11/28/2006
CGD01–06–137	Kittery, ME	Safety Zones (Parts 147 and 165)	11/29/2006
CGD01–06–143	Kittery, ME	Safety Zones (Parts 147 and 165)	12/18/2006
CGD01–07–013	Narragansett Bay, RI	Security Zones (Part 165)	6/27/2007
CGD01–07–039	Salisbury, MA	Safety Zones (Parts 147 and 165)	4/10/2007
CGD01–07–084	Asharoken, NY	Safety Zones (Parts 147 and 165)	7/4/2007
CGD01–07–085	Boston, MA	Safety Zones (Parts 147 and 165)	7/21/2007
CGD01–07–088	Great South Bay, NY	Safety Zones (Parts 147 and 165)	7/25/2007
CGD01–07–094	Jennings Beach, CT	Safety Zones (Parts 147 and 165)	7/7/2007
CGD01–07–097	Port land Harbor, ME	Safety Zones (Parts 147 and 165)	7/14/2007
CGD01–07–098	Cherry Grove, NY	Safety Zones (Parts 147 and 165)	8/4/2007
CGD01–07–099	Westhampton, NY	Safety Zones (Parts 147 and 165)	7/21/2007
CGD01–07–108	Patchogue, NY	Safety Zones (Parts 147 and 165)	8/25/2007
CGD01–07–126	Gloucester, MA	Safety Zones (Parts 147 and 165)	8/13/2007
CGD01–07–134	Miller Place, NY	Safety Zones (Parts 147 and 165)	9/15/2007
CGD05–05–062	Surf City, NC	Safety Zones (Parts 147 and 165)	6/14/2007
CGD05–06–012	North Landing River, VA	Safety Zones (Parts 147 and 165)	3/20/2006
CGD05–06–022	Chesapeake Bay, MD	Special Local Regulation (Parts 100)	6/11/2006
CGD05–06–032	Somers Point, NJ	Special Local Regulation (Parts 100)	6/4/2006
CGD05–06–034	Washington, DC	Security Zones (Part 165)	5/25/2006
CGD05–06–050	Hampton, VA	Safety Zones (Parts 147 and 165)	5/3/2006
CGD05–06–056	Oxford, MD	Safety Zones (Parts 147 and 165)	7/2/2006
CGD05–06–058	Hampton, VA	Special Local Regulation (Parts 100)	6/3/2006
CGD05–06–061	Norfolk, VA	Special Local Regulation (Parts 100)	6/9/2006
CGD05–06–073	Elizabeth City, NC	Safety Zones (Parts 147 and 165)	7/4/2006
CGD05–06–077	Chesapeake Channel, MD.	Safety Zones (Parts 147 and 165)	7/18/2006
CGD05–06–095	Piney Point, MD	Security Zones (Part 165)	9/4/2006
CGD05–06–099	Essington, PA	Safety Zones (Parts 147 and 165)	9/16/2006
CGD05–06–102	Annapolis, MD	Special Local Regulation (Parts 100)	12/9/2006
CGD05–06–107	Hopewell, VA	Safety Zones (Parts 147 and 165)	12/2/2006
CGD05–06–111	Alexandria Channel, DC	Safety Zones (Parts 147 and 165)	12/3/2006
CGD05–06–115	Wallops Island, VA	Security Zones (Part 165)	12/11/2006
CGD05–06–116	Alexandria Channel, DC	Safety Zones (Parts 147 and 165)	12/9/2006
CGD07–06–150	Dania Beach, FL	Special Local Regulation (Parts 100)	7/16/2006
CGD07–06–162	Miami Harbor, FL	Regulated Navigation Area (Parts147 and 165)	7/31/2006
CGD07–06–214	Miami, FL	Special Local Regulation (Parts 100)	12/9/2006
CGD07–06–226	Broward County, FL	Special Local Regulation (Parts 100)	12/9/2006
CGD07–06–242	Vero Beach, FL	Special Local Regulation (Parts 100)	12/1/2006
CGD07–06–243	Stuart, FL	Special Local Regulation (Parts 100)	12/2/2006
CGD07–06–259	Fort Pierce, FL	Special Local Regulation (Parts 100)	12/9/2006
CGD07–06–260	Charleston, SC	Special Local Regulation (Parts 100)	12/2/2006
CGD07–07–008	Joliet, IL	Drawbridge Operation Regulation (Part 117)	5/12/2007
CGD07–07–018	Joliet, IL	Drawbridge Operation Regulation (Part 117)	8/4/2007
CGD07–07–027	Clarksville, TN	Regulated Navigation Area (Parts 147 and 165)	10/2/2007
CGD07–07–066	Dania Beach, FL	Special Local Regulation (Parts 100)	7/15/2007
CGD09–06–007	Toledo, OH	Safety Zones (Parts 147 and 165)	2/9/2006
CGD09–06–021	Ellison Bay, WI	Safety Zones (Parts 147 and 165)	7/12/2006
CGD09–06–022	Milwaukee, WI	Safety Zones (Parts 147 and 165)	4/24/2006
CGD09–06–023	Charlevoix, MI	Safety Zones (Parts 147 and 165)	4/29/2006
CGD09–06–028	Detroit, MI	Security Zones (Part 165)	5/16/2006
CGD09–06–033	Toledo, OH	Safety Zones (Parts 147 and 165)	5/26/2006
CGD09–06–034	Cleveland, OH	Safety Zones (Parts 147 and 165)	6/7/2006
CGD09–06–037	Algonac, MI	Safety Zones (Parts 147 and 165)	6/4/2006
CGD09–06–039	Port Huron, MI	Safety Zones (Parts 147 and 165)	6/24/2006
CGD09–06–048	Grosse Ile, MI	Safety Zones (Parts 147 and 165)	6/30/2006
CGD09–06–057	Maumee River, OH	Safety Zones (Parts 147 and 165)	7/11/2006
CGD09–06–071	Fox Lake, IL	Safety Zones (Parts 147 and 165)	7/1/2006
CGD09–06–080	Duluth, MN	Safety Zones (Parts 147 and 165)	7/4/2007
CGD09–06–080	Kenosha, WI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–082	Lapointe, WI	Safety Zones (Parts 147 and 165)	7/4/2007

4TH QUARTER 2008 LISTING—Continued

Docket No.	Location	Type	Effective date
CGD09–06–082	Springs, MI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–085	Fish Creek, WI	Safety Zones (Parts 147 and 165)	7/1/2006
CGD09–06–085	Port Buffalo, NY	Safety Zones (Parts 147 and 165)	7/29/2006
CGD09–06–086	Harrisville, MI	Safety Zones (Parts 147 and 165)	7/1/2006
CGD09–06–087	Lake Michigan	Safety Zones (Parts 147 and 165)	7/30/2006
CGD09–06–088	Au Gres, MI	Safety Zones (Parts 147 and 165)	7/2/2006
CGD09–06–090	Bay Harbor Lake, MI	Safety Zones (Parts 147 and 165)	7/3/2006
CGD09–06–091	Chicago, IL	Safety Zones (Parts 147 and 165)	7/3/2006
CGD09–06–092	Cleveland, OH	Safety Zones (Parts 147 and 165)	7/3/2006
CGD09–06–093	Bay City, MI	Safety Zones (Parts 147 and 165)	7/1/2006
CGD09–06–094	Grosse Pointe Park, MI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–096	Ludington, MI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–097	Manitowoc, WI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–098	Marinette, WI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–099	Oscoda, MI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–100	Petoskey, MI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–102	Sheboygan, WI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–103	Green Bay, WI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–106	Boyne City, MI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–107	Sturgeon Bay, WI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–108	Traverse City, MI	Safety Zones (Parts 147 and 165)	7/4/2006
CGD09–06–109	Traverse City, MI	Safety Zones (Parts 147 and 165)	7/8/2006
CGD09–06–112	Milwaukee, WI	Safety Zones (Parts 147 and 165)	7/14/2006
CGD09–06–115	Frankfort, MI	Safety Zones (Parts 147 and 165)	9/2/2007
CGD09–06–116	Chicago, IL	Security Zones (Part 165)	7/6/2006
CGD09–06–119	Milwaukee, WI	Security Zones (Part 165)	7/11/2006
CGD09–06–120	Milwaukee, WI	Safety Zones (Parts 147 and 165)	7/14/2006
CGD09–06–124	Milwaukee, WI	Safety Zones (Parts 147 and 165)	7/20/2006
CGD09–06–125	Lake Michigan	Safety Zones (Parts 147 and 165)	7/22/2006
CGD09–06–126	Saugatuck, MI	Safety Zones (Parts 147 and 165)	7/27/2006
CGD09–06–127	Egg Harbor, WI	Safety Zones (Parts 147 and 165)	7/23/2006
CGD09–06–128	Tonawanda, NY	Safety Zones (Parts 147 and 165)	7/23/2006
CGD09–06–129	Racine, WI	Safety Zones (Parts 147 and 165)	7/22/2006
CGD09–06–132	Elk Rapids, MI	Safety Zones (Parts 147 and 165)	8/5/2006
CGD09–06–133	St. Joseph, MI	Safety Zones (Parts 147 and 165)	8/5/2006
CGD09–06–134	Menominee, WI	Safety Zones (Parts 147 and 165)	8/5/2006
CGD09–06–136	Milwaukee, WI	Safety Zones (Parts 147 and 165)	8/17/2006
CGD09–06–137	Chaumont Bay, NY	Safety Zones (Parts 147 and 165)	7/29/2006
CGD09–06–138	Racine, WI	Safety Zones (Parts 147 and 165)	7/28/2006
CGD09–06–140	Sault Ste. Marie, MI	Safety Zones (Parts 147 and 165)	7/29/2006
CGD09–06–142	Milwaukee, WI	Safety Zones (Parts 147 and 165)	8/6/2006
CGD09–06–145	Sheboygan, WI	Safety Zones (Parts 147 and 165)	8/19/2006
CGD09–06–149	Bay City, MI	Safety Zones (Parts 147 and 165)	8/11/2006
CGD09–06–150	Webster, NY	Safety Zones (Parts 147 and 165)	8/12/2006
CGD09–08–001	Detroit, MI	Security Zones (Part 165)	1/12/2008
COTP Port Arthur–2007–001	Orange, TX	Safety Zones (Parts 147 and 165)	1/3/2007
COTP Port Arthur–2007–002	Port Arthur, TX	Safety Zones (Parts 147 and 165)	2/24/2007
COTP Port Arthur–2007–003	Port Arthur, TX	Safety Zones (Parts 147 and 165)	3/12/2007
COTP Port Arthur–2007–004	Port Arthur, TX	Safety Zones (Parts 147 and 165)	3/28/2007
COTP Port Arthur–2007–005	Port Arthur, TX	Safety Zones (Parts 147 and 165)	4/9/2007
COTP Port Arthur–2007–006	Port Arthur, TX	Safety Zones (Parts 147 and 165)	5/19/2007
COTP Port Arthur–2007–007	Port Arthur, TX	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Port Arthur–2007–008	Orange, TX	Safety Zones (Parts 147 and 165)	6/9/2007
COTP Port Arthur–2007–009	Port Arthur, TX	Safety Zones (Parts 147 and 165)	6/9/2007
COTP Port Arthur–2007–010	Port Arthur, TX	Safety Zones (Parts 147 and 165)	6/9/2007
COTP Port Arthur–2007–011	Beaumont, TX	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Port Arthur–2007–012	Hackberry, LA	Safety Zones (Parts 147 and 165)	8/20/2007
COTP Port Arthur–2007–013	Orange, TX	Safety Zones (Parts 147 and 165)	9/22/2007
COTP San Diego 06–003	Point Loma, CA	Safety Zones (Parts 147 and 165)	5/22/2006
COTP San Diego 06–011	Parker, AZ	Safety Zones (Parts 147 and 165)	3/27/2006
COTP San Diego 06–017	Lake Havasu, AZ	Safety Zones (Parts 147 and 165)	5/21/2006
COTP San Diego 06–022	San Diego, CA	Safety Zones (Parts 147 and 165)	7/21/2006
COTP San Diego 06–025	Laughlin, NV	Safety Zones (Parts 147 and 165)	6/10/2006
COTP San Diego 06–025	Laughlin, NV	Safety Zones (Parts 147 and 165)	7/2/2006
COTP San Diego 06–051	San Diego, CA	Safety Zones (Parts 147 and 165)	7/31/2006
COTP San Diego 06–051	San Diego, CA	Safety Zones (Parts 147 and 165)	7/13/2006
COTP San Diego 06–052	San Diego, CA	Safety Zones (Parts 147 and 165)	7/3/2006
COTP San Diego 06–052	San Diego, CA	Safety Zones (Parts 147 and 165)	8/10/2006
COTP San Diego 06–052	San Diego, CA	Safety Zones (Parts 147 and 165)	7/4/2006
COTP San Diego 06–052	San Diego, CA	Safety Zones (Parts 147 and 165)	7/18/2006
COTP San Diego 06–052	Ocean Beach, CA	Safety Zones (Parts 147 and 165)	5/17/2006
COTP San Diego 06–052	Oceanside, CA	Safety Zones (Parts 147 and 165)	4/30/2006

4TH QUARTER 2008 LISTING—Continued

Docket No.	Location	Type	Effective date
COTP Savannah–2007–017	Savannah, GA	Security Zones (Part 165)	1/24/2007
COTP Savannah–2007–078	Savannah, GA	Security Zones (Part 165)	4/12/2007
COTP Savannah–2007–159	Savannah, GA	Security Zones (Part 165)	6/26/2007
COTP Savannah–2007–166	Savannah, GA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Savannah–2007–168	Savannah, GA	Security Zones (Part 165)	7/6/2007
COTP Savannah–2007–182	Savannah, GA	Security Zones (Part 165)	8/1/2007
COTP Savannah–2007–188	Savannah, GA	Safety Zones (Parts 147 and 165)	8/15/2007
COTP Savannah–2007–189	Savannah, GA	Security Zones (Part 165)	8/16/2007
COTP Savannah–2007–211	Savannah, GA	Security Zones (Part 165)	9/12/2007
COTP Savannah–2007–236	Savannah, GA	Security Zones (Part 165)	10/3/2007
COTP Savannah–2007–239	Savannah, GA	Security Zones (Part 165)	10/5/2007
COTP Savannah–2007–243	Savannah, GA	Security Zones (Part 165)	10/11/2007
COTP Savannah–2007–247	Savannah, GA	Security Zones (Part 165)	10/13/2007
COTP Savannah–2007–248	Savannah, GA	Security Zones (Part 165)	10/15/2007
COTP Savannah–2007–259	Savannah, GA	Security Zones (Part 165)	10/25/2007
COTP Savannah–2007–260	Savannah, GA	Security Zones (Part 165)	10/25/2007
COTP Savannah–2007–263	Savannah, GA	Security Zones (Part 165)	10/30/2007
COTP Savannah–2007–264	Savannah, GA	Security Zones (Part 165)	10/31/2007
COTP Savannah–2007–269	Savannah, GA	Security Zones (Part 165)	11/9/2007
COTP Southeastern Alaska–2007–001	Juneau, AK	Safety Zones (Parts 147 and 165)	5/14/2007
COTP St. Petersburg–2007–003	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	1/16/2007
COTP St. Petersburg–2007–011	Gulf of Mexico, FL	Safety Zones (Parts 147 and 165)	1/25/2007
COTP St. Petersburg–2007–026	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	2/10/2007
COTP St. Petersburg–2007–029	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	3/30/2007
COTP St. Petersburg–2007–030	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	2/13/2007
COTP St. Petersburg–2007–038	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	2/21/2007
COTP St. Petersburg–2007–044	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	2/12/2007
COTP St. Petersburg–2007–045	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	3/30/2007
COTP St. Petersburg–2007–050	Clearwater, FL	Safety Zones (Parts 147 and 165)	3/26/2007
COTP St. Petersburg–2007–054	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	3/15/2007
COTP St. Petersburg–2007–056	St. Petersburg, FL	Safety Zones (Parts 147 and 165)	4/7/2007
COTP St. Petersburg–2007–069	St. Petersburg, FL	Safety Zones (Parts 147 and 165)	4/29/2007
COTP St. Petersburg–2007–081	Clearwater Harbor, FL	Safety Zones (Parts 147 and 165)	4/22/2007
COTP St. Petersburg–2007–100	Treasure Island, FL	Safety Zones (Parts 147 and 165)	4/26/2007
COTP St. Petersburg–2007–104	Ft. Myers Beach, FL	Safety Zones (Parts 147 and 165)	4/25/2007
COTP St. Petersburg–2007–137	Clearwater, FL	Safety Zones (Parts 147 and 165)	5/30/2007
COTP St. Petersburg–2007–144	St. Petersburg, FL	Safety Zones (Parts 147 and 165)	7/4/2007
COTP St. Petersburg–2007–145	Ft. Myers Beach, FL	Safety Zones (Parts 147 and 165)	6/20/2007
COTP St. Petersburg–2007–146	Gulf of Mexico, FL	Safety Zones (Parts 147 and 165)	6/25/2007
COTP St. Petersburg–2007–149	Gulf of Mexico, FL	Safety Zones (Parts 147 and 165)	6/8/2007
COTP St. Petersburg–2007–150	Gulf of Mexico, FL	Safety Zones (Parts 147 and 165)	6/11/2007
COTP St. Petersburg–2007–151	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	6/9/2007
COTP St. Petersburg–2007–152	Tampa Bay, FL	Security Zones (Part 165)	6/11/2007
COTP St. Petersburg–2007–153	Tampa Bay, FL	Security Zones (Part 165)	6/12/2007
COTP St. Petersburg–2007–154	Peace River, FL	Safety Zones (Parts 147 and 165)	7/4/2007
COTP St. Petersburg–2007–156	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	7/13/2007
COTP St. Petersburg–2007–158	Gulf of Mexico, FL	Safety Zones (Parts 147 and 165)	6/27/2007
COTP St. Petersburg–2007–173	Gulf of Mexico, FL	Safety Zones (Parts 147 and 165)	8/23/2007
COTP St. Petersburg–2007–175	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	10/19/2007
COTP St. Petersburg–2007–177	San Carlos Bay, FL	Safety Zones (Parts 147 and 165)	7/24/2007
COTP St. Petersburg–2007–183	San Carlos Bay, FL	Safety Zones (Parts 147 and 165)	8/2/2007
COTP St. Petersburg–2007–184	Gulf of Mexico, FL	Safety Zones (Parts 147 and 165)	8/13/2007
COTP St. Petersburg–2007–185	St. Petersburg, FL	Safety Zones (Parts 147 and 165)	8/7/2007
COTP St. Petersburg–2007–198	Homosassa, FL	Safety Zones (Parts 147 and 165)	9/22/2007
COTP St. Petersburg–2007–200	Garrison Channel, FL	Security Zones (Part 165)	8/26/2007
COTP St. Petersburg–2007–206	Gulf of Mexico, FL	Safety Zones (Parts 147 and 165)	9/5/2007
COTP St. Petersburg–2007–216	Tampa Bay, FL	Security Zones (Part 165)	9/14/2007
COTP St. Petersburg–2007–220	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	9/19/2007
COTP St. Petersburg–2007–221	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	10/9/2007
COTP St. Petersburg–2007–222	Clearwater, FL	Safety Zones (Parts 147 and 165)	11/8/2007
COTP St. Petersburg–2007–223	Gulf of Mexico, FL	Safety Zones (Parts 147 and 165)	11/9/2007
COTP St. Petersburg–2007–224	Garrison Channel, FL	Safety Zones (Parts 147 and 165)	11/11/2007
COTP St. Petersburg–2007–225	San Carlos Bay, FL	Safety Zones (Parts 147 and 165)	9/25/2007
COTP St. Petersburg–2007–240	Garrison Channel, FL	Security Zones (Part 165)	10/13/2007
COTP St. Petersburg–2007–244	Old Tampa Bay, FL	Security Zones (Part 165)	10/12/2007
COTP St. Petersburg–2007–254	Clearwater Harbor, FL	Safety Zones (Parts 147 and 165)	11/3/2007
COTP St. Petersburg-2006–255	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	11/21/2006
COTP St. Petersburg–2007–268	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	11/13/2007
COTP St. Petersburg–2007–270	Alafia River, FL	Safety Zones (Parts 147 and 165)	11/12/2007
COTP Upper Mississippi River–2007–001	ST. Louis, MO	Security Zones (Part 165)	1/30/2007
COTP Upper Mississippi River–2007–003	Evansville, IL	Safety Zones (Parts 147 and 165)	3/27/2007
COTP Upper Mississippi River–2007–004	St. Louis, MO	Safety Zones (Parts 147 and 165)	3/31/2007

4TH QUARTER 2008 LISTING—Continued

Docket No.	Location	Type	Effective date
COTP Upper Mississippi River–2007–005	St. Louis, MO	Safety Zones (Parts 147 and 165)	4/15/2007
COTP Upper Mississippi River–2007–006	St. Louis, MO	Safety Zones (Parts 147 and 165)	4/28/2007
COTP Upper Mississippi River–2007–007	St. Louis, MO	Safety Zones (Parts 147 and 165)	4/27/2007
COTP Upper Mississippi River–2007–009	Kansas City, KS	Safety Zones (Parts 147 and 165)	6/30/2007
COTP Upper Mississippi River–2007–010	St. Louis, MO	Safety Zones (Parts 147 and 165)	5/4/2007
COTP Upper Mississippi River–2007–011	St. Louis, MO	Safety Zones (Parts 147 and 165)	5/7/2007
COTP Upper Mississippi River–2007–012	St. Louis, MO	Safety Zones (Parts 147 and 165)	5/14/2007
COTP Upper Mississippi River–2007–013	St. Louis, MO	Safety Zones (Parts 147 and 165)	5/15/2007
COTP Upper Mississippi River–2007–014	St. Louis, MO	Safety Zones (Parts 147 and 165)	5/19/2007
COTP Upper Mississippi River–2007–015	St. Louis, MO	Safety Zones (Parts 147 and 165)	5/31/2007
COTP Upper Mississippi River–2007–016	St. Louis, MO	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Upper Mississippi River–2007–017	St. Louis, MO	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Upper Mississippi River–2007–018	St. Louis, MO	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Upper Mississippi River–2007–019	St. Louis, MO	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Upper Mississippi River–2007–020	St. Louis, MO	Security Zones (Part 165)	7/3/2007
COTP Upper Mississippi River–2007–021	St. Louis, MO	Security Zones (Part 165)	7/6/2007
COTP Upper Mississippi River–2007–026	St. Louis, MO	Security Zones (Part 165)	8/1/2007
COTP Upper Mississippi River–2007–027	St. Louis, MO	Safety Zones (Parts 147 and 165)	8/25/2007
COTP Upper Mississippi River–2007–028	St. Louis, MO	Safety Zones (Parts 147 and 165)	9/2/2007
COTP Upper Mississippi River–2007–029	St. Louis, MO	Safety Zones (Parts 147 and 165)	9/2/2007
COTP Upper Mississippi River–2007–030	St. Louis, MO	Safety Zones (Parts 147 and 165)	9/8/2007
COTP Upper Mississippi River–2007–031	St. Louis, MO	Safety Zones (Parts 147 and 165)	9/14/2007
COTP Upper Mississippi River–2007–032	St. Louis, MO	Safety Zones (Parts 147 and 165)	9/8/2007
COTP Western Alaska–2007–001	Kodiak Island, AK	Safety Zones (Parts 147 and 165)	5/24/2007

[FR Doc. E9–24135 Filed 10–8–09; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0754]

Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Berkley Bridge across the Eastern Branch of the Elizabeth River, mile 0.4, at Norfolk, Virginia. This deviation will test a change in the drawbridge operation schedule to determine whether a schedule change is needed.

DATES: This deviation is effective from 9 a.m. on October 9, 2009 through 2:30 p.m. on March 9, 2010.

Comments and related material must be received by the Coast Guard on or before December 8, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0754 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *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.
- *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 methods. *See* the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Waverly Gregory, Bridge Administrator, Fifth Coast Guard District, telephone 757–398–6222, e-mail *Waverly.W.Gregory@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0754), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0754,'' click ''Search,'' and then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than

8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0754'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On behalf of the Cities of Chesapeake and Norfolk, Virginia, the Virginia Department of Transportation (VDOT) who owns and operates the lift-type Berkley Bridge has requested a temporary deviation to the existing bridge regulations. The normal operating schedule allows the Berkley Bridge, mile 0.4, with a vertical clearance of 48 feet at mean high tide in Norfolk, Virginia, to remain closed one hour prior to the published start of a scheduled marine event regulated under 33 CFR 100.501, and remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 allows the bridge to open for commercial vessel traffic. In addition, the bridge shall open on signal any time except from 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays, and shall open at any time for vessels with a draft of 18 feet or more, provided that at least 6 hours advance notice has been given to the Berkley Bridge Traffic Control Room at (757) 494–2490 as required by 33 CFR 117.1007(b) and (c).

Vessel traffic on this waterway consists of pleasure craft, tug and barge traffic, and ships with assist tugs seeking repair yards. There is no alternate waterway route around the bridge.

Due to the temporary closure of two area bridges, this bridge and its approaches has experienced vehicular traffic back-ups, delays, and congestion. By adjusting the scheduled bridge openings, we anticipate a decrease in vehicular traffic congestion during the daytime hours. During this test deviation, VDOT will gather data from the scheduled openings, along with vessel counts, to compare, evaluate, and monitor both old and new traffic patterns in hope of reducing roadway congestion on the bridge and local commuting area by adjusting bridge openings to ensure any future regulation will not have a significant impact on navigation.

The Berkley Bridge is the principle arterial route in and out of the City of Norfolk and serves as the major evacuation highway in the event of emergencies. According to vehicular traffic counts submitted by VDOT for the last quarter of calendar year 2008 the average daily traffic volumes at the Berkley Bridge are as shown below:

October	2008	83,296	vehicles.
November	2008	99,643	vehicles.
December	2008	106,856	vehicles.

The traffic counts reveal that from October 2008 to December 2008, the Berkley Bridge has experienced a seven percent (or 23,560-car) increase in traffic flow during the morning and evening rush hours. The Coast Guard anticipates a continued increase in vehicular traffic over the bridge due to the previously referenced temporary closure of two area bridges and and anticipates that traffic will subside when those bridges return to service.

A Notice of Proposed Rulemaking, USCG–2009–0754, is being issued in conjunction with this Temporary Deviation to obtain additional public comments.

The Coast Guard will evaluate public comments from this Temporary Test Deviation and the above-referenced Notice of Proposed Rulemaking to determine if a proposed temporary change to the drawbridge operating regulation is warranted for the duration of the project.

The Test Schedule

From 9 a.m. on October 9, 2009 through 2:30 p.m. on March 9, 2010, the draw shall open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m., Monday through Friday, except Federal holidays. At all other times, the drawbridge will operate in accordance with the current operating regulations outlined in 33 CFR 117.1007(b) and (c).

During this test deviation, VDOT will gather data from the scheduled openings, along with vessel counts, to compare, evaluate, and monitor both old and new traffic patterns in hope of reducing roadway congestion on the bridge and local commuting area by adjusting bridge openings to ensure a future regulation will not have a significant impact on navigation.

Additional Information

This deviation has been coordinated with the main commercial waterway user group that has vessels transiting in this area and there is no expectation of any significant impacts on navigation. Vessels with a mast height of less than 48 feet can pass underneath the bridge in the closed position. There are no alternate waterway routes.

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 20, 2009.

Wayne E. Justice,

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

[FR Doc. E9–24486 Filed 10–7–09; 11:15 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 20

Customer Deposit of International Mailpieces

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) to require all mailpieces weighing more than 13 ounces and

bearing only postage stamps be presented to an employee at a retail service counter in a Post Office™.

DATES: *Effective Date:* January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Rick Klutts at 813–877–0372 or Evans King at 202–268–4982.

SUPPLEMENTARY INFORMATION:

These changes require that all international outbound mailpieces weighing more than 13 ounces bearing only postage stamps be presented to an employee at a retail service counter in a Post Office™.

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), which is incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ Accordingly, 39 CFR Part 20 continues to read as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR Part 20 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 407, 408, 3622, 3632, and 3633.

■ 2. Revise the following sections of Mailing Standards of the United States Postal Service, International Mail Manual (IMM), as follows:

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

1 International Mail Services

* * * * *

120 Preparation for Mailing

* * * * *

123 Customs Forms and Online Shipping Labels

* * * * *

123.5 Place of Mailing

[Revise 123.5 as follows:]

Mailpieces bearing customs declarations have specific deposit requirements based on mail category, shape and weight; see IMM part below for determination:

Global Express Guaranteed mailpieces—*see* 215

Express Mail International mailpieces—*see* 225

Priority Mail International mailpieces—*see* 235

First-Class Mail International mailpieces—*see* 245

* * * * *

123.7 Completing Customs Forms

123.71 PS Form 2976, Customs Declaration CN 22—Sender's Declaration (green label)

* * * * *

123.712 Postal Service Employee's Acceptance of PS Form 2976

* * * * *

*[Delete the **Note** at end of 123.712]*

* * * * *

2 Conditions for Mailing

210 Global Express Guaranteed

* * * * *

215 Mail Entry and Deposit

* * * * *

[Revise 215.2 as follows:]

215.2 Place of Mailing

215.21 Payment Methods Other Than Postage Stamps

Global Express Guaranteed shipments paid with online postage, postage meters or information-based indicia (IBI) may be deposited by one of the following methods:

a. At a retail counter of any participating Global Express Guaranteed Post Office facility.

b. Through Pickup on Demand Service (*see* 215.3).

c. Through Carrier Pickup (*see* 215.4).

d. In a collection box served by a participating Global Express Guaranteed Post Office facility.

215.22 Items Weighing 13 Ounces or Less—Paid With Postage Stamps

Global Express Guaranteed shipments weighing 13 ounces or less bearing only postage stamps may be deposited by one of the following methods:

a. At a retail counter of any participating Global Express Guaranteed Post Office facility.

b. Through Pickup on Demand Service (*see* 215.3).

c. Through Carrier Pickup (see 215.4).

d. In a collection box served by a participating Global Express Guaranteed Post Office facility.

215.23 Items Weighing More Than 13 Ounces—Paid With Postage Stamps

A customer may*not* deposit a Global Express Guaranteed item weighing more than 13 ounces and bearing only postage stamps into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. In addition, these mailpieces are precluded from Pickup on Demand service under 215.3 and Carrier Pickup in 215.4. Customers must present such items to an employee at a Post Office retail service counter. The Postal Service will return improperly presented items to the sender for proper entry and acceptance.

215.24 Acceptance of Shipments

For purposes of computing the delivery guarantee, Postal Service acceptance of a Global Express Guaranteed shipment occurs when it is received and scanned at a participating Global Express Guaranteed Post Office facility. Collection box deposit and Carrier Pickup do not constitute Postal Service acceptance of a Global Express Guaranteed shipment. Acceptance occurs when the shipment is brought back to the Post Office facility and the acceptance office performs a retail system scan and verifies the weight, dimensions and postage of the shipment. For items paid with Click-N-Ship the customer will receive an e-mail verification of the acceptance date, time, and weight, as well as a verification of the amount of postage applicable for the shipment.

Note: Customers paying postage online must enter their shipment via any of the authorized methods outlined in 215.21 within 24 hours of the time when the label is printed or the transaction will be void.

* * * * *

220 Express Mail International

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225 Mail Entry and Deposit

[Revise 225.1 as follows:]

225.1 Place of Mailing

225.11 Items Requiring a Completed Customs Declaration

Except as provided in 225.12, a mailer may not deposit an Express Mail International item that requires a completed customs form into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. In addition, these mailpieces are precluded from Pickup on Demand service under 225.2 and Carrier Pickup in 225.3. Customers must present such items to an employee at a at a Post Office retail service counter. The Postal Service will return improperly presented items to the sender for proper entry and acceptance.

225.12 Exceptional Items Requiring a Completed Customs Declaration

Express Mail International items paid through an Express Mail Corporate Account (EMCA), or items that have the mailing label, customs form (including an electronic round stamp), and postage prepared and paid online through Click-N-Ship service on usps.com, the eBay integrated shipping solution, or an authorized PC Postage vendor Web site may be deposited by one of the following methods:

a. At a Postal Service retail counter.
b. Through Pickup on Demand service (see 225.2).
c. Through Carrier Pickup (see 225.3).
d. Into a Postal Service lobby drop.
e. Into an Automated Postal Center (APC) drop.
f. In a collection box.
g. In a customer mailbox.

225.13 Items Not Requiring a Customs Declaration

225.131 Items Weighing 13 Ounces or Less—Paid With Postage Stamps

An Express Mail International item bearing only postage stamps, weighing 13 ounces or less and not requiring a customs declaration (see Individual Country Listing) may be deposited by one of the following methods:

a. At a Postal Service retail counter.
b. Through Pickup on Demand service (see 225.2).
c. Through Carrier Pickup (see 225.3).
d. Into a Postal Service lobby drop.
e. Into an Automated Postal Center (APC) drop.
f. In a collection box.
g. In a customer mailbox.

225.132 Items Weighing More Than 13 Ounces—Paid With Postage Stamps

A customer may *not* deposit an Express Mail International item weighing more than 13 ounces bearing only postage stamps and not requiring a customs declaration (see Individual Country Listing) into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. In addition, these mailpieces are precluded from Pickup on Demand service under 225.2 and Carrier Pickup in 225.3. Customers must present such items to an employee at a at a Post Office retail service counter. The Postal Service will return improperly presented items to the sender for proper entry and acceptance.

225.133 Payment Methods Other Than Postage Stamps

An Express Mail International item paid with online postage, postage meters or information-based indicia (IBI) and not requiring a customs declaration (See Individual Country Listing) may be deposited by one of the following methods:

a. At a Postal Service retail counter.
b. Through Pickup on Demand service (*see* 225.2).
c. Through Carrier Pickup (*see* 225.3).
d. Into a Postal Service lobby drop.
e. Into an Automated Postal Center (APC) drop.
f. In a collection box.
g. In a customer mailbox.

* * * * *

230 Priority Mail International

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235 Mail Entry and Deposit

[Revise 235.1 as follows:]

235.1 Place of Mailing

235.11 Items Requiring a Completed Customs Declaration

Except as provided in 235.12, a mailer may not deposit a Priority Mail International item that requires a completed customs form into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. In addition, these mailpieces are precluded from Pickup on Demand service under 235.2 and Carrier Pickup in 235.3. Customers must present such items to an employee at a at a Post Office retail service counter. The Postal Service will return improperly presented items to the sender for proper entry and acceptance.

235.12 Items Bearing a Completed Customs Declaration With an Electronic Round Date

Priority Mail International items that have the mailing label, customs form (including an electronic round stamp), and postage prepared and paid online through Click-N-Ship service on usps.com, the eBay integrated shipping solution, or an authorized PC Postage vendor Web site may be deposited by one of the following methods:

a. At a Postal Service retail counter.
b. Through Pickup on Demand service (*see* 235.2).
c. Through Carrier Pickup (*see* 235.3).
d. Into a Postal Service lobby drop.
e. Into an Automated Postal Center (APC) drop.
f. In a collection box.
g. In a customer mailbox.

235.13 Flat-Rate Envelopes Not Requiring a Customs Declaration

The Priority Mail International flat-rate envelope meeting the conditions in 123.6 is the only Priority Mail International item that can be mailed without a customs labels. *See* 235.131 through 235.133 for specific conditions.

235.131 Flat-Rate Envelopes Weighing 13 Ounces or Less—Paid With Postage Stamps

A Priority Mail International flat-rate envelope bearing only postage stamps, weighing 13 ounces or less and not requiring a customs declaration (see 123.6) may be deposited by one of the following methods:

a. At a Postal Service retail counter.
b. Through Pickup on Demand service (*see* 235.2).
c. Through Carrier Pickup (*see* 235.3).
d. Into a Postal Service lobby drop.
e. Into an Automated Postal Center (APC) drop.
f. In a collection box.
g. In a customer mailbox.

235.132 Flat-Rate Envelopes Weighing More Than 13 Ounces—Paid With Postage Stamps

A customer may *not* deposit a Priority Mail International flat-rate envelope weighing more than 13 ounces bearing only postage stamps and not requiring a customs declaration (see 123.6) into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. In addition, these mailpieces are precluded from Pickup on Demand service under 235.2 and Carrier Pickup in 235.3. Customers must present such items to an employee at a at a Post Office retail service counter. The Postal Service will return improperly presented items to the sender for proper entry and acceptance.

235.133 Priority Mail Flat-Rate Envelopes—Payment Methods Other Than Postage Stamps

A Priority Mail flat-rate envelope paid with online postage, postage meters or information-based indicia (IBI) weighing under 16 ounces and not requiring a customs declaration (*see* 123.6) may be deposited by one of the following methods:

a. At a Postal Service retail counter.
b. Through Pickup on Demand service (*see* 235.2).
c. Through carrier pickup (*see* 235.3).
d. Into a Postal Service lobby drop.
e. Into an Automated Postal Center (APC) drop.
f. In a collection box.
g. In a customer mailbox.

* * * * *

240 First-Class Mail International

* * * * *

245 Mail Entry and Deposit

[Revise 245.1 as follows:]

245.1 Place of Mailing

245.11 Items Requiring a Completed Customs Declaration

Except as provided in 245.12, a mailer may not deposit a First-Class Mail International item that requires a completed customs declaration form into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. Customers must present such items to an employee at a at a Post Office retail service counter. The Postal Service will return improperly presented items to the sender for proper entry and acceptance.

245.12 Items Bearing a Completed Customs Declaration With an Electronic Round Date

First-Class Mail International items that have the mailing label, customs form (including an electronic round stamp), and postage prepared and paid online through the eBay integrated shipping solution, or an authorized PC Postage vendor Web site may be deposited by one of the following methods:

a. At a Postal Service retail counter.
b. Into a Postal Service lobby drop.
c. Into an Automated Postal Center (APC) drop.
d. In a collection box.
e. In a customer mailbox.

245.13 Items Not Requiring a Customs Declaration

245.131 Items Weighing 13 Ounces or Less—Paid With Postage Stamps

A First-Class Mail International letter-size or flat-size item bearing only postage stamps, weighing 13 ounces or less and not requiring a customs declaration (*see* 123.6) may be deposited by one of the following methods:

a. At a Postal Service retail counter.
b. Into a Postal Service lobby drop.
c. Into an Automated Postal Center (APC) drop.
d. In a collection box.
e. In a customer mailbox.

245.132 Items Weighing More Than 13 Ounces—Paid With Postage Stamps

A customer may *not* deposit a First-Class Mail International letter-size or flat-size items weighing more than 13 ounces bearing only postage stamps and not requiring a customs declaration (*see* 123.6) into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. Customers must present such items to an employee at a at a Post Office retail service counter. The Postal Service will return improperly presented items to the sender for proper entry and acceptance.

245.14 Payment Methods Other Than Postage Stamps

First-Class Mail International letter-size or flat-size items paid with online postage, postage meters or information-based indicia (IBI) weighing under 16 ounces and not requiring a customs declaration (*see* 123.6) may be deposited by one of the following methods:

a. At a Postal Service retail counter.
b. Into a Postal Service lobby drop
c. Into an Automated Postal Center (APC) drop.
d. In a collection box.
e. In a customer mailbox.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–24331 Filed 10–8–09; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Stamped Mail Over 13 Ounces Must Be Presented at a Retail Service Counter

AGENCY: Postal Service™.

ACTION: Final Rule.

SUMMARY: The Postal Service is revising the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to require all mailpieces weighing more than 13 ounces bearing only postage stamps be presented to a Postal Service employee at a retail service counter in a Post Office™.

DATES: *Effective Date:* January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Bert Olsen 202–268–7276 or Evans King 202–268–4982.

SUPPLEMENTARY INFORMATION:

These revisions ensure compliance with safety and security directives as required by the Postal Inspection Service.

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

100 Retail Mail, Letters, Cards, Flats, and Parcels

* * * * *

110 Express Mail

* * * * *

116 Deposit

1.0 Express Mail Next Day and Second Day Delivery

1.1 Deposit of Next Day and Second Day Delivery

Express Mail Next Day and Second Day Delivery items:

[Revise the first sentence in 1.1a, delete item b in its entirety, and rename current item c as item b as follows]

a. Weighing more than 13 ounces and paid only with postage stamps, must present such items to an employee at a retail service counter at a Postal Service facility.* * *

* * * * *

120 Priority Mail

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126 Deposit

1.0 Deposit

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1.2 Pieces Weighing More Than 13 Ounces

[Revise the text of 1.2, as follows:]

Priority Mail weighing more than 13 ounces bearing only postage stamps as postage may not be deposited into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. These mailpieces are also precluded from pickup service. The sender must present such items to an employee at a retail service counter in a Postal Service facility. The Postal Service will return improperly presented items to the sender for proper entry and acceptance.

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150 Parcel Post

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156 Deposit

1.0 Deposit for Parcel Post

* * * * *

[Add new item 1.6 as follows:]

1.6 Stamped Pieces over 13 Ounces

Parcel Post weighing more than 13 ounces bearing only postage stamps as postage may not be deposited into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. These mailpieces are also precluded from pickup service. The sender must present such items to an employee at a retail service counter in a Postal Service facility. The Postal Service will return improperly presented items to the sender for proper entry and acceptance.

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170 Media Mail

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176 Deposit

1.0 Deposit for Media Mail

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[Add new item 1.2 as follows:]

1.2 Stamped Pieces over 13 Ounces

Media Mail weighing more than 13 ounces bearing only postage stamps as postage may not be deposited into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. These mailpieces are also precluded from pickup service. The sender must present such items to an employee at a retail service counter in a Postal Service facility. The Postal Service will return improperly presented items to the sender for proper entry and acceptance.

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180 Library Mail

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186 Deposit

1.0 Deposit for Library Mail

1.1 Single-Piece Price Mailing

[Add new item 1.2 as follows:]

1.2 Stamped Pieces Over 13 Ounces

Library Mail weighing more than 13 ounces bearing only postage stamps as postage may not be deposited into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. These mailpieces are also precluded from pickup service. The sender must present such items to an employee at a retail service counter in a Postal Service Facility. The Postal Service will return improperly presented items to the sender for proper entry and acceptance.

* * * * *

400 Commercial Parcels

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420 Priority Mail

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426 Enter and Deposit

[Delete 1.1 and 1.2 in their entirety, and add new item 1.0 as follows:]

1.0 Time and Location of Deposit

Commercial Parcels at the Presorted price must be deposited at locations and items designated by the postmaster. Permit imprint mail must be presented at a Post Office under 604.5.0, *Permit Imprint (Indicia),* or 705, *Advanced Preparation and Special Postage Payment Systems.*

* * * * *

507 Mailer Services

* * * * *

6.0 Pickup on Demand Service

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6.2 Basic Standards

6.2.1 Availability

[Renumber current items 6.2.2 thru 6.2.8 as 6.2.3 thru 6.2.9, and add new item as 6.2.2 and as follows:]

6.2.2. Stamped Pieces Over 13 Ounces

Mailpieces weighing more than 13 ounces bearing only postage stamps as postage must be presented to an employee at a retail service counter in a Postal Service facility. Letter carriers may not pick up or accept mail weighing more than 13 ounces bearing only stamps as postage. If this mail is discovered in collection boxes, Postal Service lobby drop, Automated Postal Center (APC) drops, Postal Service dock, or customer mailbox it will be returned to the sender for proper presentation at a retail counter.

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600 Basic Standards for All Mailing Services

601 Mailability

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11.0 Other Restricted and Nonmailable Matter

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[Add new item 11.21 as follows:]

11.21 Mail Weighing More Than 13 Ounces

A mailpiece weighing more than 13 ounces bearing only postage stamps as postage may not be deposited into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. These mailpieces are also precluded from pickup service. The sender must present such items to an employee at a retail service counter in a Postal Service Facility. The Postal Service will return improperly presented items to the sender for proper entry and acceptance.

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700 Special Standards

703 Nonprofit Standard Mail and Other Unique Eligibility

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2.0 Overseas Military Mail

2.1 Basic Standards

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2.1.7 Restrictions

[Revise 2.1.7 to read as follows:]

Regardless of postage payment method, single-piece Priority Mail and single-piece Package Services weighing more than 13 ounces may *not* be deposited into a collection box, Postal Service lobby drop, Automated Postal Center (APC) drop, Postal Service dock, customer mailbox, or other unattended location. These mailpieces are also precluded from pickup service. The sender must present such items to an employee at a retail service counter in a Postal Service facility. The Postal Service will return improperly presented items to the sender for proper entry and acceptance

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–24332 Filed 10–8–09; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0601; FRL–8794–1]

Inert Ingredients; Extension of Effective Date of Revocation of Certain Tolerance Exemptions with Insufficient Data for Reassessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document moves the effective date of the revocation of six inert ingredient tolerance exemptions as

set forth in the **Federal Register** on August 7, 2009 (74 FR 39543).

DATES: In the final rule published August 9, 2006 (71 FR 45415), and delayed on August 4, 2008 (73 FR 45312), and August 7, 2009 (74 FR 39543):

1. The effective date is delayed from October 9, 2009, to February 9, 2010, for the following amendments to §180.910: 2.m., n., and cc.

2. The effective date is delayed from October 9, 2009, to February 9, 2010, for the following amendments to §180.930: 4.t., u., and v.

Objections and requests for hearings must be received on or before December 8, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0601. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; e-mail address: *leifer.kerry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0601 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 8, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0601, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

A. Background

In a final rule published in the **Federal Register** on August 9, 2006 (71 FR 45415) (FRL–8084–1), EPA revoked inert ingredient tolerance exemptions because insufficient data were available to the Agency to make the safety determination required by Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(c)(2). In reassessing the safety of the tolerance exemptions, EPA considered the validity, completeness, and reliability of the data that are available to the Agency [FFDCA section 408 (b)(2)(D)] and the available information concerning the special susceptibility of infants and children (including developmental effects from *in utero* exposure) [FFDCA section 408(b)(2)(C)]. EPA concluded it had insufficient data to make the safety finding of FFDCA section 408(c)(2) and revoked the inert ingredient tolerance exemptions identified in the final rule under 40 CFR 180.910, 180.920, 180.930, and 180.940, with the revocations effective on August 9, 2008.

In a direct final rule published in the **Federal Register** on August 4, 2008 (73 FR 45312) (FRL–8372–7), EPA moved the effective date of the revocation of certain inert ingredient tolerance exemptions from August 9, 2008, until August 9, 2009. This determination was made based on requests for an extension of the revocation date from pesticide registrants and inert ingredient manufacturers who had demonstrated their intent to support certain inert ingredient tolerance exemptions and who had provided data development plans and schedules for data submission to the Agency. In a subsequent direct

final rule published in the **Federal Register** on August 7, 2009 (74 FR 39543) (FRL–8431–8), EPA moved the effective date of the revocation of six inert ingredient tolerance exemptions from August 9, 2009, until October 9, 2009. This action was based on the fact that EPA had received petitions for the establishment of tolerance exemptions which included the submission of data for these inert ingredients. Notices of filing of these petitions (PP 8E7466 and PP 8E7478) were published in the **Federal Register** on March 25, 2009 (74 FR 12856) (FRL–8399–4). The August 7, 2009, direct final rule was published to allow for the completion of the Agency's risk assessments needed to evaluate the petitions and to complete the safety determinations for the six tolerance exemptions.

B. Moving the Effective Date of the Revocation for Six Tolerance Exemptions

Following the publication of the August 7, 2009, final rule delaying the effective date for the six revoked tolerance exemptions, EPA received significant additional toxicity, metabolism and environmental fate data from the petitioners in further support of pesticide tolerance petitions 8E7466 and 8E7478 which have been determined by the Agency to have a significant bearing on its safety evaluation under FFDCA section 408(c)(2) of the petition proposing that these exemptions be reestablished. Much of the data submitted were not previously available and thus could not have been submitted sooner. EPA, therefore, concludes that additional time is necessary to complete the safety determinations for these six tolerance exemptions and that the effective date of the revocation of these tolerance exemptions should be moved by four months to February 9, 2010.

C. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under FFDCA section 402(a), 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States. Under FFDCA section 408(e)(1)(B), 21 U.S.C. 346a(e)(1)(B), EPA may take action establishing, modifying, suspending, or revoking a tolerance exemption.

III. Delayed Effective Date for Certain Tolerance Exemptions

The amendatory designations listed in this unit are reprinted from the final rule published in the **Federal Register** issue of August 7, 2009 (74 FR 39543) for the convenience of the user. The structure mirrors the amendatory designations in the original document. The amendatory designations shown are those with the effective date delayed until February 9, 2010.

Section 180.910

m. α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly (oxyethylene) content averages 4–14 moles or 30 moles.

n. α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene)sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4 moles.

cc. α-[p-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of p-(1,1,3,3-tetramethylbutyl)phenol with a range of 1–14 or 30–70 moles of ethylene oxide: if a blend of products is used, the average range number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 1–14 or 30–70.

Section 180.930

t. α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 moles.

u. α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene)sulfate, and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4 moles.

v. α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene)sulfate, and its ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 or 30–90 moles of ethylene oxide.

IV. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by

Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 5, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.910 [Amended]

■ 2. In the final rule published August 9, 2006 (71 FR 45415), and delayed on August 4, 2008 (73 FR 45312), and August 7, 2009 (74 FR 39543) the effective date is delayed from October 9, 2009, to February 9, 2010, for the following amendments to §180.910: 2.m., n., and cc.

§ 180.930 [Amended]

■ 3. In the final rule published August 9, 2006 (71 FR 45415), and delayed on August 4, 2008 (73 FR 45312), and August 7, 2009 (74 FR 39543) the effective date is delayed from October 9, 2009, to February 9, 2010, for the following amendmentsto §180.930: 4.t., u., and v.

[FR Doc. E9–24415 Filed 10–6–09; 4:15 pm]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2155; MB Docket No. 09–156; RM–11556]

Television Broadcasting Services; Jackson and Laurel, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by commonly-owned WLBT License Subsidiary, LLC and WDAM License Subsidiary, LLC, the licensees of stations WLBT(TV), channel 7, Jackson, Mississippi, and WDAM–TV, channel 28, Laurel, Mississippi, requesting the substitution of channel 30 for WLBT(TV)'s assigned channel 7 at Jackson and the substitution of channel 7 for WDAM–TV's assigned channel 28 at Laurel.

DATES: This rule is effective October 9, 2009.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09–156, adopted September 30, 2009, and released October 1, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Mississippi, is amended by adding channel 30 and removing channel 7 at Jackson.

■ 3. Section 73.622(i), the Post-Transition Table of DTV Allotments under Mississippi, is amended by adding channel 7 and removing channel 28 at Laurel.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–24451 Filed 10–8–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XS17

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2009 total allowable catch (TAC) of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 6, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The 2009 TAC of pollock in Statistical Area 610 of the GOA is 15,249 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2009 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 15,000 mt, and is setting aside the remaining 249 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 5, 2009.

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

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 6, 2009.

James P. Burgess,

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

[FR Doc. E9–24420 Filed 10–6–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XS11

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access fishery. This action is necessary to fully use the 2009 total allowable catch (TAC) of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 6, 2009, through 2400 hrs A.l.t., December 31, 2009. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 26, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XS11, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required

fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

NMFS closed the directed fishery for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea on September 10, 2009 (74 FR 46021, September 8, 2009).

NMFS has determined that approximately 470 mt of the 2009 Atka mackerel TAC for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2009 TAC of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery, NMFS is terminating the previous closure and is reopening directed fishing for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea effective 1200 hrs, A.l.t., October 6, 2009, through 2400 hrs A.l.t., December 31, 2009. Pursuant to § 679.25(b), the Regional Administrator considered the following factors in reaching this decision: (1) the catch per unit of effort and the rate of harvest and, (2) the economic impacts on fishing businesses affected in the BSAI trawl limited access sector.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 1, 2009. The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 26, 2009.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: October 5, 2009.

Emily H. Menashes,

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

[FR Doc. E9–24425 Filed 10–6–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 195
Friday, October 9, 2009

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS–FV–09–0050; FV09–984–5 PR]

Walnuts Grown in California; Changes to Regulations Governing Voting Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revisions to the administrative regulations governing voting procedures for the California Walnut Board (Board). The Board locally administers the marketing order that regulates the handling of walnuts grown in California (order). This rule would specify the voting procedures to be used for expanded types of non-assembled meetings and remove voting by telegraph. This would enable the Board to conduct business using current communication methods, which would result in time and cost savings to the Board and its members.

DATES: Comments must be received by December 8, 2009.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Debbie.Wray@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revisions to the administrative regulations governing the Board's voting procedures to implement authority from a recent amendment to the order. It would expand the current procedures for voting by allowing voting by e-mail, facsimile, telephone, and videoconference, or by other means of communication. This proposal was unanimously recommended by the Board at a meeting on May 18, 2009.

Section 984.45(b) of the California walnut marketing order specifies the percentage requirements for quorum and voting procedures of the Board. Section 984.45(c) of the order provides authority for the Board to vote by mail or telegram, or by any other means of communication, and to prescribe, with the approval of USDA, the minimum number of votes that must be cast, as well as any other procedures that are necessary when the voting is by any of these communication methods. Section 984.45(d) of the order provides authority for the Board to meet by telephone or other means of communication.

Currently, Section 984.445 of the order's administrative regulations prescribes procedures for voting by mail or telegram but does not include procedures for voting by other means of communication, such as e-mail, facsimile, telephone, or videoconference.

At its meeting on May 18, 2009, the Board discussed the need to change the order's administrative regulations to include the use of current communication technologies to conduct business at non-assembled meetings, as authorized by a recent amendment to the order (73 FR 11328, March 3, 2008). Prior to the amendment, the Board had the authority to vote by mail or telegram upon due notice to all members but not to hold non-assembled meetings. As amended, the order provides for non-assembled meetings, but voting requirements and procedures for all such communication methods needed to be recommended by the Board and established through informal rulemaking. The Board unanimously recommended these changes at its meeting on May 18, 2009.

Using current communication methods and technology to vote at non-assembled meetings on matters deemed to be non-controversial, administrative, or of an emergency nature would result in cost savings by reducing time and travel expenses of Board members, many of whom are walnut producers and handlers who must travel long distances within California to attend meetings. Other Board expenses associated with holding assembled meetings, such as reserving meeting spaces, could also be reduced.

This proposal would expand the procedures currently prescribed for voting by mail or telegram to include voting by e-mail and facsimile. In addition, reference to voting by telegram would be removed from the regulations since this communication method generally has been replaced by newer technology. Finally, voting by roll call would be prescribed for meetings conducted by telephone, videoconference, or any other method of communication that enables interaction of Board members to ensure each member's vote by such method is accurately recorded.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are currently 58 handlers of California walnuts subject to regulation under the marketing order, and there are approximately 4,500 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural growers are defined as those having annual receipts of less than $750,000.

USDA's National Agricultural Statistics Service (NASS) reports that California walnuts were harvested from a total of 223,000 bearing acres during 2008–09. The average yield for the 2008–09 crop was 1.96 tons per acre, which is higher than the 1.56 tons per acre average for the previous five years. NASS reported the value of the 2008–09 crop at $1,210 per ton, which is lower than the previous five-year average of $1,598 per ton.

At the time of the 2007 Census of Agriculture, which is the most recent information available, approximately 89 percent of California's walnut farms were smaller than 100 acres. Fifty-four percent were between 1 and 15 acres. A 100-acre farm with an average yield of 1.96 tons per acre would have been expected to produce about 196 tons of walnuts during 2008–09. At $1,210 per ton, that farm's production would have had an approximate value of $237,000. Assuming that the majority of California's walnut farms are still smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than $237,000 in 2008–09. This is well below the SBA threshold of $750,000; thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

Industry information regarding the value of merchantable walnuts shipped by handlers during the 2008–09 marketing year is not yet available; however, the industry reported that during the 2007–08 marketing year, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under $7,000,000 and would therefore be considered small handlers according to the SBA definition.

This proposal would revise procedures currently prescribed under § 984.445 of the order for voting by mail and telegram to include other means of communication, including e-mail, facsimile, telephone, and videoconference. This revision to the regulations would incorporate authority from a recent amendment to the order concerning voting procedures and would allow the Board to conduct business at non-assembled meetings using current methods of communication. Authority for this action is provided in § 984.45 of the order.

The majority of the Board's members are walnut producers and handlers who are located at various locations throughout California, and it can be difficult to assemble these members in one location for a meeting, especially during harvest season. By prescribing procedures for voting by the communication methods authorized by the order, the Board would be able to vote on non-controversial, administrative, or emergency matters at non-assembled meetings, which would reduce travel time and expenses for producer and handler Board members. Board expenses associated with holding assembled meetings, such as the cost of reserving a meeting room, would also be reduced.

The Board unanimously recommended these changes, which are necessary to implement authority provided by a recent amendment to the order. Therefore, no alternatives to these changes were considered practicable.

This action would not impose any additional reporting or recordkeeping requirements on either small or large walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

The Board's meeting was widely publicized throughout the walnut industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the May 18, 2009, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 984.445 is revised to read as follows:

§ 984.445 Procedures for voting by mail, e-mail, telephone, videoconference, facsimile, or any other means of communication.

(a) Whenever the Board votes upon any proposition by mail, e-mail, or facsimile, at least six members or alternates acting as members must vote and one dissenting vote shall prevent its adoption. Each proposition to be voted upon by mail, e-mail, or facsimile shall specify a time limit for members to vote, after which the alternates shall be given the opportunity to vote.

(b) Whenever the Board conducts meetings by telephone, videoconference, or any technology that enables member interaction, the vote shall be conducted by roll call.

Dated: October 1, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–24299 Filed 10–8–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0938; Directorate Identifier 2009–CE–052–AD]

RIN 2120–AA64

Airworthiness Directives; PILATUS Aircraft Ltd. Model PC–7 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

This Airworthiness Directive (AD) is prompted due to the discovery of cracks caused by stress corrosion in the main-gear support struts. All the main-gear support struts that had cracks were made from material AA2024–T351 which has a lower resistance to stress corrosion cracking.

Such cracks, if undetected, could lead to the failure of the strut during landing which could then cause the Main Landing Gear (MLG) to collapse.

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

DATES: We must receive comments on this proposed AD by November 23, 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090; *e-mail: doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0938; Directorate Identifier 2009–CE–052–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Federal Office of Civil Aviation (FOCA), which is the aviation authority for Switzerland, has issued FOCA AD HB–2009–011, dated September 10, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is prompted due to the discovery of cracks caused by stress corrosion in the main-gear support struts. All the main-gear support struts that had cracks were made from material AA2024–T351 which has a lower resistance to stress corrosion cracking.

Such cracks, if undetected, could lead to the failure of the strut during landing which could then cause the Main Landing Gear (MLG) to collapse.

In order to correct and control the situation, this AD mandates the identification of the main-gear support struts to check if they have rounded clevis lugs and a Non-Destructive Inspection (NDI) procedure on the main-gear support struts if they have chamfered clevis lugs.

For main-gear support struts with chamfered clevis lugs that show cracks during the NDI, the MCAI also requires replacing any cracked main-gear support struts with parts of improved design. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

PILATUS Aircraft Ltd. has issued PILATUS PC–7 Service Bulletin No. 32–024, Rev. No. 1, dated November 17, 2008; and PILATUS PC–7 Service Bulletin No. 32–025, Rev. No. 1, dated November 17, 2008. 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 Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of

Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this proposed AD will affect 10 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $3,200, or $320 per product.

In addition, we estimate that any necessary follow-on actions would take about 20 work-hours and require parts costing $20,000, for a cost of $21,600 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

PILATUS Aircraft Ltd: Docket No. FAA–2009–0938; Directorate Identifier 2009–CE–052–AD.

Comments Due Date

(a) We must receive comments by November 23, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model PC–7 airplanes, manufacturer serial numbers 101 through 618 that are:

(1) Equipped with main-gear support struts part number (P/N) 532.10.09.039 or P/N 114.48.07.172; and

(2) 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:

This Airworthiness Directive (AD) is prompted due to the discovery of cracks caused by stress corrosion in the main-gear support struts. All the main-gear support struts that had cracks were made from material AA2024–T351 which has a lower resistance to stress corrosion cracking.

Such cracks, if undetected, could lead to the failure of the strut during landing which could then cause the Main Landing Gear (MLG) to collapse.

In order to correct and control the situation, this AD mandates the identification of the main-gear support struts to check if they have rounded clevis lugs and a Non-Destructive Inspection (NDI) procedure on the main-gear support struts if they have chamfered clevis lugs.

For main-gear support struts with chamfered clevis lugs that show cracks during the NDI, the MCAI also requires replacing any cracked main-gear support struts with parts of improved design. You may obtain further information by examining the MCAI in the AD docket.

Actions and Compliance

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

(1) Within the next 30 hours time-in-service (TIS) after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs first, visually inspect the left and right main-gear support struts to determine if they have rounded or chamfered clevis lugs. Do the inspection following paragraph 3.A. of PILATUS PC–7 Service Bulletin No. 32–024, Rev. No. 1, dated November 17, 2008.

(2) Based on the results of the inspection required in paragraph (f)(1) of this AD, if the main-gear support strut has rounded clevis lugs, no further action is required except the requirement specified in paragraph (f)(4) of this AD still applies. Make an entry in the airplane logbook to show compliance with this AD.

(3) Based on the results of the inspection required in paragraph (f)(1) of this AD, if the main-gear support strut has chamfered clevis lugs, before further flight do a Non-Destructive Inspection (NDI). Do the NDI following paragraphs 3.B. through 3.E. of PILATUS PC–7 Service Bulletin No. 32–024, Rev. No. 1, dated November 17, 2008.

(i) If cracks are found during the inspection required in paragraph (f)(3) of this AD:

(A) Before further flight after the inspection, replace any cracked main-gear support struts with new main-gear support struts, P/N 532.10.09.128. Do the replacement following PILATUS PC–7 Service Bulletin No. 32–025, Rev. No. 1, dated November 17, 2008.

(B) Within the next 10 days after the inspection, report the cracks to PILATUS AIRCRAFT LTD., Customer Liaison Manager, CH–6371 STANS, Switzerland, using the Crack Report Form (Figure 4) in PILATUS PC–7 Service Bulletin No. 32–024, Rev. No. 1, dated November 17, 2008. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act and assigned OMB Control Number 2120–0056.

(ii) If no cracks are found during the inspection required in paragraph (f)(3) of this AD, no further action is required. Make an entry in the airplane logbook to show compliance with this AD.

(4) As of 30 days after the effective date of this AD, do not install any main-gear support struts, P/N 532.10.09.039 or P/N 114.48.07.172, with chamfered clevis lugs.

Note 1: If you have any main-gear support struts, P/N 532.10.09.039 or P/N 114.48.07.172, with chamfered clevis lugs held as spares, you may return them to PILATUS AIRCRAFT LTD., Customer Liaison Manager, CH–6371 STANS, Switzerland, for replacement with a new main-gear support strut, P/N 532.10.09.128.

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: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; e-mail: *doug.rudolph@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI FOCA AD HB–2009–011, dated September 10, 2009; and PILATUS PC–7 Service Bulletin No. 32–024, Rev. No. 1, dated November 17, 2008; and PILATUS PC–7 Service Bulletin No. 32–025, Rev. No. 1, dated November 17, 2008, for related information.

Issued in Kansas City, Missouri, on October 5, 2009.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–24450 Filed 10–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0754]

RIN 1625–AA09

Drawbridge Operation Regulation; Elizabeth River, Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the regulations that govern the operation of the Berkley Bridge, mile 0.4, across the Eastern Branch of the Elizabeth River, Norfolk, VA. Due to the temporary closure of two area bridges, the Berkley Bridge has experienced an increase in traffic volume. The proposed change would provide set opening periods for the bridge during the day, relieving vehicular traffic congestion during the weekday daytime hours while still providing for the reasonable needs of navigation.

DATES: Comments, related material, and requests for public meeting must be received by the Coast Guard on or before December 8, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0754 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *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.
- *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 methods. *See* the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Waverly Gregory, Bridge Administrator, Fifth Coast Guard District, telephone 757–398–6222, e-mail *Waverly.W.Gregory@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0754), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''Submit a Comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2009–0754'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an

unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0754'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On behalf of the cities of Chesapeake and Norfolk Virginia, the Virginia Department of Transportation (VDOT) who owns and operates the lift-type Berkley Bridge has requested a temporary change to the existing bridge regulations. The current regulation set out in 33 CFR 117.1007(b) and (c) allows the Berkley Bridge, mile 0.4, in Norfolk, Virginia to remain closed one hour prior to the published start of a scheduled marine event regulated under § 100.501, and remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 allows the bridge to open for commercial vessel traffic. In addition, the bridge shall open on signal any time except from 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays, and shall open at any time for vessels with a draft of 18 feet or more, provided that at least 6 hours advance notice has been given to the Berkley Bridge Traffic Control Room AT (757) 494–2490. Vessel traffic on this waterway consists of pleasure craft, tug and barge traffic, and ships with assist tugs seeking repairs. There is no alternate waterway route.

Due to the temporary closure of two area bridges, this bridge and its approaches have experienced traffic back-ups, delays, and traffic congestion due to an increase in vehicular traffic. This temporary change will allow from March 9, 2010 to October 5, 2012, the draw of the Berkley Bridge to open on signal to vessels at 9 a.m., 11 a.m., 1 p.m., and 2:30 p.m. and permit VDOT to monitor, measure, and identify congested roadway locations during heavy traffic periods. By implementing scheduled bridge openings, we anticipate a decrease in vehicular traffic congestion during the daytime hours.

Concurrent with the publication of the Notice of Proposed Rulemaking, a Test Deviation [USCG–2009–0754] has been issued to allow VDOT to test the proposed schedule and to obtain data and public comments. The test period will be in effect during the entire Notice of Proposed Rulemaking comment period. Also, a count of the delayed vessels during the closure periods will be taken to ensure any future regulation will not have a significant impact on navigation. This NPRM has been coordinated with the main commercial waterway user group that has vessels transiting in this area and there is no expectation of any significant impacts on navigation. The Berkley Bridge is the principle arterial route in and out of the city of Norfolk and serves as the major evacuation highway in the event of emergencies. The monthly vehicular traffic count submitted by VDOT for the last quarter of calendar year 2008 shows the average daily traffic volumes at the Berkley Bridge as shown below:

October	2008	83,296	vehicles.
November	2008	99,643	vehicles.
December	2008	106,856	vehicles.

The traffic counts reveal that from October 2008 to December 2008, the Berkley Bridge has experienced a seven percent (or 23,560-car) increase in traffic flow during the morning and evening rush hours. The Coast Guard believes that this traffic increase is due to the previously referenced temporary closure of two area bridges in November, 2008. The Coast Guard anticipates a continued increase in vehicular traffic over the bridge until one or both bridges are reopened to traffic at which time the vehicular traffic on the Berkley Bridge will subside.

Discussion of Proposed Rule

The Coast Guard proposes to temporarily amend the regulations governing the Berkley Bridge, mile 0.4, at Norfolk, Virginia, at 33 CFR 117.1007, by inserting a new paragraph(c)(3) to read as follows: From March 9, 2010 to October 5, 2012, the draw shall open on signal to vessels at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m. This temporary change will reduce the daytime openings to specific times which will help to alleviate the congestion on the Berkley Bridge and its approaches from the increased vehicular traffic during repair work of the aforementioned bridges.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings, to minimize delays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises

small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, in allowing four scheduled openings during the day, outside of the advance notice request opening. Mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast GuardDistrict, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No.0170.1.

2. In § 117.1007 add a new paragraph (c)(3) to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch

* * * * *

(c) * * *

(3) From March 9, 2010 to October 5, 2012, the draw shall open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m., Monday through Friday, except Federal holidays.

Dated: August 20, 2009.

Wayne E. Justice,

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

[FR Doc. E9–24485 Filed 10–7–09; 11:15 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–8967–7]

Michigan: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Michigan has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Michigan's application and has preliminarily determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize Michigan's changes.

DATES: Comments on this proposed rule must be received on or before November 9, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–RCRA–2009–0762 by one of the following methods:

http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: greenberg.judith@epa.gov.

Mail: Ms. Judith Greenberg, Michigan Regulatory Specialist, RCRA Programs Section (LR–8J), Land and Chemicals Division, U.S. Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL 60604.

Instructions: Direct your comments to Docket ID Number EPA–R05–RCRA–2009–0762. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epagov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some of the information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy. You may view and copy Michigan's application Mondays through Fridays, excluding Federal holidays, from 9 a.m. to 4 p.m. at the following addresses: U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois, contact: Judith Greenberg, (312) 886–4179; or Michigan Department of Environmental Quality, Constitution Hall, 525 W. Allegan St., Lansing, Michigan (mailing address P.O. Box 30241, Lansing, Michigan 48909), contact Ronda Blayer, (517) 373–9548.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Greenberg, Michigan Regulatory Specialist, RCRA Programs Section, Land and Chemicals Division (LR–8J), U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604, (312) 886–4179, e-mail *greenberg.judith@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We have preliminarily determined that Michigan's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Michigan final authorization to operate its hazardous waste program with the changes described in the authorization revision application. Michigan will have responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program revision application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Michigan, including issuing permits, until the State is granted authorization to do so.

C. What Will Be the Effect If Michigan Is Authorized for These Changes?

If Michigan is authorized for these changes, a facility in Michigan subject to RCRA will have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable Federal requirements, such as HSWA regulations issued by EPA for which the State has not received authorization and RCRA requirements that are not

supplanted by authorized State-issued requirements. Michigan has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

1. Do inspections, and require monitoring, tests, analyses, or reports;

2. Enforce RCRA requirements and suspend or revoke permits; and

3. Take enforcement actions regardless of whether the State has taken its own actions.

This proposed action would not impose additional requirements on the regulated community because the regulations for which Michigan would be authorized are already effective, and would not be changed by the act of authorization.

D. What Happens If EPA Receives Comments on This Action?

If EPA receives comments on this proposed action, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Michigan Previously Been Authorized for?

Michigan initially received final authorization on October 16, 1986, effective October 30, 1986 (51 FR 36804–36805) to implement the RCRA hazardous waste management program. We granted authorization for changes to Michigan's program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on January 24, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996, effective April 8, 1996 (61 FR 4742); on November 14, 1997, effective November 14, 1997 (62 FR 61775); on March 2, 1999, effective June 1, 1999 (64 FR 10111); on July 31, 2002, effective July 31, 2002 (67 FR 49617); on March 9, 2006, effective March 9, 2006 (71 FR 12141), and on January 7, 2008 (73 FR 1077), effective January 7, 2008.

F. What Changes Are We Proposing?

On September 26, 2008, Michigan submitted a complete program revision application seeking authorization of its changes in accordance with 40 CFR 271.21. We have preliminarily determined that Michigan's hazardous waste management program revision satisfies all requirements necessary to qualify for final authorization. Therefore, we propose to grant Michigan final authorization for the following program changes:

Description of Federal requirement	Revision checklist [1]	**Federal Register** date and page	Analogous State authority
Non-wastewaters from Dyes and Pigments.	206, 206.1	February 24, 2005, 70 FR 9138; as amended on June 16, 2005, 70 FR 35032.	R 299.9311, R 299.9413, and R 299.9627, effective September 11, 2000. R 299.9204(2) and (2)(o)–(o)(v)(B), R 299.9222, and R 299.11003(1)(i), (j), and (u), and (2), effective March 17, 2008.
Uniform Hazardous Waste Manifest	207, 207.1	March 6, 2005, 70 FR 10776; as amended on June 16, 2005, 70 FR 35037.	R 299.9601(1) and (2)(c) and (e), effective December 16, 2004. R 299.9102(z), R 299.9105(m) and (n); R 299.9207(3)(b)(i)–(ii); R 299.9304(1), (1)(a) and (b), and (6); R 299.9305(1), (1)(d) and (d)(i) and (e); R 299.9306(11) and (12); R 299.9307(3); R 299.9309(2)(c); R 299.9310(2) and (2)(c) and (3); R 299.9405(2)(f) and (g) and (3)(d) and (f); R 299.9409(1)–(3) and (5); R 299.9608(1), (2), and (5)–(8); R 299.9610(2) and (5); and R 299.11003(1)(k) and (l) and (n), effective March 17, 2008.
Methods Innovation; SW–846	208, 208.1	June 14, 2005, 70 FR 34538; as amended on August 1, 2005, 70 FR 44150.	R 299.9211(1)(a) and (4), effective February 15, 1989. R 299.9630 and R 299.9631, effective June 21, 1994. R 299.9812(4), R 299.9813(4), and R 299.9814(5), effective October 15, 1996. R 299.9212(1)(a), R 299.9230(2) and (3), R 299.9311, R 299.9413, R 299.9508(1)(b), R 299.9627, and R 299.9637, effective September 11, 2000. R 299.9601(1), (2)(h) and (3), R 299.9619(1) and (8), and R 299.9809(2)(b), effective December 16, 2004.

Description of Federal requirement	Revision checklist [1]	Federal Register date and page	Analogous State authority
			R 299.9203(1)(e); R 299.9212(1)(a) and (a)(iv) and (2)(a) and (b); R 299.9227(3)(c) and (6); R 299.9504(4)(a) and (b), (15) and (21); R 299.9615; R 299.9808(8) and (10); R 299.11001; R 299.11002; R 299.11003(1)(h), (i), (j), (m), (p), (r), (t), (u), (v); and R 299.11005(1), (2), (4), (5) and (7), effective March 17, 2008.
Mercury Containing Equipment	209	August 5, 2005, 70 FR 45508	R 299.9109(g), (i), and (j), effective September 11, 2000. R 299.9101(r); R 299.9228(1)(c)–(f); (2), (2)(h) and (i), (4)(a) and (d), (5)(b), and (11); R 299.9503(1)(j); and R 299.11003(1)(w), effective March 17, 2008.
Revison of Wastewater Treatment Exemptions for Hazardous Waste Mixtures—''Headworks Exemption''.	211	October 4, 2005, 70 FR 57769	R 299.9203(1)(c)(i) and (c)(i)(D) and (E), (c)(ii) and (c)(ii)(A)–(O), (c)(iv) and (c)(iv)(A)–(G), (c)(vi), and (c)(vii), effective March 17, 2008.
NESHAP: Final Standards for Hazardous Waste Combusters (Phase I Final Replacement Standards and Phase II).	212	October 12, 2005, 70 FR 59402	R 299.9508(1) and (1)(b), effective September 11, 2000. R 299.9601(2)(i), effective December 16, 2004. R 299.9504(4), (12), (13), (20) and (21); R 299.9519(5)(k), (l) and (l)(i)–(iv) and (6); R 299.9521(3)(c) and (6); R 299.9623(2) and (3); R 299.9624 (rescinded); R 299.9625 (rescinded); R 299.9626 (rescinded); R 299.9640(1), (2), (4) and (5); R 299.9808(4), (5)(b) and (d), (8) and (10); R 299.11001(1) and (3); and R 299.11003(1)(v), effective March 17, 2008.
Burden Reduction Initiative	213	April 4, 2006, 71 FR 16862	R 299.9618, effective December 28, 1985. R 299.9631 and R 299.9632(1) and (3), effective June 21, 1994. R 299.9617(1) and (3), effective October 15, 1996. R 299.9311, R 299.9413, R 299.9508(1)(a), (b) and (d) and (5), R 299.9627, and R299.9638(1) and (4), effective September 11, 2000. R 299.9502(7); R 299.9601(2)(b), (d), and (f)–(h), (3) and (9); R 299.9614(1)(a) and (2); R 299.9619(1) and (8); R 299.9626(10); and R299.9703(5), effective December 16, 2004. R 299.9204(1)(u)(v)(A)–(C) and (10)(i); R 299.9504(1), (3), (14), (17), (19) and (20); R 299.9519(5)(m); R 299.9605(1) and (4); R 299.9607(1) and (4); R 299.9609(1)(a) and (5); R 299.9612(1) and (2); R 299.9613(1), (3)–(5) and (7); R 299.9615(1) and (7); R 299.9623(4) and (11); R 299.9629(10); R 299.9710(6) and (16); R 299.9808(8) and (10); and R 299.11003(1)(h), (m), (n), (p), (r), (u) and (v), effective March 17, 2008.
Corrections to Errors in the Code of Federal Regulations.	214	July 14, 2006, 71 FR 40254	Michigan Compiled Laws 324.11148, effective September 1, 1998. R 299.9618, effective December 28, 1985. R 299.9702 and R 299.9704, effective April 20, 1988. R 299.9628(1) and (4), effective November 19, 1991.

Description of Federal requirement	Revision checklist [1]	**Federal Register** date and page	Analogous State authority
			R 299.9217, R 299.9630, R 299.9631, and R 299.9632(1) and (3), effective June 21, 1994. R 299.9214(2) and (3), R 299.9617(1) and (3), R 299.9812(3), (4) and (7), R 299.9813(3), (6) and (7), and R 299.9814(4), (5) and (8), effective October 15, 1996. R 299.9210(2), R 299.9312(1) and (3), R 299.9616(1) and (4), and R 299.9634, effective September 22, 1998. R 299.9206(1)(b)–(d) and(2)–(5), R 299.9230(1)(a)(iii), (2) and (3), R 299.9311, R 299.9413, R 299.9605(1) and (4), R 299.9627, R 299.9638(1) and (4), R 299.9701, R 299.9708(6), R 299.9709, R 299.9803(1)(d) and (e), (5) and (6), and R 299.9804, effective September 11, 2000. R 299.9106(b), (j), (m) and (w), R 299.9109(g) and (p), R 299.9202(2), R 299.9220, R 299.9601(2)(b), (g) and (h), and (3) and (9), R 299.9614(1)(a) and (2), R 299.9619(1) and (8), R 299.9635(12)(d), (d)(ii) and (f), R 299.9639(5)(f), R 299.9703(8)(a), R 299.9706, R 299.9809(1)(f), (2)(b)(ii) and (3), and R 299.9815(2)(a), effective December 16, 2004. R 299.9104(p), R 299.9204(1)(x), (2)(f)(ii), (2)(g) and (g)(iii)(A) and (B) and (vi), (2)(k), (3) and (3)(b), (7)(f) and (8)(a), R 299.9212(1)(c), (6)(a) and (9), R 299.9222, R 299.9224, R 299.9225, R 299.9228(4)(a), (5)(b) and (11), R 299.9309(1) and (4), R 299.9503(1)(c), R 299.9504(1)(e) and (g) and (17), R 299.9519(4) and (9)(a), R 299.9605(1) and (4), R 299.9612, R 299.9613(1), (4), (5) and (7), R 299.9615(1) and (7), R 299.9623(4) and (5), R 299.9705(5) and (6), R 299.9710(3)(a) and (e), (6), (10) and (17)(a), R 299.9808(4), (8) and (10), and R 299.11003(1)(h)–(k), (m), (n), (p), (q), (t), (u), (v), (w) and (x), effective March 17, 2008.
Cathode Ray Tubes Rule	215	July 28, 2006, 71 FR 42928	R 299.9102(b), (w), (x) and (y), R 299.9109(x) and (y), R 299.9204(1)(z)(i)–(iv), R 299.9230, R 299.9231, and R 299.11003(1)(i), effective March 17, 2008.

[1] Revision Checklists generally reflect changes to Federal regulations pursuant to a particular FEDERAL REGISTER notice; EPA publishes these checklists as aids to States to use for development of their authorization revision application. *See* EPA's RCRA State Authorization Web Page at *http://www.epa.gov/epawaste/laws-regs/state/index.htm*.

EQUIVALENT STATE-INITIATED CHANGES

State requirement	Effective date(s) of state-initiated modification	Description of change
MAC R 299.9101(a) ''Aboveground tank''	10/15/1996	Words ''is able to be'' changed to ''and can be.''
MAC R 299.9101(b) ''Act''	12/16/2004	Words ''Act No. 451 of the Public Acts of 1994, as amended, being 324.101 *et seq.* of the Michigan Compiled Laws'' changed to ''1994 PA 451 § 324.101.''
MAC R 299.9101(c) ''Act 138''	12/16/2004	Same as above.
MAC R 299.9101(d) ''Act 181''	12/16/2004	Same as above.
MAC R 299.9101(e) ''Act 207''	12/16/2004	Same as above.
MAC R 299.9101(f) ''Act 218''	12/16/2004	Same as above.
MAC R 299.9101(g) ''Act 236''	12/16/2004	Same as above.
MAC R 299.9101(h) ''Act 300''	12/16/2004	Same as above.

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of state-initiated modification	Description of change
MAC R 299.9101(i) ''Act 306''	12/16/2004	Same as above.
MAC R 299.9101(j) ''Act 368''	12/16/2004	Same as above.
MAC R 299.9101(k) ''Act 399''	12/16/2004	Same as above.
MAC R 299.9101(o) ''Administrator''	12/16/2004	Words ''United States EPA'' changed to ''EPA.''
MAC R 299.9101(x) ''Authorized representative''	6/21/1994, renumbered as (x) effective 3/17/2008.	Word ''of'' changed to ''who has'' and word ''responsibility'' changed to ''responsibilities.''
MAC R 299.9101(x) ''Boiler''	12/16/2004, renumbered as (z) effective 3/17/2008.	Words ''the provisions of'' deleted.
MAC R 299.9102(a) ''CERCLA''	6/21/1994, renumbered as (c) effective 3/17/2008.	Term added; term is used elsewhere in the rules.
MAC R 299.9102(e) ''Closed portion''	10/15/1996, renumbered as (h) effective 3/17/2008.	Word ''that'' changed to ''the'' and word ''which'' changed to ''that.''
MAC R 299.9102(g) ''Commingling''	10/15/1996, renumbered as (j) effective 3/17/2008.	Term added; term is used in Part 3 of the rules.
MAC R 299.9102(h) ''Component''	10/15/1996, renumbered as (k) effective 3/17/2008.	Word ''the'' inserted.
MAC R 299.9102(g) ''Confined aquifer''	6/21/1994, renumbered as (l) effective 3/17/2008.	Words ''that is,'' ''it is'' and ''that'' inserted, word ''of'' changed to ''that have a'' and word ''containing'' changed to ''contains.''
MAC R 299.9102(k) ''Consolidation''	10/15/1996, renumbered as (n) effective 3/17/2008.	Term added; term is used in Part 3 of rules.
MAC R 299.9102(n) ''Constituent''	12/16/2004, renumbered as (o) effective 3/17/2008.	Words ''the provisions of'' deleted.
MAC R 299.9102(m) ''Construction permit''	10/15/1996, renumbered as (p) effective 3/17/2008.	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9102(m) ''Corrosion expert''	6/21/1994, renumbered as (v) effective 3/17/2008.	Words ''such as'' deleted and word ''the'' inserted.
MAC R 299.9103(b) ''Element''	12/16/2004	Word ''constituent'' deleted.
MAC R 299.9103(c)(i) ''Elementary neutralization unit''	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9103(e) ''EPA acknowledgment of consent''	10/15/1996, renumbered as (g) effective 12/16/2004.	Word ''which'' inserted.
MAC R 299.9103(g) ''EPA identification number'' (deleted).	12/16/2004	Term deleted (replaced with term ''Site identification number'').
MAC R 299.9103(h) ''EPA region''	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9103(i) ''Equivalent method''	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9103(m) ''Existing portion''	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9103(n) ''Existing tank system''	12/16/2004	Word ''will'' changed to ''shall.''
MAC R 299.9103(q) ''Federal hazardous materials transportation act''.	6/21/1994, renumbered as (x) effective 12/16/2004.	Public Law citation changed from ''89–670'' to ''93–633.''
MAC R 299.9103(s) ''Facility mailing list''	12/16/2004	Words ''in accordance with the provisions of'' changed to ''pursuant to.''
MAC R 299.9103(v) ''Floodplain''	6/21/1994, renumbered as (bb) effective 12/16/2004.	Word ''which'' changed to ''that.''
MAC R 299.9103(x) ''Freeboard''	6/21/1994, renumbered as (ff) effective 12/16/2004.	Word ''therein'' changed to ''in the tank or surface impoundment dike.''
MAC R 299.9103(y) ''Free liquids''	6/21/1994, renumbered as (gg) effective 12/16/2004.	Word ''which'' changed to ''that'' and word ''under'' changed to ''at.''
MAC R 299.9103(bb) ''Final closure''	12/16/2004	Words ''in accordance with the provisions of'' changed to ''pursuant to'' and words ''the provisions of'' deleted.
MAC R 299.9104(f) and (f)(i)–(viii) ''Hazardous waste management unit''.	6/21/1994	Word ''is'' changed to ''means.''
MAC R 299.9104(g) ''Hazardous waste number''	6/21/1994	Word ''which'' changed to ''that.''
MAC R 299.9104(m) ''Inactive portion''	6/21/1994	Word ''which'' changed to ''that.''
MAC R 299.9104(o) ''In-ground tank''	6/21/1994, renumbered as (t) effective 9/11/2000.	Word ''specified'' inserted, word ''whereby'' changed to ''and which has,'' words ''the tank'' changed to ''its,'' word ''is'' deleted, word ''that'' changed to ''the,'' and word ''tank'' changed to ''devise.''
MAC R 299.9105(c) ''Landfill cell''	10/15/1996, renumbered as (d) effective 12/16/2004.	Word ''which'' changed to ''that.''
MAC R 299.9105(q) ''Military munitions''	12/16/2004	Words ''any of the following'' inserted.
MAC R 299.9106(c) ''On-site treatment facility''	10/15/1996	Words ''which is'' and ''and'' inserted and word ''those'' changed to ''the.''
MAC R 299.9106(e) ''Operating license''	12/16/2004	Words ''pursuant to'' changed to ''under.''
MAC R 299.9106(h) ''Partial closure''	12/16/2004	Words ''in accordance with'' changed to ''pursuant to.''
MAC R 299.9106(r) ''Primary exporter''	12/16/2004	Words ''in accordance with'' changed to ''pursuant to.''
MAC R 299.9106(u)(ii) ''Processing''	12/16/2004	Word ''the'' deleted.
MAC R 299.9107(i) ''Remedial action plan''	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9107(q) ''Scrap metal''	12/16/2004	Word ''can'' changed to ''may.''
MAC R 299.9107(s) ''Site identification number''	12/16/2004	New term added to replace removal of ''EPA identification number.''

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of state-initiated modification	Description of change
MAC R 299.9107(z) ''Speculative accumulation''	12/16/2004	Word ''it'' changed to ''material,'' words ''can show'' changed to ''shows that,'' and words ''requirements are met'' inserted.
MAC R 299.9107(bb) ''Staging pile''	12/16/2004	Words ''in accordance with the requirements of'' changed to ''pursuant to.''
MAC R 299.9107(dd) ''Sump''	9/11/2000, renumbered as (ee) effective 12/16/2004.	Word ''subsequent'' changed to ''later.''
MAC R 299.9108(a) ''Tank''	6/21/1994	Word ''which'' changed to ''that'' and word ''and'' added.
MAC R 299.9108(c) ''Thermal treatment''	6/21/1994, renumbered as (d) effective 9/11/2000.	Word ''which'' changed to ''that'' word ''the'' changed to ''all of the.''
MAC R 299.9108(g) ''Totally enclosed treatment facility''	9/11/2000	Word ''thereof'' deleted and words ''of a hazardous waste'' added.
MAC R 299.9108(k) ''Treatment''	6/21/1994, renumbered as (m) effective 9/11/2000.	Word ''which'' changed to ''that'' and word ''the'' changed to ''all of the.''
MAC R 299.9108(n) ''Trial burn''	6/21/1994, renumbered as (p) effective 9/11/2000.	Word ''under'' deleted and words ''pursuant to the'' inserted.
MAC R 299.9108(o) ''Trial operation''	6/21/1994, renumbered as (q) effective 9/11/2000.	Word ''under'' deleted and words ''that is'' and ''pursuant to'' inserted.
MAC R 299.9109(b) ''Underground tank''	6/21/1994	Word ''specified'' inserted, word ''the'' changed to ''and which has its,'' and words ''of which is'' deleted.
MAC R 299.9109(g) ''Uppermost aquifer''	6/21/1994, renumbered as (n) effective 9/11/2000.	Word ''this'' changed to ''the.''
MAC R 299.9109(l) ''Vessel''	6/21/1994, renumbered as (ee) effective 9/11/2000.	Words ''includes every description of'' changed to ''means'' and word ''which'' changed to ''that.''
MAC R 299.9109(n) ''Waste''	6/21/1994, renumbered as (gg) effective 9/11/2000.	Words ''that is'' added.
MAC R 299.9109(hh) ''Waste management area''	9/11/2000	Word ''then'' inserted and word ''one'' changed to ''1.''
MAC R 299.9109(p) and (p)(i)–(iii) ''Wastewater treatment unit''.	6/21/1994, renumbered as (ii) and (ii)(i)–(ii) effective 9/11/2000.	Word ''which'' changed to ''that,'' word ''under'' changed to ''pursuant to the provisions of,'' and words ''or 'tank system' specified'' inserted.
MAC R 299.9109(q) ''Water (bulk shipment)''	6/21/1994, renumbered as (jj) effective 9/11/2000.	Word ''which'' changed to ''that.''
MAC R 299.9109(r) ''Well''	6/21/1994, renumbered as (kk) effective 9/11/2000.	Words ''which is'' added.
MAC R 299.9109(kk) ''Wetland''	10/15/1996, renumbered as (ll) effective 9/11/2000.	Words ''No. 203 of the Public acts of 1979, as amended, being § 281.701 *et seq.* of the Michigan Compiled Laws'' deleted and words ''part 303 of the'' inserted, and word ''those'' changed to ''the.''
MAC R 299.9109(t) ''Zone of engineering control''	6/21/1994, renumbered as (mm) effective 9/11/2000.	Word ''that'' deleted and words ''which is'' and ''and which'' inserted.
MAC R 299.9201(1) and (2)	9/22/1998	Modified to reflect the fact that sections 47 and 4 of the former Hazardous Waste Management Act, 1979 PA 64, as amended (Act 64) have been recodified in sections 48 and 3 of Part 111, Hazardous Waste Management, of Act 451, respectively.
MAC R 299.9202(1)(b), (v)(A) and (B); (2) and (2)(e); (3); (4); and (5).	10/15/1996	Word ''which'' changed to ''that.''
MAC R 299.9202(1)(b)(i), (iv)	10/15/1996	Words ''one of the materials'' changed to ''a material.''
MAC R 299.9202(1)(b)(i)(B) and (ii)	9/11/2000	Word ''products'' changed to ''product,'' word ''are'' changed to ''is,'' word ''wastes'' changed to ''waste,'' words ''they are'' changed to ''it is,'' and word ''their'' changed to ''its.''
MAC R 299.9202(1)(b)(v)	10/15/1996	Word ''other'' changed to ''is another.''
MAC R 299.9202(1)(b)(v)(A)	10/15/1996	Words ''which are'' inserted, words ''these constituents'' deleted, and word ''which'' inserted.
MAC R 299.9202(1)(b)(vi)	12/16/2004	Words ''in accordance with'' changed to ''pursuant to.''
MAC R 299.9202(6)(a)	12/16/2004	Reference to R 299.9107 corrected.
MAC R 299.9202(7)	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9203(1) and (1)(b); (2) and (2)(b); (4)(b); (5)(a) and (b); and (6).	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9203(4)(c)(iii) and (6)(a)	12/16/2004	Word ''one'' changed to ''1.''
MAC R 299.9203(4)(c)(iii)(B)	9/11/2000	Words ''by the person claiming the exclusion'' inserted.
MAC R 299.9203(4)(c)(iii)(C)(2)	12/16/2004	Word ''EPA'' changed to ''site.''
MAC R 299.9203(4)(e)	3/17/2008	Words ''1 or more'' changed to ''either or both.''
MAC R 299.9204(1), (4) and (6)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9204(1)(b), (n), (u)(iv); (2)(a), (i) and (l); (7) and (7)(c)(ii), (d), and (e)(iii)(B); (8); (9); (10)(b), (g)(i) and (vii) and (j); and (11).	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9204(1)(f) and (g)	12/16/2004	Reference to R 299.9107 corrected.

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of state-initiated modification	Description of change
MAC R 299.9204(1)(h)(iv)	6/21/1994	Word ''constituting'' changed to ''that constitutes.''
MAC R 299.9204(1)(i) and (j)	10/15/1996	Word ''that'' changed to ''which'' and word ''which'' inserted.
MAC R 299.9204(1)(k)	10/15/1996	Word ''if'' inserted, words ''provided it is shipped'' deleted, words ''the residue'' inserted, words ''is shipped,'' and word ''is'' inserted.
MAC R 299.9204(1)(n)	12/16/2004	Word ''U.S.'' deleted and ''subsequent to'' changed to ''after.''
MAC R 299.9204(2)(b)	10/15/1996	Word ''soils'' changed to ''soil.''
MAC R 299.9204(2)(g)(ix)	3/17/2008	Based on a petition from the United States Postal Service (USPS), ink generated by the USPS in its automated facer canceled systems was added to the list of wastes not considered hazardous wastes for the purposes of Part 111 of Act 451 and its rules provided the requirements of subrule (g) of the rule are met.
MAC R 299.9204(2)(h)	12/16/2004	Words ''of this subrule'' deleted.
MAC R 299.9204(2)(h)(ii)	12/16/2004	Word ''will'' changed to ''shall.''
MAC R 299.9204(7)(f)	3/17/2008	Revised to be consistent with the new language in R 299.9308(1).
MAC R 299.9205(1)(c); (2)(b)(i) and (b)(vi)–(x) and (d); (3)(a) and (b); (4)(a)(i), (ii), and (v), (xi), (b)(i) and (ii); (5)(a), (e), and (g)–(i).	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9205(2)	12/16/2004	Words ''(7), (8), and (9)'' changed to ''(6) and (7)'' and words ''the provisions of'' deleted.
MAC R 299.9205(2)(b)(ii) and (iii)	10/15/1996	Word ''which'' changed to ''that,'' words ''permitted or licensed'' changed to ''in compliance with the applicable requirements,'' words ''pursuant to the provisions'' deleted, and words ''act 641, act 245, or act 348'' changed to ''parts 31, 55 and 115 of the act.''
MAC R 299.9205(2)(b)(xi)	12/16/2004	Words ''in accordance with the provisions of'' changed to ''pursuant to'' and ''the provisions of'' deleted.
MAC R 299.9205(4)(a)(ix)(C)(2)	12/16/2004	Word ''EPA'' changed to ''site.''
MAC R 299.9205(4)(a)(xii) and (4)(b)(iv)	12/16/2004	Words ''Except as otherwise noted in this paragraph'' inserted, words ''in accordance with the provisions of'' changed to ''pursuant to'' and new sentence allowing municipal household waste collection programs to accumulate conditionally exempt small quantity generator waste on-site for not more than 1 year.
MAC R 299.9205(4)(a)(xiii)	12/16/2004	Words ''in accordance with the provisions of'' changed to ''pursuant to.''
MAC R 299.9205(4)(a)(xiv)	12/16/2004	Word ''one'' changed to ''1.''
MAC R 299.9205(4)(b)(iv)	12/16/2004	Word ''in accordance with the provisions of'' changed to ''pursuant to,'' words ''except for a municipal household waste collection program'' inserted, and word ''in'' inserted.
MAC R 299.9212(1)(d) and (6)(a)	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9212(3)(h)	12/16/2004	Words ''the provisions of'' deleted and word ''are'' changed to ''is.''
MAC R 299.9212(7)	12/16/2004	Words ''the provisions of'' deleted and word ''will'' changed to ''shall.''
MAC R 299.9227(4)	3/17/2008	Word ''all'' changed to ''both.''
MAC R 299.9227(5)(l)	3/17/2008	Word ''MAC'' deleted.
MAC R 299.9228(1) and (1)(a); (2)(a), (d), (e), (f)(i)(A) and (B), (g); (3); (4)(c)(iii)(B); and (5)(d) and (e); (8); and (9).	12/16/2004	Words ''in accordance with'' deleted, words ''pursuant to'' inserted, word ''then'' inserted, word ''subrule'' inserted, words ''shall be complied with'' deleted, and words ''the requirements of'' deleted.
MAC R 299.9303(1)–(4)	12/16/2004	Word ''EPA'' deleted and word ''site'' inserted, words ''in accordance with the provisions of'' changed to ''pursuant to'' and word ''to'' inserted.
MAC R 299.9306(1) and (5)	12/16/2004	Words ''(4), (5), and (6)'' changed to ''(4), (5), (6), (7), (8), (9), and (10)'' and words ''a construction permit or'' inserted.
MAC R 299.9306(1)(a), (a)(ii)–(iii), (d) and (f)	12/16/2004	Words ''in accordance with'' changed to ''pursuant to.''

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of state-initiated modification	Description of change
MAC R 299.9306(1)(a)(i)	12/16/2004	Words ''the provisions of'' deleted and language added regarding alternatives to the 50-foot setback requirement for certain container storage in situations where the generator is unable to comply with this provision or the appropriate authority determines that an alternative arrangement would be more protective of human health and the environment.
MAC R 299.9306(1)(d)(ii) and (4)(i)(iii)(B)	12/16/2004	Word ''EPA'' changed to ''site.''
MAC R 299.9306(2)	12/16/2004	Words ''construction permit or an operating'' inserted, and word ''the provisions of'' deleted.
MAC R 299.9306(4)	12/16/2004	Words ''the provisions of'' deleted and words ''a construction permit or'' inserted.
MAC R 299.9306(4)(b)(i)–(iii) and (4)(k)	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9306(4)(e)	12/16/2004	Words ''the provisions of'' and ''the requirements of'' deleted.
MAC R 299.9306(5)	12/16/2004	Words ''a construction permit or'' inserted, words ''the provisions of'' deleted, and words ''the requirements of'' deleted.
MAC R 299.9306(7)(g)	3/17/2008	Word ''with'' deleted.
MAC R 299.9307(1)	12/16/2004	Words ''in accordance with'' changed to ''pursuant to.''
MAC R 299.9307(4)	3/17/2008	Words ''the data submitted under R 299.9308(1)'' inserted and words ''each biennial report'' deleted.
MAC R 299.9307(5)	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9307(7)	12/16/2004	Words ''subrules (2) and (4)'' changed to ''subrule (4).''
MAC R 299.9308(1) and (2)	3/17/2008	Wording modified to reflect how information typically required in a biennial report is actually collected in Michigan.
MAC R 299.9309(2)(a) and (b)	12/16/2004	Word ''EPA'' changed to ''site.''
MAC R 299.9309(2)(g)(i) and (ii) and (2)(i)	12/16/2004	Words ''in accordance with the provisions of'' changed to ''pursuant to.''
MAC R 299.9310(1)	12/16/2004	Words ''the requirements of'' deleted.
MAC R 299.9310(2)(a)	12/16/2004	Word ''EPA'' changed to ''site.''
MAC R 299.9401(1) and (5) (renumbered from (6) to (5)).	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9401(4)	12/16/2004	Words ''the requirements of'' deleted.
MAC R 299.9401(6) (renumbered from (7) to (6)	12/16/2004	Words ''in accordance with'' changed to ''pursuant to.''
MAC R 299.9402	12/16/2004	Words ''an EPA'' changed to ''site'' and words ''from the administrator'' deleted.
MAC R 299.9404(2)(b)(i)	3/17/2008	Word ''EPA'' changed to ''site.''
MAC R 299.9405	10/15/1996	Entire rule modified to provide more consistency with the regulations codified in 49 CFR.
MAC R 299.9405(3)(b)(i)	3/17/2008	Word ''EPA'' changed to ''site.''
MAC R 299.9410(1)(f)	9/11/2000	Word ''whether'' changed to ''if.''
MAC R 299.9410(2)	12/16/2004	Word ''EPA'' changed to ''site.''
MAC R 299.9410(3)(a)–(c)	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9501(3) and (4)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9502(1) and (1)(b); (2) and (2)(a), (b)(i) and (i)(C), (E) and (ii); (3)(a); (5); (6); (8); (9); (10); and (13).	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9502(2)(b)(i)(A), (B) and (E)	12/16/2004	Words ''in accordance with the provisions of'' changed to ''pursuant to.''
MAC R 299.9502(3)	12/16/2004	Word ''the'' deleted.
MAC R 299.9502(10)	12/16/2004	Words ''the provisions of'' deleted and words ''in accordance with'' changed to ''pursuant to.''
MAC R 299.9502(11)(c)	12/16/2004	Word ''regulations'' changed to ''regulation.''
MAC R 299.9503(1), (2), (3), and (4)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9503(1)(a)	10/15/1996	Words ''parts 31, 55, and 115 of the'' and words ''641, act 348, or act 245'' deleted.
MAC R 299.9503(1)(f)	10/15/1996	Words ''as applicable'' inserted and words ''both of'' deleted.
MAC R 299.9503(1)(i)(x)	3/17/2008	Reference to R 299.9603(1)(b) to (f) corrected.
MAC R 299.9503(4)(c)	10/15/1996	Words ''part 31, 111, or 201 of the'' inserted and words ''307, act 64, act 245'' deleted.
MAC R 299.9504(1)(b)–(c), (2), and (16)	12/16/2004	Word ''by'' changed to ''pursuant to.''
MAC R 299.9504(1)(d), (2), (3), and (14)	12/16/2004	Words ''by the provisions of'' changed to ''pursuant to.''
MAC R 299.9504(1)(f), (18), and (19)	12/16/2004	Words ''the requirements of'' deleted.

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of state-initiated modification	Description of change
MAC R 299.9504(1)(h)	3/17/2008	Provision added so that the agency can see how public comments were addressed and how applications were revised earlier in the construction permit application process.
MAC R 299.9504(4)(b) and (11)(b)	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9504(4)(b)(ii)	12/16/2004	Word ''R 299.9623'' changed to ''40 C.F.R. § 264.343.''
MAC R 299.9504(5)(a)	10/15/1996	Word ''all'' changed to ''any.''
MAC R 299.9504(5)(a)(v) and (b)	10/15/1996	Subrule (b) deleted and new subrule (5)(a)(v) added to provide clarification regarding the prohibition of dilution as a form of treatment for any hazardous wastes rather than just toxicity characteristic wastes.
MAC R 299.9504(5)(c)–(f)	12/16/2004	Word ''whether'' changed to ''if.''
MAC R 299.9504(6)(a), (7)(a), (8)(a), (9) and (10)	12/16/2004	Words ''in the provisions of'' changed to ''pursuant to.''
MAC R 299.9504(8)(c)	12/16/2004	Words ''in accordance with the provisions of'' changed to ''pursuant to.''
MAC R 299.9506(2)	6/21/1994	Word ''under'' changed to ''pursuant to the provisions of.''
MAC R 299.9506(2)(a)	6/21/1994	Word ''such'' changed to ''the,'' words ''that are'' inserted, words ''all of'' inserted, and word ''this'' changed to ''the.''
MAC R 299.9506(2)(a)(i), (ii), (iii)(B), (c), (d) and (f); and (6)(a), (b), and (b)(i)(D).	9/11/2000	Word ''one'' changed to ''1,'' word ''two'' changed to ''2,'' word ''three'' changed to ''3,'' word ''five'' changed to ''5,'' word ''ten'' changed to ''10,'' word ''when'' changed to ''if,'' word ''method'' changed to ''methods,'' words ''subsequent to'' changed to ''following.''
MAC R 299.9506(2)(a)(ii)(C) and (6)(a)(iii)	6/21/1994	Word ''under'' changed to ''pursuant to.''
MAC R 299.9506(4)(d)	9/22/1998	Modified to reflect the fact that the former Environmental Response Act, 1982 PA 307 (Act 307), has been recodified in Part 201, Environmental Response, of Act 451.
MAC R 299.9506(6)	6/21/1994	Words ''that is'' inserted.
MAC R 299.9506(6)(f)	6/21/1994	Word ''such'' changed to ''the,'' words ''include consideration of'' changed to ''consider'' and word ''factors'' inserted.
MAC R 299.9506(8)	9/11/2000	Word ''264.100'' deleted.
MAC R 299.9508(1)(c), (g) and (i)	10/15/1996	Words ''part 111 of'' inserted, and words ''section 22(3)'' changed to ''section 23(3).''
MAC R 299.9509(1) and (2)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9510(1)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9513(1) and (3)(b)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9514(2)	12/16/2004	Word ''when'' changed to ''if.''
MAC R 299.9514(2)(b)	12/16/2004	Word ''might'' changed to ''may.''
MAC R 299.9514(2)(c)	12/16/2004	Word ''by'' changed to ''pursuant to.''
MAC R 299.9514(4)	9/22/1998	Modified to correct references to the provisions of R 299.9511 which have also been modified.
MAC R 299.9516(8)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9517(1) and (2)(b)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451
MAC R 299.9518(1) and (2)(a) and (b)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451 and subrule (2)(a) has been modified to reflect the fact that section 22 of the former Act 64 has been recodified in section 23 of Part 111 of Act 451.
MAC R 299.9519(1); (3)(a); (5); (6)(a)(v) and (b); (9)(c); (10)(d); (12); and (13).	12/16/2004	Words ''in accordance with the provisions of'' changed to ''pursuant to.''
MAC R 299.9519(2)	12/16/2004	Words ''the provisions of'' deleted and words ''in accordance with the provisions of'' changed to ''pursuant to.''
MAC R 299.9519(3)(c) and (d)	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9519(3)(e)	3/17/2008	Word ''R 299.9521'' changed to ''R 299.9522.''
MAC R 299.9519(11)(a)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9520(4)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451 and the fact that section 48 of the former Act 64 has been recodified in section 51 of Part 111 of Act 451.

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of state-initiated modification	Description of change
MAC R 299.9521(3) and (3)(a)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9522(1)–(3)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9601(2); (4); and (5)	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9601(2)(p)	12/16/2004	Provision added requiring interim status facilities to comply with R 299.9639 for disposal of corrective action management unit-eligible waste in hazardous waste landfills.
MAC R 299.9601(3)(b)	12/16/2004	Words ''the provisions of'' changed to ''pursuant to.''
MAC R 299.9601(7)	10/15/1996, renumbered as (8) effective. 9/11/2000	Word ''47'' changed to ''48'' and words ''part 111 of'' inserted.
MAC R 299.9602(1)(a) and (c) and (2)	9/22/1998	Modified to reflect the fact that the former Water Resources Commission Act, 1929 PA 245 (Act 245), has been recodified in Part 31, Water Resources Protection, of Act 451.
MAC R 299.9602(1)(b)	9/22/1998	Modified to reflect the fact that the former Air Pollution Control Act, 1956 PA 345 (Act 348), has been recodified in Part 55, Air Pollution Control, of Act 451.
MAC R 299.9603(1)(b)	9/22/1998	Modified to reflect the fact that the former Act 245 has been recodified in Part 31 of Act 451.
MAC R 299.9603(1)(c)	9/22/1998	Modified to reflect the fact that the former Shorelands Protection and Management Act, 1970 PA 245, has been recodified in Part 323, Shorelands Protection and Management, of Act 451.
MAC R 299.9603(2)	9/22/1998	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9603(3)(c)	9/22/1998	Modified to refect the fact that the former Act 348 has been recodified in Part 55 of Act 451.
MAC R 299.9604(2)	9/22/1998	Modified to reflect the recodification of the former Act 64 of Part 111 of Act 451.
MAC R 299.9607(2)(b)	12/16/2004	Word ''EPA'' changed to ''site.''
MAC R 299.9607(3)	12/16/2004	Words ''the requirements of'' deleted.
MAC R 299.9608(6)	12/16/2004, renumbered as (4) effective. 3/17/2008	Words ''the provisions of'' deleted.
MAC R 299.9609(1)	3/17/2008	Words ''or in an alternate location approved by the director or the director's designee'' inserted.
MAC R 299.9610(1)	3/17/2008	Revised to reflect how information typically required in a biennial report is actually collected in Michigan.
MAC R 299.9610(2)(a) and (c)	12/16/2004	Word ''EPA'' changed to ''site.''
MAC R 299.9610(4)	12/16/2004	Words ''in accordance with the provisions of'' changed to ''pursuant to.''
MAC R 299.9611(1)	6/21/1994	Words ''that is'' inserted.
MAC R 299.9611(3)(a) and (a)(i)–(iii)	6/21/1994	Modified to clarify provisions for groundwater monitoring waivers to allow owners or operators the ability to monitor an entire TSDF for environmental effects, thereby allowing the integration of site-wide corrective action remediation programs into hazardous waste management unit monitoring programs at a more economical cost.
MAC R 299.9611(3)(a)(iii) and (5)	10/15/1996	Modified to reflect the recodification of the former Act 64 into Part 111 of Act 451.
MAC R 299.9611(3)(b)	6/21/1994	Word ''under'' changed to ''pursuant'' and word ''this'' changed to ''the.''
MAC R 299.9612(1)(c)	9/11/2000	Word ''one'' changed to ''1'' and word ''then'' inserted.
MAC R 299.9612(1)(c)(i)	6/21/1994	Word ''this'' changed to ''the.''
MAC R 299.9612(1)(c)(iii)	9/11/2000	Words ''whether or not'' changed to ''if.''
MAC R 299.9612(1)(d) and (f)	9/22/1998	Modified to reflect the fact that the former Act 245 and Act 307 have been recodified in Parts 31 and 201 of Act 451, respectively.
MAC R 299.9612(1)(e)	9/11/2000	Word ''whether'' changed to ''if.''
MAC R 299.9612(1)(g)	9/22/1998	Modified to reflect the recodification of the former Act 64 in Part 111 of Act 451 and the fact that sections 47 and 48 of the former Act 64 have been recodified in sections 48 and 51 of Part 111 of Act 451, respectively.
MAC R 299.9613(2)	3/17/2008	Word ''more'' changed to ''less.''

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of state-initiated modification	Description of change
MAC R 299.9619(3), (6)(a)(iv) and (c), and (7)	12/16/2004	Words ''in accordance with the provisions of'' changed to ''pursuant to'' and words ''the provisions of'' deleted.
MAC R 299.9619(5), (5)(a) and (b)	9/11/2000	Subrule added in order to provide for alternative leachate collection and removal system design and operating practices if certain conditions are met.
MAC R 299.9619(6)(a)(iii)	9/11/2000	Revised to clarify that in order to provide a minimum base for root penetration, the top component of the additional material shall consist of not less than 15 centimeters of topsoil. Thus, the total thickness of the protective layer shall not be less than 60 centimeters, depending upon the implications of the maximum depth of frost penetration.
MAC R 299.9621(1)(c)(vi)	10/15/1996	Modified to provide a more accurate test method by which owners and operators will be required to determine the permeability of the clay base of the land-based unit.
MAC R 299.9629(1), (3)(a) and (b), (6), (8)(a)–(c), (9), and (11).	12/16/2004	Words ''in accordance with'' changed to ''pursuant to.''
MAC R 299.9629(1)(a) and (b), (3), (3)(a)(i)–(v), and (b)(i)–(iii).	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9703(2)–(4) and (6)	9/11/2000	Word ''one'' changed to ''1'' and ''ten'' changed to ''10.''
MAC R 299.9703(9)	12/16/2004	Words ''265.90(f), and 265.110(d)'' inserted and word ''and'' deleted.
MAC R 299.9705(1) and (1)(a) and (b)	3/17/2008	Amended to clarify requirements regarding surety bonds used to demonstrate financial assurance for closure and postclosure.
MAC R 299.9708(5), (9), (9)(c), (10), (10)(a)–(b), and (11).	9/11/2000	Words ''party or parties'' changed to ''person or persons.''
MAC R 299.9710(4), (5), and (9)(b)(i)	9/11/2000	Word ''one'' changed to ''1.''
MAC R 299.9710(9)(b)(i)	9/11/2000	Words ''and/or'' changed to ''or'' and words ''or both'' inserted.
MAC R 299.9710(9)(e)	9/11/2000	Words ''in the case of corporations that are'' changed to ''a corporation is'' and word ''then'' inserted.
MAC R 299.9710(14)	9/11/2000	Word ''R 299.9613(2)'' changed to ''R 299.9613(3).''
MAC R 299.9712(1)	9/22/1998	Modified to reflect the recodification of the former Act 46 in Part 111 of Act 451.
MAC R 299.9801(1)(b) and (7)	6/21/1994	Word ''combination'' changed to ''combining.''
MAC R 299.9801(8)	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9802 (entire rule rescinded)	10/15/1996	Rule rescinded because hazardous waste being burned for energy recovery is now subject to regulation under R 299.9808.
MAC R 299.9803(6)(a)	9/11/2000	Words ''whether or not'' changed to ''if.''
MAC R 299.9803(6)(b)	9/11/2000	Word ''then'' inserted and word ''six'' changed to ''6'' and last two sentences corrected to insert missing wording.
MAC R 299.9808(1)	9/11/2000	Words ''and (3)'' changed to ''to (4).''
MAC R 299.9808(2) and (3)(c)	12/16/2004	Words ''regulation under'' deleted.
MAC R 299.9808(2)(a)	12/16/2004	Words ''under the provisions of'' changed to ''pursuant to.''
MAC R 299.9808(2)(c)	12/16/2004	Words ''the provisions of'' deleted and words ''under the provisions of'' changed to ''pursuant to.''
MAC R 299.9808(3)(c)	12/16/2004	Words ''the provisions of'' deleted.
MAC R 299.9808(5)	12/16/2004, renumbered as (6) effective 3/17/2008.	Words ''the requirements of'' deleted.
MAC R 299.9808(8), (8)(a)(ii) and (8)(c)	12/16/2004, renumbered as (9), (9)(a)(ii) and (9)(c), effective 3/17/2008.	Words ''the provisions of'' deleted.
MAC R 299.9809(1)(a)	12/16/2004	Words ''except a mixture of used oil and halogenated hazardous waste listed under R 299.9213 or R 299.9214'' inserted.
MAC R 299.9809(2)(c)	12/16/2004	Word ''are'' deleted.
MAC R 299.9809(2)(n)	9/11/2000	Word ''then'' inserted.
MAC R 299.9809(2)(o)	9/11/2000	Word ''when'' inserted.
MAC R 299.9815(3)(a)(i) and (e)(i) and (ii)	12/16/2004	Word ''EPA'' changed to ''site.''
MAC R 299.9819	12/16/2004	Words ''the requirements of'' deleted and word ''R 299.9401(7)'' changed to ''R 299.9401(6).''
MAC R 299.11003(1)(b)	9/11/2000	Adoption by reference of 40 CFR Part 63, subparts EEE and LLL added.
MAC R 299.11004(5)	3/17/2008	Updated address where to obtain a document.
MAC R 299.11007(2)	12/16/2004	Updated address where to obtain a document.

EQUIVALENT STATE-INITIATED CHANGES—Continued

State requirement	Effective date(s) of state-initiated modification	Description of change
MAC R 299.11008(2)	12/16/2004	Updated address where to obtain a document.

G. Where Are the Revised State Rules Different From the Federal Rules?

The most significant differences between the State rules we are proposing to authorize and Federal rules are summarized below. It should be noted that this summary does not describe every difference or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete rules to ensure that they understand the requirements with which they will need to comply.

There are aspects of the Michigan program which are more stringent than the Federal program. All of these more stringent requirements are or will become part of the Federally enforceable RCRA program when authorized by the EPA, and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements are found at (references are to the Michigan Administrative Code):

Michigan does not allow containment buildings, making the State requirements more stringent than the Federal requirements at 40 CFR part 264 subpart DD, 40 CFR 265 subpart DD, and 40 CFR part 264 appendix I, Tables 1 and 2.

Michigan's regulations at R 299.9601(1), (2)(b), (2)(c), (2)(h), (2)(i), and (3); R 299.9608(1), (6) and (8); R 299.9615; and R 299.9702(1) are more stringent than the Federal analogs at 40 CFR 265.56(b), 265.71, 265.72, 265.142(a), 265.174, 265.190(a), 265.193, 265.194, 265.197, 265.201, and 265.340(b)(1) since the State requires compliance with standards equivalent to 40 CFR part 264 rather then 40 CFR part 265.

Michigan's regulations at R 299.11002(1) and (2) are more stringent than the Federal analogs at 40 CFR 260.11(d) and (d)(1) since the State adopts updated versions of the ''Flammable and Combustible Liquids Code.''

H. Who Handles Permits After the Authorization Takes Effect?

Michigan will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the tables above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Michigan is not yet authorized.

I. How Would Authorizing Michigan for These Revisions Affect Indian Country (18 U.S.C. 1151) in Michigan?

Michigan is not authorized to carry out its hazardous waste program in Indian Country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Michigan;

2. Any land held in trust by the U.S. for an Indian Tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian country.

Therefore, authorizing Michigan for these revisions would not affect Indian Country in Michigan. EPA would continue to implement and administer the RCRA program in Indian country. It is EPA's long-standing position that the term ''Indian lands'' used in past Michigan hazardous waste approvals is synonymous with the term ''Indian Country.'' *Washington Dep't of Ecology* v. *U.S. EPA,* 752 F.2d 1465, 1467, n.1 (9th Cir. 1985). *See* 40 CFR 144.3 and 258.2.

J. What Is Codification and Is EPA Codifying Michigan's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing a State's statutes and regulations that comprise a State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Michigan's rules, up to and including those revised October 19, 1991, have previously been codified through incorporation-by-reference effective April 24, 1989 (54 FR 7421, February 21, 1989); as amended effective March 31, 1992 (57 FR 3724, January 31, 1992). We reserve the amendment of 40 CFR part 272, subpart X, for the codification of Michigan's program changes until a later date.

K. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law (*see* **SUPPLEMENTARY INFORMATION,** Section A. Why are Revisions to State Programs Necessary?). Therefore this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

2. Paperwork Reduction Act

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

3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

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

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have Federalism implications (*i.e.,* 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).

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

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have Tribal implications (*i.e.,* substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.)

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

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

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

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

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

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

Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 29, 2009.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–24464 Filed 10–8–09; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 74, No. 195

Friday, October 9, 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

October 6, 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) 720–8958.

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.

Food and Nutrition Service

Title: Models of SNAP–Ed and Evaluation.

OMB Control Number: 0584–NEW.

Summary of Collection: The Food and Nutrition of the U.S. Department of Agriculture promotes optimal health and well-being of low-income individuals through improved nutrition and well-designed nutrition education efforts within the Supplemental Nutrition Assistance Program (SNAP). Under Section 17 of the Food and Nutrition Act of 2008 (7 U.S.C. 2026) the Secretary may undertake research that will help improve the administration and effectiveness of the SNAP. The nutrition assistance programs are a critical component to attaining FNS' goals. FNS defines SNAP–Ed activities as those designed to increase the likelihood of healthy food choices by SNAP recipients and those eligible for SNAP, but who are currently not participating in the program. The Models of SNAP–Ed and Evaluation Study will conduct rigorous independent evaluation of four SNAP–Ed demonstration projects.

Need and Use of the Information: The Models of SNAP–Ed and Evaluation Study will provide FNS with sound, independent estimates of the effectiveness of four SNAP–Ed approaches, and will provide SNAP–Ed educators with examples of evaluation designs that are both feasible and scientifically robust.

Description of Respondents: Individuals or households; State, Local or Tribal Government.

Number of Respondents: 2,796.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 1,548.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–24438 Filed 10–8–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Seek Reinstatement of an Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The notice to seek comment on the Agricultural Research Services (ARS) intent to seek approval from OMB to reinstatement the ARS Animal Health National Program Assessment Survey was published in the **Federal Register** on August 6, 2009. The document contained the wrong date for public comment.

FOR FURTHER INFORMATION CONTACT: Dr. Cyril G. Gay, 301–504–4786.

Correction

In the **Federal Register** of August 6, 2009, in FR Doc. E9–18848, on page 1501, in the Dates column, correct section to read as follows:

DATES: Comments must be submitted on or before October 9, 2009.

Dated: October 5, 2009.

Yvette Anderson,

Federal Register Liaison Officer for Agriculture Research Service.

[FR Doc. E9–24375 Filed 10–8–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest, MT, Warm Springs Habitat Enhancement Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Helena National Forest is going to prepare an environmental impact statement for vegetation management actions in the Warm Springs area of the Elkhorn Mountains. The purpose and need for action is to restore and promote a fire-dependent ecosystem that is resilient to high intensity wildfire. There is a need to restore ponderosa pine and aspen habitats.

DATES: Comments concerning the scope of the analysis must be received by

November 9, 2009. The draft environmental impact statement is expected February 2010 and the final environmental impact statement is expected June 2010.

ADDRESSES: Send written comments to Liz VanGenderen, Helena National Forest, 2880 Skyway Drive, Helena, MT 59602. Comments may also be sent via e-mail to *comments-northern-Helena@fs.fed.us,* or via facsimile to 406–449–5436.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

FOR FURTHER INFORMATION CONTACT: Liz VanGenderen at 406–449–5201.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

A variety of factors have influenced the need for treatment in this area. The project area represents the only place in the Elkhorn Mountains with a substantial component of ponderosa pine and aspen groves. Due to wildfire suppression and the lack of frequent, low-intensity fires, the ponderosa pine forests have filled in with younger conifers and are currently experiencing high levels of mortality associated with mountain pine beetles. The fuels available for supporting a large wildfire are extensive and becoming more continuous.

Aspen stands have declined due to the lack of natural fire which aspen clones need to survive and thrive. Fire suppression has also allowed the growth of conifers in areas which compete with aspen.

The project is also part of the Birds and Burns Network, a research study led by the Rocky Mountain Research Station to examine fire effects on populations and habitats of wildlife in ponderosa pine forests in eight states across the western United States. The goal of this research in the project area has now expanded to include consequences of mountain pine beetle for wildlife in ponderosa pine.

Proposed Action

The types of treatments being proposed include intermediate harvest, regeneration harvest, and prescribed fire. Approximately 3,770 acres of ponderosa pine would be enhanced by a combination of regeneration and intermediate harvests, and prescribed fire. Aspen that occur in these acres would also be enhanced. Approximately 170 acres of aspen and grassland would also be enhanced by using prescribed fire following the use of a masticator or chainsaw. Approximately 260 acres of Douglas-fir enhancement would be achieved by a combination of regeneration and intermediate harvest, and prescribed fire. Aspen occurring in these acres would also be enhanced. Up to 11.4 miles of new temporary road construction and reconstruction of approximately 10.2 miles would be necessary to implement the proposed action. The temporary roads would be fully recontoured following the project.

Responsible Official

Helena National Forest Supervisor.

Nature of Decision To Be Made

The decision to be made includes: whether to implement the proposed action or an alternative to the proposed action, what monitoring requirements would be appropriate to evaluate the implementation of this project, and whether a forest plan amendment would be necessary as a result of the decision for this project.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. In October 2009, a scoping package will be mailed, an open house will be scheduled, and Web site information will be posted.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: October 2, 2009.

Kevin T. Riordan,

Forest Supervisor.

[FR Doc. E9–24344 Filed 10–8–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between the Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between the Lakes Advisory Board will hold a meeting on Thursday, October 29, 2009. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App.2.

The meeting agenda includes the following:

(1) Welcome/Introductions;

(2) LBL Web Site Updates;

(3) Environmental Education Updates and Discussion;

(4) LBL General Updates;

(5) Board Discussion of Comments Received.

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between the Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between The Lakes by October 22, 2009, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting.

DATES: The meeting will be held on October 29, 9 a.m. to 12 p.m., CST.

ADDRESSES: The meeting will be held at the Kenlake State Resort Park, Hardin, Kentucky, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Sharon Byers, Advisory Board Liaison, Land Between the Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270–924–2002.

SUPPLEMENTARY INFORMATION: None.

William P. Lisowsky,

Area Supervisor, Land Between the Lakes.

[FR Doc. E9–24449 Filed 10–8–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Certain Tissue Paper Products From the People's Republic of China: Final Results and Partial Rescission of the 2007–2008 Antidumping Duty Administrative Review and Determination Not To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 6, 2009, the Department of Commerce (the Department) published the preliminary results of the 2007–2008 administrative review of the antidumping duty order on certain tissue paper products from the People's Republic of China (PRC) covering the period March 1, 2007, through February 29, 2008. This administrative review covers three mandatory respondents. We invited interested parties to comment on the preliminary results.

Based on our analysis of the comments received, we have made changes to the margin calculations. The weighted-average dumping margins are listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* October 9, 2009.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brandon Custard, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1766 or (202) 482–1823, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 2009, the Department published the preliminary results of this administrative review. *See Certain Tissue Paper Products From the People's Republic of China: Preliminary Results and Partial Rescission of the 2007–2008 Administrative Review and Intent Not to Revoke Order in Part*, 74 FR 15449 (April 6, 2009) (*Preliminary Results*). In response to the interested parties' requests, we extended the deadlines for submitting publicly available information (PAI) and case and rebuttal briefs for consideration in the final results of this administrative review.

On May 8, 2009, Max Fortune Industrial Limited and Max Fortune (FEDTE) Paper Products Co., Ltd. (Max Fortune) submitted certain information to correct alleged errors with respect to its reported plastic bag consumption factors. On May 13, 2009, we determined that this submission contained untimely new factual information and returned it to Max Fortune in accordance with 19 CFR 351.302(d).

On May 20, 2009, Max Fortune attempted to resubmit this information. The Department rejected the submission for the second time on May 27, 2009, under 19 CFR 351.302(d).

On May 21, 2009, Max Fortune and the petitioner, Seaman Paper Company of Massachusetts, Inc., submitted PAI.

On June 15 and 29, 2009, Max Fortune and the petitioner submitted case and rebuttal briefs, respectively. No party requested a hearing.

On July 15, 2009, the Department postponed the final results of this review until October 3, 2009.[1] *See Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Certain Tissue Paper Products From the People's Republic of China*, 74 FR 35842 (July 21, 2009).

We have conducted this administrative review in accordance with sections 751(a) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.213, and 19 CFR 351.221.

Period of Review

The period of review (POR) is March 1, 2007, through February 29, 2008.

Scope of the Order

The tissue paper products covered by this order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30, 4802.54, 4802.61, 4802.62, 4802.69, 4804.31.1000, 4804.31.2000, 4804.31.4020, 4804.31.4040, 4804.31.6000, 4804.39, 4805.91.1090, 4805.91.5000, 4805.91.7000, 4806.40, 4808.30, 4808.90, 4811.90, 4823.90, 4802.50.00, 4802.90.00, 4805.91.90, 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.[2]

Excluded from the scope of this order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Final Partial Rescission

In the *Preliminary Results*, the Department preliminarily rescinded this review with respect to the following companies: Foshan Sansico Co., Ltd., Sansico Asia Pacific Limited, PT Grafitecindo Ciptaprima, PT Printec Perkasa, PT Printec Perkasa II, and PT Sansico Utama. These companies reported, and we confirmed based on import data from U.S. Customs and Border Protection (CBP), that they made no shipments of subject merchandise to the United States during the POR. Subsequent to the *Preliminary Results*, no information was submitted on the record indicating that the above companies made sales to the United States of subject merchandise during the POR. Thus, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice, we are rescinding this review with respect to the above-named companies.

Separate Rates

In our *Preliminary Results*, we determined that Max Fortune met the criteria for the application of a separate rate, as it is a wholly foreign-owned

[1] Since October 3, 2009, is a Saturday, the final results are due on the next business day, October 5, 2009.

[2] On January 30, 2007, at the direction of CBP, the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

company registered and located in Hong Kong. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for the reconsideration of this determination. Therefore, the Department continues to find that Max Fortune meets the criteria for a separate rate for purposes of the final results of this review.

Also in the *Preliminary Results*, the Department found that Vietnam Quijiang Paper Co., Ltd. (Vietnam Quijiang) and Guilin Qifeng Paper Co., Ltd. (Guilin Qifeng) did not qualify for a separate rate, as neither company responded to the Department's requests for information (including a separate-rate application and/or certification). Accordingly, the Department considered these companies to be a part of the PRC-wide entity for purposes of this review. *See Preliminary Results*, 74 FR at 15452. No party commented on the Department's preliminary finding with respect to Vietnam Quijiang and Guilin Qifeng. Therefore, the Department continues to find these two companies to be part of the PRC-wide entity in the final results of this review.

Application of Adverse Facts Available

As discussed in the *Preliminary Results*, Vietnam Quijiang and Guilin Qifeng did not respond to the Department's requests for information. Accordingly, the Department determined that these two entities did not establish their eligibility for separate-rate status, and as a result, deemed them to be a part of the PRC-wide entity for purposes of this review. Based upon the failure of Vietnam Quijiang and Guilin Qifeng, as part of the PRC-wide entity, to submit responses to the Department's questionnaires, the Department found that the PRC-wide entity failed to cooperate to the best of its ability in responding to the Department's requests for information, and assigned it a rate based on total adverse facts available (AFA) pursuant to sections 776(a)(2)(A), (B) and (C), and 776(b) of the Act. Consistent with the statute, court precedent, and its normal practice, as AFA, the Department assigned the PRC-wide entity the highest rate on the record of any segment of this proceeding (*i.e.*, 112.64 percent). This rate was corroborated to the extent practicable in accordance with section 776(c) of the Act, as discussed in the *Preliminary Results. See Preliminary Results*, 74 FR at 15452–15453.

The Department did not receive comments regarding the Department's preliminary application of AFA to the PRC-wide entity, which includes Vietnam Quijiang and Guilin Qifeng. Therefore, for the final results, the Department has not altered its decision to apply a total AFA rate of 112.64 percent to the PRC-wide entity in accordance with sections 776(a)(2)(A), (B) and (C), and 776(b) of the Act.

Determination Not To Revoke in Part

Max Fortune requested that the Department revoke it from the antidumping duty order on certain tissue paper products from the PRC pursuant to 19 CFR 351.222(d)(1) and (e), based on three consecutive years of zero and/or *de minimis* margins.

While the Department found either zero or *de minimis* dumping margins for Max Fortune during the 1st administrative review (*i.e.*, 2004–2006 POR) and 2nd administrative review (*i.e.*, 2006–2007 POR) of this order, it has not done so in the current administrative review (*i.e.*, 2007–2008 POR). As Max Fortune's final dumping margin in this review is above *de minimis*, we find that Max Fortune has not satisfied the regulatory criterion of 19 CFR 351.222(b)(2)(i) requiring three consecutive years of sales at not less than normal value, and is therefore not eligible for revocation.

Notwithstanding this finding, we also find that Max Fortune did not make sales to the United States in commercial quantities during all three years forming the basis of its revocation request, as required under 19 CFR 351.222(d)(1) and (e)(1)(ii). In making this determination, we relied upon Max Fortune's sales activity during the period of investigation (POI) and the 2004–2006, 2006–2007, and 2007–2008 PORs. For at least two of these periods, Max Fortune's sales to the United States were not made in commercial quantities.

Therefore, we have determined not to revoke the order with respect to Max Fortune because it has not met two of the regulatory criteria for revocation set forth in 19 CFR 351.222(b) and (d). For a complete discussion, see Comment 1 of the Issues and Decision Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration (Issues and Decision Memorandum) accompanying this notice; and the October 5, 2009, Memorandum from the PRC Tissue Paper Team to James P. Maeder, Jr., Director, Office 2, AD/CVD Operations, entitled ''Request for Revocation by Max Fortune Industrial Limited (Max Fortune).''

Analysis of Comments Received

All issues raised in the case briefs by the parties and to which we have responded are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room 1117 of the Department of Commerce. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://trade.gov/ia*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes From the Preliminary Results

Based on the information submitted and our analysis of the comments received, we have made certain changes to the margin calculations for Max Fortune as follows:

- We used the Indian import data from *World Trade Atlas* for Harmonized Tariff Schedule subheading 6305.39.00 to value polypropylene bags. *See* Comment 3 of the Issues and Decision Memorandum for further discussion; and
- We corrected Max Fortune's reported polypropylene bag consumption factors for two products. *See* Comment 9 of the Issues and Decision Memorandum for further discussion.

Final Results of Review

We determine that the following antidumping duty margins exist in these final results:

CERTAIN TISSUE PAPER PRODUCTS FROM THE PRC

Individually reviewed exporter 2007–2008 administrative review	Weighted-average percent margin (percent)
Max Fortune Industrial Limited	14.25
PRC-wide rate	Margin (percent)
PRC-wide rate (including Guilin Qifeng Paper Co., Ltd. and Vietnam Quijiang Paper Co., Ltd.)	112.64

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. In accordance with 19 CFR 351.212(b)(1), for Max Fortune, we calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. Because we do not have entered values on the record for Max Fortune's sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

With respect to the PRC-wide entity (including Vietnam Quijiang and Guilin Qifeng), we will instruct CBP to liquidate appropriate entries at the PRC-wide rate of 112.64 percent.[3]

[3] In the final determination of the circumvention inquiry involving Vietnam Quijiang (*see Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 73 FR 57591 (October 3, 2008), the Department stated that if Vietnam Quijiang did not participate in this administrative review, we would immediately revoke the certification program relevant to its entries of certain tissue paper products from Vietnam, thereby presuming all of its entries to be of PRC origin regardless of whether they are declared to be Vietnamese or PRC origin. *See* October 24, 2008, Memorandum entitled ''Discontinuation of Certification Program.''

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of the administrative review for all shipments of certain tissue paper products from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) A cash deposit rate of 14.25 percent will be required for certain tissue paper products from the PRC exported by Max Fortune; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash-deposit rate will be PRC-wide rate of 112.64 percent; and (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 5, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix—List of Issues

Comment 1: Max Fortune's Request for Revocation from the Antidumping Duty Order
Comment 2: Incorporating Negative Dumping Margins in the Calculation of the Overall Antidumping Margin
Comment 3: Selection of Plastic Bag Surrogate Value
Comment 4: Valuing Containerization Expenses Separately From Brokerage and Handling Expenses
Comment 5: Selection of Financial Statements for Surrogate Financial Ratio Calculations
Comment 6: Reclassifications and Adjustments to Surrogate Financial Ratio Calculations
Comment 7: Appropriate Labor Rate
Comment 8: Excluding Indian Imports From Hong Kong in WTA-Sourced Surrogate Value Calculations
Comment 9: Revisions to Plastic Bag Consumption

[FR Doc. E9–24463 Filed 10–8–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–834]

Purified Carboxymethylcellulose From Mexico: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 10, 2009, the Department of Commerce (the Department) published the preliminary

results of the administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Mexico. *See Purified Carboxymethylcellulose From Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 16359 (April 10, 2009) (Preliminary Results). The review covers one producer/exporter, Quimica Amtex, S.A. de C.V. (Amtex). The period of review (POR) is July 1, 2007, through June 30, 2008. We invited interested parties to comment on our *Preliminary Results*. The Department received comments concerning our *Preliminary Results* from respondents only. Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the *Preliminary Results*. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* October 9, 2009.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 2009, the Department published the preliminary results of this review in the **Federal Register**. *See Preliminary Results*. We invited parties to comment on the *Preliminary Results*.

Since the *Preliminary Results*, we received a case brief from respondent Amtex on May 11, 2009. No brief was received from petitioner, Aqualon Company (a division of Hercules Incorporated).

Amtex originally reported as many as three entered values for some of its constructed export price (CEP) sales; these particular sales quantities had been blended from various lots of CMC held in Amtex USA's U.S. inventory. In order for the Department to calculate importer–specific *ad valorem* assessment rates, we directed Amtex to report a single weighted entered value for each reported CEP sale in a supplemental questionnaire. *See* ''Purified Carboxymethylcellulose from Mexico: Supplemental Section C Questionnaire,'' dated July 17, 2009. Amtex fully complied with this request in its ''Quimica Amtex, S.A. de C.V. Supplemental Section C Questionnaire Response,'' dated August 5, 2009. At our instruction, Amtex allocated its entered value to report a single weighted–average entered value for each CEP transaction.

On August 5, 2009, the Department published in the **Federal Register** an extension of the time limit for the final results until October 7, 2009. *See Purified Carboxymethylcellulose from Mexico: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 74 FR 39054 (August 5, 2009).

Scope of the Order

The merchandise covered by the order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes to the margin calculations. In its case brief, Amtex alleged that the Department had failed to make several conversions from pounds to kilograms for those sales originally invoiced in pounds. *See* ''Purified Carboxymethylcellulose from Mexico (A–201–834): Case Brief for the Final Results,'' dated May 11, 2009, at pages 1–5. The comparison market database fields affected were inland freight charges (INLFTCH) and variable cost of manufacture (VCOMH). *Id.*, at 1–4. The U.S. market database fields affected were variable cost of manufacture (VCOMU), total cost of manufacture (TCOMU), and packing (PACKU and PACK1U). *Id.*, at 1–5.

After analyzing the databases and the programming used in the *Preliminary Results*, we agreed with Amtex. Therefore, we added two lines of programming to the comparison market program stipulating that if the quantity unit reporting was in pounds, then the following adjustments to the comparison market program were appropriate: ''INLFTCH = INLFTCH * 2.204'' and ''VCOMH = VCOMH * 2.204.'' We also added three lines of programming to the U.S. market program stipulating that if the quantity unit reporting was in pounds, then the following adjustments to the U.S. market program were appropriate: ''VCOMU = VCOMU * 2.204'' and ''TCOMU = TCOMU * 2.204'' and ''PACKU = PACK1U'' (PACK1U reported the PACKU value as converted into kilograms).

Final Results of Review

The final weighted–average dumping margin for the period July 1, 2007, through June 30, 2008, is as follows:

Producer/Exporter	Weighted–Average Margin (Percentage)
Quimica Amtex, S.A. de C.V.	2.94

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. We have calculated importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis (i.e.*, less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un–reviewed entries at the all–others rate established in the less–than-fair–value (LTFV) investigation if there is no rate for the intermediate company or companies involved in the transaction.

Cash Deposit Requirements

Further, the following deposit requirements will be effective for all shipments of purified carboxymethylcellulose from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) the cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; (2) for previously–investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.61 percent, the ''all others'' rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Mexico*, 70 FR 28280 (May 17, 2005). These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 2, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–24462 Filed 10–8–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 8, 2009, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. The review covers one exporter. The period of review is September 1, 2007, through August 31, 2008.

Based on our analysis of the comments received, we have made no changes to our margin calculations. Therefore, the final results do not differ from the preliminary results. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

DATES: *Effective Date:* October 9, 2009.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2009, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). See *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part*, 74 FR 27109 (June 8, 2009) (*Preliminary Results*). The administrative review covers Xiping Opeck Food Co., Ltd. (Xiping Opeck). We invited interested parties to comment on the preliminary results. On July 8, 2009, we received a case brief from the petitioner, the Crawfish Processors Alliance. We did not receive a rebuttal brief from Xiping Opeck. No interested party has requested a hearing. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or un–purged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof.

Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by U.S. Customs and Border Protection (CBP) in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Rescission of Administrative Review in Part

In the *Preliminary Results*, we preliminarily found that Shanghai Now Again International Trading Co., Ltd. (Shanghai Now Again), and Yancheng Hi–King Agriculture Developing Co., Ltd. (Hi–King), had no shipments of subject merchandise during the period of review and we stated our intent to rescind the administrative review with respect to these companies. See *Preliminary Results*, 74 FR at 27110. We have received no comments concerning our intent to rescind this administrative review in part. We continue to find that Shanghai Now Again and Hi–King had no shipments of freshwater crawfish tail meat from the PRC during the period of review. In accordance with 19 CFR 351.213(d)(3), we are rescinding the

review of Shanghai Now Again and Hi–King.

Surrogate Country

In the *Preliminary Results*, we treated the PRC as a non–market-economy (NME) country and, therefore, we calculated normal value in accordance with section 773(c) of the Act. Also, we stated that we selected India[1] as the appropriate surrogate country to use in this review because it is a significant producer of merchandise comparable to subject merchandise and it is at a level of economic development comparable to the PRC, pursuant to section 773(c)(4) of the Act. See *Preliminary Results*, 74 FR at 27110. No interested party commented on our designation of the PRC as an NME country or the selection of India as the primary surrogate country. Therefore, for the final results of review, we have continued to treat the PRC as an NME country and have used the same primary surrogate country, India.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results*, we found that Xiping Opeck demonstrated its eligibility for separate–rate status. See *Preliminary Results*, 74 FR at 27110–11. We received no comments from interested parties regarding the separate–rate status of this company. Therefore, in these final results of review, we continue to find that the evidence placed on the record of this review by Xiping Opeck demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review. Thus, we have determined that Xiping Opeck is eligible to receive a separate rate.

Analysis of Comments Received

Two issues raised in the case brief by the petitioner in this review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from John M. Andersen, Acting Deputy Assistant Secretary, to Ronald K. Lorentzen, Acting Assistant Secretary, dated September 28, 2009, which is hereby adopted by this notice. A list of the issues which the petitioner has raised and to which we have responded is in the Decision Memo and attached to this notice as an Appendix. The Decision Memo, which is a public document, is on file in the CRU of the main Department of Commerce building, Room 1117, and is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

There are no changes in the calculations from those we completed for the *Preliminary Results*.

Final Results of the Review

The Department has determined that the final weighted–average dumping margin for Xiping Opeck for the period September 1, 2007, through August 31, 2008, is 0.00 percent.

Assessment

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. Because we calculated a margin of zero percent for Xiping Opeck, we will instruct CBP to liquidate the entries of merchandise exported by Xiping Opeck without regard to antidumping duties.

Cash–Deposit Requirements

The following cash–deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Xiping Opeck, the cash–deposit rate will be 0.00 percent; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be PRC–wide rate of 223.01 percent; (4) for all non–PRC exporters of subject merchandise the cash–deposit rate will be the rate applicable to the PRC entity that supplied that exporter. These deposit requirements shall remain in effect until further notice.

Notifications

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 2, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix

1. Verification Requirement
2. Draft Liquidation Instructions

[FR Doc. E9–24460 Filed 10–8–09; 8:45 am]

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[1] We have selected India as the primary surrogate country in which to value all inputs with the exception of live crawfish, the primary input, and the by-product, crawfish scrap shell. See *Preliminary Results*, 74 FR at 27110, for a discussion regarding the valuation of live crawfish and the selection of Indonesia as the secondary surrogate country.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 0909291327–91328–01]

Draft NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0; Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks two categories of comments on the draft *NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0:*

(1) Comments on the overall document and the contents of all

chapters, except Chapter 4, Standards Identified for Implementation; and

(2) Comments on the 15 additional ''Standards Identified for Implementation'' (Chapter 4); the NIST-proposed ''Guidance for Identifying Standards for Implementation''; and recommendations for adding or removing standards and specifications on the list of standards identified for implementation (Table 2), referencing relevant guidance criteria. In addition, NIST requests comments on the standards in Table 3—additional standards NIST has identified for further review.

DATES: Comments must be received on or before November 9, 2009.

ADDRESSES: Written comments may be sent to: George Arnold, 100 Bureau Drive, Stop 8100, National Institute of Standards and Technology, Gaithersburg, MD 20899–8100.

Electronic comments on the overall draft and the contents of chapters 1–3 and 5–7 may be sent to: *nistsgframeworkcomments@nist.gov*.

Comments on the 15 additional ''Standards Identified for Implementation'' (Chapter 4); the NIST-proposed ''Guidance for Identifying Standards for Implementation;'' recommendations for adding or removing standards and specifications on the list of standards identified for implementation (Table 2), referencing relevant guidance criteria; and comments on the standards in Table 3—additional standards NIST has identified for further review—may be sent to: *nistsgstandardscomments@nist.gov.* Comments on the standards in Table 3 should reference relevant guidance criteria.

The entire draft version of the *NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0 (Draft),* is available at: *http://www.nist.gov/public_affairs/releases/smartgrid_interoperability.pdf.*

FOR FURTHER INFORMATION CONTACT: George Arnold, 100 Bureau Drive, Stop 8100, National Institute of Standards and Technology, Gaithersburg, MD 20899–8100, telephone (301) 975–5627.

SUPPLEMENTARY INFORMATION: Section 1305 of the Energy Independence and Security Act (EISA) of 2007 (Pub. L. 110–140, 121 Stat. 1492) requires the Director of NIST ''to coordinate the development of a framework that includes protocols and model standards for information management to achieve interoperability of smart grid devices and systems.''

NIST recently issued the *NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0* (draft for public review and comment). The report is a result of NIST's approach to expediting development of key standards and requirements necessary for Smart Grid interoperability.

It proposes:

- A conceptual reference model to facilitate design of an architecture for the Smart Grid overall and for each of its networked domains;
- An initial set of standards for the Smart Grid;
- Priorities for additional standards necessary to resolve important gaps and to assure the interoperability, reliability, and security of Smart Grid components;
- Initial steps toward a Smart Grid cyber security and requirements document; and
- Action plans and timetables for designated standards development organizations (SDOs) tasked to fill identified gaps.

The document is a draft release, and is an initial step in a standards development and harmonization process that ultimately will deliver the hundreds of communication protocols, standard interfaces, and other widely accepted and adopted technical specifications necessary to build an advanced, secure, and interoperable electric power grid. The final version of *Release 1.0,* which will be issued later in 2009, also will serve to guide the work of a Smart Grid Interoperability Panel that is being established as part of the NIST framework for achieving end-to-end interoperability.

Results of NIST's ongoing work on interoperability and cyber security standards for the Smart Grid provide input to the Federal Energy Regulatory Commission (FERC). Under EISA, FERC is charged with instituting, once sufficient consensus is achieved, rulemaking proceedings to adopt the standards and protocols necessary to ensure Smart Grid functionality and interoperability in interstate transmission of electric power, and in regional and wholesale electricity markets.

On June 9, 2009, NIST issued a **Federal Register** notice (74 FR 27288), requesting comments on a preliminary set of 16 smart grid interoperability standards and specifications identified as applicable to Smart Grid interoperability and cyber security needs. After reviewing and evaluating the input it received, NIST increased this initial list to 31 standards and other specifications. The additional 15 standards and specifications are shaded in Table 2, Chapter 4, beginning with item 17 on page 34 of the report. In addition, Table 3 lists additional standards NIST has identified for further review.

On May 19–20, 2009, NIST and its contractor, the Electric Power Research Institute (EPRI), convened a workshop, where more than 600 people engaged in sessions focused on developing and analyzing use cases, determining Smart Grid interoperability requirements, locating key interfaces, and identifying additional standards for consideration. The sessions yielded more than 70 candidate standards and emerging specifications, which were compiled in EPRI's *Report to NIST on the Smart Grid Interoperability Standards Roadmap* (EPRI Report) ((Contract No. SB1341–09–CN–0031—Deliverable 7) Prepared by EPRI, June 17, 2009). The EPRI Report also was submitted for public review and comment. However, the additional standards constituted a small part of the lengthy report.

Excluding those already listed in Table 2, the standards compiled in the EPRI Report are listed in Table 3, Chapter 4 of the draft *NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0.*

NIST solicits public comments on the 15 standards and other specifications added to the list of NIST-identified standards for implementation, as presented in Table 2, Chapter 4. Comments may include recommendations for removing specific items, or for adding new specifications, which may or may not be among those listed in Table 3, Chapter 4 of the *NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0 (Draft).* All recommendations should reference specific criteria in the supporting explanation, as described below.

NIST has developed a core set of criteria to provide initial guidance when evaluating prospective Smart Grid standards. This guidance also is presented in Chapter 4 of *NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0 (Draft).* NIST seeks public comments on the usefulness of the criteria as well as suggestions for improving the guidance for future evaluations of standards. Additionally, NIST asks that recommendations for adding or removing specifications from the list of standards identified for Smart Grid implementation cite guidance criteria relevant to specific recommendations.

Request for Comments: NIST seeks two sets of comments on the draft framework and roadmap report. The agency requests:

1. Comments on the overall draft and the contents of chapters 1–3 (''Purpose

and Scope,'' ''Smart Grid Vision,'' and ''Conceptual Reference Model'') and chapters 5–7 (''Priority Action Plans,'' ''Cyber Security Risk Management Framework and Strategy,'' and ''Next Steps'') of the draft *NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0.*

2. Comments on the 15 additional ''Standards Identified for Implementation'' (Chapter 4); comments on the NIST-proposed ''Guidance for Identifying Standards for Implementation;'' and recommendations for adding or removing specifications on the list of standards identified for implementation (Table 2), which should reference relevant guidance criteria. In addition, comments on the standards in Table 3—additional standards NIST has identified for further review—are requested, and comments should reference relevant guidance criteria.

Comments should be submitted in accordance with instructions in the **ADDRESSES** section of this notice.

NIST advises that it also is seeking public review and comment on a companion draft document, NIST Interagency Report (NISTIR) *7628 Smart Grid Cyber Security Strategy and Requirements*. (More than 200 pages long, this document is summarized in Chapter 6 of draft *NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0.)* The request for comments on draft NISTIR 7628 will be published separately in the **Federal Register.**

Dated: October 5, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–24429 Filed 10–8–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 0909301329–91332–01]

Draft NIST Interagency Report (NISTIR) 7628, Smart Grid Cyber Security Strategy and Requirements; Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks comments on draft NISTIR 7628, *Smart Grid Cyber Security Strategy and Requirements.* This initial draft of the document contains the overall security strategy for the Smart Grid. Contents include: Development of vulnerability classes, identification of well-understood security problems that need to be addressed, selection and development of security-relevant use cases, initial privacy impact assessment, identification and analysis of interfaces identified in six functional priority areas, advanced metering infrastructure (AMI) security requirements, and selection of a suite of security documents that will be used as the base for determining and tailoring security requirements. This is the first draft of NISTIR 7628; NIST plans to post a subsequent draft of this report for additional public comments.

DATES: Comments must be received on or before December 1, 2009.

ADDRESSES: Written comments may be sent to: Annabelle Lee, National Institute of Standards and Technology, 100 Bureau Dr., Stop 8930, Gaithersburg, MD 20899–8930. Electronic comments may be sent to: *csctgdraftcomments@nist.gov*.

The report is available at: *http://csrc.nist.gov/publications/PubsDrafts.html#NIST-IR-7628*.

FOR FURTHER INFORMATION CONTACT: Annabelle Lee, National Institute of Standards and Technology, 100 Bureau Dr., Stop 8930, Gaithersburg, MD 20899–8930, telephone (301) 975–8897.

SUPPLEMENTARY INFORMATION: Section 1305 of the Energy Independence and Security Act (EISA) of 2007 (Pub. L. 110–140) requires the Director of the National Institute of Standards and Technology (NIST) ''to coordinate the development of a framework that includes protocols and model standards for information management to achieve interoperability of smart grid devices and systems.'' EISA also specifies that, ''It is the policy of the United States to support the modernization of the Nation's electricity transmission and distribution system to maintain a reliable and secure electricity infrastructure that can meet future demand growth and to achieve each of the following, which together characterize a Smart Grid: * * *

(1) Increased use of digital information and controls technology to improve reliability, security, and efficiency of the electric grid.

(2) Dynamic optimization of grid operations and resources, with full cyber-security.''

With the transition to the Smart Grid—the ongoing transformation of the nation's electric system to a two-way flow of electricity and information—the information technology (IT) and telecommunications infrastructures have become critical to the energy sector infrastructure.

NIST recently issued the *NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0* (draft for public review and comment). The report is an output of NIST's approach to expediting development of key standards and requirements necessary for Smart Grid interoperability and cyber security.

The report includes a high-level summary (Chapter 6) of draft NISTIR 7628, *Smart Grid Cyber Security Strategy and Requirements.* The report on the interoperability framework and standards roadmap, as well as the **Federal Register** notice soliciting public comments on the report, advised that NIST also was submitting this companion draft document on cyber security for public review and comment.

NIST has established a Smart Grid Cyber Security Coordination Task Group (CSCTG) which includes members from the public and private sectors, academia, regulatory organizations, and federal agencies. The CSCTG is identifying a comprehensive set of cyber security requirements. These requirements are being identified using a high-level risk assessment process that is defined in the cyber security strategy for the Smart Grid.

The DRAFT NIST Interagency Report (NISTIR) 7628, *Smart Grid Cyber Security Strategy and Requirements* includes the initial risk assessment documents (vulnerability classes and bottom-up analysis); security-relevant use cases; a base set of security requirements with cross-referenced security standards; diagrams of a set of functional priority areas and interfaces, including interface categories with constraints and issues and impacts; initial privacy impact assessment; and AMI security requirements.

Request for Comments: NIST seeks public comments on the report. The document will be revised on the basis of comments received, and a second draft will be published for public comment. In addition, the second draft will include the overall Smart Grid security architecture and the security requirements.

The final version of NISTIR 7628 will address all comments received to date. The document will have the final set of security controls and the final security architecture.

Comments on draft NISTIR 7628, *Smart Grid Cyber Security Strategy and Requirements* should be submitted in accordance with the **DATES** and **ADDRESSES** sections of this notice.

Dated: October 6, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–24430 Filed 10–8–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2009–0037]

Additional Period for Comments on Interim Examination Instructions for Evaluating Patent Subject Matter Eligibility

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments; additional comment period.

SUMMARY: The United States Patent and Trademark Office (USPTO) has prepared interim examination instructions for evaluating patent subject matter eligibility under 35 U.S.C. 101 (Interim Patent Subject Matter Eligibility Examination Instructions) pending a decision by the U.S. Supreme Court in *Bilski* v. *Kappos,* and invited the public to submit written comments on the Interim Patent Subject Matter Eligibility Examination Instructions. The USPTO is extending the comment period to ensure that members of the public have sufficient opportunity to submit comments on the Interim Patent Subject Matter Eligibility Examination Instructions. The USPTO will revise the instructions as appropriate based on comments received.

Comment Deadline Date: Written comments must be received on or before November 9, 2009. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *AB98.Comments@uspto.gov*. Comments may also be submitted by facsimile to (571) 273–0125, marked to the attention of Caroline D. Dennison. Although comments may be submitted by mail or facsimile, the USPTO prefers to receive comments via the Internet.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Office Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Caroline D. Dennison, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at 571–272–7729, or by facsimile transmission to 571–273–0125, marked to the attention of Caroline D. Dennison.

SUPPLEMENTARY INFORMATION: The USPTO posted the Interim Patent Subject Matter Eligibility Examination Instructions on its Internet Web site (address: *http://www.uspto.gov*) on August 27, 2009. The notice published on the USPTO's Internet Web site invited public comment on the Interim Patent Subject Matter Eligibility Examination Instructions and indicated that comments must be received on or before September 28, 2009, to be ensured of consideration. The USPTO subsequently published a notice in the **Federal Register** confirming that the USPTO was inviting public comment on the Interim Patent Subject Matter Eligibility Examination Instructions and that comments must be received on or before September 28, 2009, to be ensured of consideration. *See Request for Comments on Interim Examination Instructions for Evaluating Patent Subject Matter Eligibility,* 74 FR 47780 (September 17, 2009) (notice). The USPTO is extending the comment period because the USPTO desires the benefit of public comment on the instructions and wants to ensure that members of the public have sufficient opportunity to submit comments on the Interim Patent Subject Matter Eligibility Examination Instructions. Comments that have already been received are under consideration and the USPTO will revise the instructions as appropriate based on comments received.

Dated: October 5, 2009.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E9–24395 Filed 10–8–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS13

Marine Mammals; File No. 87–1743

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Daniel P. Costa, Ph.D., Long Marine Laboratory, University of California at Santa Cruz, 100 Shaffer Road, Santa Cruz, California 95060, has been issued a minor amendment to Scientific Research Permit No. 87–1743.

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: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The original permit (No. 87–1743–00), issued on September 17, 2004 (69 FR 56999), authorized long-term behavioral, physiological, and life history research studies on northern elephant seals (*Mirounga angustirostris*) through September 30, 2009. This permit was subsequently amended on four occasions through minor amendments.

This minor amendment (Permit No. 87–1743–05) extends the duration of the permit through September 30, 2010 with no increase in the number of animals that may be taken. Permit No. 87–1743–05 also authorizes a minor change to permitted methods for a physiological study to allow researchers to substitute one instrument, a thermister, for another instrument, a Doppler flow sensor, but does not change any other terms or conditions of the permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a supplemental environmental assessment (SEA) was prepared to analyze the effects of issuing the amendment. Based on the analysis, NMFS determined that issuance of the permit amendment would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That

determination is documented in a finding of no significant impact, signed on September 30, 2009.

Dated: October 5, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–24453 Filed 10–8–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS14

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a public meeting.

DATES: The meeting will be held on Tuesday, October 27, 2009, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn BWI Airport, 890 Elkridge Landing Road, Linthicum Heights, MD 21090, telephone: (410) 859–8400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is: (1) specification of Acceptable Biological Catch (ABC) for spiny dogfish for the upcoming fishing year(s); (2) review of the Management Strategy Evaluation project and research priorities to address scientific uncertainty and development of ABC control rules for managed species, and (3) to discuss the role of the SSC members relative to stock assessment working groups and Stock Assessment Review Committee (SARC) Chairmanship.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office, (302) 674–2331 extension 18, at least 5 days prior to the meeting date.

Dated: October 5, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–24314 Filed 10–8–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary for Communications and Information on spectrum policy matters.

DATES: The meeting will be held on October 27, 2009, from 9:30 a.m. to 1:00 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the United States Department of Commerce, 1401 Constitution Avenue, NW, Room 4830, Washington, DC 20230. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW, Room 4725, Washington, DC 20230 or emailed to spectrumadvisory@ntia.doc.gov.

FOR FURTHER INFORMATION CONTACT: Joe Gattuso, Designated Federal Officer, at (202) 482–0977 or jgattuso@ntia.doc.gov; and/or visit NTIA's web site at www.ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Background: The Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. § 904(b). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management to enable the introduction of new spectrum-dependent technologies and services, including long-range spectrum planning and policy reforms for expediting the American public's access to broadband services, public safety, and digital television. The Committee functions solely as an advisory body in compliance with the FACA.

Matters to Be Considered: The Committee will discuss issues, work plans, and subcommittees for the coming year. There also will be an opportunity for public comment at the meeting.

Time and Date: The meeting will be held on October 27, 2009, from 9:30 a.m. to 1:00 p.m. Eastern Daylight Time. The times and the agenda topics are subject to change. Please refer to NTIA's web site, http://www.ntia.doc.gov, for the most up-to-date meeting agenda.

Place: The meeting will be held at the United States Department of Commerce, 1401 Constitution Avenue, NW, Room 4830, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Gattuso at (202) 482–0977 or jgattuso@ntia.doc.gov, at least five (5) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments with the Committee at any time before or after a meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting should send them to the above-listed address and must be received by close of business on October 22, 2009, to provide sufficient time for review. Comments received after October 22, 2009, will be distributed to the Committee, but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in HTML, ASCII, Word, or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to spectrumadvisory@ntia.doc.gov. Comments provided via electronic mail may also be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's office at the address above. Documents including the Committee's charter, membership list, agendas, minutes, and any reports are available on NTIA's Committee web

page at http://www.ntia.doc.gov/advisory/spectrum.

Dated: October 6, 2009.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E9–24445 Filed 10–8–09; 8:45 am]

BILLING CODE 3510–60–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On Or Before: November 9, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed action.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to provide the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the service to the government.

2. If approved, the action will result in authorizing small entities to provide the service to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for the listed nonprofit agency to provide:

Service:

Service Type/Location: Custodial and Grounds Maintenance Services, Lewis R. Morgan FB–PO–CT, 18 Greenville Street, Newnan, GA.

NPA: WORKTEC, Jonesboro, GA.

Contracting Activity: GSA/Property Management Contracts, Public Buildings Service, Atlanta, GA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–24412 Filed 10–8–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* November 9, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Addition

On 8/7/2009 (74 FR 39641), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide a service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Base Supply Center, USCG Sand Island, 400 Sand Island Parkway, Honolulu, HI.

NPA: South Texas Lighthouse for the Blind, Corpus Christi, TX.

Contracting Activity: Department Of Homeland Security, U.S. Coast Guard, ISC, Honolulu, HI.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–24413 Filed 10–8–09; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the TETCO–M3 Financial Basis Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the TETCO–M3 Financial Basis (''TMT'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal:* http://www.regulations.gov.
- *E-mail: secretary@cftc.gov.* Include TETCO–M3 Financial Basis (TMT) Contract in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov;* or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii) (A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information,[3] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [4] and the applicable provisions of part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. TETCO–M3 Financial Basis Contract

The TMT contract is cash settled based on the difference between the bidweek price index for a particular calendar month at the Texas Eastern, Zone M–3 hub, as published by Platts in its *Inside FERC's Gas Market Report,* and the final settlement price of the New York Mercantile Exchange's (NYMEX's) physically-delivered Henry Hub natural gas futures contract for the same calendar month. The Platts bidweek price is computed from fixed-price, bilateral transactions executed during the last five business days of a given month, where the transactions specify the delivery of natural gas during the following calendar month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. Bidweek prices are published on the first business day of the month in which the gas flows. The size of the TMT contract is 2,500 million British thermal units (''mmBtu''), and the unit of trading is any multiple of 2,500 mmBtu. The

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

TMT contract is listed for up to 72 consecutive calendar months.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its TMT contract, the total number of trades was 1,073 in the second quarter of 2009, resulting in a daily average of 16.8 trades. During the same period, the TMT contract had a total trading volume of 145,328 contracts and an average daily trading volume of 2,270.8 contracts. Moreover, the open interest as of June 30, 2009, was 168,963 contracts.

It appears that the TMT contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the TMT contract averaged more than 2,000 contracts on a daily basis, with more than 16 separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the TMT contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, while it did not specify which contracts served a significant price discovery function or reference this particular contract, the Commission's ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain natural gas contracts. Natural gas contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Gas End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the part 36 rules,[5] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's TMT contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contract in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[6] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA[7] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC, on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–24378 Filed 10–8–09; 8:45 am]

BILLING CODE 6351–01–P

[5] 17 CFR 36, Appendix A.

[6] 44 U.S.C. 3507(d).

[7] 7 U.S.C. 19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), to Undertake a Determination Whether the San Juan Financial Basis Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the San Juan Financial Basis (''SNJ'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection

with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: secretary@cftc.gov.* Include San Juan Financial Basis (SNJ) Contract in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii) (A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information,[3] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [4] and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. San Juan Financial Basis Contract

The SNJ contract is cash settled based on the difference between the bidweek price index for a particular calendar month at the El Paso Natural Gas Co., San Juan Basin, as published by Platts in its *Inside FERC's Gas Market Report,* and the final settlement price of the New York Mercantile Exchange's (NYMEX's) physically-delivered Henry Hub natural gas futures contract for the same calendar month. The Platts bidweek price is computed from fixed-price, bilateral transactions executed during the last five business days of a given month, where the transactions specify the delivery of natural gas during the following calendar month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. Bidweek prices are published on the first business day of the month in which the gas flows. The size of the SNJ contract is 2,500 million British thermal units (''mmBtu''), and the unit of trading is any multiple of 2,500 mmBtu. The SNJ contract is listed for up to 72 consecutive calendar months.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its SNJ contract, the total number of trades was 391 in the second quarter of 2009, resulting in a daily average of 6.1 trades. During the same period, the SNJ contract had a total trading volume of 30,722 contracts and an average daily trading volume of 480.0 contracts. Moreover, the open interest as of June 30, 2009, was 49,105 contracts.

It appears that the SNJ contract may satisfy the material liquidity, price

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the SNJ contract averaged close to 500 contracts on a daily basis, with more than six separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the SNJ contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, while it did not specify which contracts served a significant price discovery function or reference this particular contract, the Commission's ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain natural gas contracts. Natural gas contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Gas End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: Price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,[5] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's SNJ contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contract in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[6] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA[7] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–24380 Filed 10–8–09; 8:45 am]

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[5] 17 CFR 36, Appendix A.

[6] 44 U.S.C. 3507(d).

[7] 7 U.S.C. 19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the Dominion-South Financial Basis Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the Dominion-South Financial Basis contract (''DOM''), offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: secretary@cftc.gov.* Include Dominion-South Financial Basis Contract (DOM) in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading

Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

• *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii) (A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information,[3] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [4] and the applicable provisions of part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. Dominion-South Financial Basis Contract

The DOM contract is cash settled based on the difference between the bidweek price index for a particular calendar month at the Dominion Transmission, Inc.'s, Appalachia hub, as published by Platts in its *Inside FERC's Gas Market Report,* and the final settlement price of the New York Mercantile Exchange's (NYMEX's) physically-delivered Henry Hub natural gas futures contract for the same calendar month. The Platts bidweek price is computed from fixed-price, bilateral transactions executed during the last five business days of a given month, where the transactions specify the delivery of natural gas during the following calendar month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. Bidweek prices are published on the first business day of the month in which the gas flows. The size of the DOM contract is 2,500 mm Btu, and the unit of trading is any multiple of 2,500 mm Btu. The DOM contract is listed for up to 72 consecutive calendar months.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its DOM contract, the total number of trades was 347 in the second quarter of 2009, resulting in a daily average of 5.4 trades. During the same period, the DOM contract had a total trading volume of 38,872 contracts and an average daily trading volume of 607.4 contracts. Moreover, the open interest as of June 30, 2009, was 97,240 contracts.

It appears that the DOM contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the DOM contract averaged more than 600 contracts on a daily basis, with more than 5 separate transactions each day. In addition, the open interest in the subject contract was large. In regard to price linkage, the final settlement of the DOM contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, while it did not specify which contracts served a significant price discovery

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

function or reference this particular contract, the Commission's ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain natural gas contracts. Natural gas contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Gas End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the part 36 rules,[5] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's DOM contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contracts in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[6] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA[7] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC, on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

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BILLING CODE 6351–01–P

[5] 17 CFR 36, Appendix A.

[6] 44 U.S.C. 3507(d).

[7] 7 U.S.C. 19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the Malin Financial Basis Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the Malin Financial Basis (''MLN'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: secretary@cftc.gov.* Include Malin Financial Basis (MLN) Contract in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov;* or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address.

Telephone: (202) 418–5133. *E-mail: snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) that averaged five trades per day or more over the most recent calendar quarter; and (ii) (A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information,[3] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [4] and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. Malin Financial Basis Contract

The MLN contract is a monthly contract that is cash settled based on the difference between the price of natural gas at the Malin hub for the month of delivery in the first publication of the month, as published by Intelligence Press, Inc. (IPI), in *NGI's Bidweek Survey,* and the final settlement price for New York Mercantile Exchange's (''NYMEX's'') Henry Hub physically-delivered natural gas futures contract for the same specified calendar month. The bidweek price is computed from fixed-price, bilateral transactions executed during the last five business days of a given month, where the transactions specify the delivery of natural gas at the Malin hub during the following calendar month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. Bidweek prices are published on the first business day of the month in which the gas flows. The size of the MLN contract is 2,500 mm Btu, and the unit of trading is any multiple of 2,500 mm Btu. The MLN contract is listed for up to 72 calendar months commencing with the next calendar month.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its MLN contract, the total number of trades was 664 in the second quarter of 2009, resulting in a daily average of 10.4 trades. During the same period, the MLN contract had a total trading volume of 59,564 contracts and an average daily trading volume of 930.7 contracts. Moreover, the open interest as of June 30, 2009, was 65,804 contracts.

It appears that the MLN contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the MLN contract averaged just shy of 1,000 contracts on a daily basis, with more than 10 separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the MLN contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas futures contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, the ICE maintains exclusive rights over IPI's bidweek price indices. As a result, no other exchange can offer such a basis contract based on IPI's Malin bidweek index. While other third-party price providers produce natural gas price indices for a variety of trading centers, those indices may not have the same values or quality as IPI's price indices; each company's bidweek indices are based on transactions that are consummated during the last five days of the month prior to delivery and are voluntarily submitted by traders. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403–07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

whether the data are daily only or historical. For example, the ICE offers ''West Gas End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,[5] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's MLN contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contract in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[6] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

[5] 17 CFR 36, Appendix A.

[6] 44 U.S.C. 3507(d).

B. Cost-Benefit Analysis

Section 15(a) of the CEA[7] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–24384 Filed 10–8–09; 8:45 am]

BILLING CODE 6351–01–P

[7] 7 U.S.C. 19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the Permian Financial Basis Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the Permian Financial Basis (''PER'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: secretary@cftc.gov.* Include Permian Financial Basis (PER) Contract in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov;* or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address.

Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii) (A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information,[3] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [4] and the applicable provisions of part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. Permian Financial Basis Contract

The PER contract is cash settled based on the difference between the bidweek price index for a particular calendar month at the El Paso Natural Gas Co., Permian Basin, as published by Platts in its *Inside FERC's Gas Market Report,* and the final settlement price of the New York Mercantile Exchange's (NYMEX's) physically-delivered Henry Hub natural gas futures contract for the same calendar month. The Platts bidweek price is computed from fixed-price, bilateral transactions executed during the last five business days of a given month, where the transactions specify the delivery of natural gas during the following calendar month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. Bidweek prices are published on the first business day of the month in which the gas flows. The size of the PER contract is 2,500 million British thermal units (''mmBtu''), and the unit of trading is any multiple of 2,500 mmBtu. The PER contract is listed for up to 72 consecutive calendar months.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its PER contract, the total number of trades was 727 in the second quarter of 2009, resulting in a daily average of 11.4 trades. During the same period, the PER contract had a total trading volume of 49,200 contracts and an average daily trading volume of 768.8 contracts. Moreover, the open interest as of June 30, 2009, was 55,940 contracts.

It appears that the PER contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the PER contract averaged close to 800 contracts on a daily basis, with more than 11 separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the PER contract is based, in part, on the final settlement price of the NYMEX's physically delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, while it did not specify which contracts served a significant price discovery function or reference this particular contract, the Commission's ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain natural gas contracts. Natural gas contracts based on actively traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Gas End of Day'' and ''OTC

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the part 36 rules,[5] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's PER contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contract in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[6] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA[7] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC, on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

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[5] 17 CFR 36, Appendix A.

[6] 44 U.S.C. 3507(d).

[7] 7 U.S.C. 19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the AECO Financial Basis Contract, Offered for Trading on the Intercontinental Exchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the AECO Financial Basis (''AEC'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: secretary@cftc.gov.* Include AECO Financial Basis Contract (AEC) in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov;* or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'')[1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii) (A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information,[3] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA[4] and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. AECO Financial Basis Contract

The AEC contract is cash settled based on the difference between the AECO–C & Nova Inventory Transfer (Alberta) price index for natural gas in the month of production, as reported in the first publication of the month of Canadian Enerdata, Ltd.'s *Canadian Gas Price Reporter* and the final settlement price of the NYMEX Henry Hub physically-delivered natural gas futures contract for the same calendar month. The Alberta natural gas market is a major connection point for long-distance transmission systems that take natural gas to points throughout Canada and the United States. The transactions used to calculate the monthly Alberta price index are those that are conducted on the Natural Gas Exchange (''NGX'') in a given month and specify the delivery of natural gas at the Alberta hub in the following month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. The size of the AEC contract is 2,500 million British thermal units (''mmBtu''), and the unit of trading is any multiple of 2,500 mmBtu. The AEC contract is listed for up to 120 calendar months commencing with the next calendar month.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its AEC contract, the total number of trades was 7,263 in the second quarter of 2009, resulting in a daily average of 113.5 trades. During the same period, the AEC contract had a total trading volume of 806,438 contracts and an average daily trading volume of 12,601 contracts. Moreover, the open interest as of June 30, 2009, was 443,402 contracts.

It appears that the AEC contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the AEC contract averaged more than 12,000 contracts on a daily basis, with more than 100 separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the AEC contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, the ICE maintains exclusive rights over NGX's Alberta natural gas price index. As a result, no other exchange can offer such a basis contract based on NGX's Alberta index price. While other third-party price providers produce natural gas price indices for a variety of trading centers, those indices may not be the same in value or quality as NGX's price indices. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Gas End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,[5] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403–07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

[5] 17 CFR 36, Appendix A.

specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's AEC contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contract in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[6] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA[7] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC, on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

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BILLING CODE 6351–01–P

[6] 44 U.S.C. 3507(d).

[7] 7 U.S.C. 19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the Chicago Financial Basis Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the Chicago Financial Basis (''DGD'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: secretary@cftc.gov.* Include Chicago Financial Basis (DGD) Contract in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov;* or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'')[1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii) (A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information,[3] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA[4] and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. Chicago Financial Basis Contract

The DGD contract is a monthly contract that is cash settled based on the difference between the price of natural gas at the Chicago Citygate hub for the month of delivery in the first publication of the month, as published by Intelligence Press, Inc. (IPI), in *NGI's Bidweek Survey,* and the final settlement price for New York Mercantile Exchange's (''NYMEX's'') Henry Hub physically-delivered natural gas futures contract for the same specified calendar month. The bidweek price is computed from fixed-price, bilateral transactions executed during the last five business days of a given month, where the transactions specify the delivery of natural gas at the Chicago Citygate hub during the following calendar month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. Bidweek prices are published on the first business day of the month in which the gas flows. The size of the DGD contract is 2,500 mmBtu, and the unit of trading is any multiple of 2,500 mmBtu. The DGD contract is listed for up to 72 calendar months commencing with the next calendar month.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its DGD contract, the total number of trades was 1,572 in the second quarter of 2009, resulting in a daily average of 24.6 trades. During the same period, the DGD contract had a total trading volume of 146,193 contracts and an average daily trading volume of 2,284.3 contracts. Moreover, the open interest as of June 30, 2009, was 127,744 contracts.

It appears that the DGD contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the DGD contract averaged over 2,000 contracts on a daily basis, with nearly 25 separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the DGD contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas futures contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, the ICE maintains exclusive rights over IPI's bidweek price indices. As a result, no other exchange can offer such a basis contract based on IPI's Chicago Citygate bidweek index. While other third-party price providers produce natural gas price indices for a variety of trading centers, those indices may not have the same values or quality as IPI's price indices; each company's bidweek indices are based on transactions that are consummated during the last five days of the month prior to delivery and are voluntarily submitted by traders. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''Midcontinent Gas End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: Price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,[5] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's DGD contract performs a significant price discovery function. Commenters'

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

[5] 17 CFR 36, Appendix A.

attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contract in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity they are knowledgeable about the subject contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [6] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA [7] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC, on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

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BILLING CODE 6351–01–P

[6] 44 U.S.C. 3507(d).

[7] 7 U.S.C. 19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the TCO Financial Basis Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the TCO Financial Basis (''TCO'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: secretary@cftc.gov.* Include TCO Financial Basis (TCO) Contract in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) that averaged five trades per day or more

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

over the most recent calendar quarter; and (ii)(A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information,[3] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [4] and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. TCO Financial Basis Contract

The TCO contract is cash settled based on the difference between the bidweek price index for a particular calendar month at the Columbia Gas Transmission Corp.'s Appalachia hub, as published by Platts in its *Inside FERC's Gas Market Report,* and the final settlement price of the New York Mercantile Exchange's (NYMEX's) physically-delivered Henry Hub natural gas futures contract for the same calendar month. The Platts bidweek price is computed from fixed-price, bilateral transactions executed during the last five business days of a given month, where the transactions specify the delivery of natural gas during the following calendar month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. Bidweek prices are published on the first business day of the month in which the gas flows. The size of the TCO contract is 2,500 million British thermal units (''mmBtu''), and the unit of trading is any multiple of 2,500 mmBtu. The TCO contract is listed for up to 72 consecutive calendar months.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its TCO contract, the total number of trades was 583 in the second quarter of 2009, resulting in a daily average of 9.1 trades. During the same period, the TCO contract had a total trading volume of 61,944 contracts and an average daily trading volume of 967.9 contracts. Moreover, the open interest as of June 30, 2009, was 141,544 contracts.

It appears that the TCO contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the TCO contract averaged more than 900 contracts on a daily basis, with over nine separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the TCO contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, while it did not specify which contracts served a significant price discovery function or reference this particular contract, the Commission's ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain natural gas contracts. Natural gas contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''East Gas End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: Price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules, the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's TCO contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contract in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity they are knowledgeable about the subject contract.

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [5] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA [6] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

[5] 44 U.S.C. 3507(d).

[6] 7 U.S.C. 19(a).

Issued in Washington, DC, on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

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COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the Waha Financial Basis Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the Waha Financial Basis contract (''WAH''), offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: secretary@cftc.gov.* Include Waha Financial Basis Contract (WAH) in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii)(A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information,[3] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA[4] and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. Waha Financial Basis Contract

The WAH contract is cash settled based on the difference between the bidweek price index for a particular calendar month at the Waha, West Texas hub, as published by Platts in its *Inside FERC's Gas Market Report,* and the final settlement price of the New York Mercantile Exchange's (NYMEX's) physically-delivered Henry Hub natural gas futures contract for the same calendar month. The Platts bidweek price is computed from fixed-price, bilateral transactions executed during the last five business days of a given month, where the transactions specify the delivery of natural gas during the following calendar month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. Bidweek prices are published on the first business day of the month in which the gas flows. The size of the WAH contract is 2,500 mmBtu, and the unit of trading is any multiple of 2,500 mmBtu. The WAH contract is listed for up to 72 consecutive calendar months.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its WAH contract, the total number of trades was 1,165 in the second quarter of 2009, resulting in a daily average of 18.2 trades. During the same period, the WAH contract had a total trading volume of 100,490 contracts and an average daily trading volume of 1,570.2 contracts. Moreover, the open interest as of June 30, 2009, was 96,371 contracts.

It appears that the WAH contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the WAH contract averaged more than 1,500 contracts on a daily basis, with more than 18 separate transactions each day. In addition, the open interest in the subject contract was large. In regard to price linkage, the final settlement of the WAH contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In regard to material price reference, while it did not specifically address the natural gas contracts under review, the ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain natural gas contracts. Natural gas contracts based on actively-traded hubs are transacted on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,[5] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's WAH contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contracts in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[6] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

[5] 17 CFR 36, Appendix A.

[6] 44 U.S.C. 3507(d).

B. Cost-Benefit Analysis

Section 15(a) of the CEA [7] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

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[7] 7 U.S.C. 19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the Zone 6–NY Financial Basis Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the Zone 6–NY Financial Basis (''TZS'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal:* http://www.regulations.gov.
- *E-mail: secretary@cftc.gov.* Include Zone 6–NY Financial Basis (TZS) Contract in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov;* or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) that averaged five trades per day or more over the most recent calendar quarter; and (ii)(A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information,[3] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [4] and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. Zone 6–NY Financial Basis Contract

The TZS contract is cash settled based on the difference between the bidweek price index for a particular calendar month at the Transco, Zone 6–NY hub,[5] as published by Platts in its *Inside FERC's Gas Market Report,* and the final settlement price of the New York Mercantile Exchange's (NYMEX's) physically-delivered Henry Hub natural gas futures contract for the same calendar month. The Platts bidweek price is computed from fixed-price, bilateral transactions executed during the last five business days of a given month, where the transactions specify the delivery of natural gas during the following calendar month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. Bidweek prices are published on the first business day of the month in which the gas flows. The size of the TZS contract is 2,500 million British thermal units (''mmBtu''), and the unit of trading is any multiple of 2,500 mmBtu. The TZS contract is listed for up to 72 consecutive calendar months.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its TZS contract, the total number of trades was 552 in the second quarter of 2009, resulting in a daily average of 8.6 trades. During the same period, the TZS contract had a total trading volume of 55,371 contracts and an average daily trading volume of 865.2 contracts. Moreover, the open interest as of June 30, 2009, was 87,520 contracts.

It appears that the TZS contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the TZS contract averaged over 800 contracts on a daily basis, with more than eight separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the TZS contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, while it did not specify which contracts served a significant price discovery function or reference this particular contract, the Commission's ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain natural gas contracts. Natural gas contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''East Gas End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,[6] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's TZS contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contract in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [7] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403–07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

[5] The hub refers to Zone 6 of the Transcontinental Gas Pipe Line Corp.'s natural gas line that runs from Virginia to New York (approximately 300 miles).

[6] 17 CFR 36, Appendix A.

[7] 44 U.S.C. 3507(d).

B. Cost-Benefit Analysis

Section 15(a) of the CEA [8] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–24376 Filed 10–8–09; 8:45 am]

BILLING CODE 6351–01–P

[8] 7 U.S.C.19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), to Undertake a Determination Whether the HSC Financial Basis Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the HSC [1] Financial Basis (''HSC'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: secretary@cftc.gov.* Include HSC Financial Basis (HSC) Contract in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* (202) 418–5515. *E-mail: gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. *Telephone:* (202) 418–5133. *E-mail: snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [2] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii)(A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

[1] The acronym ''HSC'' indicates the Houston Ship Channel, which is a conduit for ocean going vessels between the city of Houston, Texas, and the Gulf of Mexico.

[2] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[3] After prompt consideration of all relevant information,[4] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [5] and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. HSC Financial Basis Contract

The HSC contract is cash settled based on the difference between the bidweek price index for a particular calendar month at the HSC, as published by Platts in its *Inside FERC's Gas Market Report*, and the final settlement price of the New York Mercantile Exchange's (NYMEX's) physically-delivered Henry Hub natural gas futures contract for the same calendar month. The Platts bidweek price is computed from fixed-price, bilateral transactions executed during the last five business days of a given month, where the transactions specify the delivery of natural gas at the HSC during the following calendar month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. Bidweek prices are published on the first business day of the month in which the gas flows. The size of the HSC contract is 2,500 mmBtu, and the unit of trading is any multiple of 2,500 mmBtu. The HSC contract is listed for up to 84 calendar months commencing with the next calendar month.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its HSC contract, the total number of trades was 2,524 in the second quarter of 2009, resulting in a daily average of 39.4 trades. During the same period, the HSC contract had a total trading volume of 209,010 contracts and an average daily trading volume of 3,265.8 contracts. Moreover, the open interest as of June 30, 2009, was 313,594 contracts.

It appears that the HSC contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the HSC contract averaged more than 3,000 contracts on a daily basis, with nearly 40 separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the HSC contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, while it did not specify which contracts served a significant price discovery function or reference this particular contract, the Commission's ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain natural gas contracts. Natural gas contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''Gulf Gas End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,[6] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's HSC contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to an SPDC determination. The Commission notes that comments which analyze the contracts in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [7] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and

[3] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[4] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403–07_ecmreport.pdf.*

[5] 7 U.S.C. 2(h)(7)(C).

[6] 17 CFR Part 36, Appendix A.

[7] 44 U.S.C. 3507(d).

assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA [8] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC, on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–24388 Filed 10–8–09; 8:45 am]

BILLING CODE 6351–01–P

[8] 7 U.S.C. 19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the NGPL TXOK Financial Basis Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the NGPL [1] TxOk [2] Financial Basis (''NTO'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: secretary@cftc.gov.* Include NGPL TxOk Financial Basis (NTO) Contract in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* (202) 418–5515. *E-mail: gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. *Telephone:* (202) 418–5133. *E-mail: snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [3] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii)(A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

[1] The acronym ''NGPL'' represents the Natural Gas Pipeline Co. of America.

[2] The acronym ''TxOk'' represents the Texas/Oklahoma natural gas hub.

[3] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[4] After prompt consideration of all relevant information,[5] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA[6] and the applicable provisions of part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. NGPL TxOk Financial Basis Contract

The NTO contract is cash settled based on the difference between the bidweek price index for a particular calendar month at the NGPL's TxOk hub, as published by Platts in its *Inside FERC's Gas Market Report,* and the final settlement price of the New York Mercantile Exchange's (NYMEX's) physically-delivered Henry Hub natural gas futures contract for the same calendar month. The Platts bidweek price is computed from fixed-price, bilateral transactions executed during the last five business days of a given month, where the transactions specify the delivery of natural gas during the following calendar month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. Bidweek prices are published on the first business day of the month in which the gas flows. The size of the NTO contract is 2,500 million British thermal units (''mmBtu''), and the unit of trading is any multiple of 2,500 mmBtu. The NTO contract is listed for up to 72 consecutive calendar months.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its NTO contract, the total number of trades was 1,083 in the second quarter of 2009, resulting in a daily average of 16.9 trades. During the same period, the NTO contract had a total trading volume of 84,432 contracts and an average daily trading volume of 1,319.3 contracts. Moreover, the open interest as of June 30, 2009, was 70,557 contracts.

It appears that the NTO contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the NTO contract averaged over 1,300 contracts on a daily basis, with more than sixteen separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement of the NTO contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, while it did not specify which contracts served a significant price discovery function or reference this particular contract, the Commission's ECM Study stated that, in general, market participants view the ICE as a price discovery market for certain natural gas contracts. Natural gas contracts based on actively-traded hubs are transacted heavily on the ICE's electronic trading platform, with the remainder being completed over-the-counter and potentially submitted for clearing by voice brokers. In addition, ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''Midcontinent Gas End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,[7] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's NTO contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's part 36 rules for a detailed discussion of the factors relevant to an SPDC determination. The Commission notes that comments which analyze the contract in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[8] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and

[4] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[5] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*

[6] 7 U.S.C. 2(h)(7)(C).

[7] 17 CFR 36, Appendix A.

[8] 44 U.S.C. 3507(d).

assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA [9] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–24386 Filed 10–8–09; 8:45 am]

BILLING CODE 6351–01–P

[9] 7 U.S.C.19(a).

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the PG&E Citygate Financial Basis Contract, Offered for Trading on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the PG&E Citygate Financial Basis (''PGE'') contract, offered for trading on the IntercontinentalExchange, Inc. (''ICE''), an exempt commercial market (''ECM'') under Sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before October 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov*
- *E-mail: secretary@cftc.gov.* Include PG&E Citygate Financial Basis (PGE) Contract in the subject line of the message.
- *Fax:* (202) 418–5521
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/*.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. *Telephone:* (202) 418–5133. *E-mail: snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will evaluate the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii)(A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily price of another agreement.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information,[3] the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA[4] and the applicable provisions of Part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. PG&E Citygate Financial Basis Contract

The PGE contract is cash settled based on the difference between the bidweek price index for a particular calendar month at the PG&E Citygate hub, as published by Intelligence Press, Inc. (IPI), in *NGI's Bidweek Survey,* and the final settlement price of the New York Mercantile Exchange's (NYMEX's) physically-delivered Henry Hub natural gas futures contract for the same calendar month. The bidweek price is computed from fixed-price, bilateral transactions executed during the last five business days of a given month, where the transactions specify the delivery of natural gas at the PG&E hub during the following calendar month. The price index is computed as the volume-weighted average of the applicable natural gas transactions. Bidweek prices are published on the first business day of the month in which the gas flows. The size of the PGE contract is 2,500 mmBtu, and the unit of trading is any multiple of 2,500 mmBtu. The PGE contract is listed for up to 72 calendar months commencing with the next calendar month.

Based upon a required quarterly notification filed on July 27, 2009 (mandatory under Rule 36.3(c)(2)), the ICE reported that, with respect to its PGE contract, the total number of trades was 1,142 in the second quarter of 2009, resulting in a daily average of 17.8 trades. During the same period, the PGE contract had a total trading volume of 99,418 contracts and an average daily trading volume of 1,553.4 contracts. Moreover, the open interest as of June 30, 2009, was 150,299 contracts.

It appears that the PGE contract may satisfy the material liquidity, price linkage, and material price reference factors for SPDC determination. With respect to material liquidity, trading in the ICE PGE contract averaged more than 1,500 contracts on a daily basis, with more than 15 separate transactions each day. In addition, the open interest in the subject contract was substantial. In regard to price linkage, the final settlement price of the PGE contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas contract, where the NYMEX is registered with the Commission as a designated contract market (''DCM''). In terms of material price reference, the ICE maintains exclusive rights over IPI's bidweek price indices. As a result, no other exchange can offer such a basis contract based on IPI's PG&E bidweek index. While other third-party price providers produce natural gas price indices for a variety of trading centers, those indices may not have the same values or quality as IPI's price indices; each company's bidweek indices are based on transactions that are consummated during the last five days of the month prior to delivery and are voluntarily submitted by traders. In addition, the ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers ''West Gas End of Day'' and ''OTC Gas End of Day'' data packages with access to all price data or just 12, 24, 36, or 48 months of historical data.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: Price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the Part 36 rules,[5] the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration.

As part of its evaluation, the Commission will consider the written data, views, and arguments from any ECM that lists the potential SPDC and from any other interested parties. Accordingly, the Commission requests comment on whether the ICE's PGE contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's Part 36 rules for a detailed discussion of the factors relevant to a SPDC determination. The Commission notes that comments which analyze the contract in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the subject contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[6] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] Where appropriate, the Commission may choose to interview market participants regarding their impressions of a particular contract. Further, while they may not provide direct evidentiary support with respect to a particular contract, the Commission may rely for background and context on resources such as its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study''). *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*

[4] 7 U.S.C. 2(h)(7)(C).

[5] 17 CFR Part 36, Appendix A.

[6] 44 U.S.C. 3507(d).

B. Cost-Benefit Analysis

Section 15(a) of the CEA [7] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of such an order or to determine whether the benefits of such an order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly-mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

Issued in Washington, DC, on October 5, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–24390 Filed 10–8–09; 8:45 am]

BILLING CODE 6351–01–P

[7] 7 U.S.C. 19(a).

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Tuesday, October 27, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review Meeting.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–24560 Filed 10–7–09; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Dallas Floodway Project, a Multipurpose Project Containing Levee Remediation, Flood Risk Management, Ecosystem Restoration, Recreation Enhancement, and Other Proposed Projects Along the Trinity River Within and Adjacent to the Existing Dallas Floodway in Dallas County, Dallas TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Fort Worth District, in partnership with the City of Dallas, intends to prepare a Draft Environmental Impact Statement (DEIS), pursuant to Section 102 of the National Environmental Policy Act (NEPA) as implemented by the regulations promulgated by the Council on Environmental Quality (40 Code of Federal Regulations Parts 1500–1508 and USACE Engineering Regulation 200–2–2) to analyze the potential comprehensive environmental consequences resulting from the implementation of proposed levee remediation, flood risk management, ecosystem restoration, recreation enhancement, and other proposed projects in and around the Dallas Floodway, in Dallas, TX.

The USACE is preparing the DEIS in response to the authority contained in the United States Senate Committee on Environment and Public Works Resolution dated April 22, 1988, and Section 5141 of the Water Resources Development Act WRDA of 2007. The USACE must determine the technical soundness and environmental acceptability of the authorized project, levee remediation plans and other projects that are being proposed within and adjacent to the Dallas Floodway.

The study area is located in and adjacent to the Dallas Floodway along the Trinity River, in Dallas, TX. The study area includes the area bound by the Loop 12 crossing of the Elm Fork and the I–30 crossing of the West Fork (river mile 505.50) to the southeastern edge of the Central Wastewater Treatment Plant on the Trinity River (river mile 494.63), as well as areas to the east and west of the Dallas Floodway to incorporate drainage basins associated with the east and west levee interior drainage systems. The study area encompasses approximately 36,292 acres.

FOR FURTHER INFORMATION CONTACT: For questions regarding the Dallas Floodway Projects EIS, please contact Mr. Jeffry Tripe, Regional Technical Specialist, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, TX, 76102–0300, (817) 886–1716, or via e-mail at *Jeffry.A.Tripe@usace.army.mil*.

SUPPLEMENTARY INFORMATION: The Dallas County Levee Improvement District (DCLID) constructed the original Dallas Floodway levees between 1928 and 1931. The DCLID rerouted the Trinity River by constructing a channel within the leveed floodway and filled the original river channel or used it for sump storage. In the mid-forties, major floods, compounded by continued urbanization in the watershed, resulted in increased drainage into the Dallas Floodway and severe flooding. To reduce flooding within the Dallas Floodway project area, Congress authorized the Dallas Floodway flood control project in 1945 and 1950. This resulted in several USACE improvements to the Dallas Floodway, completed in 1958.

The existing Upper Trinity River Feasibility Study (UTRFS) serves as an umbrella study to all USACE projects in the basin. The USACE initiated the UTRFS in response to the authority contained in the United States Senate Committee on Environment and Public Works Resolution dated April 22, 1988. This authorizing legislation for the overall study defines the area of investigations as the Upper Trinity River Basin, with specific emphasis on the Dallas-Fort Worth Metroplex. The UTRFS identified approximately 90 potential projects addressing flood risk management, ecosystem restoration, and recreation within the study area.

In May 1996, acting as the non-Federal sponsor on the on-going UTRFS, the North Central Texas Council of Governments coordinated with the

USACE and City of Dallas to modify the UTRFS Cost Sharing Agreement to include an Interim Feasibility Study of the existing Dallas Floodway as part of the on-going UTRFS. The team assessed several flood risk management alternatives in the Dallas Floodway Interim Feasibility Study. The USACE and City of Dallas also developed additional environmental quality alternatives to benefit fish and wildlife habitat, water quality, and aesthetic properties while minimizing adverse impacts to existing cultural resources and flood risk management benefits. On November 29, 2005, the USACE published a Notice of Intent (NOI) in the **Federal Register** (70 FR 71477) to prepare a DEIS for proposed modifications to the existing Dallas Floodway based on the Interim Feasibility Study and held a public scoping meeting on December 13, 2005. The USACE stopped the NEPA process in early 2006 in order to conduct further study and alternative development and connectivity to other projects in the vicinity.

The City of Dallas continued developed of another variation to the Trinity River Corridor Master Implementation Plan that included similar environmental quality measures and interior drainage system improvements, known as the BVP. The 2007 WRDA authorized the City of Dallas, Dallas Floodway BVP. This authorization superseded the need to continue development of the Interim Feasibility Study and allowed implementation of the BVP and interior drainage system components if the USACE determines they are technically sound and environmentally acceptable. On December 22, 2008, the USACE published a NOI in the **Federal Register** (73 FR 78377) to prepare a Draft EIS for the Dallas Floodway BVP. Due to the large number of other proposed projects being requested by local entities, the USACE suspended the NEPA process in March 2009. The intent to conduct a comprehensive analysis of all proposed Dallas Floodway projects was initiated to better assess impacts to the environment and risk to flood protection.

This NOI announces the USACE's intent to initiate the NEPA process for a comprehensive analysis of potential Dallas Floodway Projects. Projects that are currently proposed to be assessed in the USACE Dallas Floodway Project include: City of Dallas levee remediation plans; USACE and City of Dallas 2007 WRDA projects that include the BVP, flood risk management, and interior drainage plans; and other proposed projects within the Dallas Floodway such as the proposed Trinity Parkway Tollway and various bridge and utility improvement projects.

Proposed BVP alternatives for ecosystem restoration and recreation enhancement will be developed and evaluated based on ongoing fieldwork and data collection and past studies conducted by the Corps of Engineers, the City of Dallas, and regulatory agencies. Ecosystem restoration actions that will be evaluated in the DEIS include creating meanders within the Trinity River, restoring, protecting and expanding the riparian corridor, improving aquatic habitat, creating riffle-pool complexes, and constructing wetlands. Recreation measures that will be evaluated include the West, Natural, and Urban lakes, terraced playing fields, multipurpose trails, whitewater facilities, pedestrian bridges, utilities, parking facilities, amphitheaters, promenade, concession pads, boat/canoe access points, and passive recreation features, such as interpretive guidance, media, and picnic areas. Recreation measures will be developed to a scope and scale compatible with proposed ecosystem restoration measures without significantly diminishing ecosystem benefits.

Proposed USACE and City of Dallas alternatives to address existing Dallas Floodway flood risk management and interior drainage concerns will be evaluated from both a non-structural and structural perspective. Non-structural measures that will be evaluated include acquisition and removal of structures or flood proofing of structures for protection from potential future flood damage. Structural measures that will be evaluated include levee height modification by fill or addition of flood walls, changes in interior drainage by enlarging storage areas or increasing widths and depths, removal of the existing AT&SF Bridge, and/or a combination of these measures.

The USACE performed a periodic inspection of the Dallas Floodway in early December 2007 and documented significant deficiencies. The findings resulted in unacceptable ratings for the Dallas Floodway. In addition to numerous unacceptable ratings, the results of the inspection identified negative impacts during base flood (100-year event) conditions, which would jeopardize performance of flood protections to function as authorized. This is a significant concern that may have a substantial negative impact on Federal Emergency Management Authority (FEMA) flood mapping of the areas outside the levees and the residents and businesses protected by those levees. An assessment of proposed levee remediation plans and potential impacts will be performed in the DEIS.

In addition to levee remediation and flood risk management projects and concerns, there are several Section 408 projects proposed for the Dallas Floodway. Under the terms of 33 U.S. Code (USC) 408, any proposed levee modification requires a determination by the Secretary of the Army that the proposed alteration, permanent occupation, or use of a Federal project is not injurious to the public interest and will not impair the usefulness of the levee. The authority to make this determination and approve modifications to Federal works under 33 USC 408 has been delegated to the Chief of Engineers, USACE. Thus, the USACE will consider and evaluate identified Section 408 projects in conjunction with the authorized WRDA and levee remediation projects in order to determine the potential environmental consequences of all proposed actions in the Dallas Floodway Project study area.

The USACE will conduct coordination with the public and agencies to ensure full and open participation and aid in the development of the DEIS. The USACE requests that all affected Federal, state, and local agencies, affected Indian tribes, and other interested parties participate in the NEPA process. The USACE invites the public to participate in the EIS scoping process and review of the DEIS. A scoping meeting is scheduled for Tuesday, November 17, 2009 at the Dallas Convention Center (650 S. Griffin Street, Dallas, Texas) from 6 p.m. until 9 p.m. The USACE will inform all known interested individuals as well as announce the meeting dates and locations in local news media. The USACE will announce the release of the DEIS for public comment and the subsequent public review meeting date in the local news media upon completion of the DEIS. The NOI, DEIS, and other project related information will also be available for review at USACE Web sites.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–24439 Filed 10–8–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board on Coastal Engineering Research.

Date of Meeting: November 12–13, 2009.

Place: Rooms 3M60 and 3M70, GAO Building, Headquarters, U.S. Army Corps of Engineers, 441 G Street NW., Washington, DC 20314.

Time: 9 a.m. to 4 p.m. (November 12, 2009).

8 a.m. to 12 p.m. (November 13, 2009).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to COL Gary E. Johnston, Executive Secretary, Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION:

The Board provides broad policy guidance and review of plans and fund requirements for the conduct of research and development of research projects in consonance with the needs of the coastal engineering field and the objectives of the Chief of Engineers.

Proposed Agenda: This meeting is devoted to an Executive Session of the Board to review in detail actions underway on three Board initiatives or concerns, which include: (1) To review the Data Collection and Dissemination Framework being developed jointly with the National Ocean Service; (2) to review the proposed PgMP for the Sustainable Approach for Coastal and Estuarine Systems (SUSTAIN); and (3) to review the interim Report on National Shoreline Management Study and the plans for completing the study.

The meeting is open to the public, but since the meeting will be held in a government facility and seating capacity of the meeting room is limited, advance notice of intent to attend is required. A list of attendees will be provided to security.

Gary E. Johnston,

Colonel, U.S. Army Corps of Engineers, Executive Secretary.

[FR Doc. E9–24437 Filed 10–8–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

Name of Committee: United States Military Academy Board of Visitors.

Date: Friday, October 23, 2009.

Time: 9 a.m.–11:30 a.m. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location. All participants are subject to security screening.

Location: Superintendent's Conference Room, Taylor Hall, West Point, NY.

Purpose of the Meeting: This is the 2009 Annual Meeting of the USMA Board of Visitors (BoV). Members of the Board will be provided updates on Academy issues.

Agenda: The Academy leadership will provide the Board updates on the following: Middle States Accreditation, USMA Mission and Vision, Academic Instruction, Physical Instruction, A76 Commercial Activity Study, Base Realignment and Closure (BRAC), Residential Communities Initiative (RCI), FY 09 Budget Year End Closeout, Admissions-Diversity, Honor Committee, and Annual Report. The Board will discuss proposed meeting dates for the 2010 Organizational meeting.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Committee's Designated Federal Officer or Point of Contact: Ms. Joy A. Pasquazi, (845) 938–5078, *Joy.Pasquazi@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Joy A. Pasquazi, (845) 938–5078, (Fax: 845–938–3214) or via e-mail: *Joy.Pasquazi@us.army.mil.*

SUPPLEMENTARY INFORMATION: Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military Academy, Office of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five working days prior to the next meeting in order to provide time for member consideration. By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–24440 Filed 10–8–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OII–0012]

RIN 1855–AA06

Investing in Innovation

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.396A, 84.396B and 84.396C.

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of proposed priorities, requirements, definitions, and selection criteria.

SUMMARY: The Secretary of Education (Secretary) proposes priorities, requirements, definitions, and selection criteria under the Investing in Innovation Fund. The Secretary may use these priorities, requirements, definitions, and selection criteria for competitions of the Investing in Innovation Fund for fiscal year (FY) 2010 and later years. We intend for the priorities, requirements, definitions, and selection criteria to support the efforts of local educational agencies (LEAs) and nonprofit organizations (as defined in this notice) that have strong track records of improving student achievement (as defined in this notice) to expand their work; identify, document, and share best practices; and take successful practices ''to scale.''

DATES: We must receive your comments on or before November 9, 2009.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID and the term

''Investing in Innovation'' at the top of your comments.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.'' A direct link to the docket page is also available at *http://www.ed.gov/news/pressreleases/2009/10/10062009a.html.*

• *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed priorities, requirements, definitions, and selection criteria, address them to Office of Innovation and Improvement (Attention: Investing in Innovation Comments), U.S. Department of Education, 400 Maryland Avenue, SW., room 4W321, Washington, DC 20202.

• *Privacy Note:* The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Mia Howerton. Telephone: (202) 205–0417; or Erin McHugh. Telephone: (202) 401–1304. Or by e-mail: *i3@ed.gov.* Note that we will not accept comments by e-mail.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation To Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion your comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person, in room 4W335, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The Investing in Innovation Fund, established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA), provides funding to support (1) LEAs, and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools (as defined in this notice). The purpose of the program is to provide competitive grants to applicants with a record of improving student achievement, in order to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth (as defined in this notice) for high-need students (as defined in this notice), as well as to promote school readiness, close achievement gaps, decrease dropout rates, increase high school graduation rates, and improve teacher and school leader effectiveness.

These grants will (1) allow eligible entities to expand and develop their work so that their work can serve as models of best practices, (2) allow eligible entities to work in partnership with the private sector and the philanthropic community, and (3) identify and document best practices that can be shared and taken to scale based on demonstrated success.

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Section 14007, Public Law No. 111–5.

Background

The Statutory Context

On February 17, 2009, President Obama signed into law the ARRA (Pub. L. 111–5), historic legislation designed to stimulate the economy, support job creation, and invest in critical sectors, including education. The ARRA lays the foundation for education reform by supporting investments in innovative strategies that are most likely to lead to improved results for students, long-term gains in school and LEA capacity for success, and increased productivity and effectiveness.

The ARRA provides $98.2 billion to the Department for direct expenditures on education. Within this amount, $650 million was authorized and appropriated for the Investing in Innovation Fund (referred to as the ''Innovation Fund'' in the ARRA), for a competitive grant program to enable LEAs and nonprofit organizations with a record of improving kindergarten-through-grade-12 (K–12) student achievement to: expand their work; identify, document, and share best practices; and take successful practices to scale.

Education Reform Areas

One of the overall goals of the ARRA is to improve student achievement through school improvement and reform. Within the context of the ARRA, the Investing in Innovation Fund focuses on four key assurances, or education reform areas, that will help achieve this goal: (1) Improvements in teacher effectiveness and ensuring that all schools have effective teachers, (2) gathering information to improve student learning, teacher performance, and college and career readiness through enhanced data systems, (3) progress toward college- and career-ready standards and rigorous assessments, and (4) improving achievement in low-performing schools through intensive support and effective interventions.

Overview of the Investing in Innovation Fund

The Department intends to use the Investing in Innovation Fund to support the overarching ARRA goal of improving student achievement by aligning four of the priorities proposed in this notice directly with the four ARRA reform areas. In this notice we propose four additional priorities that are aligned with other Department reform goals in the areas of early learning, college access, students with disabilities and limited English proficient students, and rural LEAs. Finally, we propose to require that all funded projects provide educational or other services to support high-need students.

In this notice, the Department proposes to award three types of grants within the Investing in Innovation

Fund: ''Scale-up'' grants, ''Validation'' grants, and ''Development'' grants. We have defined each of these types of grants in the section that follows.

Projects funded under each of the three types of grants would provide services to high-need students and would focus on priorities directly tied to the reform areas of the ARRA; applicants could also choose to meet the additional priority areas. Among the three grant types, there would be differences in terms of the evidence that an applicant would be required to submit in support of its proposed project; the expectations for scaling up successful projects during or after the grant period, either directly or through partners; and the funding that a successful applicant would receive.

The intent of these requirements is to ensure that program funds are used to expand and take to scale the most promising practices, strategies, and programs. We are proposing definitions and criteria that would be used to evaluate the available evidence supporting a proposed project, in terms of the strength of the research, the significance of the effect, and the magnitude of the effect for each type of grant. As such, we are particularly interested in receiving comments on these proposed definitions and selection criteria, and whether, in evaluating the magnitude of the effect, we should specify a minimum effect size and, if so, what that effect size should be. We also are interested in your comments on how to ensure that projects that are innovative and comprehensive in scope or that may show a cumulative effect over time are properly considered, given the proposed definitions and selection criteria. We are cognizant of the need to balance our interest in innovation with the importance of research-based evidence, and welcome comments on how best to achieve the proper balance.

We also are interested in receiving comments on the criteria we are proposing to evaluate the cost-effectiveness of a proposed practice, strategy, or program. We believe that an important aspect of evaluating applications under the Investing in Innovation Fund is assessing the extent to which a proposal is feasible and can be brought to scale in a cost-effective manner. So that we can judge the cost-effectiveness of a proposed project, we propose that applicants provide estimated start-up and operating costs per student (including indirect costs) for reaching the total number of students proposed to be served by the project, as well as for the applicant or others to reach 100,000, 250,000, and 500,000 students for Development grants and Validation grants; and to reach 100,000, 500,000, and 1,000,000 students for Scale-up grants. We are interested in your comments on whether there are other methods of determining cost-effectiveness that would be more informative or less burdensome.

Following is an overview of the three types of grants we are proposing to award:

1. Scale-up grants would provide funding to scale up practices, strategies, or programs for which there is *strong evidence* (as defined in this notice) that the proposed practice, strategy, or program will have a statistically significant effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, or increasing high school graduation rates, and that the effect of implementing the proposed practice, strategy, or program will be substantial and important. We also propose that an applicant for a Scale-up grant could demonstrate success through an intermediate variable directly correlated with these outcomes, such as teacher or school leader effectiveness or improvements in school climate.

We further propose that an applicant for a Scale-up grant estimate the number of students to be reached by the proposed project and provide evidence of its capacity to reach the proposed number of students during the course of the grant. In addition, we propose that an applicant for a Scale-up grant provide evidence of its capacity (*e.g.,* in terms of qualified personnel, financial resources, management capacity) to scale up to a State, regional, or national level (as defined in this notice), working directly or through partners either during or following the end of the grant period. We recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs to other LEAs and States. Applicants can and should partner with others (*e.g.,* service centers, State educational agencies, institutions of higher education) to disseminate and take to scale their effective practices, strategies, and programs.

Successful applicants for Scale-up grants would receive larger levels of funding than successful applicants for Validation or Development grants.

2. Validation grants would provide funding to support practices, strategies, or programs that show promise, but for which there is currently only *moderate evidence* (as defined in this notice) that the proposed practice, strategy, or program will have a statistically significant effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, or increasing high school graduation rates, and that with further study, the effect of implementing the proposed practice, strategy, or program may prove to be substantial and important. Thus, proposals for Validation grants would not need to have the same level of research evidence to support the proposed project that would be required for Scale-up grants. We also propose that applicants could demonstrate success through an intermediate variable directly correlated with these outcomes, such as teacher or school leader effectiveness or improvements in school climate.

An applicant for a Validation grant would have to estimate the number of students to be reached by the proposed project and provide evidence of its capacity to reach the proposed number of students during the course of the grant. In addition, we propose that an applicant for a Validation grant provide evidence of its capacity (*e.g.,* in terms of qualified personnel, financial resources, management capacity) to scale up to a State or regional level, working directly or through partners either during or following the end of the grant period. As noted earlier, we recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs to other LEAs and States. Applicants can and should partner with others to disseminate and take to scale their effective practices, strategies, and programs.

Successful applicants for Validation grants would receive more funding than successful applicants for Development grants.

3. Development grants would provide funding to support new, high-potential, and relatively untested practices, strategies, or programs whose efficacy should be systematically studied. An applicant would have to provide evidence that the proposed practice, strategy, or program, or one similar to it, has been attempted previously, albeit on a limited scale or in a limited setting, and yielded promising results that suggest that more formal and systematic study is warranted. An applicant must provide a rationale for the proposed practice, strategy, or program that is based on research findings or reasonable hypotheses, including related research or theories in education and other sectors. Thus, proposals for Development grants would not need to provide the same level of evidence to support the proposed project that would be required for Validation or Scale-up grants.

We also propose that an applicant for a Validation grant estimate the number of students to be served by the project,

and provide evidence of its ability to implement and appropriately evaluate the proposed project and, if positive results are obtained, its capacity (*e.g.*, in terms of qualified personnel, financial resources, management capacity) to further develop and bring the project to a larger scale directly or through partners either during or following the end of the grant period. As noted earlier, we recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs. Applicants can and should partner with others to disseminate and take to scale their effective practices, strategies, and programs.

To summarize, in terms of the evidence required to support the proposed practice, strategy, or program, the major differences between Scale-up, Validation, and Development grants are (*see* Table 1): (1) The strength of the research; (2) the significance of the effect; and (3) the magnitude of the effect.

TABLE 1—DIFFERENCES BETWEEN THE THREE TYPES OF INVESTING IN INNOVATION GRANTS IN TERMS OF THE EVIDENCE REQUIRED TO SUPPORT THE PROPOSED PRACTICE, STRATEGY, OR PROGRAM

	Scale-up grants	Validation grants	Development grants
Strength of Research	Strong evidence	Moderate evidence	Reasonable hypotheses.
Significance of Effect	Statistically significant	Statistically significant	Warrants further study.
Magnitude of Effect	Substantial and important	Potential to be substantial and important.	Promising.

In addition, the three types of grants differ in terms of the expectations to scale up successful projects during or following the end of the grant period, either directly or through partners, and the level of funding that would be available. (*See* Table 2).

It is our intent to make one or more awards for each type of grant (Scale-up, Validation, Development), assuming that we receive applications for each type of grant that are of sufficient quality. We will announce specific funding ranges for each type of grant in the notice inviting applications for this program.

TABLE 2—DIFFERENCES BETWEEN THE THREE TYPES OF INVESTING IN INNOVATION GRANTS IN TERMS OF EXPECTATIONS TO SCALE UP AND THE FUNDING TO BE PROVIDED

	Scale-up grants	Validation grants	Development grants
Scale up	National, Regional, or State	Regional or State	Further develop and scale.
Funding to be provided	Highest	Moderate	Modest.

Proposed Priorities

Types of Priorities

The Secretary proposes eight priorities for the Investing in Innovation Fund. Proposed Priorities 1, 2, 3, and 4 are proposed as absolute priorities and are aligned with the four reform areas under the ARRA; all applicants must apply under one of these four priorities. Proposed Priorities 5, 6, 7, and 8 are proposed as competitive preference priorities and are aligned with other key education reform goals of the Department. We may apply one or more of the competitive preference priorities to one or more of the three types of grants (Scale-up, Validation, Development grants).

We may choose, in the notice of final priorities, requirements, definitions, and selection criteria, to change the designation of any of these priorities to absolute, competitive preference, or invitational priorities, or to include the substance of these priorities in the selection criteria.

Under an absolute priority, as specified by 34 CFR 75.105(c)(3), we would consider only applications that meet the priority. Under a competitive preference priority, we would give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)). With an invitational priority, we would signal our interest in receiving applications that meet the priority; however, consistent with 34 CFR 75.105(c)(1), we would not give an application that meets an invitational priority preference over other applications.

Proposed Absolute Priorities

Proposed Absolute Priority 1—Innovations That Support Effective Teachers and School Leaders

Background. Research indicates that teacher quality is a critical contributor to student learning.[1] Yet we know that there is dramatic variation in teacher effectiveness across schools and LEAs, as well as inequity in the distribution of effective teachers between high- and low-poverty schools. We also know that it is difficult to predict teacher effectiveness based on the qualifications that teachers bring to the job.[2] Furthermore, studies show that school leadership is a major contributing factor to what students learn at school and that strong teachers are more likely to teach in schools with strong principals.[3] Absolute priority 1 is intended to support projects that promote practices, strategies, or programs to increase the number and percentage of effective teachers and school leaders, or help reduce the inequities in the distribution of effective teachers and school leaders.

[1] *See, e.g.*, Kane, Thomas J., Jonah E. Rockoff, and Douglas O. Staiger (2006), ''What Does Certification Tell Us About Teacher Effectiveness? Evidence from New York City,'' NBER Working Paper No. 12155; Rivkin, Steven G., Eric A. Hanushek, and John F. Kain (2005), ''Teachers, Schools, and Academic Achievement,'' Econometrica, 73(2), 417–458; Rockoff, Jonah. E. (2004), ''The Impact of Individual Teachers on Students' Achievement: Evidence from Panel Data,'' American Economic Review 94(2), 247–52; Aaronson, Daniel, Lisa Barrow, and William Sander (2003), ''Teacher and Student Achievement in the Chicago Public High Schools,'' Federal Reserve Bank of Chicago Working Paper 2002–28.

[2] Rivkin, Hanushek, and Kain (2005); Kane, Rockoff, and Staiger (2006).

[3] Leithwood, Kenneth, Karen Seashore Louis, Stephen Anderson, and Kyla Sahlstrom (2004), ''How Leadership Influences Student Learning,'' Wallace Foundation Learning from Leadership Project.

It is also designed to encourage the use of teacher and school leader evaluation systems that are tied to student growth.

Statement of the Proposed Absolute Priority. Under proposed absolute priority 1, the Department would provide funding to support practices, strategies, or programs that increase the number or percentages of highly effective teachers and school leaders or reduce the number or percentages of ineffective teachers and school leaders, especially for high-need students, by identifying, recruiting, developing, placing, rewarding, and retaining highly effective teachers and school leaders (or removing ineffective teachers and school leaders). In such initiatives, teacher or school leader effectiveness should be determined by an evaluation system that is rigorous, transparent, and fair; performance should be differentiated using multiple rating categories of effectiveness; multiple measures of teachers' effectiveness should be taken into account, with data on student growth as a significant factor; and the measures should be designed and developed with teacher involvement.

Proposed Absolute Priority 2—Innovations That Improve the Use of Data

Background. Section 14005(d)(3) of the ARRA requires States receiving State Fiscal Stabilization funds to establish a longitudinal data system that includes the elements described in section 6401(e)(2) of the America COMPETES Act (20 U.S.C. 9871). Providing student achievement or student growth data to teachers and principals, including estimates of individual teacher impact on student achievement or student growth, is key to driving education reform in general and improvements in the classroom, in particular.[4] This priority is designed to increase the availability and use of practices, strategies, and programs that provide teachers, principals, administrators, families, and other stakeholders with the data they need to inform and improve school and classroom instructional practices, decision-making, and overall effectiveness.

Statement of the Proposed Absolute Priority. Under proposed absolute priority 2, the Department would provide funding to support strategies, practices, or programs that encourage and facilitate the evaluation, analysis, and use of student achievement or student growth data by educators, families, and other stakeholders in order to inform decision-making; improve student achievement or student growth, and teacher, school leader, school, or LEA performance and productivity; or enable data aggregation, analysis, and research. Where applicable, these data would be disaggregated using the student subgroups described in section 1111(b)(3)(C)(xiii) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with limited English proficiency, students with disabilities, student gender).

Proposed Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High-Quality Assessments

Background. A third key ARRA reform area is improving State academic content standards and student academic achievement standards so that they build toward college and career readiness, and implementing high-quality assessments aligned with those standards. In order to make the transition to such standards and assessments, States will need support in: Developing, acquiring, disseminating, and implementing high-quality curricular instructional materials and assessments; developing or acquiring and delivering high-quality professional development to support the transition to new standards, assessments, and instructional materials; and engaging in other strategies that align the standards and information from assessments with classroom practices that meet the needs of all students, including high-need students.

Statement of the Proposed Absolute Priority. Under proposed absolute priority 3, the Department would provide funding for practices, strategies, or programs that support States' efforts to transition to college- and career-readiness standards and assessments, including curricular and instructional practices, strategies, or programs in core academic subjects that are aligned with high academic content and achievement standards and with high-quality assessments based on those standards. Proposals may include practices, strategies, or programs that: (a) Increase the success of under-represented student populations in academically rigorous courses and programs (such as Advanced Placement or International Baccalaureate courses; dual enrollment programs; early college high schools; and science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities); (b) increase the development and use of formative assessments or interim assessments, or other performance-based tools and metrics that are aligned with student content and academic achievement standards; or (c) translate the standards and information from assessments into classroom practices that meet the needs of all students, including high-need students.

Proposed Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools

Background. Although there are noted examples of successful school reform efforts, persistently low-performing schools (as defined in this notice) continue to plague this country's system of public education and fail to adequately educate our Nation's youth to succeed in a global economy. It is imperative that we as a Nation serve our most educationally needy schools in order to ensure that all students are prepared for the challenges of the global economy.

Statement of the Proposed Absolute Priority. Under proposed absolute priority 4, the Department would provide funding to support strategies, practices, or programs that turn around persistently low-performing schools through either whole-school reform or targeted approaches to reform. Applicants addressing this priority must focus on either:

(a) Whole-school reform, such as comprehensive interventions to assist, augment, or replace persistently low-performing schools; or

(b) Targeted approaches to reform, including, but not limited to: (1) Providing more time for students to learn core academic content by expanding the school day, school week, or the school year, or by increasing instructional time for core academic subjects during the day and in the summer; (2) integrating student supports to address non-academic barriers to student achievement; or (3) creating multiple pathways for students to earn regular high school diplomas (*e.g.*, transfer schools, awarding credit based on demonstrated evidence of student competency, offering dual-enrollment options).

Proposed Competitive Preference Priorities

As stated previously, we are proposing four competitive preference priorities that we may choose to apply to one or more of the three types of

[4] *See, e.g.,* The Data Quality Campaign at *http://www.dataqualitycampaign.org/using-data-systems/roadmap-for-states.*

grants (Scale-up, Validation, and Development grants).

Proposed Competitive Preference Priority 5—Innovations for Improving Early Learning Outcomes

Background. Research demonstrates the importance of efforts to build early language and literacy skills, as well as skills with numbers and spatial thinking, as a means of eliminating the differences in student achievement or student growth that develop between children from low-income families and children from middle-income families during their school years.[5] Investing in early learning programs to prevent the development of these gaps in skills can reduce the need for more costly and difficult interventions, including referrals to special education, later on in a child's life.[6] In addition, research indicates that investments in young children can yield dramatic economic benefits over the course of those children's lives in the form of reduced incidence of crime and increased employment. This proposed competitive preference priority aligns with the Department's efforts to increase the quality of existing early learning programs and expand access to high-quality early learning programs, particularly for children from low-income families.

Statement of Proposed Competitive Preference Priority 5. We propose to give competitive preference to proposals that include practices, strategies, or programs to improve educational outcomes for high-need students who are young children (birth through 3rd grade) by enhancing the quality of early learning programs. Proposals must focus on (a) improving young children's school readiness (including social, emotional, and cognitive) so that children are prepared for success in core academic subjects; (b) improving and aligning developmental milestones and standards with appropriate outcome measures; and (c) improving alignment, collaboration, and transitions between early learning programs that serve children from birth to age three, in preschools, and in kindergarten through third grade.

Proposed Competitive Preference Priority 6—Innovations That Support College Access and Success

Background. One way to help meet the President's goal of restoring the United States to first in the world in the percentage of citizens holding college degrees is to increase the number of high school students with access to college who are prepared to succeed in an institution of higher education. Proposed competitive preference priority 6 would fund practices, strategies, and programs that prepare K–12 students for success in college.

Statement of Proposed Competitive Preference Priority 6. We propose to give competitive preference to proposals for practices, strategies, or programs that enable K–12 students, particularly high school students, to successfully prepare for, enter, and graduate from a two- or four-year college. Proposals must include practices, strategies, or programs for K–12 students that address students' preparedness and expectations related to college; help students understand issues of college affordability and the financial aid and college application processes; and provide support to students from peers and knowledgeable adults.

Proposed Competitive Preference Priority 7—Innovations To Address the Unique Learning Needs of Students With Disabilities and Limited English Proficient Students

Background. One of the primary goals of the ESEA, as well as the Individuals with Disabilities Education Act (IDEA), is to improve the quality of education for all students, including students with disabilities and students who are limited English proficient. In particular, the ESEA requires each State and LEA to work toward narrowing achievement gaps and demonstrate high levels of progress for these two groups of students. However, as evidenced by results on State assessments under section 1111(b)(3) of the ESEA, schools often lack appropriate and effective strategies to enable a greater share of students with disabilities and limited English proficient students to meet high standards.

Statement of Proposed Competitive Preference Priority 7. We propose to give competitive preference to proposals that include innovative strategies, practices, or programs to address the unique learning needs of students with disabilities, or the linguistic and academic needs of limited English proficient students. Proposals must focus on particular practices, strategies, or programs that are designed to improve academic outcomes and increase graduation rates for students with disabilities or limited English proficient students.

Proposed Competitive Preference Priority 8—Innovations That Serve Schools in Rural LEAs

Background. Solutions to educational challenges in rural areas frequently differ from what works in urban and suburban communities.[7] This proposed competitive preference priority recognizes the need to bring education innovation and reform to all regions of the country, including rural LEAs.

Statement of Proposed Competitive Preference Priority 8. We propose to give competitive preference to proposals that focus on the unique challenges of high-need students in schools within a rural LEA (as defined in this notice) and address the particular challenges faced by students in these schools. Proposals must include practices, strategies, or programs that improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or improve teacher and school leader effectiveness in one or more rural LEAs.

Proposed Requirements

Background

The Investing in Innovation Fund would provide support to LEAs, and nonprofit organizations that partner with one or more LEAs or a consortium of schools that apply and successfully compete for a Scale-up, Validation, or Development grant. What follows are the statutory and proposed eligibility requirements for LEAs and nonprofit organizations.

Proposed Requirements

The Secretary proposes the following requirements for the Investing in Innovation Fund. We may apply these requirements in any year in which this program is in effect.

Providing Innovations that Improve Achievement for High-Need Students: All applicants must implement practices, strategies, or programs for high-need students (as defined in this notice).

Eligible applicants: Entities eligible to apply for Investing in Innovation Fund grants include: (a) an LEA or (b) a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools.

Eligibility requirements:[8] To be eligible for an award, an eligible

[5] National Research Council. 1998. *Preventing Reading Difficulties in Young Children.*

[6] Schweinhart, L.J. (2002, June). How the HighScope Perry Preschool Study Grew: A Researcher's Tale. *Phi Delta Kappa Center for Evaluation, Development, and Research.* (No. 32).

[7] *Status of Education in Rural America.* (2007). U.S. Department of Education, National Center for Educational Statistics.

[8] We note that at the time of publication of this notice, the pending House and Senate appropriations bills would, if enacted, make

Continued

applicant must meet several statutory requirements and one additional requirement. The requirements in paragraphs (1), (2), (3), and (4) that follow are statutory; we are including them here for clarity. We are requesting comment on the proposed requirement in paragraph (5).

To be eligible for an award, an applicant must:

(1) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities);

(2) Have exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years or have demonstrated success in significantly increasing student achievement for all groups of students described in that section through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.,* the National Assessment of Educational Progress);

(3) Have made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with other meaningful data;

(4) Demonstrate that they have established partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale; and

(5) In the case of a nonprofit organization, provide in its application the names of the LEAs with which it will partner, or the names of the schools in the consortium with which it will partner. If a nonprofit organization applicant intends to partner with additional LEAs or schools that are not named in its application, it must describe in its application the demographics and other characteristics of these LEAs and schools and the process it will use to select them as partners. An applicant must identify its specific partners before a grant award will be made.

Note about LEA Eligibility: To be eligible for an award, an LEA applicant must be located within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

Note about Eligibility for an Entity that Includes a Nonprofit Organization: To be eligible for an award, the statute requires that an application submitted by a nonprofit organization, in partnership with one or more LEAs or a consortium of schools, be considered to have met the eligibility requirements in paragraphs (1), (2), and (3) described earlier in this notice, if the nonprofit organization has a record of meeting those requirements. We are proposing that a nonprofit organization applicant be considered to have met these eligibility requirements through its record of work with an LEA. Therefore, an applicant that is a nonprofit organization would not necessarily need to select as a partner for its Investing in Innovation Fund grant an LEA or a consortium of schools that meets the eligibility requirements in paragraphs (1), (2), and (3) described earlier. Rather, the nonprofit organization would have to demonstrate that it has a record of meeting those requirements through the assistance it has provided to one or more LEAs in the past.

Funding Categories: An applicant must state in its application whether it is applying for a Scale-up, Validation, or Development grant. An applicant may not submit an application for the same proposed project under more than one type of grant. An applicant will be considered for an award only for the type of grant for which it applies.

Cost Sharing or Matching: To be eligible for an award, an applicant must demonstrate that it has established one or more partnerships with an entity or organization in the private sector, which may include philanthropic organizations, and that the entity or organization in the private sector will provide matching funds in order to help bring project results to scale. An applicant must obtain matching funds or in-kind donations equal to at least 20 percent of its grant award. The Secretary may consider decreasing the 20 percent matching requirement in the most exceptional circumstances, on a case-by-case basis. An applicant that anticipates being unable to meet the 20 percent matching requirement must include in its application a request to the Secretary to reduce the matching level requirement, along with a statement of the basis for the request.

Evaluation: An applicant receiving funds under this program must comply with the requirements of any evaluation of the program conducted by the Department. In addition, an applicant is required to conduct an independent evaluation (as defined in this notice) of its proposed project and must agree, along with its independent evaluator, to cooperate with any technical assistance provided by the Department or its contractor. The purpose of this technical assistance would be to ensure that the evaluations are of the highest quality and to encourage commonality in evaluation approaches across funded projects where it is feasible and useful to do so. Finally, an applicant receiving funds under this program must make broadly available through formal (*e.g.,* peer-reviewed journals) or informal (*e.g.,* newsletters) mechanisms, and in print or electronically, the results of any evaluations it conducts of its funded activities

Participation in ''Communities of Practice'': Grantees will be required to participate in, organize, or facilitate, as appropriate, communities of practice for the Investing in Innovation Fund. A community of practice is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them. Establishment of communities of practice under the Investing in Innovation Fund will enable grantees to meet, discuss, and collaborate with each other regarding grantee projects.

Proposed Definitions

Background

Several important terms associated with the Investing in Innovation Fund are not defined in the ARRA.

Proposed Definitions

The Secretary proposes the following definitions for the Investing in Innovation Fund.[9] We may apply one or more of these definitions in any year in which this program is in effect.

1. Definitions Related to Evidence

Strong evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies

technical changes to provisions of the authorizing legislation for this program. (*See http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp111&sid=cp111LTV8y&refer=&r_n=hr220.111&item=&sel=TOC_1120308&; and http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp111&sid=cp111M6VRe&refer=&r_n=sr066.111&item=&sel=TOC_904504&). These changes would modify the eligibility requirements currently set forth in section 14007(b)(2) and (c) by: (1) Making minor alterations to the sections concerning the basis for awards and the special eligibility rule, and (2) removing the reference to State measurable annual achievement objectives. In addition to these minor changes to the eligibility requirements, enactment of the proposed legislation would authorize eligible entities that include a partnership with a nonprofit organization, to make subgrants within the partnership.*

[9] In this notice, we use many of the same definitions that were in the Race to the Top notice of proposed priorities, requirements, definitions, and selection criteria (see *http://www.ed.gov/legislation/FedRegister/proprule/2009-3/072909d.html*). The comment period for the Race to the Top program is now closed, and we are considering the comments on the definitions, as well as other sections of that notice. In the final notice for the Investing in Innovation Fund, we will align our definitions, as appropriate, with those included in the final notice for the Race to the Top program.

with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (*i.e.,* studies with high external validity). The following are examples of strong evidence: (1) More than one well-designed and well-implemented experimental study (as defined in this notice) or well-designed and well-implemented quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity) but have limited generalizability (*i.e.,* moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence: (1) At least one well-designed and well-implemented experimental or quasi-experimental study supporting the effectiveness of the practice strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented experimental or quasi-experimental study that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Experimental study means a study that employs random assignment of students, teachers, classrooms, or schools to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental design and can support causal conclusions (*i.e.,* minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed quasi-experimental studies include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Carefully matched comparison group design means a type of quasi-experimental study that attempts to approximate an experimental study. More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to: (1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups); (2) demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background; (3) the time period in which the two groups are studied (*e.g.,* the two groups are children entering kindergarten in the same year as opposed to sequential years); and (4) methods used to collect outcome data (*e.g.,* the same test of reading skills administered in the same way to both groups).

Interrupted time series design means a type of quasi-experimental study in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an ''interruption'' of the prior situation at the time when the program was implemented. Adding a nonequivalent control group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, increases the reliability of the findings.

Regression discontinuity design study means, in part, a quasi-experimental study design that closely approximates an experimental study. In a regression discontinuity design, participants are assigned to a treatment or control group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score (''cut score'') to the treatment group and assignment of those below the score to the control group.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a practice, strategy, or program and are implementing it. This independence helps ensure the objectivity of an evaluation and prevents even the appearance of a conflict of interest.

2. Other Definitions

Consortium of schools means two or more public elementary or secondary schools acting collaboratively for the purpose of applying for and implementing an Investing in Innovation Fund grant jointly with an eligible nonprofit organization.

Nonprofit organization means an entity that meets the definition of ''nonprofit'' under 34 CFR 77.1(c), or an institution of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended.

Formative assessment means an assessment that is embedded in instruction and is used by teachers to provide timely feedback on student understanding and to adjust ongoing teaching and learning effectively.

Interim assessment means an assessment given at regular and specified intervals throughout the school year, and is designed to evaluate students' knowledge and skills relative to a specific set of academic standards, the results of which can be aggregated (*e.g.,* by course, grade level, school, or LEA) in order to inform teachers and administrators at the student, classroom, school, and LEA levels.

Highly effective school leader means a principal or other school leader whose students, overall and for each subgroup as described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, student gender), demonstrate high rates (*e.g.,* more than one grade level in an academic year) of student growth. Applicants may supplement this definition as they see fit so long as school leader effectiveness is judged, in significant measure, by student growth.

Highly effective teacher means a teacher whose students achieve high rates (*e.g.,* more than one grade level in an academic year) of student growth. Applicants may supplement this definition as they see fit so long as teacher effectiveness is judged, in significant measure, by student growth.

High-need student means a student at risk of educational failure, or otherwise in need of special assistance and support, such as students who are living in poverty, who are far below grade level, who are over-age and under-credited, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time,

who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are limited English proficient.

Persistently low-performing schools means Title I schools in corrective action or restructuring in the State and the secondary schools (both middle and high schools) in the State that are equally as low-achieving as these Title I schools and are eligible for, but do not receive, Title I funds.

National level, as used in reference to a Scale-up grant, describes a project that is able to be effective in a wide variety of communities and student populations around the country, including rural and urban areas, as well as with different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, student gender).

Regional level, as used in reference to a Scale-up or Validation grant, describes a project that is able to serve a variety of communities and student populations within a State or multiple States, including rural and urban areas, as well as with different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, student gender).

Rural LEA means an LEA that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Applicants may determine whether a particular LEA is eligible for these programs by referring to information on the following Department Web sites. For the SRSA: *http://www.ed.gov/programs/reapsrsa/eligible08/index.html.* For the RLIS: *http://www.ed.gov/programs/reaprlisp/eligibility.html.*

Student achievement means, at a minimum—

(a) For tested grades and subjects: A student's score on the State's assessments under section 1111(b)(3) of the ESEA and may also include other measures of learning, as appropriate, such as those described in paragraph (b) of this definition.

(b) For non-tested grades and subjects: An alternative academic measure of student learning and performance (*e.g.,* performance on interim assessments or on other classroom-based assessments; rates at which students are on track to graduate from high school; percentage of students enrolled and achieving at successful levels in Advanced Placement, pre-Advanced Placement, International Baccalaureate, or dual-enrollment courses).

Student growth means the change in student achievement data for an individual student between two or more points in time. Growth may be measured by a variety of approaches, but any approach used must be statistically rigorous and based on student achievement data, and may also include other measures of student learning in order to increase the construct validity and generalizability of the information.

Proposed Selection Criteria

Background

The proposed selection criteria are intended to ensure that applicants—regardless of grant type—can demonstrate that they have the experience and capacity to expand or develop practices, strategies, or programs that will have a positive impact on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, or increasing high school graduation rates.

Proposed Selection Criteria

The Secretary proposes the following selection criteria for evaluating an application under the Investing in Innovation Fund. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications or the application package, or both, we will announce the maximum possible points assigned to each criterion.

1. Scale-Up Grants

A. Need for the Project and Quality of the Project Design

(1) The Secretary considers the need for the project and quality of the design of the proposed project.

(2) In determining the need for the project and quality of the design of the proposed project, the Secretary considers the following factors:

(a) The extent to which the proposed project represents an exceptional approach to the priorities the applicant is seeking to meet (*i.e.,* addresses a largely unmet need, particularly for high-need students, and is a practice, strategy, or program that has not already been widely adopted).

(b) The extent to which the proposed project has a clear set of goals and an explicit strategy (*i.e.,* logic model), with actions that are (i) aligned with the priorities the applicant is seeking to meet, and (ii) expected to result in achieving the goals, objectives, and outcomes of the proposed project.

B. Strength of Research, Significance of Effect, and Magnitude of Effect

(1) The Secretary considers the strength of the existing research evidence and the significance of effect in support of the proposed project, as well as the magnitude of the effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, or increasing high school graduation rates. Applicants may also demonstrate success through an intermediate variable that is directly correlated with improving these outcomes, such as teacher or school leader effectiveness, or improvements in school climate.

(2) In determining the strength of the existing research evidence and the significance of effect to support the proposed project, as well as the magnitude of the effect, the Secretary considers the following factors:

(a) The extent to which the applicant demonstrates that there is *strong evidence* that the proposed practice, strategy, or program will have a statistically significant effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, or increasing high school graduation rates, and that the effect will be substantial and important.

(b) The importance and magnitude of the effect expected to be obtained by the proposed project, including the extent to which the project will substantially and measurably improve student achievement or student growth, close achievement gaps, decrease dropout rates, or increase high school graduation rates. The evidence in support of the importance and magnitude of the effect would be the research-based evidence provided by the applicant to support the proposed project.

C. Experience of the Applicant

(1) The Secretary considers the experience of the applicant in implementing the proposed project.

(2) In determining the experience of the applicant, the Secretary considers the following factors:

(a) The past performance of the applicant in implementing large, complex, and rapidly growing projects.

(b) The extent to which an applicant provides information and data demonstrating that it has (or has supported an LEA in taking actions that have)—

(i) Significantly closed the achievement gaps between groups of

students described in section 1111(b)(2) of the ESEA;

(ii) Exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years or demonstrated success in significantly increasing student achievement for all groups of students described in that section through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.,* the National Assessment of Educational Progress); and

(iii) Made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with other meaningful data.

D. Quality of the Project Evaluation

1. The Secretary considers the quality of the evaluation to be conducted of the proposed project.

2. In determining the quality of the evaluation, the Secretary considers the following factors:

(a) The extent to which the methods of evaluation will include an experimental study or, if a well-designed experimental study of the project cannot be conducted, the extent to which the methods of evaluation will include a well-designed quasi-experimental study.

(b) The extent to which, for either an experimental study or quasi-experimental study, the study will be conducted of the practice, strategy, or program as implemented at scale.

(c) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes.

(d) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project to facilitate replication or testing in other settings.

(e) The extent to which the proposed project plan includes sufficient resources to effectively carry out the project evaluation.

(f) The extent to which the proposed evaluation is rigorous, independent, and neither the program developer nor the project implementer is evaluating the impact of the project.

Note: We encourage applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.*

E. Strategy and Capacity To Scale

1. The Secretary considers the quality of the applicant's strategy and capacity to bring the proposed project to scale on a national, regional, or State level.

2. In determining the quality of the strategy and capacity to scale, the Secretary considers:

(a) The number of students to be reached by the proposed project and the applicant's capacity to reach the proposed number of students during the course of the grant period.

(b) The applicant's capacity (*e.g.,* in terms of qualified personnel, financial resources, management capacity) to bring the project to scale on a national, regional, or State level working directly, or through partners, either during or following the end of the grant period.

(c) The feasibility of the proposed project to be replicated successfully, if positive results are obtained, in a variety of settings and with a variety of student populations. Evidence of this ability includes the proposed project's demonstrated success in multiple settings with different types of students, the availability of resources and expertise required for implementing the project with fidelity, and the proposed project's evidence of relative ease of use or user satisfaction.

(d) The applicant's estimate of the cost of the proposed project, which includes start-up and operating costs per student (including indirect costs) for reaching the total number of students proposed to be served by the project, as well as for the applicant or others to reach 100,000, 500,000, and 1,000,000 students.

(e) The mechanisms the applicant will use to broadly disseminate information on its project to support replication.

F. Sustainability

1. The Secretary considers the adequacy of resources to continue the proposed project after the grant period ends.

2. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(a) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the Scale-up grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of current and future partners; and evidence of broad support from stakeholders (*e.g.*, State educational agencies, teachers' unions) critical to the project's long-term success.

(b) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the LEA, schools, or nonprofit organization at the end of the Scale-up grant.

G. Quality of the Management Plan and Personnel

1. The Secretary considers the quality of the management plan and personnel for the proposed project.

2. In determining the quality of the management plan and personnel for the proposed project, the Secretary considers:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks, as well as plans for sustainability and scalability of the proposed project.

(b) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing large, complex, and rapidly growing projects.

(c) The qualifications, including relevant expertise and experience, of the project director and key personnel of the independent evaluator, especially in designing and conducting large-scale experimental and quasi-experimental studies of educational initiatives.

2. Validation Grants

A. Need for the Project and Quality of the Project Design

(1) The Secretary considers the need for the project and quality of the design of the proposed project.

(2) In determining the need for the project and quality of the design of the proposed project, the Secretary considers the following factors:

(a) The extent to which the proposed project represents an exceptional approach to the priorities the applicant is seeking to meet (*i.e.*, addresses a largely unmet need, particularly for high-need students, and is a practice, strategy, or program that has not already been widely adopted).

(b) The extent to which the proposed project has a clear set of goals and an explicit strategy (*i.e.*, logic model), with actions that are (1) aligned with the priorities the applicant is seeking to meet, and (2) expected to result in achieving the goals, objectives, and outcomes of the proposed project.

B. Strength of Research, Significance of Effect, and Magnitude of Effect

(1) The Secretary considers the strength of the existing research evidence and the significance of effect in support of the proposed project, as

well as the magnitude of the effect on improving student achievement, closing achievement gaps, decreasing dropout rates, or increasing high school graduation rates. Applicants may also demonstrate success through an intermediate variable that is directly correlated with these outcomes, such as teacher or school leader effectiveness, or improvements in school climate.

(2) In determining the strength of the existing research evidence and the significance of the effect to support the proposed project, as well as the magnitude of the effect the Secretary considers the following factors:

(a) The extent to which the applicant demonstrates that there is *moderate evidence* that the proposed practice, strategy, or program will have a statistically significant effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, or increasing high school graduation rates and that with further study, the effect may prove to be substantial and important.

(b) The importance and magnitude of the effect expected to be obtained by the proposed project, including the likelihood that the project will substantially and measurably improve student achievement or student growth, close achievement gaps, decrease dropout rates, or increase high school graduation rates. The evidence in support of the importance and magnitude of the effect would be the research-based evidence provided by the applicant to support the proposed project.

C. Experience of the Applicant

(1) The Secretary considers the experience of the applicant in implementing the proposed project.

(2) In determining the experience of the applicant, the Secretary considers the following factors:

(a) The past performance of the applicant in implementing complex projects.

(b) The extent to which an applicant provides information and data demonstrating that it has (or supported an LEA in taking actions that have)—

(i) Significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA;

(ii) Exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years or demonstrated success in significantly increasing student achievement for all groups of students described in that section through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.*, the National Assessment of Educational Progress); and

(iii) Made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with other meaningful data.

D. Quality of the Project Evaluation

1. The Secretary considers the quality of the evaluation to be conducted of the proposed project.

2. In determining the quality of the evaluation, the Secretary considers the following factors:

(a) The extent to which the methods of evaluation will include a well-designed experimental or well-designed quasi-experimental study.

(b) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes.

(c) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project to facilitate replication or testing in other settings.

(d) The extent to which the proposed project plan includes sufficient resources to effectively carry out the project evaluation.

(e) The extent to which the proposed evaluation is rigorous, independent, and neither the program developer nor the project implementer is evaluating the impact of the project.

Note: We encourage applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCES Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.*

E. Strategy and Capacity To Scale

1. The Secretary considers the quality of the applicant's strategy and capacity to bring the proposed project to scale on a State or regional level.

2. In determining the quality of the strategy and capacity to scale, the Secretary considers:

(a) The number of students proposed to be reached by the proposed project and the applicant's capacity to reach the proposed number of students during the course of the grant period.

(b) The applicants capacity (*e.g.*, in terms of qualified personnel, financial resources, management capacity) to bring the project to scale on a State or regional level (as appropriate, based on the findings of the proposed project) working directly, or through partners, either during or following the end of the grant period.

(c) The feasibility of the proposed project to be replicated successfully, if positive results are obtained, in a variety of settings and with a variety of student populations. Evidence of this ability includes the availability of resources and expertise required for implementing the project with fidelity, and the proposed project's evidence of relative ease of use or user satisfaction.

(d) The applicant's estimate of the cost of the proposed project, which includes start-up and operating costs per student (including indirect costs) for reaching the total number of students proposed to be served by the project, as well as for the applicant or others to reach 100,000, 250,000, and 500,000 students.

(e) The mechanisms the applicant will use to broadly disseminate information on its project to support further development, expansion, or replication.

F. Sustainability

1. The Secretary considers the adequacy of resources to continue to develop the proposed project.

2. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(a) The extent to which the applicant demonstrates that it has the resources, as well as the support of stakeholders (*e.g.*, State educational agencies, teachers' unions), to operate the project beyond the length of the Validation grant.

(b) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the LEA, schools, or nonprofit organization at the end of the Validation grant.

G. Quality of the Management Plan and Personnel

1. The Secretary considers the quality of the management plan and personnel for the proposed project.

2. In determining the quality of the management plan and personnel for the proposed project, the Secretary considers:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks, as well as plans for sustainability and scalability of the proposed project.

(b) The qualifications, including relevant training and experience, of the

project director and key project personnel, especially in managing complex projects.

(c) The qualifications, including relevant expertise and experience, of the project director and key personnel of the independent evaluator, especially in designing and conducting experimental and quasi-experimental studies of educational initiatives.

3. Development Grants

We anticipate using a two-tier process to review the applications for Development grants. This two-tier review would include a pre-application process to select applicants that would be invited to submit a full application. We anticipate that the pre-application process will require an applicant to submit a short summary of its proposed project and that we will use some or all of the selection criteria that follow to rate the proposed projects, but with a particular focus on the need for the project and quality of the project design and the strength of research, significance of effect, and magnitude of effect in support of the proposed project. Applicants that are rated highly in the pre-application phase would be invited to submit a full application, from which the awards for Development grants would be made.

A. Need for the Project and Quality of the Project Design

(1) The Secretary considers the need for the project and quality of the design of the proposed project.

(2) In determining the need for the project and quality of the design of the proposed project, the Secretary considers the following factors:

(a) The extent to which the proposed project represents an exceptional approach to the priorities the applicant is seeking to meet (*i.e.*, addresses a largely unmet need, particularly for high-need students, and is a practice that has not already been widely adopted).

(b) The extent to which the proposed project has a clear set of goals and an explicit strategy (*i.e.,* logic model), with the goals, objectives, and outcomes to be achieved by the proposed project clearly specified and measurable and linked to the priorities the applicant is seeking to meet.

B. Strength of Research, Significance of Effect, and Magnitude of Effect

(1) The Secretary considers the strength of the existing research evidence to support the proposed project and the significance of effect in support of the proposed project, as well as the magnitude of the effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, or increasing high school graduation rates. Applicants may also demonstrate success through an intermediate variable that is directly correlated with improving these outcomes, such as teacher or school leader effectiveness, or improvements in school climate.

(2) In determining the strength of the existing research evidence, the significance of effect to support the proposed project, and the magnitude of effect, the Secretary considers the following factors:

(a) The extent to which the applicant demonstrates that there are research-based findings or reasonable hypotheses that support the proposed project, including related research in education and other sectors.

(b) The extent to which the proposed project has been attempted previously, albeit on a limited scale or in a limited setting, with promising results that suggest that more formal and systematic study is warranted.

(c) The extent to which the applicant demonstrates that, if funded, the proposed project likely will have a positive impact, as measured by the importance or magnitude of the effect, on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, or increasing high school graduation rates.

C. Experience of the Applicant

(1) The Secretary considers the experience of the applicant in implementing the proposed project or a similar project.

(2) In determining the experience of the applicant, the Secretary considers the following factors:

(a) The past performance of the applicant in implementing projects of the size and scope proposed by the applicant.

(b) The extent to which an applicant provides information and data demonstrating that it has (or supported an LEA in taking actions that)—

(i) Significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA;

(ii) Exceeded the State's annual measurable objectives consistent with section 1111(b)(2) of the ESEA for two or more consecutive years or has demonstrated success in significantly increasing student achievement for all groups of students described in that section through another measure, such as measures described in section 1111(c)(2) of the ESEA (*i.e.*, the National Assessment of Educational Progress); and

(iii) Made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with other meaningful data.

D. Quality of the Project Evaluation

1. The Secretary considers the quality of the evaluation to be conducted of the proposed project.

2. In determining the quality of the evaluation, the Secretary considers the following factors.

(a) The extent to which the methods of evaluation are appropriate to the size and scope of the proposed project.

(b) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes.

(c) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project to facilitate further development, replication, or testing in other settings.

(d) The extent to which the proposed project plan includes sufficient resources to effectively carry out the project evaluation.

Note: We encourage applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1*; and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/*.

E. Strategy and Capacity to Further Develop and Scale

1. The Secretary considers the quality of the applicant's strategy and capacity to further develop and scale the proposed project.

2. In determining the quality of the strategy and capacity to further develop and scale the proposed project, the Secretary considers:

(a) The number of students proposed to be reached by the proposed project and the applicant's capacity to reach the proposed number of students during the course of the grant period.

(b) The applicant's capacity (*e.g.*, in terms of qualified personnel, financial resources, management capacity) to further develop and scale the proposed practice, strategy, or program, or to work with others to ensure that the proposed practice, strategy, or program can be further developed and scaled, based on the findings of the proposed project.

(c) The feasibility of the proposed project to be replicated successfully, if

positive results are obtained, in a variety of settings and with a variety of student populations. Evidence of this ability includes the availability of resources and expertise required for implementing the project with fidelity, and the proposed project's evidence of relative ease of use or user satisfaction.

(d) The applicant's estimate of the cost of the proposed project, which includes the start-up and operating costs per student (including indirect costs) for reaching the total number of students proposed to be served by the project as well as for the applicant or others to reach 100,000, 250,000, and 500,000 students.

(e) The mechanisms the applicant will use to broadly disseminate information on its project to support further development or replication.

F. Sustainability

1. The Secretary considers the adequacy of resources to continue to develop or expand the proposed practice, strategy, or program after the grant period ends.

2. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(a) The extent to which the applicant demonstrates that it has the resources, as well as the support from stakeholders (*e.g.*, State educational agencies, teachers' unions) to operate the project beyond the length of the Development grant.

(b) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the LEA, schools, or nonprofit organization at the end of the Development grant.

G. Quality of the Management Plan and Personnel

1. The Secretary considers the quality of the management plan and personnel for the proposed project.

2. In determining the quality of the management plan and personnel for the proposed project, the Secretary considers:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(b) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing projects of the size and scope of the proposed project.

Final Priorities, Requirements, Definitions, and Selection Criteria: We will announce the final priorities, requirements, definitions, and selection criteria in a notice in the **Federal Register**. We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these priorities, requirements, and selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. Pursuant to the Executive order, it has been determined that this regulatory action will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through the Investing in Innovation Fund will exceed that amount. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of the Executive order.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priorities, requirements, definitions, and selection criteria justify the costs.

We have determined, also, that this proposed regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Need for Federal Regulatory Action

These proposed priorities, requirements, definitions, and selection criteria are needed to implement the Investing in Innovation Fund. The Secretary does not believe that the statute, by itself, provides a sufficient level of detail to ensure that the program achieves the greatest national impact in promoting educational innovation. The authorizing language is very brief and provides only broad parameters governing the program. The proposals discussed in this notice would provide greater clarity on the types of activities the Department seeks to fund, and permit the Department to use selection criteria that are closely aligned with the Secretary's priorities.

In the absence of specific selection criteria for the Investing in Innovation Fund, the Department would use the general selection criteria in 34 CFR 75.210 of the Education Department General Administrative Regulations in selecting grant recipients. The Secretary does not believe the use of those general criteria would be appropriate for the Investing in Innovation Fund grant competition, because they do not focus on the educational reform and innovation activities most likely to raise student achievement and eliminate persistent disparities in achievement across different populations of students.

Regulatory Alternatives Considered

The Department considered a variety of possible priorities, requirements, definitions, and selection criteria before deciding to propose those included in this notice. The proposed priorities, requirements, definitions, and selection criteria are those that the Secretary believes best capture the purposes of the program while clarifying what the Secretary expects the program to accomplish and ensuring that program activities are aligned with Departmental priorities. The proposals would also provide eligible applicants with flexibility in selecting activities to apply to carry out under the program. The Secretary believes that the proposals, thus, appropriately balance a limited degree of specificity with broad flexibility in implementation. We seek

public comment on whether we have achieved the optimal balance.

Summary of Costs and Benefits

The Secretary believes that the proposed priorities, requirements, definitions, and selection criteria would not impose significant costs on eligible LEAs, nonprofit organizations, or other entities that would receive assistance through the Investing in Innovation Fund. The Secretary also believes that the benefits of implementing the proposals contained in this notice outweigh any associated costs.

The Secretary believes that the proposed priorities, requirements, definitions, and selection criteria would result in selection of high-quality applications to implement activities that are most likely to have a significant national impact on educational reform and improvement. Through the proposals discussed in this notice, the Secretary seeks to provide clarity as to the scope of activities he expects to support with program funds and the expected burden of work involved in preparing an application and implementing a project under the program. The pool of possible applicants is very large; during school year 2007–08, 9,729 LEAs across the country (about 65 percent of all LEAs) made adequate yearly progress. Although not every one of those LEAs would necessarily meet all the eligibility requirements, the number of LEAs that would meet them is likely to be in the thousands. Potential applicants, both LEAs and nonprofit organizations, would need to consider carefully the effort that will be required to prepare a strong application, their capacity to implement a project successfully, and their chances of submitting a successful application.

The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants. The costs of carrying out activities would be paid for with program funds and with matching funds provided by private-sector partners. Thus, the costs of implementation would not be a burden for any eligible applicants, including small entities. However, under the proposed selection criteria the Secretary would assess the extent to which an applicant would be able to sustain a project once Federal funding through the Investing in Innovation Fund is no longer available. Thus, eligible applicants should propose activities that they will be able to sustain without funding from the program and, thus, in essence, should include in their project plan the specific steps they will take for sustained implementation of the proposed project.

The proposed priorities would provide flexibility on the topics and types of grant activities applicants could propose. The proposal for the three types of grants—Scale-up, Validation, and Development grants—would allow potential applicants to determine which type of grant they are best suited to apply for, based on their own priorities, resources, and capacity to implement grant activities.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed regulatory action. This table provides our best estimate of the Federal payments to be made to LEAs and nonprofit organizations under this program as a result of this proposed regulatory action. Expenditures are classified as transfers to those entities.

TABLE—ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers (in millions)
Annual Monetized Transfers.	$643.5
From Whom to Whom	Federal Government to LEAs, nonprofits.

Paperwork Reduction Act of 1995

The requirements and selection criteria proposed in this notice will require the collection of information that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). It is our plan to offer a comment period for the information collection at the time of the notice of final priorities, requirements, definitions, and selection criteria. At that time, the Department will submit the information collection to OMB for its review and provide the specific burden hours associated with each of the requirements and selection criteria for comment. However, because it is likely that the information collection will be reviewed under emergency OMB processing, the Department encourages the public to comment on the estimates we are providing for the burden hours associated with the requirements and selection criteria proposed in this notice.

Estimates for Scale-up Grants: We estimate 100 applicants for Scale-up grants, and that each applicant would spend approximately 120 hours of staff time to address the application requirements and criteria, prepare the application, and obtain necessary clearances. The total number of hours for all Scale-up applicants is an estimated 12,000 hours (100 applicants times 120 hours equals 12,000 hours).

Estimates for Validation Grants: We estimate 500 applicants for Validation grants, and that each applicant would spend approximately 120 hours of staff time to address the application requirements and criteria, prepare the application, and obtain necessary clearances. The total number of hours for all Validation applicants is an estimated 60,000 hours (500 applicants times 120 hours equals 60,000 hours).

Estimates for Development Grants: We estimate 2000 pre-applications and 100 full applications for Development grants. We estimate that pre-applicants will spend approximately 60 hours of staff time to address the pre-application requirements and criteria, prepare the pre-application, and obtain all necessary clearances for the pre-application. We estimate that full applicants will spend approximately 60 hours of staff time to address the full application requirements and criteria, prepare the full application, and obtain all necessary clearances for the full application. The total number of hours for all Development pre-applicants and full applicants is an estimated 126,000 hours ((2000 pre-applicants times 60 hours equals 120,000 hours) plus (100 full applicants times 60 hours equals 6,000 hours)).

Total Estimates: Across the three grant types, we estimate the average total cost per hour of the LEA and nonprofit organization staff who carry out this work to be $25.00 an hour. The total estimated cost for all applicants would be $4,950,000 ($25.00 times 198,000 (12,000 + 60,000 + 126,000) hours equals $4,950,000).

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action will affect are small LEAs or nonprofit organizations applying for and receiving funds under this program. The Secretary believes that the costs imposed on applicants by

the proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the proposed priorities, requirements, definitions, and selection criteria would impose no burden on small entities in general. Eligible applicants would determine whether to apply for funds, and have the opportunity to weigh the requirements for preparing applications, and any associated costs, against the likelihood of receiving funding and the requirements for implementing projects under the program. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to spur educational reforms and improvements without additional Federal funding.

The U.S. Small Business Administration Size Standards defines as ''small entities'' for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. The Urban Institute's National Center for Charitable Statistics reported that of 203,635 nonprofit organizations that had an educational mission and reported revenue to the IRS by July 2009, 200,342 (or about 98 percent) had revenues of less than $5 million. In addition, there are 12,484 LEAs in the country that meet the definition of small entity. However, the Secretary believes that only a small number of these entities would be interested in applying for funds under this program, thus reducing the likelihood that the proposals contained in this notice would have a significant economic impact on small entities.

In addition, the Secretary believes that the proposed priorities, requirements, definitions, and selection criteria discussed in this notice do not impose any additional burden on small entities applying for a grant than they would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the regulatory action and the time needed to prepare an application would likely be the same.

Further, the proposed action may help small entities determine whether they have the interest, need, or capacity to implement activities under the program and, thus, prevent small entities that do not have such an interest, need, and capacity from absorbing the burden of applying.

This proposed regulatory action would not have a significant economic impact on small entities once they receive a grant because they would be able to meet the costs of compliance using the funds provided under this program and with any matching funds provided by private-sector partners.

The Secretary invites comments from small nonprofit organizations and small LEAs as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, requests evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: October 6, 2009.

Arne Duncan,

Secretary of Education.

[FR Doc. E9–24387 Filed 10–8–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Federal Loan Guarantee To Support Construction and Start-up of the Taylorville Energy Center in Taylorville, IL

AGENCY: Department of Energy, Loan Guarantee Program.

ACTION: Notice of intent to prepare an environmental impact statement and conduct a public scoping meeting.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations, and the DOE NEPA implementing procedures to assess the potential environmental impacts for its proposed action of issuing a Federal loan guarantee to Christian County Generation, L.L.C. (CCG) (DOE/EIS–0430). CCG submitted an application to DOE under the Federal loan guarantee program pursuant to the Energy Policy Act of 2005 (EPAct 2005) to support construction and start-up of the Taylorville Energy Center in Taylorville, Illinois (''the Facility'').[1]

CCG is a limited liability company that is currently owned by Tenaska Taylorville, LLC, an affiliate of Tenaska, Inc., an Omaha, Nebraska-based power development company, and by MDL Holding Company, L.L.C. of Louisville, Kentucky. CCG proposes to develop the Facility on an 886-acre parcel of land. As proposed, the approximately 730 megawatt (gross) electric generation Facility would utilize integrated gasification combined-cycle technology to produce electricity from Illinois bituminous coal. Synthesis gas processing would also allow the separation and capture of carbon dioxide (CO_2) and the manufacture of pipeline-quality Substitute Natural Gas (''SNG'' or ''methane''). SNG would be used in a power block with two combustion turbines and one steam turbine. The Facility would be designed

[1] The amount requested for the loan guarantee is not being disclosed at this time because it is business sensitive. Moreover, should DOE approve a loan guarantee, the amount may differ from the original request.

such that surplus SNG can be transported offsite to an interstate pipeline for sale. The Facility would capture at least 50 percent of the CO_2 and over 99 percent of the sulfur compounds that would otherwise be emitted. The CO_2 stream would be compressed and delivered at the fenceline to another party for pipeline transport to enhanced oil recovery operations and geologic storage. CCG is also studying the feasibility of geologic storage of CO_2 in the vicinity of the site.

The EIS will evaluate the potential impacts of the issuance of a DOE Loan Guarantee for CCG's proposed project and the range of reasonable alternatives. The purpose of this Notice of Intent is to inform the public about DOE's proposed action; invite public participation in the EIS process; announce plans for a public scoping meeting; and solicit public comments for consideration in establishing the scope and content of the EIS. DOE invites those agencies with jurisdiction by law or special expertise to be cooperating agencies.

DATES: To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be postmarked or emailed by November 9, 2009 to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving written comments (see **ADDRESSES** below), DOE will conduct a public scoping meeting in the vicinity of the proposed Facility at which government agencies, private-sector organizations, and the general public are invited to provide comments or suggestions with regard to the alternatives and potential impacts to be considered in the EIS. The date, time, and location of the public scoping meeting will be announced in local news media and on the DOE Loan Guarantee Program's ''NEPA Public Involvement'' Web site (*http://www.lgprogram.energy.gov/NEPA–2.html*) at least 15 days prior to the date of the meeting.

ADDRESSES: Public comments can be submitted electronically or by U.S. Mail. Written comments on the proposed EIS scope should be addressed to: Ms. Angela Colamaria, Loan Guarantee Program Office (CF–1.3), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Please submit one signed original paper copy. Electronic submission of comments is encouraged due to processing time required for regular mail. Comments can be submitted electronically by sending an email to: *TEC-EIS@hq.doe.gov.* All electronic and written comments should reference Project No. DOE/EIS–0430.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this EIS, the public scoping meeting, or to receive a copy of the draft EIS when it is issued, contact Angela Colamaria by *telephone:* 202–287–5387; *toll-free number:* 800–832–0885 ext. 75387; or *electronic mail: Angela.Colamaria@hq.doe.gov.* For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; *telephone:* 202–586–4600; *facsimile:* 202–586–7031; *electronic mail: askNEPA@hq.doe.gov*; or leave a toll-free message at 800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

EPAct 2005 established a Federal loan guarantee program for eligible energy projects that employ innovative technologies. Title XVII of EPAct 2005 authorizes the Secretary of Energy to make loan guarantees for a variety of types of projects, including those that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' A principal goal of the loan guarantee program is to encourage commercial use in the United States of new or significantly improved energy-related technologies. DOE believes that accelerated commercial use of these new or improved technologies will help to sustain economic growth, yield environmental benefits, and produce a more stable and secure energy supply.

Purpose and Need for Agency Action

CCG submitted a Part I application to DOE for a loan guarantee on December 19, 2008, and submitted a Part II application on March 23, 2009. The purpose and need for agency action is to comply with DOE's mandate under Title XVII of EPAct 2005 by selecting eligible projects that meet the goals of the Act. DOE is using the NEPA process to assist in determining whether to issue a loan guarantee to CCG to support the proposed project.

Proposed Action

DOE's proposed action is to issue a loan guarantee to CCG to support the construction and start-up of the Taylorville Energy Center in Taylorville, Illinois.

The site of the proposed Facility consists of an 886-acre parcel of land located in Taylorville, Illinois. Of the 886 acres, CCG currently owns or controls via option agreements 713 acres, and is attempting to option approximately 173 additional, contiguous acres. The site and additional acreage to be acquired is bounded by County Road E1700N on the north, State Road 48 (and the Norfolk Southern Railroad) on the east, farmland on the south, and County Road N1400E on the west.

As proposed, the Facility would manufacture pipeline quality SNG from Illinois bituminous coal and produce electricity utilizing integrated gasification combined-cycle technology. The Facility is expected to use 7,500 tons of coal per day (2.5 million tons of coal annually). The primary water supply would be municipal treated effluent from a local sanitary district.

The Facility is expected to contribute 2 billion kilowatt-hours per year to the electric grid system. SNG would be used to fuel a power block with two combustion turbines and one steam turbine. The amount of SNG produced may exceed the requirements of the power block under certain operating conditions. The Facility would be designed such that surplus SNG can be transported offsite to an interstate pipeline for sale.

The Facility would capture at least 50 percent of the CO_2 and over 99 percent of the sulfur compounds that would otherwise be emitted. The CO_2 stream would be compressed and delivered at the fenceline to another party for pipeline transport to enhanced oil recovery operations and geologic storage at a location to be determined by the off-taker. CCG is also studying the feasibility of geologic storage in the vicinity of the site using the Mt. Simon formation.

Supporting infrastructure and facilities would include local access roads, rail interconnections, water supply and wastewater pipelines, CO_2 pipelines, a natural gas pipeline, and a high voltage transmission line to connect the Facility to the electric grid system. Rail access to the site would be provided by construction of a rail connection to the Norfolk Southern Railroad east of the site. Coal may also be delivered by truck. Approximately 6 miles of County Road E1700N would be reconstructed and enhanced to 80,000 lbs. gross vehicle weight standards. DOE plans to analyze the impacts of construction and operation of the

supporting infrastructure and facilities in the EIS.

The Facility would eliminate process wastewater entirely through use of water treatment, recycling, and zero liquid discharge systems. Solid waste (slag) and sulfur, by-products from the process, would be sold as a commercial product, disposed of onsite, or transported offsite for disposal at a non-hazardous, solid waste landfill. The construction work force would peak at up to 1,500 construction workers over a 4-year period. The Facility would be operated and maintained by a staff of approximately 145 employees and contractors.

Coal gasification and electric generation components of the Facility would be constructed on approximately 70 acres of the site. The site is currently used for agriculture (row crops), is surrounded by farmland, and is zoned for industrial and agricultural use. The coal gasification and electric generation components of the Facility are entirely within property that is zoned for industrial use. In addition, several hundred acres of Prime Farmland within the 886-acre parcel could be affected by the construction of the Facility. Preliminary assessments indicate that the footprint of the proposed facility would not affect any wetlands or floodplains. In the event that further analysis indicates that wetlands or floodplains would be affected, DOE will prepare a floodplain and wetland assessment in accordance with its regulations at 10 CFR part 1022 and include the assessment in the EIS.

Alternatives

In determining the range of reasonable alternatives to be considered in the EIS for the proposed CCG Facility, DOE identified the reasonable alternatives that would satisfy the underlying purpose and need for agency action. DOE currently plans to analyze in detail the project proposed by CCG and the no action alternative. DOE will also analyze design options available to CCG within the scope of the project (*e.g.,* various methods for disposition of slag and sulfur and transportation of coal) and mitigation measures as appropriate.

Under the no action alternative, DOE would not provide the loan guarantee for the CCG project and the project would not be constructed as part of the DOE loan guarantee program. This option would not contribute to the Federal loan guarantee program goals to make loan guarantees for energy projects that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies.''

Preliminary Identification of Environmental Issues

The following environmental resource areas have been tentatively identified for consideration in the EIS. This list is neither intended to be all-inclusive nor a predetermined set of potential environmental impacts:

- Air quality;
- Greenhouse gas emissions and climate change;
- Energy use and production;
- Water resources, including groundwater and surface waters;
- Wetlands and floodplains;
- Geological resources;
- Ecological resources, including threatened and endangered species and species of special concern;
- Cultural resources, including historic structures and properties; sites of religious and cultural significance to tribes; and archaeological resources;
- Land use;
- Visual resources and aesthetics;
- Transportation and traffic;
- Noise and vibration;
- Hazardous materials and solid waste management;
- Human health and safety;
- Accidents and terrorism;
- Socioeconomics, including impacts to community services;
- Environmental justice.

DOE invites comments on whether other resource areas or potential issues should be considered in the EIS.

Public Scoping Process

To ensure that all issues related to DOE's proposed action are addressed, DOE seeks public input to define the scope of the EIS. The public scoping period will begin with publication of the NOI and end on November 9, 2009. Interested government agencies, private-sector organizations, and the general public are encouraged to submit comments concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be considered. Scoping comments should clearly describe specific issues or topics that the EIS should address to assist DOE in identifying significant issues. Comments must be postmarked or e-mailed by November 9, 2009 to ensure consideration. (See **ADDRESSES** above). Late comments will be considered to the extent practicable. DOE invites those agencies with jurisdiction by law or special expertise to be cooperating agencies.

A public scoping meeting will be held at a date, time, and location to be determined. Notice of this meeting will be provided in local news media and on the DOE Loan Guarantee Program's ''NEPA Public Involvement'' Web site (*http://www.lgprogram.energy.gov/NEPA–2.html*) at least 15 days prior to the date of the meeting. Members of the public and representatives of groups and Federal, State, local, and tribal agencies are invited to attend. The meeting will include both a formal opportunity to present oral comments and an informal session during which DOE and CCG personnel will be available for discussions with attendees. Displays and other forms of information about the proposed agency action, the EIS process, and the CCG proposed Facility will also be available for review. DOE requests that anyone who wishes to present oral comments at the meeting contact Ms. Colamaria by phone or e-mail (see **ADDRESSES** above). Individuals who do not make advance arrangements to speak may register at the meeting. Speakers who need more than five minutes should indicate the length of time desired in their request. DOE may need to limit speakers to five minutes initially, but will provide additional opportunities as time permits. Written comments regarding the scoping process can also be submitted to DOE officials at the scoping meeting.

Issued in Washington, DC, on October 6, 2009.

Steve Isakowitz,

Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. E9–24422 Filed 10–8–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8598–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146 or *http://www.epa.gov/compliance/nepa/*.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Draft EISs

EIS No. 20090038, ERP No. D–COE–K35045–CA, PROGRAMMATIC—Los Angeles Regional Dredge Material Management Plan, Develop a Long-

Term Strategy for Managing Dredged Sediment for all Harbors within the Region, City of Long Beach and County of Los Angeles, CA.

Summary: EPA expressed environmental concerns about the need for additional alternatives analysis; analysis of sediment management options; and better evaluation of dredging methods. Rating EC2.

EIS No. 20090134, ERP No. D–COE–K65363–CA, Newhall Ranch Resource Management and Development Plan (RMDP) and the Spineflower Conservation Plan (SCP), Implementation, Portion of Santa Clara River Valley, Los Angeles County, CA.

Summary: EPA expressed environmental objections to water quality impacts to tributaries of the Santa Clara River, and expressed concerns about impacts to air quality, traffic, and water supply. EPA recommended the maximum avoidance alternative that reduces project footprint and impacts and provided additional green building resources. Rating EO2.

EIS No. 20090177, ERP No. D–AFS–K65366–CA, Lassen National Forest, Motorized Travel Management Plan, Implementation, Butte, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama Counties, CA.

Summary: EPA expressed environmental concerns about the scope of alternatives analysis, water resource impacts, decommissioning of unauthorized routes, and monitoring and enforcement of travel management requirements. Rating EC2.

EIS No. 20090232, ERP No. D–BIA–K60043–CA, Soboba Band of Luiseno Indians Horseshoe Grande Fee-to-Trust Project, Construction of a Hotel and Casino Project, City of San Jacinto, Riverside County, CA.

Summary: EPA expressed environmental concerns about potential impacts to waters of the U.S. from the wastewater treatment percolation pond, and recommended mitigation measures for construction equipment emissions, pollution prevention measures to avoid soil contamination, and commitments to green building design. Rating EC2.

EIS No. 20090254, ERP No. D–AFS–K65377–00, Bridgeport Travel Management Project, To Provide the Primary Framework for Sustainable Management of Motor Vehicle Use on the Bridgeport Ranger District, Humboldt-Toiyabe National Forest, Mono County, CA and Lyon, Douglas, and Mineral Counties, NV.

Summary: EPA expressed environmental concerns about the scope of alternatives analysis, water resources, wet weather and seasonal closures, erosion, decommissioning of unauthorized routes, climate change, and monitoring and enforcement of travel management requirements. Rating EC2.

EIS No. 20090266, ERP No. D–IBR–K39120–CA, Madera Irrigation District Water Supply Enhancement Project, Constructing and Operating a Water Bank on the Madera Property, Madera County, CA.

Summary: EPA expressed environmental concerns about the long-term feasibility of this conjunctive use/water bank project given increasingly constrained source water supplies, and potential significant impacts to vernal pools, rare alkali rain pools, and threatened and endangered species. Rating EC2.

EIS No. 20090273, ERP No. D–FSA–A65177–00, PROGRAMMATIC—Biomass Crop Assistance Program (BCAP), To Establish and Administer the Program Areas Program Component of BCAP as mandated in Title IX of the 2008 Farm Bill in the United States.

Summary: EPA expressed environmental concerns about potential direct, indirect and cumulative impacts bioenergy crops will have on water quality and air quality to waters of the U.S., and recommended a monitoring program for the BCAP and subsequent individual projects. Rating EC2.

EIS No. 20090280, ERP No. DS–FHW–E40768–TN, Shelby Avenue/Demonbreun Street (Gateway Boulevard Corridor, from I–65 North [I–24 West] to I–40 West in Downtown Nashville, To Address Transportation needs in the Study Area, Davidson County, TN.

Summary: EPA expressed environmental concerns about air toxic impacts and requested that this issue be addressed. EPA also requested that the document include appropriate mitigation. Rating EC2.

Final EISs

EIS No. 20090236, ERP No. F–FHW–K53013–CA, Orange County Gateway Project, To Provide Grade Separation Alternative Along the Burlington Northern Santa Fe railroad tracks from west of Bradford Avenue to west of Imperial Highway (State Route 90), Cities of Placentia and Anaheim, Orange County, CA.

Summary: EPA continues to have environmental concerns about impacts to air quality and jurisdictional waters, as well as, cumulative impacts and environmental justice impacts.

EIS No. 20090288, ERP No. F–COE–K39041–CA, Natomas Levee Improvement Program, Phase 3 Landside Improvements Project, Issuance of Section 408 and 404 Permits, Sacramento and Sutter Counties, CA.

Summary: EPA continues to have environmental concerns about the residual flood risk to development in a floodplain protected by levees, and indirect and cumulative environmental effects. EPA recommended Natomas Basin flood safety plan implementation prior to additional development.

EIS No. 20090300, ERP No. F–NPS–K61169–AZ, Fire Management Plan, Management of Wildland and Prescribed Fire, Protection of Human Life and Property Restoration and Maintenance of Fire Dependent Ecosystems, and Reduction of Hazardous Fuels, Grand Canyon National Park, Coconino County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

Dated: October 6, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

BILLING CODE 6560–50–U

[FR Doc. E9–24468 Filed 10–8–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8598–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements Filed 09/28/2009 through 10/02/2009 Pursuant to 40 CFR 1506.9

EIS No. 20090340, Final EIS, AFS, UT, Pockets Resource Management Project, Additional Information on Analysis and Disclosure on the Effect of the PA and Alternatives on Three Unroaded and Undeveloped Areas Identified on a 2005 Draft Map, Proposes to Salvage Dead and Dying Spruce/Fir, Regenerate Aspen, and Manage Travel, Escalate Ranger District, Dixie National Forest, Garfield County, UT, Wait Period Ends: 11/09/2009, Contact: Marianne Breeze Orton 435–676–9360.

EIS No. 20090341, Final EIS, IBR, CA, Grassland Bypass Project 2010–2019 Project, Proposed new Use

Agreement, San Joaquin River, CA, Wait Period Ends: 11/09/2009, Contact: Shauna McDonald 559–487–5202.

EIS No. 20090342, Final EIS, AFS, CA, Sequoia National Forest Motorized Travel Management Project, Prohibit Cross-Country Travel for Managing Motorized Travel, Kern River, Western Divide Ranger Districts, Sequoia National Forest, Tulare County, CA, Wait Period Ends: 11/09/2009, Contact: Barbara Johnston 559–784–1500 Ext. 1220.

EIS No. 20090343, Draft EIS, AFS, OR, Deschutes and Ochoco National Forest and the Crooked River National Grassland Travel Management Project, Implementation, Deschutes, Jefferson, Crook, Klamath, Lake, Grant and Wheeler County, OR, Comment Period Ends: 11/23/2009, Contact: Mollie Chaudet 541–383–5517.

EIS No. 20090344, Draft EIS, AFS, WY, Rattlesnake Forest Management Project, Proposes to Implement Multiple Resource Management Action, Bearlodge Ranger District, Black Hills National Forest, Crook County, WY, Comment Period Ends: 11/23/2009, Contact: Elizabeth Krueger 307–283–1361.

EIS No. 20090345, Draft EIS, AFS, WI, Honey Creek-Padus Project, Proposes to Harvest Timber, Regenerate Stands, Plant and Protect Tree Seedlings and Manage Access on Approximately 6,702 Acres, Lakewood-Laona Ranger District, Chequamegon-National Forest, Forest County, WI, Comment Period Ends: 11/23/2009, Contact: Marilee Houlter 715–276–6333.

EIS No. 20090346, Draft EIS, TVA, 00, Northeastern Tributary Reservoirs Land Management Plan, Implementation, Beaver Creek, Clear Creek, Boone, Fort Patrick Henry, South Holston, Watauga, and Wilbur Reservoirs, Carter, Johnson, Sullivan, and Washington Counties, TN and Washington County, VA, Comment Period Ends: 11/23/2009, Contact: Amy Henry 856–632–4045.

EIS No. 20090347, Final EIS, AFS, MT, Butte Lookout Project, Proposed Timber Harvest, Prescribed Burning, Road Work and Management Activities, Missoula Ranger District, Lola National Forest, Missoula County, MT, Wait Period Ends: 11/09/2009, Contact: Tami Paulson 406–329–3731.

EIS No. 20090348, Final EIS, EPA, AK, Red Dog Mine Extension—Aqqaluk Project, Reissuance Permit Applications for National Pollutant Discharge Elimination System (NPDES) Permit and New Information, Chukchi Sea, AK, Wait Period Ends: 11/09/2009, Contact: Patricia McGrath 206–553–0979.

Amended Notices

EIS No. 20090231, Draft EIS, BIA, CA, Point Molate Mixed-Use Tribal Destination Resort and Casino, Proposed Project is to Strengthen the Tribal Government and Improve the Social economic Status, Guidiville Band of Pomo Indian of the Guidiville Rancheria (Tribe), City of Richmond, Contra Costa County, CA, Comment Period Ends: 10/23/2009, Contact: Larry Blevin 916–978–6037.

EIS No. 20090244, Draft EIS, BLM, CA, Santa Ana River Wash Land Use Plan Amendment and Land Exchange Project, Proposes to Exchange Land Located within Upper Santa Ana River Wash, for District-Owned Lands in San Bernardino County, CA, Comment Period Ends: 10/21/2009, Contact: Michael Bennett 760–833–7139.

Revision to FR Notice Published 07/24/2009: Extending Comment Period from 09/8/2009 to 10/21/2009

EIS No. 20090252, Draft EIS, NPS, DC, White-Tailed Deer Management Plan, To Develop a White-Tailed Deer Management that Supports Long-Term Protection, Preservation and Restoration of Native Vegetation and other Natural and Cultural Resource in Rock Creek Park, Washington, DC, Comment Period Ends: 11/02/2009, Contact: Ken Ferebee 202–895–6221 Revision to FR Notice Published 07/31/2009: Extending Comment Period from 09/14/2009 to 11/02/2009.

Dated: October 6, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–24467 Filed 10–8–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8967–6]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(h)(1), notice is hereby given of a proposed administrative settlement concerning Doughty's Treating Plant Site, LaSalle Parish, Louisiana.

The settlement requires the Town of Jena, settling party to pay a total of $18,500, plus interest as payment of response costs to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before November 9, 2009.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Kenneth Talton, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–7475. Comments should reference the Doughty's Treating Plant Site, Jena, LaSalle Parish, Louisiana, and EPA Docket Number 06–03–09, and should be addressed to Kenneth Talton at the address listed above.

FOR FURTHER INFORMATION CONTACT: Amy Salinas, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–8063.

Dated: September 29, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–24465 Filed 10–8–09; 8:45 am]

BILLING CODE 6560–50–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.: 011885–001.

Title: CMA CGM/MSC Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM, S.A. and Mediterranean Shipping Co. S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLC; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment would revise temporarily the provision of vessels and the allocation of space under the agreement.

Agreement No.: 011966–001.

Title: West Coast USA–Mexico & Canada Vessel Sharing Agreement.

Parties: Compania Sud Americana de Vapores S.A.; Hamburg Süd; Compania Chilena de Navegacion Interoceania, S.A.; and Maruba S.C.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would delete Maruba S.C.A as a party to the agreement and adjust the terms under which the remaining parties will continue to operate. Parties request expedited review.

Dated: October 6, 2009.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E9–24452 Filed 10–8–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0088]

Federal Acquisition Regulation; Submission for OMB Review; Travel Costs

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the reinstatement of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a currently approved information collection requirement concerning Travel Costs.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 8, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0088, Travel Costs, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, Contract Policy Division, GSA, (202) 501–3221 or e-mail *Edward.chambers@gsa.gov.*

A. Purpose

FAR 31.205–46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel as set forth in the Federal Travel Regulations for travel in the conterminous 48 United States, the Joint Travel Regulations, Volume 2, Appendix A, for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, and the Department of State Standardized Regulations, section 925, ''Maximum Travel Per Diem Allowances for Foreign Areas.'' The burden generated by this coverage is in the form of the contractor preparing a justification whenever a higher actual expense reimbursement method is used.

B. Annual Reporting Burden

Respondents: 5,800.

Responses per Respondent: 10.

Total Responses: 58,000.

Hours per response: .25.

Total Burden Hours: 14,500.

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. 9000–0088, Travel Costs, in all correspondence.

Dated: September 23, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–24403 Filed 10–8–09; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0205]

General Services Administration Acquisition Regulation (GSAR) Part 523; Submission for OMB Review; Environmental Conservation, Occupational Safety, and Drug-Free Workplace

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for comments regarding the reinstatement of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement regarding Environmental Conservation, Occupational Safety, and Drug-Free Workplace. A request for public comments was published at 74 FR 11889, March 20, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: November 9, 2009.

FOR FURTHER INFORMATION CONTACT: William Clark, Procurement Analyst,

Contract Policy Division, at telephone (202) 219–1813 or via e-mail to *William.clark@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat, General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0205, Environmental Conservation, Occupational Safety, and Drug-Free Workplace, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Hazardous Substance Act and Hazardous Material Transportation Act prescribe standards for packaging of hazardous substances. To meet the requirements of the Acts, the General Services Administration Regulation prescribes clause 552.223–72, Hazardous Material Information, to be inserted in solicitations and contracts that provides for delivery of hazardous materials on an f.o.b. origin basis. This information collection will be accomplished by means of the clause, which requires the contractor to identify for each National Stock Number the DOT Shipping Name, DOT Hazards Class, and whether the item requires a DOT label. Contracting Officers and technical personnel use the information to monitor and ensure contract requirements based on law and regulation. Properly identified and labeled items of hazardous material allows for appropriate handling of such items throughout GSA's supply chain system. The information is used in GSA warehouses, stored in an NSN database and provided to GSA customers. Non-Collection and/or a less frequently conducted collection of the information resulting from Clause 552.223–72 would prevent the Government from being properly notified and prepared for arrival and storage of items containing hazardous material. Government activities may be hindered from apprising their employees of; (1) All hazards to which they may be exposed; (2) Relative symptoms and appropriate emergency treatment; and (3) Proper conditions and precautions for safe use and exposure.

B. Annual Reporting Burden

Respondents: 563.
Responses per Respondent: 3.
Hours per Response: 658.
Total Burden Hours: 1111.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0205, Environmental Conservation, Occupational Safety, and Drug-Free Workplace, in all correspondence.

Dated: September 29, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–24397 Filed 10–8–09; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0326]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: The Hospital Preparedness Program—Revision—OMB No. 0990–0326–OS—Assistant Secretary for Preparedness and Response (ASPR).

Abstract: The Office of the Assistant Secretary for Preparedness and Response (ASPR), Division of Healthcare Preparedness Program (HPP) and the State and Local Initiative—Program Evaluation Section (SLI–PES), is proposing a Web-based reporting system to gather critical information and data from the 62 Awardees participating in the National Bioterrorism Hospital Preparedness Program (NBHPP).

The reporting system will capture information related on performance measures, critical benchmarks, minimal levels of readiness, program statistics, policies and procedures, surge capacity elements, surge capacity as measured by exercises, and other pertinent information for programmatic fiscal management, improvement and tracking performance. The data submitted to HPP will be gathered for mid-year reports and end of year reports on annual activities and progress.

Awardees will indicate the progress made toward each of the financial and programmatic objectives noted on their cooperative agreement application (CAA) on the mid-year progress report. The end of year report on annual activities will require Awardees to provide additional details on objective achievement and budget/fiscal management. The end of year report will also require Awardees to present improvements made toward achieving the program's critical benchmarks.

In addition, the reporting will increase ASPR's ability to quickly and efficiently analyze data, identify trends, make timely program decisions, and provide the Department of Health and Human Services (HHS), Congress, and other Operating Divisions with data and information.

Estimated Annualized Burden Table

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Form is Web-based interface	Mid-Year Report	62	1	2	124
Form is Web-based interface	Final Report	62	1	16	992

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Total					1,116

Seleda Perryman,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. E9–24470 Filed 10–8–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier 0990–0346]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: HITECH Act Breach Notification—OMB No. 0990–0346–Extension—Office of Civil Rights.

Abstract: The Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5) requires the Office for Civil Rights to collect information regarding breaches discovered by covered entities and their business associates under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (45 C.F.R. Part 160 and Subparts A and E of Part 164). ARRA was enacted on February 17, 2009. The Department of Health and Human Services (HHS) issued interim final regulations on August 24, 2009 (74 FR 42740), which became effective September 23, 2009, to require HIPAA covered entities and their business associates to provide notification in the case of breaches of unsecured protected health information. Section 164.404 of this interim final regulation requires HIPAA covered entities to notify affected individuals of a breach of their unsecured protected health information and, in some cases, to notify the media of such breaches pursuant to § 164.406. Section 164.408 requires covered entities to provide the Secretary with immediate notice of all breaches of unsecured protected health information involving more than 500 individuals. Additionally, the Act requires covered entities to provide the Secretary with an annual log of all breaches of unsecured protected health information that involve less than 500 individuals. Finally, business associates must notify the covered entity of any breaches that occur subject to § 164.410.

Estimated Annualized Burden Table

Type of respondent	Number of respondents	Average number of responses per respondent	Average burden hours per response	Total burden hours
Individual Notice—Written and E-mail Notice (drafting, preparing, sending, and documenting notification)	106	1	206	21,836
500 or More Affected Individuals (investigating and documenting breach)	56	1	44	2,464
Less than 500 Affected Individuals (investigating and documenting breach)	50	1	8	400
Individual Notice—Substitute Notice (posting or publishing)	70	1	1	70
Individual Notice—Substitute Notice (toll-free number)	70	1	3,438	240,660
Media Notice	56	1	1	56
Notice to Secretary (notice for breaches affecting 500 or more individuals and annual notice and maintenance of annual log)	106	1	140/60	247
TOTAL				265,733

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–24471 Filed 10–8–09; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Norma Couvertier, APT Foundation: Based on the report of an investigation conducted by the APT Foundation and additional analysis conducted by ORI in

its oversight review, ORI found that Norma Couvertier, former Research Assistant II, APT Foundation in New Haven, Connecticut, engaged in research misconduct in research supported by National Institute of Drug Abuse (NIDA), National Institutes of Health (NIH), award R37 DA015969.

Specifically, ORI found that Ms. Couvertier engaged in research misconduct by falsifying and fabricating data that were reported on Participant Urine Monitoring and Breathalyzer Result Forms (CRFs) completed by the Respondent for thirty two (32) of the enrolled study participants in the computer Based Training in Cognitive Behavioral Therapy (CBT4CBT) research study. A total of 253 alcohol breathalyzer (BALS) results were recorded for the 32 participants as being 0.000 indicating no alcohol detected, rather than the code 999 used when no breathalyzer test was done.

ORI also found that Ms. Couvetier, on 253 occasions, with 32 different study participants, falsified alcohol breathalyzer test results and knowingly and consistently entered a false negative test (indicated by 0.000) rather than identifying the result as a missing data collection (indicated by code 999).

ORI acknowledges Ms. Couvetier's verbal admissions and willingness to cooperate and assist during the APT Foundation's investigation.

Ms. Couvertier has entered into a Voluntary Settlement Agreement in which she has voluntarily agreed, for a period of three (3) years, beginning on September 18, 2009:

(1) To exclude herself from serving in any advisory capacity to the U.S. Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant;

(2) that any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or that uses her in any capacity on PHS-supported research or that submits a report of PHS-funded research in which she is involved must concurrently submit a plan for supervision of her duties to ORI. The supervisory plan must be designed to ensure the integrity of her research contribution. Respondent agreed that she will not participate in any PHS-supported research until such a supervisory plan is approved by ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852. (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. E9–24392 Filed 10–8–09; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10142, CMS–R–262, CMS–10300, CMS–10298 and CMS–10294]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CY 2011 Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), and implementing regulations at 42 CFR, Medicare Advantage organizations (MAO) and Prescription Drug Plans are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval CMS.

MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The information provided in the BPT is the basis for the plan's enrollee premiums and CMS payments for each contract year. The tool collects data such as medical expense development (from claims data and/or manual rating), administrative expenses, profit levels, and projected plan enrollment information. By statute, completed BPTs are due to CMS by the first Monday of June each year.

CMS reviews and analyzes the information provided on the Bid Pricing Tool. Ultimately, CMS decides whether to approve the plan pricing (*i.e.,* payment and premium) proposed by each organization. Refer to the supporting document attachment ''C'' for a list of changes. *Form Number:* CMS–10142 (OMB#: 0938–0944); *Frequency:* Reporting—Yearly; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 550; *Total Annual Responses:* 6,050; *Total Annual Hours:* 42,350. (For policy questions regarding this collection contact Diane Spitalnic at 410–786–5745. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CY 2011 Plan Benefit Package (PBP) Software and Formulary Submission *Use:* Under the Medicare Modernization Act (MMA), Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations are required to submit plan benefit packages for all Medicare beneficiaries residing in their service area. The plan benefit package submission consists of the PBP software, formulary file, and supporting documentation, as necessary. MA and PDP organizations use the PBP software to describe their organization's plan benefit packages, including information on premiums, cost sharing, authorization rules, and supplemental benefits. They also generate a formulary to describe their list of drugs, including information on prior authorization, step therapy, tiering, and quantity limits. Additionally, CMS uses the PBP and formulary data to review and approve the plan benefit packages proposed by each MA and PDP organization.

CMS requires that MA and PDP organizations submit a completed PBP and formulary as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to CMS for review and approval. Based on operational changes and policy clarifications to the Medicare program and continued input and feedback by the industry, CMS has made the necessary changes to the plan benefit package submission. Refer to the supporting document ''Appendix B'' for

a list of changes. *Form Number:* CMS–R–262 (OMB#: 0938–0763); *Frequency:* Reporting—Yearly; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 475; *Total Annual Responses:* 4988; *Total Annual Hours:* 12,113. (For policy questions regarding this collection contact Sara Walters at 410–786–3330. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* State Plan Amendment Templates for Additional State Plan Option for Providing Premium Assistance under Title XIX and XXI; *Use:* Section 301 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3, adds Section 2105(c)(10) of the Social Security Act effective April 1, 2009, to offer States a new option to provide premium assistance subsidies to enroll targeted low-income individuals under age 19, and their parents in qualified employer-sponsored coverage. To elect this option, a State Children's Health Insurance Program agency will complete the template pages and submit it for approval as part of a State plan amendment. *Form Number:* CMS–10300 (OMB#: 0938–New); *Frequency:* Reporting—Once and On occasion; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 255. (For policy questions regarding this collection contact Stacey Green at 410–786–6102. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Data Collection For Developing Outpatient Therapy Payment Alternatives (DOTPA) ; *Use:* In Section 545 of the Benefits Improvement and Protection Act (BIPA) of 2000, the Congress required the Secretary of the Department of Health and Human Services to report on the development of standardized assessment instruments for outpatient therapy. Currently, CMS does not collect these data. The purposes of this project are to identify, collect, and analyze therapy-related information tied to beneficiary need and the effectiveness of outpatient therapy services that is currently unavailable to CMS. The ultimate goal is to develop payment method alternatives to the current financial cap on Medicare outpatient therapy services. *Form Number:* CMS–10298 (OMB#: 0938–New); *Frequency:* Reporting—Yearly; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 190; *Total Annual Responses:* 38,632; *Total Annual Hours:* 13,658. (For policy questions regarding this collection contact David Bott at 410–786–0249. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Program Evaluation of the Eighth and Ninth Scope of Work Quality Improvement Organization Program; *Use:* The statutory authority for the Quality Improvement Organization (QIO) Program is found in Part B of Title XI of the Social Security Act, as amended by the Peer Review Improvement Act of 1982. The Social Security Act established the Utilization and Quality Control Peer Review Organization Program, now known as the QIO Program. The statutory mission of the QIO Program, as set forth in Title XVIII—Health Insurance for the Aged and Disabled, Section 1862(g) of the Social Security Act—is to improve the effectiveness, efficiency, economy, and quality of services delivered to Medicare beneficiaries. The quality strategies of the Medicare QIO Program are carried out by specific QIO contractors working with health care providers in their state, territory, or the District of Columbia. The QIO contract contains a number of quality improvement initiatives that are authorized by various provisions in the Act. As a general matter, Section 1862(g) of the Act mandates that the secretary enter into contracts with QIOs for the purpose of determining that Medicare services are reasonable and medically necessary and for the purposes of promoting the effective, efficient, and economical delivery of health care services and of promoting the quality of the type of services for which payment may be made under Medicare. CMS interprets the term ''promoting the quality of services'' to involve more than QIOs reviewing care on a case-by-case basis, but to include a broad range of proactive initiatives that will promote higher quality. CMS has, for example, included in the SOW tasks in which the QIO will provide technical assistance to Medicare-participating providers and practitioners in order to help them improve the quality of the care they furnish to Medicare beneficiaries. Additional authority for these activities appears in Section 1154(a)(8) of the Act, which requires that QIOs perform such duties and functions, assume such responsibilities, and comply with such other requirements as may be required by the Medicare statute. CMS regards survey activities as appropriate if they will directly benefit Medicare beneficiaries. In addition, Section 1154(a)(10) of the Act specifically requires that the QIOs ''coordinate activities, including information exchanges, which are consistent with economical and efficient operation of programs among appropriate public and private agencies or organizations, including other public or private review organizations as may be appropriate.'' CMS regards this as specific authority for QIOs to coordinate and operate a broad range of collaborative and community activities among private and public entities, as long as the predicted outcome will directly benefit the Medicare program.

The purpose of the study is to design and conduct an analysis evaluating the impact on national and regional health care processes and outcomes of the Ninth Scope of Work QIO Program. The QIO Program is national in scope and scale and affects the quality of healthcare of 43 million elderly and disabled Americans. CMS will conduct an impact and process analysis using data from multiple sources: (1) Primary data collected via in-depth interviews, focus groups, and surveys of QIOs, health care providers, and other stakeholders; (2) secondary data reported by QIOs through CMS systems; and (3) CMS administrative data. The findings will be presented in a final report as well as in other documents and reports suitable for publication in peer-review journals. This request relates to the following data collections: (1) Survey of QIO directors and theme leaders; (2) Survey of hospital QI directors and nursing home administrators; (3) focus groups with Medicare beneficiaries; and (4) in-person and telephone discussions with QIO staff, partner organizations, health care providers, and community health leaders. Form Number: CMS–10294 (OMB# 0938–New); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits, and Medicare beneficiaries; *Number of Respondents:* 3,343; *Total Annual Responses:* 3,343; *Total Annual Hours:* 1,707. (For policy questions regarding this collection contact Robert Kambic at 410–786–1515. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the

Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *December 8, 2009:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 1, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–24236 Filed 10–8–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10287]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Quality of Care Complaint Form; *Use:* In accordance with section 1154(a)(14) of the Social Security Act, Quality Improvement Organizations (QIOs) are required to conduct appropriate reviews of all written complaints submitted by beneficiaries concerning the quality of care received. The Medicare Quality of Care Complaint Form will be used by Medicare beneficiaries to submit quality of care complaints. This form will establish a standard form for all beneficiaries to utilize and ensure pertinent information is obtained by QIOs to effectively process these complaints. *Form Number:* CMS–10287 (OMB#: 0938–New); *Frequency:* Reporting—On occasion; *Affected Public:* Individuals or Households; *Number of Respondents:* 3,500; *Total Annual Responses:* 3,500; *Total Annual Hours:* 583. (For policy questions regarding this collection contact Tom Kessler at 410–786–1991. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on November 9, 2009.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: October 1, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–24233 Filed 10–8–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (0MB) approve the proposed information collection project: ''Medical Expenditure Panel Survey (MEPS) Household Component and the MEPS Medical Provider Component through 2012.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on May 6, 2009 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by November 9, 2009.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submissionomb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''Medical Expenditure Panel Survey (MEPS) Household Component and the MEPS Medical Provider Component Through 2012''

AHRQ seeks to renew the Medical Expenditure Panel Survey Household Component (MEPS–HC) and the MEPS Medical Provider Component (MEPS–MPC) through the year 2012. For over thirty years, the results of the MEPS and its predecessor surveys (the 1977 National Medical Care Expenditure Survey, the 1980 National Medical Care Utilization and Expenditure Survey and

the 1987 National Medical Expenditure Survey) have been used by OMB, DHHS, Congress and a wide number of health services researchers to analyze health care use, expenses and health policy. AHRQ is authorized to conduct the MEPS pursuant to 42 U.S.C. 299b–2.

Major changes continue to take place in the health care delivery system. The MEPS is needed to provide information about the current state of the health care system as well as to track changes over time. The current MEPS design, unlike the previous periodic surveys, permits annual estimates of use of health care and expenditures and sources of payment for that health care. It also permits tracking individual change in employment, income, health insurance and health status over two years. The use of the National Health Interview Survey (NHIS) as a sampling frame expands the surveys' analytic capacity by providing another data point for comparisons over time.

The MEPS–HC and MEPS–MPC are two of three components of the MEPS:

- MEPS–HC is a sample of households participating in the National Health Interview Survey (NHIS) in the prior calendar year and are interviewed 5 times over a 2½ year period. These 5 interviews yield two years of information on use of and expenditures for health care, sources of payment for that health care, insurance status, employment, health status and health care quality.
- MEPS–MPC collects information from medical and financial records maintained by hospitals, physicians, pharmacies, health care institutions, and home health agencies named as sources of care by household respondents.
- Insurance Component (MEPS–IC): The MEPS–IC collects information on establishment characteristics, insurance offerings and premiums from employers. The MEPS–IC is conducted by the Census Bureau for AHRQ and is cleared separately.

This request is for the MEPS–HC and MEPS–MPC only.

Method of Collection

The MEPS is designed to meet the need for information to estimate health expenses, insurance coverage, access, use and quality. Households selected for participation in the MEPS are interviewed five times in person. These rounds of interviewing are spaced about 5 months apart. The interview will take place with a family respondent who will report for him/herself and for other family members.

After a preliminary mail contact containing an advance letter, households will be mailed MEPS record keeping materials (a calendar) and a DVD and brochure. After the advance contact, households will be contacted for the first of five in-person interviews. The interviews are conducted as a computer assisted personal interview (CAPI). The CAPI instrument is organized as a core instrument that will repeat unchanged in each of the rounds. Additional sections are asked only once a year and provide greater depth. Dependent interviewing methods in which respondents are asked to confirm or revise data provided in earlier interviews will be used to update information such as employment and health insurance data after the round in which such data are usually collected. The main data collection modules for the MEPS–HC are as follows:

Household Component Core Instrument. The core instrument collects data about persons in sample households. Topical areas asked in each round of interviewing include condition enumeration, health status, health care utilization including prescribed medicines, expense and payment, employment, and health insurance. Other topical areas that are asked only once a year include access to care, priority conditions, income, assets, satisfaction with health plans and providers, children's health, adult preventive care. While many of the questions are asked about the entire reporting unit (RU), which is typically a family, only one person normally provides this information.

Adult Self Administered Questionnaire. A brief self-administered questionnaire (SAQ), administered once a year in rounds 2 and 4, will be used to collect self-reported (rather than through household proxy) information on health status, health opinions and satisfaction with health care for adults 18 and older.

Diabetes Care SAQ. A brief self administered questionnaire on the quality of diabetes care is administered once a year in rounds 3 and 5 to persons identified as having diabetes.

Permission forms for the MEPS–MPC. As in previous panels of the MEPS, we will ask respondents for permission to obtain supplemental information from their medical providers (hospitals, physicians, health care institutions, home health agencies and pharmacies).

MEPS–MPC Instruments

The main objective of the MEPS–MPC is a collection of data from medical providers that will serve as an imputation source of medical expenditure and source of payment data reported by household respondents. This data will supplement, replace and verify information provided by household respondents about the charges, payments, and sources of payment associated with specific health care encounters. The questionnaires used in the MEPS–MPC vary according to type of provider. The data collection instruments are as follows:

Home Care for Health Care Providers Questionnaire. This questionnaire is used to collect data from home health care agencies which provide medical care services to household respondents. Information collected includes type of personnel providing care, hours or visits provided per month, and the charges and payments for services received.

Home Care Provider Questionnaire for Non-Health Care Providers. This is used to collect information about services provided in the home by non-health care workers to household respondents because of a medical condition; for example, cleaning or yard work, transportation, shopping, or child care.

Office-based Providers Questionnaire. This questionnaire is for the office-based physician sample, including doctors of medicine (MDs) and osteopathy (DOs), as well as providers practicing under the direction or supervision of an MO or DO (*e.g.,* physician assistants and nurse practitioners working in clinics). Providers of care in private offices as well as staff model HMOs are included.

Separately Billing Doctors Questionnaire. Information from physicians identified by hospitals as providing care to sampled persons during the course of inpatient, outpatient department or emergency room care, but who bill separately from the hospital, is collected in this questionnaires.

Hospitals Questionnaire. This questionnaire is used to collect information about hospital events, including inpatient stays, outpatient department, and emergency room visits. Hospital data are collected not only from the billing department, but from medical records and administrative records departments as well. Medical records departments are contacted to determine the names of all the doctors who treated the patient during a stay or visit. In many cases, the hospital administrative office also has to be contacted to determine whether the doctors identified by medical records billed separately from the hospital itself.

Institutions Questionnaire. This questionnaire is used to collect data from health care institutions providing care to sampled persons and includes nursing homes, assisted living facilities, rehabilitation facilities, as well as any

other health care facilities providing health care to a sampled person.

Pharmacies Questionnaire. This questionnaire requests the prescription name, NDC code, date prescription was filled, payments by source, prescription strength, form and quantity, and person for whom the prescription was filled. Most pharmacies have the requested information available in electronic format and respond by providing a computer generated printout of the patient's prescription information. If the computerized form is unavailable, the pharmacy can report their data to a telephone interviewer.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the MEPS–HC and MEPS–MPC. The MEPS–HC Core Interview will be completed by 15,000 ''family level'' respondents, also referred to as RU respondents. Since the MEPS–HC consists of 5 rounds of interviewing covering a full two years of data, the annual average number of responses per respondent is 2.5 responses per year. The MEPSHC core requires an average response time of 1½ hours to administer. The Adult SAQ will be completed once a year by each person in the RU that is 18 years old and older, an estimated 21,000 persons. The Adult SAQ requires an average of 7 minutes to complete. The Diabetes care SAQ will be completed once a year by each person in the RU identified as having diabetes, an estimated 1,800 persons and takes about 3 minutes to complete. Permission forms for the MEPS–MPC will be completed once for each medical provider seen by any RU member. Each of the 15,000 RUs in the MEPS–HC will complete an average of 5.2 forms, which require about 3 minutes each to complete. The total annual burden hours for the MEPS–HC is estimated to be 62,690 hours.

The MEPS–MPC uses 7 different questionnaires; 6 for medical providers and 1 for pharmacies. Each questionnaire is relatively short and requires 3 to 5 minutes to complete.

The total annual burden hours for the MEPS–MPC is estimated to be 20,077 hours. The total annual burden hours for the MEPS–HC and MPC is estimated to be 82,767 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this information. The annual cost burden for the MEPS–HC is estimated to be $1,226,216; the annual cost burden for the MEPS–MPC is estimated to be $285,965.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
MEPS–HC				
MEPS–HC Core Interview	15,000	2.5	1.5	56,250
Adult SAQ	21,000	1	7/60	2,450
Diabetes care SAQ	1,800	1	3/60	90
Permission forms for the MEPS–MPC	15,000	5.2	3/60	3,900
Subtotal for the MEPS–HC	52,800	na	na	62,690
MEPS–MPC				
Home care for health care providers questionnaire	441	6.5	5/60	239
Home care for non-health care providers questionnaire	23	6.6	5/60	13
Office-based providers questionnaire	13,665	5.8	5/60	6,605
Separately billing doctors questionnaire	12,450	2	3/60	1,245
Hospitals questionnaire	5,402	6.5	5/60	2,926
Institutions (non-hospital) questionnaire	72	1.5	5/60	9
Pharmacies questionnaire	7,760	23.3	3/60	9,040
Subtotal for the MEPS–MPC	39,813	na	na	20,077
Grand Total	92,613	na	na	82,767

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
MEPS–HC				
MEPS–HC Core Interview	15,000	56,250	$19.56	$1,100,250
Adult SAQ	21,000	2,450	19.56	47,922
Diabetes care SAQ	1,800	90	19.56	1,760
Permission forms for the MEPS–MPC	15,000	62,690	19.56	76,284
Subtotal for the MEPS–HC	52,800	62,690	na	1,226,216
MEPS–MPC				
Home care for health care providers questionnaire	441	239	14.24	3,403
Home care for non-health care questionnaire	23	13	19.56	254
Office-based providers questionnaire	13,665	6,605	14.24	94,055
Separately billing doctors questionnaire	12,450	1,245	14.24	17,729
Hospitals questionnaire	5,402	2,926	14.24	41,666

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Institutions (non-hospital) questionnaire	72	9	14.24	128
Pharmacies questionnaire	7,760	9,040	14.24	128,730
Subtotal for the MEPS–MPC	39,813	20,077	na	285,965
Grand Total	92,613	82,767	na	1,512,181

*Based upon the mean of the average wages for Healthcare Support Workers, All Other (31–9099) and All Occupations (00–0000), Occupational Employment Statistics, May 2007 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_nat.htm#b29–0000.*

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total and annualized cost of this information collection. The cost associated with the design and data collection of the MEPS–HC and MEPS–MPC is estimated to be $47.6 million in each of the next three fiscal years.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost Component	Total cost (millions)	Annualized cost (millions)
Sampling Activities	$2.79	$0.93
Interviewer Recruitment and Training	8.52	2.84
Data Collection Activities	86.7	28.9
Data Processing	21.39	7.13
Production of Public Use Data Files	19.53	6.51
Project Management	3.93	1.31
Total	142.8	47.6

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for 0MB approval of the proposed information collection. All comments will become a matter of public record.

Dated: September 16, 2009.

Carol M. Clancy,

Director.

[FR Doc. E9–24305 Filed 10–8–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2009–E–0073 and FDA–2009–E–0015]

Determination of Regulatory Review Period for Purposes of Patent Extension; ENTEREG; U.S. Patent Nos. 5,250,542 and 5,434,171

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ENTEREG and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit written comments and petitions 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.*

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug

products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ENTEREG (alvimopan). ENTEREG is a peripherally acting μ-opioid receptor antagonist indicated to accelerate the time to upper and lower gastrointestinal recovery following partial large or small bowel resection surgery with primary anastomosis. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for ENTEREG (U.S. Patent Nos. 5,250,542 and 5,434,171) from Eli Lilly and Company, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 26, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ENTEREG represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ENTEREG is 5,305 days. Of this time, 3,879 days occurred during the testing phase of the regulatory review period, while 1,426 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: November 12, 1993. The applicant claims November 11, 1993, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 12, 1993, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act: June 25, 2004*. FDA has verified the applicant's claim that the new drug application (NDA) 21–775 was submitted on June 25, 2004.

3. *The date the application was approved*: May 20, 2008. FDA has verified the applicant's claim that NDA 21–775 was approved on May 20, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,827 days of patent term extension for U.S. Patent No. 5,250,542 and 1,826 days of patent term extension for U.S. Patent No. 5,434,171.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by December 8, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by April 7, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 31, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–24457 Filed 10–8–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0448]

Draft Guidance for Industry and Food and Drug Administration Staff; the Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #13; 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 ''The Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #13.'' This document is intended to provide guidance to mammography facilities and their personnel. It represents FDA's current thinking on the final regulations implementing the Mammography Quality Standards Act of 1992 (MQSA). This guidance document updates previous guidance. 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 January 7, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''The Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #13'' 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 20993–0002. 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: Charles Finder, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4646, Silver Spring, MD 20993–0002, 301–796–5715.

SUPPLEMENTARY INFORMATION:

I. Background

MQSA (Pub. L. 102–539) was signed into law on October 27, 1992, to establish national quality standards for mammography. It is codified at 42 U.S.C. 263b. The MQSA requires that, in order to lawfully provide mammography services after October 1, 1994, all facilities, except facilities of the Department of Veterans Affairs, must be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary) or by an approved State certification agency (section 354(b) of the MQSA; 42 U.S.C. 263b(b)). In June 1993, the authority to approve accreditation bodies and State certification agencies and to certify facilities was delegated by the Secretary to the FDA (58 FR 32543). On October 28, 1997, the FDA first published final regulations implementing the MQSA in the **Federal Register** (21 CFR part 900) (62 FR 55852). The MQSA has twice been amended since its enactment, through the Mammography Quality Standards Reauthorization Acts (MQSRA) of 1998 and 2004 (Pub. L. 105–248 and Pub. L. 108–365).

This draft guidance updates the Policy Guidance Help System and addresses or contains the following:

1. Updated contact information for accreditation bodies and certification agencies;
2. General guidance regarding Additional Mammography Reviews (AMRs);
3. Previously approved alternative standards;
4. Centers for Medicare and Medicaid Services (CMS) reimbursement;
5. Mechanisms to inform physicians and patients of mammography results;
6. Labeling of mammographic images;
7. Mammographic modality and its impact on personnel experience requirements;
8. Clarification of the personnel 6-month exemption period;
9. Information on calibrating the air kerma measuring instrument;
10. Medical physicist involvement as it applies to cassette replacement;
11. Full Field Digital Mammography (FFDM) and use of single-use cushion pads;
12. Quality control testing of computer controlled compression devices;
13. Mammography equipment evaluations of laser printers;
14. Quality control testing of monitors and laser printers;
15. Mammography equipment evaluations of new FFDM units; and
16. Mammography equipment evaluations of off-site laser printers and monitors.

In November 1998, FDA compiled all to-date final FDA guidances related to MQSA and put them into a computerized searchable database called the Policy Guidance Help System (PGHS). The PGHS is available on the Internet at *http://www.fda.gov/cdrh/mammography/robohelp/start.htm.*

FDA periodically updates the information in the PGHS, and this document serves as a further update. Individuals wishing to receive automatic notification of future updates may subscribe to our e-mail ListServ by visiting *http://service.govdelivery.com/service/subscribe.html?code=USFDA_45* and following the directions there.

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 ''The Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #13.'' 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 ''The Mammography Quality Standards Act Final Regulations: Modifications and Additions to Policy Guidance Help System #13,'' 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 (1695) 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 manufacturers' 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

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 900 have been approved under OMB Control No. 0910–0309.

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: October 1, 2009.

Jeffrey Shuren,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. E9–24435 Filed 10–8–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0118]

Guidances for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Documents: Respiratory Viral Panel Multiplex Nucleic Acid Assay; and Testing for Human Metapneumovirus Using Nucleic Acid Assays; and Testing for Detection and Differentiation of Influenza A Virus Subtypes Using Multiplex Nucleic Acid Assays; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the special controls guidance document entitled ''Class II Special Controls Guidance Document: Respiratory Viral Panel Multiplex Nucleic Acid Assay,'' and two companion special controls guidance documents entitled ''Class II Special Controls Guidance Document: Testing for Human Metapneumovirus (hMPV) Using Nucleic Acid Assays'' and ''Class II Special Controls Guidance Document: Testing for Detection and Differentiation of Influenza A Virus Subtypes Using Multiplex Nucleic Acid Assays.'' These guidance documents describe a means by which respiratory viral panel multiplex nucleic acid assays may comply with the requirement of special controls for class II devices. The guidance documents include recommendations for performance evaluation, labeling, and measures to address the effects of ancillary reagents (specific reagents required under instructions for use of the assay but not provided) on safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule codifying the classification of the respiratory viral panel multiplex nucleic acid assay into class II (special controls), and establishing these guidance documents as the special controls for those devices.

DATES: Submit written or electronic comments on the guidances at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance documents entitled ''Class II Special Controls Guidance Document: Respiratory Viral Panel Multiplex Nucleic Acid Assay,'' ''Class II Special Controls Guidance Document: Testing for Human Metapneumovirus (hMPV) Using Nucleic Acid Assays,'' or ''Class II Special Controls Guidance Document: Testing for Detection and Differentiation of Influenza A Virus Subtypes Using Multiplex Nucleic Acid Assay'' 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 these guidances 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: Zivana Tezak, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5550, Silver Spring, MD 20993, 301–796–6204.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule codifying the classification of the respiratory viral panel multiplex nucleic acid assay into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)), and establishing these guidance documents as the special controls for respiratory viral panel multiplex nucleic acid assay devices classified under that regulation. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1), request FDA to classify the device under the criteria set forth in section 513(a)(1). FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

Under this authority, on January 3, 2008, FDA by order classified into class II, subject to these special control guidance documents, the Luminex Molecular Diagnostics, Inc., xTAG™ RVP (Respiratory Viral Panel).

II. Significance of Special Controls Guidance Documents

FDA believes that adherence to the recommendations described in these guidance documents, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of respiratory viral panel multiplex nucleic acid assays classified under § 866.3080. In order to be classified as a class II device under § 866.3080, an RVP device must comply with the requirement of special controls; manufacturers must address the issues requiring special controls as identified in the guidance documents, either by following the recommendations in the guidance documents or by some other means that provides equivalent assurances of safety and effectiveness.

III. Electronic Access

Persons interested in obtaining a copy of any of the guidance documents may do so by using the Internet. To receive ''Class II Special Controls Guidance Document: Respiratory Viral Panel Multiplex Nucleic Acid Assay,'' (document number 1669); ''Class II Special Controls Guidance Document: Testing for Human Metapneumovirus (hMPV) Using Nucleic Acid Assays,'' (document number 1673); or ''Class II Special Controls Guidance Document: Testing for Detection and Differentiation of Influenza A Virus Subtypes Using Multiplex Nucleic Acid Assays,'' (document number 1672); 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 numbers shown in parentheses in the previous sentence 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/MedicalDevices/default.htm*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule establishing as special controls for the respiratory viral panel multiplex nucleic acid assay the three guidance documents that are the subject of this notice. The preamble to that rule addresses the application of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) to the information collection provisions referenced in these guidance documents.

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. Revised comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 1, 2009.

Jeffrey Shuren,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. E9–24431 Filed 10–8–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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: Center for Scientific Review Special Emphasis Panel; Molecular, Cellular and Developmental Neurobiological Small Business.

Date: November 16–17, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Eugene Carstea, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, (301) 435–0634.

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: November 16–17, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Palomar Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Developmental Biology and Aging.

Date: November 16, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Joseph G. Rudolph, PhD, Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–09–008 BRDG–SPAN and RFA–OD–09–009 Catalyst ARRA Review Panel #1.

Date: November 16, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street, NW., Washington, DC 20001.

Contact Person: David Balasundaram, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Infectious Diseases and Microbiology Fellowships.

Date: November 16–17, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Alexander D. Politis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Musculoskeletal Rehabilitation.

Date: November 16, 2009.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Aftab A. Ansari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–594–6376, *ansaria@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Clinical Studies and Epidemiology Study Section.

Date: November 17–18, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Hilary D. Sigmon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–09–008 BRDG–SPAN and RFA–OD–09–009, Catalyst ARRA Review Panel #5.

Date: November 17, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Mary Custer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Orthopedic and Skeletal Biology SBIR/STTR.

Date: November 17, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Kan Ma, PhD, Scientific Review Officer, National Institute of Arthritis, Musculoskeletal Scientific Review Branch, One Democracy Plaza Suite 800, Bethesda, MD 20892–4872, 301–451–4838, *mak2@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pilot and Feasibility Clinical Studies in Digestive Diseases and Nutrition.
Date: November 17, 2009.
Time: 11 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).
Contact Person: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Computational Biology, Image Processing, and Data Mining.
Date: November 18–19, 2009.
Time: 8 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).
Contact Person: Marc Rigas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7849, Bethesda, MD 20892, 301–402–1074, *rigasm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–09–008 BRDG–SPAN and RFA–OD–09–009, Catalyst ARRA Review Panel #4.
Date: November 19, 2009.
Time: 7:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Aidan Hampson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7850, Bethesda, MD 20892, (301) 435–0634, *hampsona@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation.
Date: November 19–20, 2009.
Time: 8 a.m. to 8 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).
Contact Person: Jean D. Sipe, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiovascular Sciences Small Business Activities.
Date: November 19–20, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco, 1101 Fourth Avenue, Seattle, WA 98101.
Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Roadmap HTS Assay for MLPCN.
Date: November 19, 2009.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: James J. Li, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–435–2417, *lijames@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business—Respiratory Sciences.
Date: November 19–20, 2009.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).
Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risk Prevention and Health Behavior.
Date: November 20, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Palomar Hotel, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Karen Lechter, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24304 Filed 10–8–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Human Genome Research Institute Special Emphasis Panel, CEER RENEWAL RFA HG–09–003.
Date: November 19–20, 2009.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24360 Filed 10–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Hepatitis C Cooperative Research Centers (U19).

Date: November 18–20, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Diplomat/Ambassador Room, Bethesda, MD 20814.

Contact Person: Betty Poon, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2660, *poonb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: October 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24362 Filed 10–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps (NHSC).

Dates and Times: November 12, 2009, 3 p.m.–5:15 p.m.; November 13, 2009, 8:30 a.m.–4 p.m.; and November 14, 2009, 8:30 a.m.–1 p.m.

Place: Hilton Washington DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852. Phone: 301–468–1100.

Status: The meeting will be open to the public.

Agenda: The Council will be convening in Rockville, Maryland, to hear updates from the Agency and the Bureau of Clinician Recruitment and Service, discuss recruitment strategies for the NHSC and address current workforce issues.

For Further Information Contact: CDR Albert Perrine, Bureau of Clinician Recruitment and Service, Health Resources and Services Administration, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857; e-mail: *aperrine@hrsa.gov;* telephone: 301–443–4543.

Dated: October 2, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–24394 Filed 10–8–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Member Conflict Review, Program Announcement Number (PA) 07–318, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–3 p.m., November 9, 2009 (Closed).

Place: NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26506, Telephone: (304) 285–6143.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Member Conflict Review, PA 07–318.''

Contact Person for More Information: Chris Langub, Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop E74, Atlanta, Georgia 30333; Telephone: (404) 498–2543.

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.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–24398 Filed 10–8–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel. Joint T–32 Review.

Date: November 2, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529. (301) 496–5388. *wiethorp@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24171 Filed 10–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD).

Date and Time:

November 12, 2009, 8:30 a.m.–4:30 p.m.

November 13, 2009, 8 a.m.–2 p.m.

Place: Hilton Washington DC/Rockville, Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland 20910.

Status: The meeting will be open to the public.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105–392. At this meeting, the Advisory Committee will finalize its eighth report about the re-design of primary health care and begin work on its ninth report about the primary care pipeline. Reports are submitted to Congress and to the Secretary of the Department of Health and Human Services.

Agenda: The meeting on Thursday, November 12 will begin with opening remarks from the Chair of the Advisory Committee and welcoming comments from senior management of the Health Resources and Services Administration. Following several presentations on the primary care workforce, the Advisory Committee will finalize its eighth report about the redesign of the delivery of primary health care with implications for the training of health care practitioners. The Advisory Committee will then begin work on its ninth report about revitalizing primary care by priming the primary care pipeline. In both plenary sessions and in small groups, the Advisory Committee will focus on report recommendations and an outline for the report. On the first day of the meeting, annual elections will be held for Chair and two Vice Chairs. On Friday, November 13, the Advisory Committee will continue to work on its ninth report, determine next steps in the report preparation process, and plan for the next Advisory Committee meeting. An opportunity will be provided for public comment.

For Further Information Contact: Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerilyn K. Glass, M.D., PhD., Advisory Committee Executive Secretary, Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6190. The Web address for information on the Advisory Committee and the November 12–13, 2009 meeting agenda is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd.*

Dated: October 2, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–24393 Filed 10–8–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Childhood Nephrotic Syndrome.

Date: November 5, 2009.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Multi-Center Clinical Study Planning.

Date: November 9, 2009.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Genetics of Crohn's Disease.

Date: November 12, 2009.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6706 Democracy Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Gastrointestinal Programs.

Date: November 16, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Peyronie's Disease Ancillary Studies.

Date: November 16, 2009.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Studies.

Date: November 17, 2009.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Multi-Center Clinical Study Planning.

Date: November 23, 2009.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch,

DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov*.

(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: October 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24363 Filed 10–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.) notice is hereby given of the following meeting

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for type 1 diabetes. The outcome of the evaluation will be a decision whether NIDDK should support the request and make available contract resources for development of the potential therapeutic to improve the treatment or prevent the development of type 1 diabetes and its complications. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Type 1 Diabetes—Rapid Access to Intervention Development Special Emphasis Panel, National Institute of Diabetes and Digestive and Kidney Diseases.

Date: October 28, 2009.

Time: 11 a.m.–1 p.m.

Agenda: To evaluate requests for preclinical development resources for potential new therapeutics for type 1 diabetes and its complications.

Place: 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Dr. Myrlelne Staten, Senior Advisor, Diabetes, Translation Research, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, NIH, 6707 Democracy Boulevard, Bethesda, MD 20892–5460, 301 402–7886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 98.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24361 Filed 10–8–09; 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; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Biobehavioral and Behavioral Sciences Subcommittee.

Date: November 17–18, 2009.

Time: 9 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24359 Filed 10–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Advisory Council for Healthcare Research and Quality: Request for Nominations for Public Members

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for nominations for public members.

SUMMARY: Section 931 of the Public Health Service Act (PHS Act), 42 U.S.C. 299c, established a National Advisory Council for Healthcare Research and Quality (the Council). The Council is to advise the Secretary of HHS (Secretary) and the Director of the Agency for Healthcare Research and Quality (AHRQ) on matters related to activities of the Agency to improve the quality, safety, efficiency, and effectiveness of health care for all Americans.

Seven current members' terms will expire in November 2009. To fill these positions in accordance with the legislative mandate establishing the Council, we are seeking individuals who are distinguished: (1) In the conduct of research, demonstration projects, and evaluations with respect to health care; (2) in the fields of health care quality research or health care improvement; (3) in the practice of medicine; (4) in other health professions; (5) in representing the private health care sector (including health plans, providers, and purchasers) or administrators of health care delivery systems; (6) in the fields of health care economics, information systems, law, ethics, business, or public policy; and (7) in representing the interests of patients and consumers of health care. Individuals are particularly sought with experience and success in activities specified in the summary above.

DATES: Nominations should be received on or before Friday, November 20, 2009.

ADDRESSES: Nominations should be sent to Ms. Deborah Queenan, AHRQ, 540 Gaither Road, Room 3238, Rockville, Maryland 20850. Nominations also may be faxed to (301) 427–1341.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Queenan, AHRQ, at (301) 427–1330.

SUPPLEMENTARY INFORMATION: Section 931 of the PHS Act, 42 U.S.C. 299c, provides that the Secretary shall appoint to the National Advisory Council for Healthcare Research and Quality twenty-one appropriately qualified individuals. At least seventeen members shall be representatives of the public and at least one member shall be a specialist in the rural aspects of one or more of the professions or fields listed in the above summary. In addition, the Secretary designates, as ex officio members, representatives from other Federal agencies specified in the authorizing legislation, principally agencies that conduct or support health care research, as well as Federal officials the Secretary may consider appropriate. The Council meets in the Washington, DC metropolitan area, generally in Rockville, Maryland, approximately three times a year to provide broad guidance to the Secretary and AHRQ's Director on the direction of and programs undertaken by AHRQ.

Seven individuals will be selected presently by the Secretary to serve on the Council beginning with the meeting in the spring of 2010. Members generally serve 3-year terms. Appointments are staggered to permit an orderly rotation of membership.

Interested persons may nominate one or more qualified persons for membership on the Council. Self-nominations are accepted. Nominations shall include: (1) A copy of the nominee's résumé or curriculum vitae; and (2) a statement that the nominee is willing to serve as a member of the Council. Selected candidates will be asked to provide detailed information concerning their financial interests, consultant positions and research grants and contracts, to permit evaluation of possible sources of conflict of interest.

The Department seeks a broad geographic representation. In addition, AHRQ conducts and supports research concerning priority populations, which include: Low-income groups; minority groups; women; children; the elderly; and individuals with special health care needs, including individuals with disabilities and individuals who need chronic care or end-of-life health care. See 42 U.S.C. 299(c). Nominations of candidates with expertise in health care for these priority populations are encouraged.

Dated: October 2, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–24306 Filed 10–8–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0133]

Homeland Security Information Network Advisory Committee

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Information Network Advisory Committee (HSINAC) will meet from October 19, 2009 to October 21, 2009, in Potomac, MD. This meeting is open to the public during the times listed in this notice.

DATES: The HSINAC will meet Monday, October 19, 2009, from 2 p.m. to 6 p.m., Tuesday, October 21, 2009 from 8:30 a.m. to 6 p.m. and on Thursday, October 22, 2009, from 9 a.m. to 12 p.m. Please note that the meeting might close early if the committee has completed its business.

ADDRESSES: The meeting convenes at the Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854–4436. All visitors to Bolger Center must pre-register to gain admittance to the building. To register, please contact Gabrielle Gallegos by close of business on October 16, 2009 at (202–357–7624) (202–357–7680 TTY) or *HSINAC@DHS.Gov.* Seating may be limited and is available on a first-come, first-served basis. Participation in HSINAC deliberations is limited to committee members and Department of Homeland Security officials.

Send written material, comments, questions, and requests to make oral presentations to Gabrielle Gallegos, Department of Homeland Security, by electronic mail to *HSINAC@DHS.Gov* or by fax to 202–282–8191. Include the docket number, DHS–2009–0133 in the subject line of the message. Regular mail may be sent to Gabrielle Gallegos, Department of Homeland Security, 245 Murray Lane, SW., BLDG 410, Washington, DC 20528–0426.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and DHS–2009–0133, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the Homeland Security Information Network Advisory Committee, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Gabrielle Gallegos, 245 Murray Lane, SW., BLDG 410, Washington, DC 20528–0426, *HSINAC@DHS.Gov,* 202–357–7624, fax 202–282–8191.

SUPPLEMENTARY INFORMATION: Notice of this meeting is delivered in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The purpose of the Homeland Security Information Network Advisory Committee is to identify issues and provide independent advice and recommendations for the improvement of the Homeland Security Information Network (HSIN) to senior leadership of the Department, in particular the Director of Operations Coordination and Planning. The meeting agenda will include discussion about the following topics: Demonstration of the system update, capabilities release timelines and milestones, change control board, future requirements, policy, committee reports, security and controlled unclassified information.

Pursuant to 41 CFR 102–3.150(b), this notice was published late as a result of exceptional circumstances. An administrative processing error prevented earlier publication, and the Department determined that it would be impracticable to reschedule the substantive activity scheduled for this meeting. In order to allow the greatest possible public participation, the Department has extended the usual deadlines to register public participants for the conference and to receive public comments. As noted above, that date is October 16, 2009.

Information on Services for Individuals With Disabilities and Language Requirements

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Gabrielle Gallegos as soon as possible. The Federal Relay Service (FedRelay), a Federal Government telecommunications service, enables those who are deaf, hard-of-hearing, deaf/blind, or have speech disabilities equal communication access.

All calls are strictly confidential and no records of conversations are maintained. Toll-Free and Toll Access Numbers for Federal Relay are:

800–877–8339 TTY (Text Telephone)/ ASCII (American Standard Code For Information Interchange);
877–877–6280 VCO (Voice Carry Over);
877–877–8982 Speech-to-Speech;
800–845–6136 Spanish;
800–877–0996 Customer Service (Voice/TTY, ASCII and Spanish);
866–377–8642 Voice;
866–893–8340 TeleBraille.
From non-domestic locations the number is 605–331–4923.

Dated: October 6, 2009.

Mary Kruger,

Chief of Staff, Department of Homeland Security, Office of Operations Coordination and Planning.

[FR Doc. E9–24441 Filed 10–8–09; 8:45 am]

BILLING CODE 9110–9A–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–39]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, Room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–5422; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS2603, Washington, DC 20240; (202) 208–5399; *Navy:* Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: October 1, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/09/2009

SUITABLE/AVAILABLE PROPERTIES

BUILDING

ALASKA

18 Fuel Storage Tanks
Point Barrow Long Range
Radar Site
Barrow AK 99723
Landholding Agency: GSA
Property Number: 54200930009
Status: Excess
GSA Number: 9–D–AK–824
Comments: 18,000–65,000 gallons, off-site use only

IDAHO

Bldgs. MFC757, MFC–757A Idaho National Laboratory
Scoville ID 83415

Landholding Agency: GSA
Property Number: 54200930010
Status: Excess
GSA Number: 9–B–ID–576
Comments: Concrete basin and cooling tower foundation, potential contamination, off-site use only

MAINE

Border Patrol Station
Rt 1A
Van Buren ME 46278
Landholding Agency: GSA
Property Number: 54200930015
Status: Excess
GSA Number: 1–X–ME–0689
Comments: Bldg.—approx. 1717 sq. ft., attached trailer—approx. 460 sq. ft.

OREGON

3 Bldgs.
Fremont-Winema
National Forests
Lakeview OR 97630
Landholding Agency: GSA
Property Number: 54200930013
Status: Excess
GSA Number: 9–A–OR–0779–AA
Comments: Various sq. ft., most recent use—storage, off-site use only

VIRGINIA

Tract 07–194
13425 Wilderness Park Dr.
Spotsylvania VA 22553
Landholding Agency: Interior
Property Number: 61200930019
Status: Excess
Comments: Split level home, off-site use only

WEST VIRGINIA

Naval Reserve Center
841 Jackson Ave.
Huntington WV 25704
Landholding Agency: GSA
Property Number: 54200930014
Status: Excess
GSA Number: 4–N–WV–0555
Comments: 31,215 sq. ft., presence of asbestos/lead paint, most recent use—office

LAND

ARIZONA

9.46 acres
Tract No. WC–1–2e
Waddell Canal
Phoenix AZ 85383
Landholding Agency: Interior
Property Number: 61200930013
Status: Excess
Comments: Operating pumping station

COLORADO

0.317 acres
Animas-La Plata Project
Durango CO 81301
Landholding Agency: Interior
Property Number: 61200930014
Status: Excess
Comments: Electrical substation, subject to perpetual easement

UNSUITABLE PROPERTIES

BUILDING

ALABAMA

15 Bldgs.
Dauphin Island
Mobile AL
Landholding Agency: Coast Guard
Property Number: 88200930002
Status: Underutilized
Reasons: Secured Area

CALIFORNIA

Bldg. 004J
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200930003
Status: Excess
Reasons: Secured Area

Bldgs. 6110, 6111
Yosemite National Park
Tuolumne CA 95389
Landholding Agency: Interior
Property Number: 61200930017
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 88
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77200930014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 46
Integrated Support Command
Alameda CA 94501
Landholding Agency: Coast Guard
Property Number: 88200930003
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

DISTRICT OF COLUMBIA

Bldg. A379
Anacostia Naval Annex
Washington DC 20373
Landholding Agency: Navy
Property Number: 77200930015
Status: Unutilized
Reasons: Extensive deterioration, Floodway, Secured Area

FLORIDA

5 Bldgs.
Everglades National Park
Monroe FL
Landholding Agency: Interior
Property Number: 61200930015
Status: Unutilized
Directions: 1–504, 1–486D, 1–426, 1–427, 1–414
Reasons: Extensive deterioration

GEORGIA

Tract 101–66, 67
MLK Natl Historic Site
Atlanta GA 30312
Landholding Agency: Interior
Property Number: 61200930018
Status: Unutilized
Reasons: Extensive deterioration

HAWAII

Bldg. 1446
Naval Station
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77200930016
Status: Excess
Reasons: Extensive deterioration

MARYLAND

12 Bldgs.
Naval Support Facility
Indian Head MD 20640
Landholding Agency: Navy
Property Number: 77200930017
Status: Excess
Directions: 893, 1214, 1215, 1216, 1217, 1219, 1223, 1288, 1299, 1670, 1672, 1674
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

NEW MEXICO

11 Bldgs.
Los Alamas Natl Lab
Los Alamos NM
Landholding Agency: Energy
Property Number: 41200930004
Status: Excess
Directions: 21–0031, 21–0042, 21–0080, 21–0212, 21–0328, 21–0355, 21–0357, 21–0370, 54–0062, 54–0215, 54–0216
Reasons: Extensive deterioration, Secured Area

11 Bldgs.
Los Alamos Natl Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200930005
Status: Excess
Directions: 03–2239, 03–02240, 03–1535, 03–1651, 03–1790, 16–0251, 16–0898, 16–1407, 48–0046, 48–0047, 64–0027
Reasons: Secured Area

NEW YORK

Club 37
Massena NY 13662
Landholding Agency: GSA
Property Number: 54200930011
Status: Surplus
GSA Number: NY0944–AA
Reasons: Extensive deterioration

NORTH CAROLINA

Diamond Shoals Light Station
Cape Hatteras NC
Landholding Agency: GSA
Property Number: 54200930012
Status: Excess
GSA Number: 4–U–NC–751
Reasons: Floodway

PENNSYLVANIA

Bldgs. 47, 531, 1070 Naval Support Activity
Mechanicsburg PA
Landholding Agency: Navy
Property Number: 77200930018
Status: Excess
Reasons: Extensive deterioration

RHODE ISLAND

Bldg. A71CHI Naval Station
Newport RI 02841
Landholding Agency: Navy
Property Number: 77200930019
Status: Excess
Reasons: Extensive deterioration, Floodway Secured Area

VIRGINIA

Tracts 01–126, 01–153
Appomattox Court House National Park
Appomattox VA 24522
Landholding Agency: Interior
Property Number: 61200930016
Status: Excess
Reasons: Extensive deterioration

Tract 03–182, 268
9941 Brock Rd.
Spotsylvania VA 22553
Landholding Agency: Interior
Property Number: 61200930020
Status: Excess
Reasons: Extensive deterioration

Tract 03–233
8621 Old Plank Rd
Fredericksburg VA 22407
Landholding Agency: Interior
Property Number: 61200930021
Status: Excess
Reasons: Extensive deterioration

11 Bldgs.
Naval Air Station
Dam Neck Annex Virginia Beach VA
Landholding Agency: Navy
Property Number: 77200930020
Status: Excess
Directions: 112, 113, 116, 120, 121, 122, 130, 131, 138, 139, 198
Reasons: Extensive deterioration, Secured Area

9 Bldgs.
Naval Air Station
Dam Neck Annex
Virginia Beach VA
Landholding Agency: Navy
Property Number: 77200930021
Status: Excess
Directions: 442, 529, 611, 614, 840, 842, 843, 845, 846
Reasons: Extensive deterioration, Secured Area

8 Bldgs.
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200930022
Status: Excess
Directions: 404, 405, 407, 408, 409, 410, 411, 412
Reasons: Secured Area, Extensive deterioration

10 Bldgs.
Naval Weapon Station
Yorktown VA 23691
Landholding Agency: Navy
Property Number: 77200930023
Status: Excess
Directions: 541, 542, 543, 544, 545, 546, 547, 548, 549, 550
Reasons: Extensive deterioration, Secured Area

Bldg. LP23
Naval Station
Norfolk VA 23511
Landholding Agency: Navy
Property Number: 77200930024
Status: Excess
Reasons: Secured Area

WEST VIRGINIA

Bldg. 88
Naval Information
Operations Command
Sugar Grove WV 26815
Landholding Agency: Navy
Property Number: 77200930025
Status: Excess
Reasons: Secured Area

[FR Doc. E9–24138 Filed 10–8–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 19, 2009.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on November 19, 2009 at 9 a.m. at the South Grafton Community Center located at 25 Main Street, South Grafton, MA for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about thirty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Jan H. Reitsma, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Jan H. Reitsma, Executive Director of the Commission at the aforementioned address.

Jan H. Reitsma,
Executive Director, BRVNHCC.

Notice of Full Commission Meeting for the John H. Chafee Blackstone River Valley National Heritage Corridor Commission

Notice is hereby given, in accordance with section 552b of Title 5, United States Code, that the meeting of the Full Commission of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 19, 2009 at 9 a.m. at the South Grafton Community Center located at 25 Main Street, South Grafton, MA. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated Resource Management Plan for those lands and waters within the Corridor in Rhode Island and Massachusetts.

[FR Doc. E9–24406 Filed 10–8–09; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2009-N216] [96200-1672-0005-7E]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; 1018-0142; Wildlife Without Borders—Critically Endangered Animals Conservation Fund Grant Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on November 30, 2009. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must send comments on or before November 9, 2009.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018-0142.

Title: Wildlife Without Borders—Critically Endangered Animals Conservation Fund Grant Program.

Service Form Number(s): 3-2338A.

Type of Request: Extension of a currently approved collection.

Affected Public: Domestic and nondomestic Federal, State, and local governments; nonprofit, nongovernmental organizations; public and private institutions of higher education; and any other organization or individual with demonstrated experience deemed necessary to carry out the proposed project.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Applications	40	40	12 hours	480
Reports	10	20	30 hours	600
Totals	50	60		1,080

Abstract: Section 8 of the Endangered Species Act (16 U.S.C. 1531 et seq.) authorizes the establishment of the Wildlife Without Borders—Critically Endangered Animals Conservation Fund to fund projects that conserve the world's most endangered species. Critically endangered animals are those that face an extremely high risk of extinction in the immediate future. The Division of International Conservation, Fish and Wildlife Service, administers this competitive grants program to provide funding for conservation actions that have a high likelihood of creating durable benefits to specific species facing immediate threat of extinction.

Applicants submit proposals for funding in response to a Notice of Funding Availability that we publish on Grants.gov and the program web page. Applications consist of:

(1) Cover page with basic project details (FWS Form 3-2338A).

(2) Project summary and narrative.

(3) Letter of appropriate government endorsement.

(4) Brief curricula vitae for key project personnel.

(5) Complete Standard Forms 424 and 424b (non-domestic applicants do not submit the standard forms).

Applications may also include, as appropriate, a copy of the organization's Negotiated Indirect Cost Rate Agreement (NIRCA) and any additional documentation supporting the proposed project.

All assistance awards under this program have a maximum reporting requirement of a:

(1) Mid-term report (performance report and a financial status report) due within 30 days of the conclusion of the first half of the project period, and

(2) Final report (performance and financial status report and copies of all deliverables, photographic documentation of the project and products resulting from the project) due within 90 days of the end of the performance period.

Comments: On July 17, 2009, we published in the **Federal Register** (74 FR 34771) a notice of our intent to request that OMB renew this information collection. In that notice, we solicited comments for 60 days, ending on September 15, 2009. We did not receive any comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: October 5, 2009

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E9–24455 Filed 10–8–09; 9:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Comment Request for the USGS Production Estimate, Construction Sand and Gravel and Crushed and Broken Stone

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0065).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to the Office of Management and Budget (OMB) an information collection request (ICR) for the extension of the currently approved paperwork requirements for the USGS *Construction Sand and Gravel and Crushed and Broken Stone.* This collection consists of three forms and this notice provides the public an opportunity to comment on the paperwork burden of these forms. We 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.

DATES: You must submit comments on or before December 8, 2009.

ADDRESSES: Please submit a copy of your comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Centre Avenue, Fort Collins, CO 80526–8118 (mail); 970–226–9445 (phone); 970–226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–0065 in the subject line.

FOR FURTHER INFORMATION CONTACT: Shonta E. Osborne at 703–648–7960 or by mail at U.S. Geological Survey, 985 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

SUPPLEMENTARY INFORMATION:

Title: Production Estimate, Construction Sand and Gravel and Crushed and Broken Stone.

OMB Control Number: 1028–0065.

Type of Request: Extension of a currently approved collection.

Abstract: This collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, academia, and the general public. This information will be published in the ''Mineral Commodity

Summaries,'' the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked.

Affected Public: Businesses that produce nonfuel industrial minerals.

Respondent Obligation: Voluntary.

Frequency of Collection: Quarterly and Annually.

Estimated Number of Annual Responses: 2,014.

Annual Burden Hours: 470 hours. We expect to receive 2,014 annual responses. We estimate an average of 10–15 minutes per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done. To comply with the public process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60 day public comment period.

USGS Information Collection Clearance Officer: Phadrea Ponds 970–226–9445.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team, U.S. Geological Survey.

[FR Doc. E9–24443 Filed 10–8–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Public Meeting for the National Park Service Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Gates of the Arctic National Park Subsistence Resource Commission (GAAR SRC) will meet to develop and continue work on National Park Service (NPS) subsistence hunting program recommendations and other related subsistence management issues. This meeting is open to the public and will have time allocated for public testimony. The public is welcomed to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after the meeting. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION ON THE GAAR SRC MEETING CONTACT: Dave Krupa, Subsistence Manager, Tel. (907) 455–0631, Address: 4175 Geist Road, Fairbanks, AK 99703, or Clarence Summers, Subsistence Manager, Tel. (907) 644–3603.

GAAR SRC Meeting Date and Location: The GAAR SRC meeting will be held on Wednesday, November 4, 2009, and Thursday, November 5, 2009, from 9 a.m. to 5 p.m. at the Sophie Station Hotel, Tel. (907) 479–3650, in Fairbanks, AK. The GAAR SRC meeting may end early if all business is completed.

The proposed meeting agenda for each meeting includes the following:

1. Call to Order
2. SRC Roll Call and Confirmation of Quorum
3. SRC Chair and Superintendent's Welcome and Introductions
4. Approval of Minutes
5. Review and Approve Agenda
6. SRC Purpose and Status of Membership
7. SRC Member Reports
8. Park Subsistence Manager's Report
9. Subsistence Uses of Horns, Antlers, Bones and Plants EA Update
10. Federal Subsistence Board Update
11. Alaska Board of Game Update
12. Old Business
13. New Business
14. Public and other Agency Comments
15. Set Time and Place for next SRC Meeting
16. Adjournment

SUPPLEMENTARY INFORMATION: The GAAR SRC meeting location and date may need to be changed based on weather or local circumstances. If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date.

Dated: September 21, 2009.

Debora Cooper,

Associate Regional Director, Resources, Alaska.

[FR Doc. E9–24316 Filed 10–8–09; 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 August 3, to August 7, 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 29, 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

Cochise County

Schilling Ranch Historic District, 6396 N. Schilling Ranch Rd., Corral vicinity, 09000608, LISTED, 8/07/09 (Cattle Ranching in Arizona in the Modern Era, 1945–1970)

Maricopa County

Roald Amundsen Pullman Private Railroad Car, 7301 Indian Bend Rd., Scottsdale, 09000582, LISTED, 8/06/09

Pima County

Barrio El Membrillo Historic District, Bounded by W. Granada St. on the N., W. Simpson St. on the S., the right-of-way of the former EP&SW Railroad on the E., Tucson, 09000583, LISTED, 8/05/09

COLORADO

Jefferson County

Rockland Community Church and Cemetery, 24225 Rockland Rd., Golden, 09000584, LISTED, 8/05/09

GEORGIA

Gwinnett County

Buford Public School Auditorium, 4975 Little Mill Rd., Buford, 09000586, LISTED, 8/05/09

ILLINOIS

Champaign County

Alpha Gamma Delta Fraternity House, 1106 S. Lincoln Ave., Urbana, 09000589, LISTED, 8/05/09

(Fraternity and Sorority Houses at the Urbana—Champaign Campus of the University of Illinois MPS).

KANSAS

Crawford County

State Bank of Girard, 105 E. Prairie, Girard, 09000349, LISTED, 8/07/09

MAINE

Androscoggin County

Turner Cattle Pound, SW corner of Gen. Turner Hill Rd. and Kennebec Trail, Turner, 09000592, LISTED, 8/07/09

Hancock County

Bass Harbor Memorial Library, 89 Bernard Rd., Tremont, 09000593, LISTED, 8/05/09

Hancock County

Sea Change, 27 Corning Way, Northeast Harbor, 08000991, LISTED, 8/07/09

Sagadahoc County

Fiddler's Reach Fog Signal, N. shore of Kennebec River, E. of Doubling Point Light Station, Arrowsic, 09000594, LISTED, 8/05/09

Waldo County

(Former) Maine Central Railroad Depot ME Rt. 7, Brooks, 09000595, LISTED, 8/05/09

MISSOURI

Buchanan County

Museum Hill Historic District (Boundary Increase), 321 and 323 N. 15th and 1510 Faraon St., St. Joseph, 09000598, LISTED, 8/05/09

(St. Joseph, Buchanan County, Missouri MPS AD).

MISSOURI

Cooper County

Blackwater Residential Historic District, Parts of the 300–400 block of Trigg Ave., 300 block of Scott Ave. and the 300 block of Main St., Blackwater, 09000597, LISTED, 8/05/09

Franklin County

Keller, Christian and Anna, Farmstead, 936 Kohl Country La., Gerald vicinity, 08000867, LISTED, 8/06/09

St. Louis Independent City

Forest Park Southeast Historic District (Boundary Increase III), 4100–4162 Manchester (even) 4151–4201 Manchester (odd) & 4216 Gibson, St. Louis, 09000596, LISTED, 8/05/09

NORTH CAROLINA

Alamance County

Beverly Hills Historic District, Portion of 14 blocks on N. Main St., Rolling Rd., Highland Ave., Virginia Ave., N. Ireland St., N. St. John St., Burlington, 09000599, LISTED, 8/05/09 (Burlington MRA)

Catawba County

Frye, Dr. Glenn R., House, 539 N. Center St., NE, Hickory, 09000600, LISTED, 8/05/09

Durham County

Russell School, 2001 St. Mary's Rd. (S. side SR 1002 .1 mi. W of jct with SR 1003), Durham vicinity, 09000601, LISTED, 8/05/09

Forsyth County

Winston-Salem Tobacco Historic District, Bounded by Chestnut St. on the W., 5th and 7th Sts. on the N., Linden St. on the E., and 4th and Fogle Sts. on the S., Winston-Salem, 09000602, LISTED, 8/05/09

TENNESSEE

Hardin County

Savannah Historic District (Boundary Increase), Roughly bounded by College St., Main St., Tennessee St., and Williams St., Savannah, 09000534, LISTED, 8/07/09

[FR Doc. E9–24426 Filed 10–8–09; 8:45 am]

BILLING CODE 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 September 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 October 26, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARKANSAS

Clay County

Piggott Commercial Historic District (Post Offices with Section Art in Arkansas MPS), Roughly bounded on the N. by W. Cherry on the South by W. Court, on the E. by S. Throgmorton and the W. by Clay, Piggott, 09000867

Faulkner County

Oak Grove Cemetery Historic Section, E. Bruce St. approx. 3 mi. E. of Harkrider St., Conway, 09000868

COLORADO

Las Animas County

McCormick House, 1919 Pinon St., Trinidad, 09000869

CONNECTICUT

Middlesex County

Xi Chapter, Psi Upsilon Fraternity, 242 High St., Middletown, 09000870

ILLINOIS

Ogle County

Indian Statue, Lowden Memorial State Park, 1411 N. River Rd., Oregon, 09000871

Piatt County

Monticello Courthouse Square Historic District, Roughly bounded by Market/Rte. 105; the railroad tracks; N. Hamilton and N. Independence Sts.; and Marion St., Monticello, 09000872

KANSAS

Dickinson County

Garfield Elementary School (Public Schools of Kansas MPS), 300 NW 7th St., Abilene, 09000874

Ford County

Dodge City Downtown Historic District, Roughly bounded by Front St. on the S., 3rd Ave. on the W., Vine St. on the N., and Central Ave. on the E., Dodge City, 09000875

Gray County

Gray County Courthouse (Old), 117 S. Main, Cimarron, 09000873

Reno County

Norris, G.W., House, 301 E. 12th Ave., Hutchinson, 09000876

Sedgwick County

Penley House (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957), 3400 Penley Dr., Wichita, 09000877

MAINE

Cumberland County

BAGHEERA (schooner), Maine State Pier, Commercial St., Portland, 09000878

York County

Arundel Golf Club, 19 River Rd., Kennebunkport, 09000879

Sanford Mills Historic District, Bounded by Washington St., Pioneer Ave., Emery St., and Weaver Dr., Sanford, 09000880

MASSACHUSETTS

Hampden County

Calhoun, Apartments, The, 1391–1399 Dwight St. & 85 Jefferson Ave., Springfield, 09000881

Verona, Apartments, The, 1245–1255 Dwight St. & 6–10 Allendale St., Springfield, 09000882

MISSISSIPPI

Carroll County

Vaiden High School, 504 Mulberry St., Vaiden, 09000883

Clarke County

McNair, Doctor, House, 116 E. Church St., Quitman, 09000895

Hinds County

Wiener House at 228 Ridge Drive, 228 Ridge Dr., Jackson, 09000884

Lincoln County

Alexander Teen Center, 456 Rogers St., Brookhaven, 09000885

Warren County

Glenwood-Vicklan Historic District (Vicksburg MPS) Including Vicklan St., Glenwood Cir., Edna Dr., and Chambers St. (E. of the Bayou), Vicksburg, 09000886

MISSOURI

Buchanan County

Central Police Station, 701 Messanie, St. Joseph, 09000887

St. Louis County

Meramec River U.S. Bridge—J421 (Route 66 in Missouri MPS), Historic U.S. Rt. 66 spanning the Meramec River, Eureka, 09000888

St. Louis Independent City

National Candy Company Factory, 4230 Gravois Ave., St. Louis, 09000889

Our Lady of Perpetual Help Parish Hall, School, Convent, and Rectory, 5217 N. 21st. (Parish Hall), 2017 Linton Ave., (School & Convent), and 2011 Linton Ave. (Rectory), St. Louis, 09000890

OREGON

Lake County

Shirk, David L., Ranch, Guano Valley, Sec. 35, Township 38 S., Range 27 E., Willamette Meridian, Adel, 09000891

VERMONT

Rutland County

Bridge 4, (Metal Truss, Masonry, and Concrete Bridges in Vermont MPS), Vermont Rt. 31, Poultney, 09000892

Windham County

Williams Street Extension Historic District, 51–58, 61–68, 70 Williams St., Rockingham, 09000893

WISCONSIN

Ozaukee County

Port Washington Fire Engine House, 102 E. Pier St., Port Washington, 09000894

Request for REMOVAL has been made for the following resources:

ILLINOIS

Vanderburgh County

Skora Building (Downtown Evansville, MRA) 101–103 NW 2nd St., Evansville, 82001855

[FR Doc. E9–24427 Filed 10–8–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW143954]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(2), the Bureau of Land Management (BLM) received a petition for reinstatement from North American Explorer Inc., and Bellevue Resources, Inc., for competitive oil and gas lease WYW143954 for land in Campbell County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW143954 effective February 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E9–24405 Filed 10–8–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW143962]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(2), the Bureau of Land Management (BLM) received a petition for reinstatement from North American Explorer Inc., and Bellevue Resources, Inc., for competitive oil and gas lease WYW143962 for land in Campbell County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended

lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW143962 effective February 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E9–24404 Filed 10–8–09; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–678]

In the Matter of: Certain Energy Drink Products; Notice of Commission Decision Not To Review an Initial Determination Granting Motion To Amend the Complaint and the Notice of Investigation To Add Six Additional Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice; Corrected.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 11) issued by the presiding administrative law judge (''ALJ'') in the above-captioned investigation granting a motion filed by complainants Red Bull GmbH and Red Bull North America, Inc. (collectively, ''Red Bull'') to amend the amend the complaint and notice of investigation to add six new respondents.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 17, 2009, based on a complaint filed by Red Bull GmbH and Red Bull North America, Inc. (''Red Bull''). 74 FR 28725 (June 17, 2009). The complaint as amended alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain energy drink products by reason of infringement of U.S. Trademark Registration Nos. 3,092,197; 2,946,045; 2,994,429; and 3,479,607 and U.S. Copyright Registration No. VA0001410959. The complaint initially named six respondents: Chicago Import, Inc.; Lamont Dist., Inc. a/k/a Lamont Distributors Inc.; India Imports, Inc., a/k/a International Wholesale Club; Washington Food and Supply of DC, Inc., a/k/a Washington Cash & Carry; Vending Plus, Inc.; and Baltimore Beverage Co.

On September 8, 2009, the ALJ issued the subject ID, granting Red Bull's motion to amend the complaint and notice of investigation to add six new respondents: Posh Nosh Imports; Greenwich, Inc.; Advantage Food Distributors, Ltd.; Wheeler Trading, Inc.; Avalon International General Trading, LLC; and Central Supply, Inc. No petitions for review were filed.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Dated: Issued: September 30, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–24309 Filed 10–8–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–688]

Certain Hybrid Electric Vehicles and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 3, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Paice, LLC of Bonita Springs, Florida. A letter supplementing the complaint was filed on September 24, 2009. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hybrid electric vehicles and components thereof by reason of infringement of certain claims of U.S. Patent No. 5,343,970. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Erin D. E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2550.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 5, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain hybrid electric vehicles or components thereof that infringe one or more of claims 11 and 39 of U.S. Patent No. 5,343,970, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact on this issue;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Paice LLC22957, Shady Knoll Drive, Bonita Springs, FL 34135.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Toyota Motor Corporation, 1 Toyota-Cho, Toyota City, Aichi Prefecture 471–8571, Japan.

Toyota Motor North America, Inc., 9 West 57th Street, Suite 4900, New York, NY 10019.

Toyota Motor Sales, U.S.A., Inc., 19001 S. Western Avenue, Torrance, CA 90509.

(c) The Commission investigative attorney, party to this investigation, is Erin D.E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against a respondent.

Issued: October 5, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–24399 Filed 10–8–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–09–026]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 13, 2009 at 2 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, *Telephone:* (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–753, 754, and 756 (Second Review) (Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before October 26, 2009.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 5, 2009.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E9–24499 Filed 10–7–09; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that on October 5, 2009, the United States lodged a proposed Consent Decree (''Consent Decree'') in the United States District Court for the Eastern District of Louisiana in the matter captioned *United States and State of Louisiana* v. *Mosaic Fertilizer, LLC,* Civil Action No. 2:09–cv–6662.

In this action, the United States and the State of Louisiana sought injunctive relief and civil penalties in connection with sulfur dioxide (''SO_2'') emitted from two sulfuric acid production units at the Mosaic Fertilizer, LLC (''Mosaic'') Uncle Sam plant, located in Uncle Sam, Louisiana. The United States and the State of Louisiana alleged in a complaint (''Complaint'') filed simultaneously with the lodging of the Consent Decree that Mosaic was liable under the New Source Review Prevention of Significant Deterioration (''PSD'') provisions of the Clean Air Act, 42 U.S.C. 7475(a), and the PSD provisions of the federally-approved Louisiana Air Control Commission Implementation Plan, for the failure to obtain a preconstruction PSD permit incorporating the best available control technology (''BACT'') when modifications were made to the sulfuric acid production units known as the Uncle Sam A Train and Uncle Sam D Train, and for the subsequent operation of those units without a PSD permit incorporating BACT. The Complaint also alleged that Mosaic violated the New Source Performance Standards (''NSPS''), set forth at 40 CFR 60.82–60.84, promulgated by EPA under Section 111(b)(1) of the Clean Air Act, 42 U.S.C. 7411(b)(1), which became applicable to the Uncle Sam A Train upon its modification.

Under the terms of the Consent Decree, the civil claims for relief

concerning the Uncle Sam Plant A Train and D Train would be resolved, and Mosaic would be required to (1) reduce emissions of SO_2 from the Uncle Sam A Train and D Train to rates consistent with BACT; and (2) pay a civil penalty of $2.4 million ($1.8 million to the United States and $600,000 to the State of Louisiana). In addition, Mosaic will undertake a project to reduce SO_2 emissions from the third sulfuric acid production unit at the Uncle Sam plant, known as the Uncle Sam E Train. For reasons independent of this civil action, Mosaic has ceased sulfuric acid production at its Mulberry plant in Bartow, Florida, and plans to permanently terminate production at that facility. The Consent Decree prohibits Mosaic from using the emission credits generated by that shutdown to permit increased SO_2 emissions at another of its facilities.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *Mosaic Fertilizer, LLC,* D.J. Ref. No. 90–5–2–1–08957.

The Consent Decree may be examined at the Office of the United States Attorney, 500 Poydras Street, Room B–210, New Orleans, Louisiana 70130 and at U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13.25 for a copy of a version without signature pages and appendices (25 cents per page reproduction cost), or $22.00 for a copy of a version that includes all signature pages and appendices, payable to the U.S. Treasury or, if by e-mail or fax, forward a check in the stated amount for the version selected to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–24366 Filed 10–8–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection (Pertains to Surface Coal Mines)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR section 77.1713; Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection.

DATES: Submit comments on or before December 8, 2009.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Rowlett.John@dol.gov,* along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

§ 77.1713 requires coal mine operators to conduct examinations of each active working area of surface mines, active surface installations at these mines, and preparation plans not associated with underground coal mines for hazardous conditions during each shift. A report of hazardous conditions detected must be entered into a record book along with a description of any corrective actions taken.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- 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 agency's 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 submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and selecting ''*FedReg. Docs*''. On the next screen, select ''Paperwork Reduction Act Supporting Statement'' to view documents supporting the **Federal Register** Notice.

III. Current Actions

Under 30 CFR 77.1713, coal mine operators to conduct examinations of each active working area of surface mines, active surface installations at these mines, and preparation plans not associated with underground coal mines for hazardous conditions during each shift. A report of hazardous conditions detected must be entered into a record book along with a description of any corrective actions taken.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection.

OMB Number: 1219–0083.

Recordkeeping: A report of hazardous conditions detected must be entered into a record book along with a description of any corrective actions taken.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 1,442.

Responses: 449,904.

Total Burden Hours: 674,856 hours.

Total Burden Cost (operating/maintaining): $43,784,656.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 5th day of October 2009.

John Rowlett,

Director, Management Services Division.

[FR Doc. E9–24389 Filed 10–8–09; 8:45 am]

BILLING CODE 4510–43–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* November 2, 2009
   Time: 9 a.m. to 5 p.m.
   Room: 421
   Program: This meeting will review applications for Digital Media Projects in America's Media Makers Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.
2. *Date:* November 3, 2009
   Time: 9 a.m. to 5 p.m.
   Room: 421
   Program: This meeting will review applications for Interpreting America's Historic Places Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.
3. *Date:* November 4, 2009
   Time: 9 a.m. to 5 p.m.
   Room: 421
   Program: This meeting will review applications for Interpreting America's Historic Places Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.
4. *Date:* November 5, 2009
   Time: 9 a.m. to 5 p.m.
   Room: 421
   Program: This meeting will review applications for Radio Projects in America's Media Makers Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.
5. *Date:* November 6, 2009
   Time: 9 a.m. to 5 p.m.
   Room: 421
   Program: This meeting will review applications for Urban and Labor History in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.
6. *Date:* November 9, 2009
   Time: 9 a.m. to 5 p.m.
   Room: 421
   Program: This meeting will review applications for Local and Regional History in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.
7. *Date:* November 9, 2009
   Time: 8:30 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Pilot Course Grants, submitted to the Division of Education Programs at the September 15, 2009 deadline.
8. *Date:* November 10, 2009
   Time: 8:30 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Pilot Course Grants, submitted to the Division of Education Programs at the September 15, 2009 deadline.
9. *Date:* November 10, 2009
   Time: 8:30 a.m. to 5 p.m.
   Room: 415
   Program: This meeting will review applications for History and Culture IV in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.
10. *Date:* November 10, 2009
    Time: 9 a.m. to 5 p.m.
    Room: 421
    Program: This meeting will review applications for American Studies in America's Media Makers Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.
11. *Date:* November 16, 2009
    Time: 9 a.m. to 5 p.m.
    Room: 421
    Program: This meeting will review applications for Art History in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.
12. *Date:* November 16, 2009
    Time: 8:30 a.m. to 5 p.m.
    Room: 315
    Program: This meeting will review applications for Pilot Course Grants, submitted to the Division of Education Programs at the September 15, 2009 deadline.
13. *Date:* November 17, 2009
    Time: 8:30 a.m. to 5 p.m.
    Room: 315
    Program: This meeting will review applications for Pilot Course Grants, submitted to the Division of Education Programs at the September 15, 2009 deadline.
14. *Date:* November 17, 2009
    Time: 9 a.m. to 5 p.m.
    Room: 421
    Program: This meeting will review applications for U.S. History in

America's Media Makers Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.

15. *Date:* November 17, 2009
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review applications for World Studies II in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

16. *Date:* November 18, 2009
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review applications for Picturing America School Collaboration Projects, submitted to the Division of Education Programs at the October 7, 2009 deadline.

17. *Date:* November 18, 2009
Time: 9 a.m. to 5 p.m.
Room: 421
Program: This meeting will review applications for U.S. History in America's Media Makers Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.

18. *Date:* November 19, 2009
Time: 9 a.m. to 5 p.m.
Room: 421
Program: This meeting will review applications for Projects for Family and Youth in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the August 26, 2009 deadline.

19. *Date:* November 19, 2009
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review applications for Picturing America School Collaboration Projects, submitted to the Division of Education Programs at the October 7, 2009 deadline.

20. *Date:* November 19, 2009
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review applications for Music and Performing Arts in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

Michael P. McDonald,
Advisory Committee Management Officer.
[FR Doc. E9–24428 Filed 10–8–09; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).
Dates/Time: October 26, 2009, 8:30 a.m.—5:30 p.m., October 27, 2009, 8:30 a.m.—11 a.m.
Place: National Science Foundation (NSF), 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.
To help facilitate your access into the building, please contact the individual listed below prior to the meeting so that a visitors' badge may be prepared for you in advance.
Type of Meeting: Open.
Contact Person: Dr. Margaret E.M. Tolbert, Senior Advisor and CEOSE Executive Liaison, Office of Integrative Activities/OD, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone Numbers: (703) 292–4216, 703–292–8040 *mtolbert@nsf.gov.*
Minutes: Minutes may be obtained from the Executive Liaison at the above address or the Web site at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*
Purpose of Meeting: To study programs and policies and provide to NSF advice and recommendations concerning broadening the participation of women, underrepresented minorities, and persons with disabilities in science and engineering.

Agenda

Monday, October 26, 2009

Opening Statement by the CEOSE Chair.
Presentations and Discussions:
✓ Women and Girls in the STEM Fields: A Comprehensive Approach to Achieving Equity
✓ Education in the National Science and Technology Council
✓ A Conversation with the Director of the National Science Foundation
✓ Plans for the *2009–2010 CEOSE Biennial Report to Congress*
✓ The Role of the Office of Equal Opportunity Programs in Fostering a Work Environment of Diversity and Inclusion
✓ Enhancing Engineering through Broadening Experiences
✓ Charges for and Membership of the CEOSE *Ad Hoc* Subcommittees

Tuesday, October 27, 2009

Opening Statement by the CEOSE Chair.
Presentations and Discussions:
✓ Plans for the CEOSE Mini-Symposium on Women of Color in STEM: Perspectives on Experiences, Research, Evaluation, and Policy in Higher Education and Careers
✓ Report by CEOSE Liaisons to NSF Advisory Committees
✓ Completion of Unfinished Business

Dated: October 6, 2009.
Susanne Bolton,
Committee Management Officer.
[FR Doc. E9–24367 Filed 10–8–09; 8:45 am]
BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board: Sunshine Act Meetings; Notice

The National Science Board's Executive Committee, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Monday, October 19, 2009 at 3 p.m.

SUBJECT MATTER: Discussion of Future NSF Budget Accounts.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for information or schedule updates, or contact: Kim Silverman, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. *Telephone:* (703) 292–7000.

Ann Ferrante,
Technical Writer/Editor.
[FR Doc. E9–24531 Filed 10–7–09; 4:15 pm]
BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0446; IA–09–044]

In the Matter of: Mr. Christopher S. Loyd Confirmatory Order (Effective Immediately)

I

Mr. Christopher Loyd holds the position of Radiation Safety Officer for Earth Exploration, Inc. Earth Exploration, Inc., is the holder of Materials License No. 13–26408–01 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on June 3, 1992. The license authorizes Earth Exploration, Inc., to store portable gauges at its permanent facilities in Indianapolis and South Bend, Indiana,

and to use those portable gauges at temporary job sites. Mr. Loyd was named as Radiation Safety Officer on the license in 2002.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on August 25, 2009.

II

On July 21, 2008, the NRC conducted an onsite inspection at the Earth Exploration, Inc., main office in Indianapolis, Indiana and at two temporary job sites in Indianapolis. Additional onsite inspections were held on August 14 and 15, 2008, at the South Bend field office and a temporary job site in South Bend, Indiana. The purpose of the inspections was to review licensee activities related to radiation safety and to assess licensee compliance with the Commission's rules and regulations and with the conditions of the Earth Exploration, Inc., license. As a result of the inspection observations, the NRC Office of Investigations (OI) initiated an investigation (OI Case No. 3–2008–026) and on April 27, 2009, the NRC preliminarily determined that apparent violations of NRC requirements had occurred at Earth Exploration, Inc. The apparent violations included, among others, failure to: (1) Perform annual reviews of the radiation protection program as required by 10 CFR 20.1101(c); (2) perform leak testing of sealed sources as required by License Condition 13; (3) perform physical inventories every six months of sealed sources as required by License Condition 16; (4) ensure that dosimetry provided to gauge users was processed and evaluated by a processor approved through the National Voluntary Laboratory Accreditation Program as required by License Condition 21; and (5) ensure through the Radiation Safety Officer that required tests and conditions of the NRC license are performed as required by License Condition 21. The NRC preliminarily determined that Mr. Christopher Loyd's actions, as the Radiation Safety Officer, caused the licensee to be in apparent violation of the above requirements resulting in an apparent violation of 10 CFR 30.10.

The results of the investigation were sent to Mr. Christopher Loyd in a letter dated July 21, 2009. This letter offered Mr. Loyd the opportunity to either participate in ADR mediation or to attend a Predecisional Enforcement Conference. In response to the NRC's offer, Mr. Loyd requested use of the NRC's ADR process to resolve the differences he had with the NRC. On July 31, 2009, the NRC and Mr. Loyd agreed to mediation. On August 25, 2009, the NRC and Mr. Loyd participated in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. As used by the NRC, ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the August 25, 2009, ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

1. Within three months of the date of the Confirmatory Order, Mr. Loyd agrees to conduct ''lessons learned'' training, to address oversight of the radiation safety program; duties and responsibilities of the RSO; and transportation, use, and security for portable gauges. The training shall also address employees' responsibility to report safety concerns to licensee management and the availability of informing the NRC of any concerns. Within two weeks of completing this internal training for all these employees, Mr. Loyd will submit an outline of the presentation and a list of attendees to the Director for the Division of Nuclear Materials Safety, NRC, Region III, on behalf of Earth Exploration, Inc.

2. Within 30 days of the date of the Confirmatory Order, Mr. Loyd agrees to prepare and submit to the Director for the Division of Nuclear Materials Safety, NRC, Region III, a plan to inform others of the lessons learned about the importance of ensuring robust radiation safety program requirements and developing the necessary infrastructure and communication paths to identify and resolve competing priorities that may preclude successful implementation. As a part of the plan, Mr. Loyd will submit either the article or a presentation outline to the Director for the Division of Nuclear Materials Safety, NRC, Region III, for review prior to its use.

3. Mr. Loyd agrees to prepare and submit to the Director for the Division of Nuclear Materials Safety, NRC, Region III, and to his management at Earth Exploration, Inc., a document which describes the radiation safety activities completed every three months for a period of two years. The first report shall be submitted within 90 days of the date of the Confirmatory Order.

4. Mr. Loyd agrees to submit to the Director for the Division of Nuclear Materials Safety, NRC, Region III and to his management at Earth Exploration, Inc., a plan on how he will accomplish all of the tasks assigned to him as Radiation Safety Officer, and what steps he will take to ensure that the infrastructure exists for those duties with a long periodicity (*i.e.,* one a year) within 60 days of the date of the Confirmatory Order.

5. Mr. Loyd, by signing the Agreement in Principle, makes no admission that he deliberately violated any NRC requirements and this agreement is settlement of a disputed claim in order to avoid further action by the NRC.

6. The NRC agrees to not pursue any further enforcement action in connection with the NRC's July 21, 2009, letter to Mr. Loyd. This does not prohibit the NRC from taking an enforcement action, in accordance with the NRC Enforcement Policy, if Mr. Loyd commits a similar violation in the future or violates the Order.

On September 10, 2009, Mr. Christopher Loyd consented to issuing this Order with the commitments, as described in Section V below. Mr. Loyd further agreed that this Order is to be effective upon issuance and that he has waived his right to a hearing.

IV

Since Mr. Christopher Loyd has agreed to take additional actions to address the NRC's concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that Mr. Loyd's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Mr. Loyd's commitments be confirmed by this Order. Based on the above, and Mr. Loyd's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, *It is hereby ordered, effective immediately:*

1. Mr. Christopher Loyd shall, within three months of the date of the Confirmatory Order, conduct ''lessons learned'' training. The training shall address oversight of the radiation safety program; duties and responsibilities of

the Radiation Safety Officer; and transportation, use, and security for portable gauges. The training shall also address employees' responsibility to report safety concerns to licensee management and the availability of informing the NRC of any concerns. Within two weeks of completing this internal training, Mr. Loyd shall submit an outline of the presentation and a list of attendees to the Director for the Division of Nuclear Materials Safety, NRC, Region III.

2. Mr. Christopher Loyd shall, within 30 days of the date of the Confirmatory Order, prepare and submit to the Director for the Division of Nuclear Materials Safety, NRC, Region III, a plan to inform others of the lessons learned about the importance of ensuring robust radiation safety program requirements and developing the necessary infrastructure and communication paths to identify and resolve competing priorities that may preclude successful implementation. As a part of the plan, Mr. Loyd shall submit either the article or a presentation outline, to the Director for the Division of Nuclear Materials Safety, NRC, Region III for review prior to its use.

3. Mr. Loyd shall prepare and submit to the Director for the Division of Nuclear Materials Safety, NRC, Region III, and to his management at Earth Exploration, Inc., a document which describes the radiation safety activities completed every three months for a period of two years. The first report shall be submitted within 90 days of the date of the Confirmatory Order.

4. Mr. Loyd shall submit to the Director for the Division of Nuclear Materials Safety, NRC, Region III and to his management at Earth Exploration, Inc., a plan on how he will accomplish all of the tasks assigned to him as Radiation Safety Officer, and what steps he will take to ensure that the infrastructure exists for those duties with a long periodicity (*i.e.* one a year) within 60 days of the date of the Confirmatory Order.

The Regional Administrator, NRC Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Loyd of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Mr. Christopher Loyd, may request a hearing within 20 days of the Order's publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007, 72 FR 49139. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding [even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate]. Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted

works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

If a person other than Mr. Christopher Loyd requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires, if a hearing request has not been received. *A request for hearing shall not stay the immediate effectiveness of this order.*

For the U.S. Nuclear Regulatory Commission.

Dated this 1st day of October 2009.

Cynthia D. Pederson,

Deputy Regional Administrator, Region III.

[FR Doc. E9–24421 Filed 10–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0445, Docket Number 030–32764, License Number 13–26408–01, EA–09–114]

In the Matter of Earth Exploration, Inc.: Indianapolis, IN; Confirmatory Order (Effective Immediately)

I

Earth Exploration, Inc., (Earth Exploration or licensee) is the holder of Materials License No. 13–26408–01 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on June 3, 1992. The license authorizes Earth Exploration to store portable gauges at its permanent facilities in Indianapolis and South Bend, Indiana, and to use those portable gauges at temporary job sites.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on August 25, 2009.

II

On July 21, 2008, the NRC conducted an onsite inspection at the Earth Exploration main office in Indianapolis, Indiana, and at two temporary job sites in Indianapolis. Additional onsite inspections were held on August 14 and 15, 2008, at the South Bend field office and a temporary job site in South Bend, Indiana. The purpose of the inspections was to review licensee activities related to radiation safety and to assess licensee compliance with the Commission's rules and regulations and with the conditions of the Earth Exploration license. As a result of the inspection observations, the NRC Office of Investigations (OI) initiated an investigation (OI Case No. 3–2008–026) and on April 27, 2009, the NRC preliminarily determined that apparent violations of NRC requirements had occurred at Earth Exploration. The apparent violations included failure to: (1) Perform annual reviews of the radiation protection program as required by 10 CFR 20.1101(c); (2) perform leak testing of sealed sources as required by License Condition 13; (3) perform physical inventories every 6 months of sealed sources as required by License Condition 16; (4) ensure that dosimetry provided to gauge users was processed and evaluated by a processor approved through the National Voluntary Laboratory Accreditation Program as required by License Condition 21; (5) ensure through the Radiation Safety Officer that required tests and conditions of the NRC license are performed as required by License Condition 21; (6) secure, on multiple occasions, portable gauges using two independent physical barriers as required by 10 CFR 30.34(i); and (7) lock a gauge or gauge case when in storage as required by License Condition 19. Additionally, the NRC identified five potential violations of 10 CFR 71.5 in regard to transportation of radioactive material in accordance with Department of Transportation regulations in 49 CFR. These potential violations included failure to: (1) Ensure proper/legible markings on packages as required by 49 CFR 178.3(a); (2) label transport packages as required by 49 CFR 172.403(b); (3) block and brace two packages as required by 49 CFR 177.842(b); (4) ensure the accessibility of shipping papers as required by 49 CFR 177.817(e); and (5) provide an emergency response telephone number which is monitored at all times when radioactive material is in transportation as required by 49 CFR 172.604(a)(1).

The results of the investigation were sent to Earth Exploration in a letter dated July 21, 2009. This letter offered Earth Exploration the opportunity to either participate in ADR mediation or to attend a Predecisional Enforcement Conference. In response to the NRC's offer, Earth Exploration requested use of the NRC's ADR process to resolve the issues. On July 31, 2009, the NRC and Earth Exploration agreed to mediation. On August 25, 2009, the NRC and Earth Exploration participated in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. As used by the NRC, ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the August 25, 2009, ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

1. Earth Exploration acknowledges the above violations and confirms that the violations have been corrected as of August 31, 2008.

2. Earth Exploration agrees to retain a qualified consultant to audit the performance of its radiation safety program on an annual basis for a period of 5 years, with the first audit occurring within 3 months of the date of the Confirmatory Order. Copies of the consultant's audit reports will be submitted to the Director for the Division of Nuclear Materials Safety, Region III, NRC, within 6 weeks following completion of the audit.

3. Earth Exploration agrees that the Radiation Safety Officer's supervisor, and two individuals acting as assistant Radiation Safety Officers, one each from the South Bend and Indianapolis offices, will receive training on how to manage a radiation safety program. The training is to be scheduled within 3 months of the date of the Confirmatory Order and the training is to be conducted within 6 months of the date of the Confirmatory Order. Within 2 weeks of completion of the training, Earth Exploration will submit to the Director for the Division of Nuclear Materials Safety, Region III, NRC, the course syllabus (to include the dates

and location of the course) and a list of attendees.

4. Within 3 months of the date of the Confirmatory Order, Earth Exploration agrees to conduct ''lessons learned'' training, to be given by the Radiation Safety Officer and to be attended by all employees involved in gauge use, to address oversight of the radiation safety program; duties and responsibilities of the Radiation Safety Officer; and transportation, use, and security for portable gauges. The training shall also address employees' responsibility to report safety concerns to licensee management and the availability of informing the NRC of any concerns. Within 2 weeks of completing this internal training for all employees involved in gauge use, Earth Exploration will submit an outline of the presentation and a list of attendees to the Director for the Division of Nuclear Materials Safety, Region III, NRC.

5. Within 30 days of the date of the Confirmatory Order, Earth Exploration agrees to have the Radiation Safety Officer prepare and submit to the Director for the Division of Nuclear Materials Safety, Region III, NRC, a plan to inform other organizations of the lessons learned about the importance of ensuring robust radiation safety program requirements and developing the necessary infrastructure and communication paths to identify and resolve competing priorities that may preclude successful implementation. As a part of the plan, Earth Exploration will submit either the article or a presentation outline to the Director for the Division of Nuclear Materials Safety, Region III, NRC, for review prior to its use.

6. Earth Exploration, by signing the Agreement in Principle, makes no admission that any employee of Earth Exploration deliberately violated any NRC requirements and this agreement is settlement of a disputed claim in order to avoid further action by the NRC.

7. The NRC agrees to not pursue any further enforcement action in connection with the NRC's July 21, 2009, letter to Earth Exploration. This does not prohibit the NRC from taking an enforcement action, in accordance with the NRC Enforcement Policy, if Earth Exploration commits a similar violation in the future or violates the Order.

On September 10, 2009, Earth Exploration consented to issuing this Order with the commitments, as described in Section V below. Earth Exploration further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since Earth Exploration has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that the licensee's commitments as set forth in Section V are acceptable and necessary and conclude that, with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Earth Exploration's commitments be confirmed by this Order. Based on the above, and Earth Exploration's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, *it is hereby ordered, effective immediately:*

1. Earth Exploration shall retain a qualified consultant to audit the performance of its radiation safety program on an annual basis for a period of 5 years, with the first audit occurring within 3 months of the date of the Confirmatory Order. Copies of the consultant's audit reports will be submitted to the Director for the Division of Nuclear Materials Safety, Region III, NRC, within 6 weeks following completion of the audit.

2. Earth Exploration shall ensure that the Radiation Safety Officer's supervisor, and two individuals acting as assistant Radiation Safety Officers, one each from the South Bend and Indianapolis offices, will receive training on how to manage a radiation safety program. The training shall be scheduled within 3 months of the date of the Confirmatory Order and the training is to be conducted within 6 months of the date of the Confirmatory Order. Within 2 weeks of completion of the training, Earth Exploration shall submit to the Director for the Division of Nuclear Materials Safety, Region III, NRC, the course syllabus (to include the dates and location of the course) and a list of attendees.

3. Earth Exploration shall, within 3 months of the date of the Confirmatory Order, conduct ''lessons learned'' training, to be given by the Radiation Safety Officer and to be attended by all employees involved in gauge use. The training shall address oversight of the radiation safety program; duties and responsibilities of the Radiation Safety Officer; and transportation, use, and security for portable gauges. The training shall also address employees' responsibility to report safety concerns to licensee management and the availability of informing the NRC of any concerns. Within 2 weeks of completing this internal training for all employees involved in gauge use, Earth Exploration shall submit an outline of the presentation and a list of attendees to the Director for the Division of Nuclear Materials Safety, Region III, NRC.

4. Earth Exploration shall, within 30 days of the date of the Confirmatory Order, prepare and submit to the Director for the Division of Nuclear Materials Safety, Region III, NRC, a plan to inform other organizations of the lessons learned about the importance of ensuring robust radiation safety program requirements and developing the necessary infrastructure and communication paths to identify and resolve competing priorities that may preclude successful implementation. As a part of the plan, Earth Exploration shall submit either the article or a presentation outline, to the Director for the Division of Nuclear Materials Safety, Region III, NRC, for review prior to its use.

The Regional Administrator, Region III, NRC, may, in writing, relax or rescind any of the above conditions upon demonstration by Earth Exploration of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Earth Exploration, may request a hearing within 20 days of the Order's publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007, (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at

hearingdocket@nrc.gov, or by calling (301) 415–1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms ViewerJ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

If a person other than Earth Exploration requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires, if a hearing request has not been received.

A request for hearing shall not stay the immediate effectiveness of this order.

For the U.S. Nuclear Regulatory Commission.

Dated this 1st day of October 2009.

Cynthia D. Pederson,

Deputy Regional Administrator, Region III.

[FR Doc. E9–24423 Filed 10–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0439]

Office of New Reactors; Final Interim Staff Guidance on Evaluation and Acceptance Criteria for 10 CFR 20.1406 To Support Design Certification and Combined License Applications

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The NRC is issuing its Final Interim Staff Guidance (ISG) DC/COL–ISG–06 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092470100). The purpose of this ISG is to clarify NRC position on what is an acceptable level of detail and content for demonstrating compliance with Title 10 of the *Code of Federal Regulations*, Section 20.1406 (10 CFR 20.1406). Regulatory Guide 4.21, ''Minimization of Contamination and Waste Generation: Life Cycle Planning,'' provides an acceptable method of demonstrating compliance. This ISG provides further clarification on the evaluation and acceptance criteria that will be used by NRC staff in reaching a reasonable assurance finding that a design certification (DC) or combined license (COL) applicant has complied with the requirements of 10 CFR 20.1406. The NRC staff issues DC/COL–ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for DCs and COLs by the Office of New Reactors. The NRC staff will also incorporate the approved DC/COL–ISG–06 into the next revision of the SRP and related guidance documents.

DISPOSITION: On July 31, 2008, the staff issued the proposed ISG ''Evaluation and Acceptance Criteria for 10 CFR 20.1406 to Support Design Certification and Combined License Applications,'' (DC/COL–ISG–06) (ADAMS Accession No. ML081850160). There were no comments received on the proposed ISG. At a March 12, 2009 public meeting with Nuclear Energy Institute (NEI) to discuss Health Physics Issues for New Reactors (ADAMS Accession No. ML090890093), the staff provided copies of draft Revision 7 of ''Interim Staff Guidance for Evaluation and Acceptance Criteria for 10 CFR 20.1406 to Support Design Certification and Combined License Applications'' (ADAMS Accession No. ML090640183) to NEI and requested input back by April 3, 2009. Some of the comments received (ADAMS Accession No. ML090990781) were subsequently incorporated into this document. Staff responses to public comments on DC/COL–ISG–06 can be found in ADAMS as Accession Number ML092740151.

ADDRESSES: The NRC maintains ADAMS which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *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 Public Document reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Frye, Chief, Health Physics Branch, Division of Construction Inspection and Operational Programs, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–3900 or e-mail at *timothy.frye@nrc.gov*.

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 2nd day of October 2009.

For the Nuclear Regulatory Commission.

George M. Tartal,

Acting Branch Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9–24424 Filed 10–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of October 12, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of October 12, 2009

Tuesday, October 13, 2009

9:15 a.m. Affirmation Session (Public Meeting) (Tentative). Calvert Cliffs 3 Nuclear Project LLC & UniStar Nuclear Operating Services LLC (Combined License App. Calvert Cliffs, Unit 3) Docket Nos. 52–016–COL, Calvert Cliffs 3 Nuclear Project LLC & UniStar Nuclear Operating Services, LLC, Appeal from LBP–09–4 (Tentative).

*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: October 5, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–24530 Filed 10–7–09; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0444]

Notice of Opportunity for Public Comment on the Proposed Model Safety Evaluation for Plant-Specific Adoption of Technical Specification Task Force Traveler-513, Revision 2, ''Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation''

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for public comment.

SUMMARY: The NRC is requesting public comment on the enclosed proposed model safety evaluation, model no significant hazards consideration determination, and model application for plant-specific adoption of Technical Specification Task Force (TSTF) Traveler-513, Revision 2, ''Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation.'' The TSTF Traveler-513, Revision 2, is available in the Agencywide Documents Access Management System (ADAMS) under Accession Number ML091810158. The proposed changes revise Standard Technical Specification (STS) [3.4.15], ''[Reactor Coolant System (RCS) Leakage Detection Instrumentation].'' The proposed changes also revise the STS Bases to clearly define the RCS leakage detection instrumentation Operability requirements in the Limiting Condition for Operation (LCO) Bases, eliminate discussion from the STS Bases that could be erroneously construed as Operability requirements, and reflect the changes to the TSs. This model safety evaluation will facilitate expedited approval of plant-specific adoption of TSTF Traveler-513, Revision 2.

DATES: Comment period expires November 9, 2009 Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0444 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information,

the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0444. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The Proposed Model Safety Evaluation for Plant-Specific Adoption of TSTF Traveler-513, Revision 2, available electronically under ADAMS Accession Number ML092460664.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0444.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle C. Honcharik, Senior Project Manager, Special Projects Branch, Mail Stop: O–12D1, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone 301–415–1774 or e-mail at *michelle.honcharik@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This notice provides an opportunity for the public to comment on proposed changes to the Standard TS (STS) after a preliminary assessment and finding by the NRC staff that the agency will likely offer the changes for adoption by licensees. This notice solicits comment on a proposed change to the STS, which if implemented by a licensee will modify the plant-specific TS. The NRC staff will evaluate any comments received for the proposed change to the STS and reconsider the change or announce the availability of the change for adoption by licensees. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. The NRC will process and note each amendment application responding to the notice of availability according to applicable NRC rules and procedures.

Applicability

TSTF Traveler-513, Revision 2, is applicable to pressurized water reactors. The Traveler revises the TS and TS Bases to clearly define the RCS leakage detection instrumentation Operability requirements as well as revise Conditions and Required Actions related to leakage detection instrumentation.

The proposed change does not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF Traveler-513, Revision 2. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the license amendment request (LAR). Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF Traveler-513, Revision 2.

Dated at Rockville, Maryland, this 24th day of September 2009.

For the Nuclear Regulatory Commission.

Stacey L. Rosenberg,

Chief, Special Projects Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

Proposed Model Application for Plant-Specific Adoption of TSTF Traveler-513, Revision 2, ''Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation''

U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555.

Subject: [Plant Name]
DOCKET NO. 50–[XXX]
LICENSE AMENDMENT REQUEST FOR ADOPTION OF TECHNICAL SPECIFICATION TASK FORCE (TSTF) TRAVLER-513, REVISION 2, ''REVISE PWR OPERABILITY REQUIREMENTS AND ACTIONS FOR RCS LEAKAGE INSTRUMENTATION''

In accordance with the provisions of Section 50.90 of Title 10 of the *Code of Federal Regulations* (10 CFR), [LICENSEE] is submitting a request for an amendment to the Technical Specifications (TS) for [PLANT NAME, UNIT NO.].

The proposed amendment would revise the TS and TS Bases to clearly define the Reactor Coolant System (RCS) leakage detection instrumentation Operability requirements as well as revise Conditions and Required Actions related to leakage detection instrumentation. The revised Required Actions employ alternate methods of monitoring RCS leakage when one or more required monitors are inoperable. This change is consistent with NRC approved Revision 2 to TSTF Improved Standard Technical Specification (STS) Change Traveler-513, ''Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation'' [Discuss any differences with Traveler-513, Revision 2.] The availability of this TS improvement was announced in the **Federal Register** on [Date] ([ ] FR [ ]) as part of the consolidated line item improvement process (CLIIP).

The proposed amendment contains a less restrictive TS change. The less restrictive change is justified because alternate RCS leakage monitoring methods are required to be performed when no required monitoring methods are Operable. Further detailed justification is contained in Attachment 1.

Attachment 1 provides a description of the proposed change. Attachment 2 provides the existing TS pages marked to show the proposed change. Attachment 3 provides the existing TS

Bases pages marked up to show the proposed change. Attachment 4 provides the proposed TS changes in final typed format. Attachment 5 provides the proposed TS Bases changes in final typed format. Attachment 6 provides the regulatory commitment[s].

[LICENSEE] requests approval of the proposed license amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, ''Notice for Public Comment; State Consultation,'' a copy of this application, with attachments, is being provided to the designated [STATE] Official.

I declare [or certify, verify, state] under penalty of perjury that the foregoing is correct and true.

Executed on [date] [Signature].

If you should have any questions about this submittal, please contact [NAME, TELEPHONE NUMBER].

Sincerely,
[Name, Title]

Attachments: 1. Evaluation of Proposed Change
2. Proposed Technical Specification Changes (Mark-Up)
3. Proposed Technical Specification Bases Changes (Mark-Up)
4. Proposed Technical Specification Change (Re-Typed)
5. Proposed Technical Specification Bases Changes (Re-Typed)
6. List of Regulatory Commitments

cc: [NRR Project Manager]
[Regional Office]
[Resident Inspector]
[State Contact]

Evaluation of Proposed Change

1.0 Description

The proposed amendment would revise the Technical Specification (TS) and TS Bases to clearly define the Reactor Coolant System (RCS) leakage detection instrumentation Operability requirements as well as revise Conditions and Required Actions related to leakage detection instrumentation. This change is consistent with NRC-approved Revision 2 to Technical Specification Task Force (TSTF) Improved Standard Technical Specification (STS) Change Traveler-513, ''Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation.'' [Minor differences between the proposed plant-specific TS changes, and the changes proposed by Traveler-513 are listed in Section 2.0.] The availability of this TS improvement was announced in the **Federal Register** on [Date] ( ] FR [ ]) as part of the consolidated line item improvement process (CLIIP).

2.0 Proposed Change

Consistent with the NRC-approved Revision 2 of Traveler-513, the proposed changes revise and add a new Condition to TS [3.4.15], ''[RCS Leakage Detection Instrumentation],'' and revise the associated bases. New Condition [D] is applicable when the containment atmosphere gaseous radioactivity monitor is the only Operable monitor (*i.e.,* all other monitors are inoperable). The Required Actions require analyzing grab samples of the containment atmosphere or performing an RCS water inventory balance every 12 hours and restoring another monitor within 7 days. Existing Condition [F] applies when all required monitors are inoperable and requires immediate entry into Limiting Condition for Operation (LCO) 3.0.3. This Condition is revised to require obtaining and analyzing a containment atmosphere grab sample and performance of an RCS water inventory balance every 6 hours. At least one RCS leakage detection monitor must be restored within 72 hours or a plant shutdown is required. Existing Condition [E] applies when the Required Actions and associated Completion Times are not met. It is moved to the last Condition and applies to all the previous Conditions. The TS Bases are revised to clearly define the RCS leakage detection instrumentation Operability requirements in the LCO Bases, eliminate discussion from the Bases that could be erroneously construed as Operability requirements, and reflect the changes to the TSs.

[The proposed changes also correct inappropriate references to ''required'' equipment in TS [3.4.15]. In several locations the specifications incorrectly refer to a ''required'' [equipment name]. The term ''required'' is reserved for situations in which there are multiple ways to meet the LCO, such as the requirement for either a gaseous or particulate radiation monitor. The incorrect use of the term ''required'' is removed from TS [3.4.15] Conditions [A, B, and C].

[LICENSEE] is [not] proposing variations or deviations from the TS changes described in Traveler-513, Revision 2, or the NRC staff's model safety evaluation published on [DATE] ([ ] FR [ ]) as part of the CLIIP Notice of Availability. [Discuss any differences with Traveler-513, Revision 2 and the effect of any changes on the NRC staff's model safety evaluation.]

3.0 Background

The background for this application is adequately addressed by the NRC Notice of Availability published on [DATE] ([ ] FR [ ]).

4.0 Technical Analysis

The proposed amendment contains a less restrictive TS change to existing Condition [F]. The proposed Required Actions for Condition [F] would eliminate the requirement to immediately enter LCO 3.0.3 and would add the requirement to analyze grab samples of the containment atmosphere once per 6 hours, perform an RCS water inventory balance once per 6 hours per Surveillance Requirement 3.4.13.1, and restore at least one RCS leakage detection monitor to Operable status within 72 hours. The less restrictive change is justified because alternate RCS leakage monitoring methods are required to be performed when no monitoring methods are operable. These alternate methods provide an RCS leakage detection capability similar to the required methods. The RCS mass balance is capable of identifying a one gallon per minute (gpm) RCS leak rate and uses instrumentation readily available to control room operators. The grab sample has an RCS leakage detection capability that is comparable to that of the containment particulate radiation monitor. The proposed Actions and Completion Times for grab samples and mass balance calculations are adequate because use of frequent grab samples and RCS mass balance calculations provide assurance that any significant RCS leakage will be detected prior to significant RCS pressure boundary degradation. The proposed 72 hour Completion Time for Restoration of at least one RCS leakage detection monitor to Operable status is appropriate given the low probability of significant RCS leakage during the time when no required RCS leakage detection monitors are Operable, and the need for time to restore at least one monitor to Operable status.

[LICENSEE] has reviewed the safety evaluation published on [DATE] ([ ] FR [ ]) as part of the CLIIP Notice of Availability. [LICENSEE] has concluded that the technical justifications presented in the safety evaluation prepared by the NRC staff are applicable to [PLANT, UNIT NO.].

5.0 Regulatory Safety Analysis

5.1 No Significant Hazards Determination

[LICENSEE] has reviewed the no significant hazards determination published on [DATE] ([] FR []) as part of the CLIIP Notice of Availability. [LICENSEE] and has concluded that the determination presented in the notice is

applicable to [PLANT, UNIT NO.]. [LICENSEE] has evaluated the proposed changes to the TS using the criteria in 10 CFR 50.92 and has determined that the proposed changes do not involve a significant hazards consideration. An analysis of the issue of no significant hazards consideration is presented below:

[LICENSEE INSERT ANALYSIS HERE.]

5.2 Applicable Regulatory Requirements/Criteria

A description of the proposed TS change and its relationship to applicable regulatory requirements was provided in the NRC Notice of Availability published on [DATE] ([] FR []). [LICENSEE] has reviewed the NRC staff's model safety evaluation published on [DATE] ([] FR[]) as part of the CLIIP Notice of Availability and concluded that the regulatory evaluation section is applicable to [PLANT, UNIT NO.].

6.0 Environmental Consideration

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation published on [DATE] ([] FR []) as part of the CLIIP Notice of Availability. [LICENSEE] has concluded that the NRC staff's findings presented in that evaluation are applicable to [PLANT, NO.].

The proposed change would change a requirement with respect to installation or use of a facility component located within the restricted area, as defined in 10 CFR 20, and would change an inspection or surveillance requirement. However, the proposed change does not involve (i) a significant hazards consideration, (ii) a significant change in the types or significant increase in the amounts of any effluent that may be released offsite, or (iii) a significant increase in individual or cumulative occupational radiation exposure. Accordingly, the proposed change meets the eligibility criterion for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the proposed change.

7.0 References

1. Federal Register Notice, Notice of Availability published on [DATE] ([ ] FR [ ]).

2. TSTF–513, Revision 2, ''Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation.''

[3. Other References]

Proposed Model No Significant Hazards Consideration Determination for Plant-Specific Adoption of TSTF Traveler-513, Revision 2, ''Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation''

Description of Amendment Request: The proposed amendment would revise Technical Specification (TS) [3.4.15], ''[Reactor Coolant System (RCS) Leakage Detection Instrumentation.]'' Conditions and Required Actions as well as make associated TS Bases changes for TS [3.4.15].

Basis for proposed no significant hazards consideration: As required by Title10 of the *Code of Federal Regulations* (10 CFR) Section 50.91(a), the [LICENSEE] analysis of the issue of no significant hazards consideration is presented below:

1: Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The proposed change clarifies the Operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only Operable RCS leakage instrumentation monitor is the containment atmosphere gaseous radiation monitor. The proposed change also extends the allowed operating time when all RCS leakage instrumentation is inoperable. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2: Does the Proposed Change Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated?

Response: No.

The proposed change clarifies the Operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only Operable RCS leakage instrumentation monitor is the containment atmosphere gaseous radiation monitor. The proposed change also extends the allowed operating time when all RCS leakage instrumentation is inoperable. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change maintains sufficient continuity and diversity of leak detection capability that the probability of piping evaluated and approved for Leak-Before-Break progressing to pipe rupture remains extremely low. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3: Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

Response: No.

The proposed change clarifies the Operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only Operable RCS leakage instrumentation monitor is the containment atmosphere gaseous radiation monitor. The proposed change also extends the allowed operating time when all RCS leakage instrumentation is inoperable to allow time to restore at least one RCS leakage monitoring instrument to Operable status. Reducing the amount of time the plant is allowed to operate with only the containment atmosphere gaseous radiation monitor Operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure. Allowing a limited period of time to restore at least one RCS leakage monitoring instrument to Operable status before requiring a plant shutdown avoids putting the plant through a thermal transient without RCS leakage monitoring. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above, the NRC staff concludes that the requested change does not involve a significant hazards consideration, as set forth in 10 CFR 50.92(c), ''Issuance of Amendment.''

Proposed Model Safety Evaluation for Plant-Specific Adoption of Technical Specification Task Force Traveler-513, Revision 2, ''Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation''

1.0 Introduction

By letter dated [DATE], [LICENSEE] (the licensee) proposed changes to the technical specifications (TS) for [PLANT NAME]. The proposed changes revise TS [3.4.15], ''[Reactor Coolant System (RCS) Leakage Detection Instrumentation].'' The proposed changes also revise the TS Bases to clearly define the RCS leakage detection instrumentation Operability requirements in the Limiting Condition for Operation (LCO) Bases, eliminate discussion from the TS Bases that could be erroneously construed as Operability requirements, and reflect the changes to the TSs.

The licensee stated that the application is consistent with NRC-approved Revision 2 to Technical Specification Task Force (TSTF) Improved Standard Technical Specification (STS) Change Traveler-513, ''Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation.'' [Discuss any differences with TSTF–513, Revision 2.] The availability of this TS improvement

was announced in the **Federal Register** on [Date] ([ ] FR [ ]) as part of the consolidated line item improvement process (CLIIP).

2.0 Regulatory Evaluation

The regulation in General Design Criterion (GDC) 30 of Appendix A to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, ''Quality of Reactor Coolant Pressure Boundary,'' requires means for detecting and, to the extent practical, identifying the location of the source of RCS Leakage. Regulatory Guide (RG) 1.45, Revision 0, ''Reactor Coolant Pressure Boundary Leakage Detection Systems,'' May 1973, describes acceptable methods of implementing the GDC 30 requirements with regard to the selection of leakage detection systems for the Reactor Coolant Pressure Boundary (RCPB). Revision 1 of RG 1.45 was issued in May 2008. RG 1.45, Revision 1, describes different methods of implementing the GDC 30 requirements compared to RG 1.45, Revision 0, and was intended to be applicable only to new reactors. Therefore, operating nuclear power plants are not committed to Revision 1 of RG 1.45.

RG 1.45, Revision 0, Regulatory Position C.2, states that ''Leakage to the primary reactor containment from unidentified sources should be collected and the flow rate monitored with an accuracy of one gallon per minute (gpm) or better.'' Regulatory Position C.3 states, ''At least three separate detection methods should be employed and two of these methods should be (1) sump level and flow monitoring and (2) airborne particulate radioactivity monitoring. The third method may be selected from the following: (a) monitoring of condensate flow rate from air coolers or (b) monitoring of airborne gaseous radioactivity. Humidity, temperature, or pressure monitoring of the containment atmosphere should be considered as alarms or indirect indication of leakage to the containment.'' Regulatory Position C.5 states, ''The sensitivity and response time of each leakage detection system in regulatory position 3 above employed for unidentified leakage should be adequate to detect a leakage rate, or its equivalent, of one gpm in less than one hour.'' RG 1.45, Revision 0, states, ''In analyzing the sensitivity of leak detection systems using airborne particulate or gaseous radioactivity, a realistic primary coolant radioactivity concentration assumption should be used. The expected values used in the plant environmental report would be acceptable.'' The appropriate sensitivity of a plant's containment atmosphere gaseous radioactivity monitors is dependent on the design assumptions and the plant-specific licensing basis as described in the plant's updated final safety analysis report (UFSAR).

As stated in NRC Information Notice (IN) 2005–24, ''Nonconservatism in Leakage Detection Sensitivity,'' the reactor coolant activity assumptions for containment atmosphere gaseous radioactivity monitors may be nonconservative. This means the monitors may not be able to detect a one gpm leak within one hour under all likely operating conditions.

The NRC's regulatory requirements related to the content of the TS are contained in 10 CFR Part 50.36. Paragraph (c)(2)(ii) of 10 CFR 50.36 lists criteria for determining whether particular items are required to be included in the TS LCOs. Criterion 1 of that regulation applies to installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary. As described in the **Federal Register** Notice associated with this regulation (60 FR 36953, July 16, 1995), this criterion is intended to apply to process variables that alert the operator to a situation when accident initiation is more likely.

The NRC's guidance for the format and content of PWR TS can be found in NUREG–1430, Revision 3.0, ''Standard Technical Specifications Babcock and Wilcox Plants,'' NUREG–1431, Revision 3.0, ''Standard Technical Specifications Westinghouse Plants,'' and NUREG–1432, Revision 3.0, ''Standard Technical Specifications Combustion Engineering Plants.'' STS 3.4.15, ''RCS Leakage Detection Instrumentation'' contains the guidance specific to the RCS leakage detection instrumentation for PWRs. The STS Bases provide a summary statement of the reasons for the STS. Operability requirements should be defined in the LCO section of the STS Bases.

The STS Bases for STS 3.4.15 contained in NUREG–1430, Revision 3.0; NUREG–1431, Revision 3.0; and NUREG–1432, Revision 3.0, included information that could be construed as Operability requirements in the Background, Applicable Safety Analysis, and LCO sections. These STS Bases did not accurately describe the Operability of a detector as being based on the design assumptions and licensing basis for the plant. This situation and the issue described in IN 2005–24 have caused questions to arise regarding the Operability requirements for containment atmosphere gaseous radioactivity monitors. Traveler-513, Revision 2, contained changes to the STS Bases that revised PWR Operability requirements. In addition, Traveler-513, Revision 2, includes NRC-approved revisions to TS Actions for RCS Leakage Instrumentation that recognize the potentially reduced sensitivity of the gaseous radioactivity instrument and more appropriate actions when all RCS leakage detection instrumentation is inoperable.

2.1 Adoption of Traveler-513, Revision 2, by [Facility Name]

Proper plant-specific adoption of Traveler-513, Revision 2, by [licensee] will revise the RCS Leakage Detection Instrumentation TS and TS Bases and clarify the Operability requirements for RCS Leakage Detection Instrumentation.

The NRC staff reviewed the proposed changes for compliance with 10 CFR 50.36 and agreement with the precedent as established in NUREG–[1430, 1431, or 1432]. In general, licensees cannot justify technical specification changes solely on the basis of adopting the model STS. To ensure this, the NRC staff makes a determination that proposed changes maintain adequate safety. Changes that result in relaxation (less restrictive condition) of current TS requirements require detailed justification.

In general, there are two classes of changes to TSs: (1) Changes needed to reflect contents of the design basis (TSs are derived from the design basis), and (2) voluntary changes to take advantage of the evolution in policy and guidance as to the required content and preferred format of TSs over time. This amendment request deals with both classes of change. The amendment request includes proposed changes to the TS Bases to more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation and proposed changes to the TS that take advantage of revised guidance on required actions for inoperable RCS leakage detection instrumentation. Guidelines for TS and TS Bases content are found in NUREG–[1430, 1431, or 1432], as amended by Traveler-513, Revision 2.

Licensees may revise the TSs to adopt improved STS format and content provided that plant-specific review supports a finding of continued adequate safety because: (1) The change is editorial, administrative or provides clarification (*i.e.,* no requirements are materially altered), (2) the change is more restrictive than the licensee's current requirement, or (3) the change is less restrictive than the licensee's current requirement, but nonetheless still affords adequate assurance of safety when judged against current regulatory

standards. The detailed application of this general framework, and additional specialized guidance, are discussed in Section 3.0 in the context of specific proposed changes.

3.0 Technical Evaluation

The current Bases for TS [3.4.15], ''[Reactor Coolant System (RCS) Leakage Detection Instrumentation],'' do not clearly define the basis for Operability for the RCS Leakage Instrumentation. The current TS Bases contain information that could be construed as Operability requirements in the Background, Applicable Safety Analysis, and LCO sections. In addition, the current TS Bases do not accurately describe the Operability of a detector as being based on the design assumptions and licensing basis for the plant.

In adopting Traveler-513, Revision 2, the licensee proposed changes that would revise the Bases for TS [3.4.15] to clearly define the RCS leakage detection instrumentation Operability requirements in the LCO Bases and reflect the changes to the TSs. The proposed changes to the Operability requirements included in the LCO Bases are acceptable because they define, consistent with the design basis of the facility, the minimum set of diverse instruments that must be operable, the plant parameters monitored by the instrumentation, the design sensitivity of the leakage detection instruments, and factors that affect the operational sensitivity of the instrument. These instruments satisfy Criterion 1 of 10 CFR 50.36(c)(2)(ii) in that they are installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary.

In adopting the changes to TS included in Traveler-513, Revision 2, the licensee also proposed to revise TS [3.4.15], ''[Reactor Coolant System (RCS) Leakage Detection Instrumentation]'' Conditions and Required Actions. The licensee proposed adding new Condition [D] to TS [3.4.15]. New Condition [D] would be applicable when the containment atmosphere gaseous radioactivity monitor is the only operable RCS leakage detection monitor. The proposed Required Actions for new Condition [D] require the licensee to analyze grab samples of the containment atmosphere once per 12 hours and restore the required containment sump monitor to Operable status within seven days, or analyze grab samples of the containment atmosphere once per 12 hours and restore the containment air cooler condensate flow rate monitor to Operable status within 7 days. The NRC staff determined that the proposed change is more restrictive than the current requirement, because there is no current Condition for the situation when the containment atmosphere gaseous radioactivity monitor is the only operable RCS leakage detection monitor. The proposed Actions and Completion Times are adequate because the grab samples will provide an alternate method of monitoring RCS leakage when the containment atmosphere gaseous radioactivity monitor is the only operable RCS leakage detection monitor and the 12-hour interval is sufficient to detect increasing RCS leakage. In addition, Surveillance Requirement (SR) 3.4.13.1 requires verification that RCS operational leakage is within limits by performance of an RCS water inventory balance at a frequency of once per 72 hours, which provides periodic confirmation that RCS leakage is within limits using diverse instrumentation. Allowing 7 days to restore another RCS leakage monitor to Operable status ensures that the plant will not be operated in a degraded configuration for a long time.

Existing TS [3.4.15] Condition [F] is applicable when all required RCS leakage detection monitors are inoperable. The current Required Action for Condition [F] is to immediately enter LCO 3.0.3. The licensee proposed modifying the Required Actions for Condition [F]. The proposed Required Actions for Condition [F] would eliminate the requirement to immediately enter LCO 3.0.3 and would add the requirement to analyze grab samples of the containment atmosphere once per 6 hours, perform an RCS water inventory balance once per 6 hours per SR 3.4.13.1, and restore at least one RCS leakage detection monitor to Operable status within 72 hours. The NRC staff determined that the proposed change is less restrictive than the current requirement because it would allow a longer time to operate when all required RCS leakage detection monitors are inoperable.

The licensee provided justification for the less restrictive change in its LAR, which the NRC staff reviewed. The grab sample has an RCS leakage detection capability that is comparable to that of the containment particulate radiation monitor. The RCS water inventory balance is capable of identifying a one-gpm RCS leak rate and uses instrumentation readily available to control room operators. The proposed Actions and Completion Times for grab samples and water inventory balance calculations are adequate because use of frequent grab samples and RCS water inventory balance calculations provide assurance that any significant RCS leakage will be detected prior to significant RCS pressure boundary degradation. The proposed 72-hour Completion Time for Restoration of at least one RCS leakage detection monitor to Operable status is appropriate given the low probability of significant RCS leakage during the time when no required RCS leakage detection monitors are Operable, and the need for time to restore at least one monitor to Operable status.

[Facility] has been licensed for Leak-Before-Break (LBB). The basic concept of LBB is that certain piping material has sufficient fracture toughness (*i.e.,* ductility) to resist rapid flaw propagation. The licensee has evaluated postulated flaws in [RCS loop] piping and determined the piping has sufficient fracture toughness that the postulated flaw would not lead to pipe rupture and potential damage to adjacent safety related systems, structures and components before the plant could be placed in a safe, shutdown condition. The NRC staff has previously reviewed and approved these analyses. Before pipe rupture, the postulated flaw would lead to limited but detectable leakage, which would be identified by the leak detection systems in time for the operator to take action. The proposed actions for inoperable RCS leakage detection instrumentation maintain sufficient continuity and diversity of leakage detection capability that an extremely low probability of undetected leakage leading to pipe rupture is maintained. This extremely low probability of pipe rupture continues to satisfy the basis for acceptability of LBB.

The licensee proposed minor changes to ensure continuity of the TS format. These changes re-lettered current Condition [D], which applies when the containment sump monitor is the only operable leakage detection instrument, to Condition [E], and current Condition [E], which applies when the required action and the associated completion time are not satisfied, to Condition [G]. Similar changes were made to the associated Required Actions. The NRC staff determined that these changes were editorial, and therefore acceptable.

The NRC staff evaluated the licensee's proposed change against the applicable regulatory requirements listed in Section 2 of this safety evaluation. The NRC staff also compared the proposed change to the change made to STS by Traveler-513, Revision 2. The NRC staff determined that all the proposed changes afford adequate assurance of safety when judged against current regulatory standards. Therefore, the

NRC staff finds the proposed changes acceptable.

4.0 Conclusions

The Commission has concluded, based on the considerations discussed above, that: (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

5.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the NRC staff].

6.0 Environmental Consideration

The amendment changes a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20, ''Standards for Protection Against Radiation.'' The NRC staff has determined that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards considerations, and there has been no public comment on the finding [FR]. Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

7.0 References

1. [Licensee] Licensee Amendment Request to adopt TSTF–513, [DATE].

2. **Federal Register** Notice, Notice of Availability published on [DATE] ([ ] FR [ ]).

3. TSTF Traveler-513, Revision 2, ''Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation''.

[FR Doc. E9–24407 Filed 10–8–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11888 and #11889]

Georgia Disaster Number GA–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Georgia (FEMA–1858–DR), dated 09/26/2009.

Incident: Severe Storms and Flooding.

Incident Period: 09/18/2009 and continuing.

DATES: *Effective Date:* 09/30/2009.

Physical Loan Application Deadline Date: 11/25/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 06/28/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of GEORGIA, dated 09/26/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Dooly, Dawson, Heard, Houston, Peach, Rockdale, Taylor.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–24419 Filed 10–8–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11891 and #11892]

New York Disaster #NY–00074

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New York dated 10/02/2009.

Incident: Severe Storms, Straight-Line Winds, and Flooding.

Incident Period: 07/06/2009 through 07/07/2009.

DATES: *Effective Date:* 10/02/2009.

Physical Loan Application Deadline Date: 12/01/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 07/02/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Westchester.

Contiguous Counties:

New York. Bronx, Orange, Putnam, Rockland.

Connecticut. Fairfield.

New Jersey. Bergen.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	4.875
Homeowners Without Credit Available Elsewhere	2.437
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11891 6 and for economic injury is 11892 0.

The States which received an EIDL Declaration # are New York, Connecticut, New Jersey.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 2, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–24411 Filed 10–8–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11897 Disaster #ZZ–00005]

The Entire United States and U.S. Territories

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loan Program (MREIDL), dated 10/01/2009.

DATES: *Effective Date:* 10/01/2009.

MREIDL Loan Application Deadline Date: 1 year after the essential employee is discharged or released from active duty.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of Public Law 106–50, the Veterans Entrepreneurship and Small Business Development Act of 1999, and the Military Reservist and Veteran Small Business Reauthorization Act of 2008, this notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan Program (MREIDL).

Effective 10/01/2009, small businesses employing military reservists may apply for economic injury disaster loans if those employees are called up to active duty during a period of military conflict or have received notice of an expected call-up, and those employees are essential to the success of the small business daily operations.

The purpose of the MREIDL program is to provide funds to an eligible small business to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was called up or expects to be called up to active duty in his or her role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active duty. For information/applications contact 1–800–659–2955 or visit *http://www.sba.gov.*

Applications for the Military Reservist Economic Injury Disaster Loan Program may be filed at the above address.

The Interest Rate for eligible small businesses is 4.000

The number assigned is 11897 0.

(Catalog of Federal Domestic Assistance Number 59002)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–24416 Filed 10–8–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11874 and #11875]

California Disaster #CA–00141

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of disaster for the State of California dated 09/09/2009.

Incident: 49 Fire.

Incident Period: 08/30/2009 through 09/04/2009.

DATES: *Effective Date:* 10/02/2009.

Physical Loan Application Deadline Date: 11/09/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 06/09/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Administrator's disaster declaration in the State of California, dated 09/09/2009, is hereby amended to establish the incident period for this disaster as beginning 08/30/2009 and continuing through 09/04/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 2, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–24414 Filed 10–8–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11895 and #11896]

Kansas Disaster #KS–00038

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA–1860–DR), dated 09/30/2009.

Incident: Severe Storms and Flooding.

Incident Period: 07/08/2009 through 07/14/2009.

DATES: *Effective Date:* 09/30/2009.

Physical Loan Application Deadline Date: 11/30/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 06/30/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/30/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Anderson, Bourbon, Franklin, Linn, Sedgwick.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500.
Businesses And Non-Profit Organizations Without Credit Available Elsewhere;	4.000.

The number assigned to this disaster for physical damage is 11895B and for economic injury is 11896B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–24417 Filed 10–8–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11868 and #11869]

New York Disaster #NY–00079

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–1857–DR), dated 09/01/2009.

Incident: Severe Storms and Flooding.

Incident Period: 08/08/2009 through 08/10/2009.

DATES: *Effective Date:* 09/29/2009.

Physical Loan Application Deadline Date: 11/02/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 09/01/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Allegany.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–24418 Filed 10–8–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form N–6, SEC File No. 270–446, OMB Control No. 3235–0503.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form N–6 (17 CFR 239.17c and 274.11d) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) registration statement of separate accounts organized as unit investment trusts that offer variable life insurance policies.'' Form N–6 is the form used by insurance company separate accounts organized as unit investment trusts that offer variable life insurance contracts to register as investment companies under the Investment Company Act of 1940 and/or to register their securities under the Securities Act of 1933. The primary purpose of the registration process is to provide disclosure of financial and other information to investors and potential investors for the purpose of evaluating an investment in a security. Form N–6 also permits separate accounts organized as unit investment trusts that offer variable life insurance contracts to provide investors with a prospectus containing information required in a registration statement prior to the sale or at the time of confirmation of delivery of securities.

The Commission estimates that there are approximately 250 separate accounts registered as unit investment trusts and offering variable life insurance policies that file registration statements on Form N–6. The Commission estimates that there are 95 initial registration statements on Form N–6 filed annually. The Commission estimates that approximately 813 registration statements (718 post-effective amendments plus 95 initial registration statements) are filed on Form N–6 annually. The Commission estimates that the hour burden for preparing and filing a post-effective amendment on Form N–6 is 67.5 hours. The total annual hour burden for preparing and filing post-effective amendments is 48,465 hours (718 post-effective amendments annually times 67.5 hours per amendment). The estimated hour burden per portfolio for preparing and filing an initial registration statement on Form N–6 is 770.25 hours. The estimated annual hour burden for preparing and filing initial registration statements is 73,174 hours (95 initial registration statements annually times 770.25 hours per portfolio for each registration statement). The frequency of response is annual. The total annual hour burden for Form N–6, therefore, is estimated to be 121,639 hours (48,465 hours for post-effective amendments plus 73,174 hours for initial registration statements).

The information collection requirements imposed by Form N–6 are mandatory. Responses to the collection of information will not be kept confidential. 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: October 5, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24357 Filed 10–8–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 204; OMB Control No. 3235–0647; SEC File No. 270–586.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information provided for in Rule 204 (17 CFR

242.204) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 204 requires that, subject to certain limited exceptions, if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency it must immediately close out the fail to deliver position by purchasing or borrowing securities by no later than the beginning of regular trading hours on the settlement day following the day the participant incurred the fail to deliver position. Rule 204 is intended to help further the Commission's goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, Rule 204 is intended to help further the Commission's goal of addressing potentially abusive ''naked'' short selling in all equity securities.

The information collected under Rule 204 will continue to be retained and/or provided to other entities pursuant to the specific rule provisions and will be available to the Commission and self-regulatory organization (''SRO'') examiners upon request. The information collected will continue to aid the Commission and SROs in monitoring compliance with these requirements. In addition, the information collected will aid those subject to Rule 204 in complying with its requirements. These collections of information are mandatory.

Several provisions under Rule 204 will impose a ''collection of information'' within the meaning of the Paperwork Reduction Act.

I. *Allocation Notification Requirement:* As of December 31, 2007, there were 5,561 registered broker-dealers. Each of these broker-dealers could clear trades through a participant of a registered clearing agency and, therefore, become subject to the notification requirements of Rule 204(d). If a broker-dealer has been allocated a portion of a fail to deliver position in an equity security and after the beginning of regular trading hours on the applicable close-out date, the broker-dealer has to determine whether or not that portion of the fail to deliver position was not closed out in accordance with Rule 204(a), we estimate that a broker-dealer will have to make such determination with respect to approximately 1.76 equity securities per day.[1] We estimate a total of 2,466,415 notifications in accordance with Rule 204(d) across all broker-dealers (that were allocated responsibility to close out a fail to deliver position) per year (5,561 broker-dealers notifying participants once per day [2] on 1.76 securities, multiplied by 252 trading days in a year). The total estimated annual burden hours per year will be approximately 394,626 burden hours (2,466,415 multiplied by 0.16 hours/notification).

II. *Demonstration Requirement for Fails to Deliver on Long Sales:* As of July 31, 2008, there were 197 participants of NSCC, the primary registered clearing agency responsible for clearing U.S. transactions that were registered as broker-dealers.[3] If a participant of a registered clearing agency has a fail to deliver position in an equity security at a registered clearing agency and determines that such fail to deliver position resulted from a long sale, we estimate that a participant of a registered clearing agency will have to make such determination with respect to approximately 34 securities per day.[4] We estimate a total of 1,687,896 demonstrations in accordance with Rule 204(a)(1) across all participants per year (197 participants checking for compliance once per day on 34 securities, multiplied by 252 trading days in a year). The total approximate estimated annual burden hour per year will be approximately 270,063 burden hours (1,687,896 multiplied by 0.16 hours/documentation).

III. *Pre-Borrow Notification Requirement:* As of July 31, 2008, there were 197 participants of NSCC, the primary registered clearing agency responsible for clearing U.S. transactions that were registered as broker-dealers.[5] If a participant of a registered clearing agency has a fail to deliver position in an equity security and after the beginning of regular trading hours on the applicable close-out date, the participant has to determine whether or not the fail to deliver position was closed out in accordance with Rule 204(a), we estimate that a participant of a registered clearing agency will have to make such determination with respect to approximately 50 equity securities per day.[6] We estimate a total of 2,482,200 notifications in accordance with Rule 204(c) across all participants per year (197 participants notifying broker-dealers once per day on 50 securities, multiplied by 252 trading days in a year). The total estimated annual burden hours per year will be approximately 397,152 burden hours (2,482,200 @ 0.16 hours/documentation).

IV. *Certification Requirement:* If the broker-dealer determines that it has not incurred a fail to deliver position on settlement date in an equity security for which the participant has a fail to deliver position at a registered clearing agency or has purchased securities in accordance with the conditions

[1] As stated in the adopting release for Interim Final Temporary Rule 204T, the Commission's Office of Economic Analysis (''OEA'') estimates that there are approximately 9,809 fail to deliver positions per settlement day. Across 5,561 broker-dealers, the number of securities per broker-dealer per day is approximately 1.76 equity securities. During the period from January to July 2008, approximately 4,321 new fail to deliver positions occurred per day. The National Securities Clearing Corporation (''NSCC'') data for this period includes only securities with at least 10,000 shares in fails to deliver. To account for securities with fails to deliver below 10,000 shares, the figure is multiplied by a factor of 2.27. The factor is estimated from a more complete data set obtained from NSCC during the period from September 16, 2008 to September 22, 2008. It should be noted that these numbers include securities that were not subject to the close-out requirement of Rule 203(b)(3) of Regulation SHO. Exchange Act Release No. 58733 (Oct. 14, 2008), 73 FR 61706, 61718 n.107 (Oct. 17, 2008) (''Rule 204T Adopting Release'').

[2] Because failure to comply with the close-out requirements of Rule 204(a) is a violation of the rule, we believe that a broker-dealer would make the notification to a participant that it is subject to the borrowing requirements of Rule 204(b) at most once per day.

[3] Those participants not registered as broker-dealers include such entities as banks, U.S.-registered exchanges, and clearing agencies. Although these entities are participants of a registered clearing agency, generally these entities do not engage in the types of activities that will implicate the close-out requirements of the rule. Such activities of these entities include creating and redeeming Exchange Traded Funds, trading in municipal securities, and using NSCC's Envelope Settlement Service or Inter-city Envelope Settlement Service. These activities rarely lead to fails to deliver and, if fails to deliver do occur, they are small in number and are usually closed out within a day.

[4] OEA estimates approximately 68% of trades are long sales and applies this percentage to the number of fail to deliver positions per day. OEA estimates that there are approximately 9,809 fail to deliver positions per settlement day. Across 197 broker-dealer participants of the NSCC, the number of securities per participant per day is approximately 50 equity securities. 68% of 50 securities per day is 34 securities per day. The 68% figure is estimated as 100% minus the proportion of short sale trades found in the Regulation SHO Pilot Study. *See http://www.sec.gov/news/studies/2007/regshopilot020607.pdf.*

[5] *See supra* note 3.

[6] OEA estimates that there are approximately 9,809 fail to deliver positions per day. Across 197 broker-dealer participants of the NSCC, the number of securities per participant per day is approximately 50 equity securities. During the period from January to July 2008, approximately 4,321 new fail to deliver positions occurred per day. The NSCC data for this period includes only securities with at least 10,000 shares in fails to deliver. To account for securities with fails to deliver below 10,000 shares, the figure is grossed-up by a factor of 2.27. The factor is estimated from a more complete data set obtained from NSCC during the period from September 16, 2008 to September 22, 2008. It should be noted that these numbers include securities that were not subject to the close-out requirement of Rule 203(b)(3) of Regulation SHO.

specified in Rule 204(e), we estimate that a broker-dealer will have to make such determinations with respect to approximately 1.76 securities per day. As of December 31, 2007, there were 5,561 registered broker-dealers. Each of these broker-dealers may clear trades through a participant of a registered clearing agency. We estimate that on average, a broker-dealer will have to certify to the participant that it has not incurred a fail to deliver position on settlement date in an equity security for which the participant has a fail to deliver position at a registered clearing agency or, alternatively, that it is in compliance with the requirements set forth in Rule 204(e), 2,466,415 times per year (5,561 broker-dealers certifying once per day on 1.76 securities, multiplied by 252 trading days in a year). The total approximate estimated annual burden hour per year will be approximately 394,626 burden hours (2,466,415 multiplied by 0.16 hours/certification).

V. *Pre-Fail Credit Demonstration Requirement:* If a broker-dealer purchases or borrows securities in accordance with the conditions specified in Rule 204(e) and determines that it has a net long position or net flat position on the settlement day on which the broker-dealer purchases or borrows securities we estimate that a broker-dealer will have to make such determination with respect to approximately 1.76 securities per day.[7] As of December 31, 2007, there were 5,561 registered broker-dealers. We estimate that on average, a broker-dealer will have to demonstrate in its books and records that it has a net long position or net flat position on the settlement day for which the broker-dealer is claiming credit, 2,466,415 times per year (5,561 broker-dealers checking for compliance once per day on 1.76 securities, multiplied by 252 trading days in a year). The total approximate estimated annual burden hour per year will be approximately 394,626 burden hours (2,466,415 multiplied by 0.16 hours/demonstration).

Please note that 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. We submitted the collection of information to OMB for review and approval in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13. The title for the collection of information is ''Rule 204'' and the OMB control number for the collection of information is 3235–0647.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: October 5, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24358 Filed 10–8–09; 8:45 am]

BILLING CODE 8011–01–P

[7] *See supra* note 1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60765; File No. SR–NSCC–2009–08]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Fees for Certain Insurance and Retirement Processing Services

October 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 10, 2009, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. 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 purpose of the proposed rule change is to revise fees for certain retirement and insurance processing services.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise fees for certain insurance and retirement processing services provided by NSCC to better align fees with the costs of delivering services.[3]

Effective October 1, 2009, NSCC is adopting an incentive discount for Registered Representative (''REP'') and Brokerage Identification Number (''BIN'') transactions, a subset of In-Force Transaction types that are formally called ''Brokerage Identification Number Change Requests,'' ''Brokerage Identification Number Change Confirms,'' ''Registered Representative Change Requests,'' and ''Registered Representative Change Confirms.'' The first $350 that NSCC charges to a member each month for such transactions shall be waived. Further, effective October 1, 2009, a member that submits any of these transaction types will receive a credit equaling 30% of its monthly fee for BIN and REP transactions.[4] The 30% credit will then be applied against fees that are charged to a member for NSCC's established Insurance and Retirement Products (called ''Core Products''). Established products that are designated as Core Products are Positions, Commissions, Financial Activity Reporting, Applications/Subsequent Premiums, and Asset Pricing. The purpose of bundling products in this fashion and providing a credit in connection with usage of new products is to compensate members for the

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] This proposed rule change filing replaces proposed rule change filing SR–NSCC–2009–06, which was withdrawn by NSCC on September 9, 2009.

[4] The credit will be calculated by subtracting the $350 discount from the member's total monthly BIN and REP fees and then multiplying that resulting amount by 30%.

programming and other costs associated with new product adoption.

In addition, effective October 1, 2009, NSCC is adopting a reduction in fees that may be incurred by a member due to extraordinary events, such as mergers or mass reconciliations, that generate unusually high transaction volume for a limited duration. A member must arrange with NSCC in advance for the appropriate reduction in fees in such circumstances. With respect to transaction types for which the member has no history of prior usage, the credit will be 85% of the transaction fees chargeable for the transaction type. There will be an additional credit of 5% if the member continues use of the transaction type in its usual processing flows after the event. With respect to transaction types for which the member has a history of prior usage, the credit will be in an amount sufficient to produce an aggregate fee that is no more than 120% of the average amount charged to the member for such transactions in the prior three months.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder applicable to NSCC because the proposed rule change updates NSCC's fee schedule and provides for equitable allocation of fees among its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [6] and Rule 19b–4(f)(2) [7] thereunder because the proposed rule change is establishing or changing a due, fee, or other charge applicable only to a member. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or
- Send an e-mail to *rule-comment@sec.gov*. Please include File No. SR–NSCC–2009–08 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–NSCC–2009–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/legal/rule_filings/nscc/2009.php*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NSCC–2009–08 and should be submitted on or before October 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24350 Filed 10–8–09; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60785; File No. SR–Phlx–2009–86]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Specialist and Registered Options Traders Allocation and Assignment Rules

October 2, 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 30, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rules 501 (Specialist Appointment), 505 (Allocation, Reallocation and Transfer of Issues), 506 (Allocation Application), 507 (Application for Approval as an SQT or RSQT and Assignment of Options), and 513 (Voluntary Resignation of Options Privileges) to clarify and streamline the process for specialist allocations and Streaming Quote Trader (''SQT'') [3] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See*

Continued

Remote Streaming Quote Trader (''RSQT'')[4] assignments, and delete unnecessary or obsolete language.

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 amend Phlx Rules 501, 505, 506, 507, and 513 to clarify and streamline the process for specialist allocations and Streaming Quote Trader and Remote Streaming Quote Trader assignments, and delete unnecessary or obsolete language.

After the merger of The NASDAQ OMX Group, Inc. (''NASDAQ OMX'') and the Philadelphia Stock Exchange, Inc. (now NASDAQ OMX PHLX, Inc.),[5] the Commission in May 2009 approved a Phlx filing that, among other things, eliminated the Options Allocation, Evaluation and Securities Committee (''Allocation Committee'') and transferred all relevant duties from the Allocation Committee to the Exchange staff.[6] As a result, the Exchange administers Rules 500 through 599 (the ''Allocation and Assignment Rules'').

The Allocation and Assignment Rules generally describe the process for: application for becoming and appointment of specialists; allocation of classes of options to specialist units and individual specialists; application for becoming and approval of SQTs and RQTs and assignment of options to them; and specialist, SQT, and RSQT performance evaluations.[7]

Rule 501 deals with the process of applying for approval as a specialist or specialist unit on the Exchange. The Exchange proposes changes to clarify that the Exchange may prescribe the form and/or format for the initial application and subsequent application(s). This proposed change should enhance the uniformity and quality of the application process.[8] The information required on such applications is already established in the rule and is not changed.[9] The exchange also clarifies in the rule that upon application by a member organization to become a specialist, the Exchange may, but is not required, to approve such organization as a specialist unit.

Rule 505 deals with allocating, re-allocating and transferring options classes on the Exchange. Currently, the rule states that a specialist unit that receives an allocation in an option must act as a specialist in it for at least one year. The Exchange is proposing a change indicating that, instead of an inflexible minimum one year time period, the Exchange may establish a minimum period that does not exceed one year (the ''minimum specialist period''). The length of the minimum specialist period, if one is chosen by the Exchange, will be indicated by the Exchange when it solicits applications for allocation of a security.[10] The Exchange believes that this rule change would allow the Exchange to more closely tailor minimum specialist periods, to the benefit of specialists and specialist units as well as the Exchange.[11]

In a similar vein regarding minimum period, the Exchange proposes to codify in Rule 507 that upon initial assignment of an option to an SQT or RSQT, the SQT or RSQT may not withdraw from such assignment for ten or fewer business days after the effective date of assignment. The Exchange may, however, in exceptional circumstances approve withdrawal from an option assignment before such period of time.[12] Where an SQT or RSQT seeks to withdraw from assignment in an option pursuant to Rule 507, the period of time that must pass between an SQT or RSQT notifying the Exchange of his or her desire to withdraw from assignment and the effective date of such withdrawal is reduced from three business days to one business day.[13] Additionally, proposed Rule 507(b) states that, similarly to Rule 501, the Exchange may prescribe the form and/or format of applications for assignment in an option and the

Rule 1014(b)(ii)(A). *See also* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32) (approval order regarding enhancements to opening, linkage and routing, quoting, and order management processes in the Exchange's electronic options order entry, trading, and execution system PHLX XL II.).

[4] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[5] *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31). *See also* Securities Exchange Act Release No. 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008) (SR–NASDAQ–2008–035).

[6] Securities Exchange Act Release No. 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (SR–Phlx–2009–23)(approval order). The proposal is similar in nature to previous proposals that, among other things, sought to more closely align the rules of Phlx and other exchanges within NASDAQ OMX, such as of The NASDAQ Stock Market LLC (''Nasdaq''). *See, for example,* Securities Exchange Act Release Nos. 59794 (April 20, 2009), 74 FR 18761 (April 24, 2009) (SR–Phlx–2009–17) (approval order regarding proposal to modify the process for nominating Phlx Governors); 60431 (August 4, 2009), 74 FR 40265 (August 11, 2009) (SR–Phlx–2009–59) (notice of filing relating to by-laws, Regulatory Oversight Committee, and referee program); and 59923 (May 14, 2009), 74 FR 23902 (May 21, 2009) (SR–NASDAQ–2009–046) (notice of filing and immediate effectiveness relating to criteria for securities that underlie options traded on NOM).

[7] The Allocation and Assignment Rules also indicate, among other things, under what circumstances new allocations may not be made. *See, for example,* Supplementary Material .01 to Rule 506 (specialist may not apply for a new allocation for a period of six months after an option allocation was taken away from the specialist in a disciplinary proceeding or an involuntary reallocation proceeding).

[8] The Exchange notes that specialist applications are submitted for various purposes that may include, for example, requests for approval as new (or returning) specialists or specialist units, initial approval to be a specialist in a particular option class, and approval to be a specialist in additional option classes. The proposed changes should allow the Exchange to have similar applications for use within the various types of applicant classes while affording the Exchange flexibility to modify the form and/or format of such applications and information requested therein.

[9] The information specified in Rule 501 for applications to be a specialist unit includes the following: (1) The identity of the unit's staff positions and who will occupy those positions; (2) the unit's clearing arrangements; (3) the unit's capital structure, including any lines of credit; and (4) the unit's back up arrangements.

[10] *See* Proposed Commentary .01 to Rule 505.

[11] As an example, in establishing a minimum period the Exchange may, among other things, take into account the desirability of the continuity of a market in a particular class of options.

[12] As an example, such exceptional circumstances may exist where, within the week after assignment, the entity whose assigned security the SQT or RSQT is quoting is acquired by another, thereby impacting the risk tolerance of the SQT or RSQT and resulting in a request by the SQT or RSQT to cease the assignment.

[13] The Exchange conforms Rule 506 to similarly state that if a specialist seeks to withdraw from allocation in a security, it should so notify the Exchange at least one business day prior to the desired effective date of such withdrawal.

minimum information to be provided thereon.[14]

Rule 513 deals with voluntary resignations by specialist units from allocations of particular options. Currently, the rule states that barring any specialist performance or disciplinary issues, the option specialist unit that last traded an option must be given preference in any future allocation decision regarding the same option. The Exchange proposes to clarify that while a preference may be given by the Exchange, the preference will no longer be effective for a one year period in every instance. This should enable the Exchange to make better re-allocation determinations by taking into consideration not only past but also current and prospective factors.

The Exchange also proposes to delete obsolete language regarding SQT and RSQT applicants requesting partial options assignments. Currently, Rule 507 in Commentary .01 allows an SQT or RSQT applicant to request option assignment by ''root symbol,'' [15] such that an SQT or RSQT could effectively request not to be assigned in certain options within an options class, such as, for example, those emanating from mergers and acquisitions and spin-offs.[16] In light of the recent enhancements and configurations to the Exchange's electronic quoting and trading system, which is now known as Phlx XL II,[17] requesting partial assignments is no longer a feasible alternative for SQTs and RSQTs and is therefore being deleted.[18]

The Exchange believes that the changes proposed to the Allocation and Assignment Rules as a whole streamline the rules and make their implementation more uniform and predictable to the benefit of the Exchange and market participants such as specialists, specialist units, SQTs and RSQTs on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [19] in general, and furthers the objectives of Section 6(b)(5) of the Act [20] 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 clarifying and streamlining the process for specialist allocations and SQT and RSQT assignments. The Exchange believes that its rule change proposal does not engender unfair discrimination among specialists, specialist units, SQTs and RSQTs in that it clarifies and streamlines (as well as codifies) allocation and assignment procedures that are equally applicable to all members and member organizations at the Exchange.

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 foregoing 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 for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [21] and Rule 19b–4(f)(6) [22] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–86 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–2009–86. 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 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–86 and should

[14] Moreover, the information noted in the proposed rule (*e.g.* appropriate Exchange account number, requested start date for each option applied for, and name of member organization) is similar to information currently requested of applicants.

[15] A root symbol is the options trading mnemonic used for each option as applied by The Options Clearing Corporation (''OCC'') to series overlying the same security (depending, without limitation, on the strike price of the series, the expiration of the series, the price of the underlying security, and/or mergers and acquisitions relating to the underlying security). *See* Commentary .01 to Rule 507.

[16] The trend in allocations is, on the other hand, toward inclusivity of options emanating from mergers and acquisitions and spin-offs. *See* Securities Exchange Act Release No. 60455 (August 6, 2009), 74 FR 40857(SR–Phlx–2009–62) (notice of filing and immediate effectiveness) (providing for automatic allocation of related options).

[17] *See* Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32) (approval order regarding XL II).

[18] Assignment by ''root symbol'' is not compatible with XL II system requirements.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. Phlx has satisfied this requirement.

be submitted on or before October 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24356 Filed 10–8–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60771; File No. SR–Phlx–2009–85]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Discontinuation of the Specialist Fee Credit Pilot Program

October 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to discontinue its current pilot program relating to specialist fee credits for linkage orders.

While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective on September 28, 2009.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to discontinue the current pilot program related to a specialist fee credit for linkage is because the pilot is no longer necessary. On June 17, 2008, the Exchange filed an executed copy of the Options Order Protection and Locked/Crossed Market Plan (''Plan''), joining all other approved options markets in adopting the Plan.[3] The Plan requires each options exchange to adopt rules implementing various requirements specified in the Plan.[4] The Plan replaces the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[5] That Plan requires its participant exchanges to operate a stand-alone system or ''Linkage'' for sending order-flow between exchanges to limit trade-throughs.[6] The Options Clearing Corporation (''OCC'') operates the Linkage system (the ''System'').[7] The Exchange adopted various new rules in connection with the Plan to avoid trade-throughs and locked markets, among other things.[8] The Exchange currently offers private routing as opposed to utilizing the Linkage Plan for routing. In light of this change, the Exchange proposes to terminate the specialist option transaction charge credit pilot program for trades executed via Intermarket Options Linkage (''Linkage'') as the credit will no longer be necessary since the specialists will no longer utilize Linkage to route trades.

The current pilot, which is set to expire on July 31, 2010,[9] relates to: (1) An option transaction charge credit of $0.21 per contract for Exchange specialist units[10] that incur options transaction charges when a customer order is delivered electronically via Phlx XL[11] or via the Exchange's Options Floor Broker Management Systems (''FBMS'')[12] and then is executed via the Linkage as a Principal Acting as Agent Order (''P/A Order'')[13]; and (2) the Floor Broker Linkage P/A fee and Options Specialist Unit Credit, which charges floor brokers an amount equal to the transaction fee(s) assessed on options specialist units by another exchange in connection with customer orders that are delivered to the limit book via FBMS and executed via Linkage as P/A Orders. The Exchange provides to options specialists units a credit in an amount equal to the transaction fee(s) assessed on them by another exchange in connection with executing customer orders that are delivered to the limit order book via FBMS and executed via Linkage as P/A Orders. The current pilot program has been in effect for several years.[14]

The pilot program which relates to transaction fees applicable to the execution of P/A Orders and Principal

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 60405 (July 20, 2009) (National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets).

[4] *See* Securities Exchange Act Release No. 60363 (July 22, 2009), 74 FR 37270 (July 28, 2009) (SR–Phlx–2009–61). Linkage was governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage approved by the Commission. The registered U.S. options markets are linked together on a real-time basis through a network capable of transporting orders and messages to and from each market.

[5] *See* footnote 4.

[6] *See* footnote 4.

[7] *See* footnote 4.

[8] *See* footnote 4.

[9] *See* Securities Exchange Act Release No. 60209 (July 1, 2009), 74 FR 33006 (July 9, 2009) (SR–Phlx–2009–55).

[10] The Exchange uses the terms ''specialists'' and ''specialists units'' interchangeably herein.

[11] *See* Exchange Rule 1080.

[12] FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trails for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Exchange Rule 1080, Commentary .06.

[13] A P/A Order is an order for the principal account of a specialist (or equivalent entity on another participant exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. *See* Exchange Rule 1088, a temporary linkage rule.

[14] *See* Securities Exchange Act Release Nos. 58234 (July 25, 2008), 73 FR 45263 (August 4, 2008) (SR–Phlx–2008–55); 56101 (July 19, 2007), 72 FR 40920 (July 25, 2007) (SR–Phlx–2009–50 [sic]); 54257 (August 1, 2006), 71 FR 45089 (August 8, 2006) (SR–Phlx–2006–46); 53761 (May 5, 2006), 71 FR 27768 (May 12, 2006) (SR–Phlx–2006–20).

Orders (''P Orders'') [15] sent to the Exchange via Linkage pursuant to the Linkage Plan [16] will remain in effect until such time as all participant exchanges to the Linkage Plan no longer send Linkage P or P/A orders via the Linkage Plan. At such time the Exchange intends to file a proposed rule change with the Commission to request the discontinuation of that pilot as well.[17]

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [18] in general, and furthers the objectives of Section 6(b)(4) of the Act [19] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. In particular, the Exchange believes that the pilot program is no longer necessary because the specialists no longer utilize Linkage to route trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [20] and Rule 19b–4(f)(2) thereunder,[21] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx-2009–85 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–2009–85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 No. SR–Phlx–2009–85 and should be submitted on or before October 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24352 Filed 10–8–09; 8:45 am]

BILLING CODE 8011–01–P

[15] A principal Order is an order for the principal account of an Eligible Market Maker and is not a P/A Order. *See* Exchange Rule 1088.

[16] *See* Securities Exchange Act Release No. 59891 (May 8, 2009), 74 FR 22990 (May 15, 2009) (SR–Phlx–2009–24).

[17] Currently, the Exchange has a temporary linkage rule, Exchange Rule 1088, which provides that the Exchange will continue to accept P and P/A Orders from options exchanges that continue to use such orders to address trade-throughs via the existing linkage for a temporary period. *See* Securities Exchange Act Release No. 60363 (July 22, 2009), 74 FR 37270 (July 28, 2009) (SR–Phlx–2009–61). *See also* Exchange Rule 1088.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 240.19b–4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60784; File No. SR–Phlx–2009–69]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Prohibit Options Specialist Commission Charges

October 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Rule 1014, Commentary .10 to establish that options specialists on the Exchange are prohibited from charging commissions.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 eliminate arbitrary and potentially excessive costs for trading options on the Exchange. The Exchange believes that this prohibition should provide clarity to member organizations and options investors on this topic by stating the current position of the Exchange. Specifically, the Exchange proposes to adopt a rule prohibiting specialist commission charges. In effect, the rules prohibit the specialist [3] from charging a commission for any trade in which he participated, whether acting as agent or principal. In addition, the rules prohibit a specialist from charging a commission or fee for the handling, execution or processing of an order delivered through the Exchange's automated trading system, Phlx XL II,[4] whether the specialist is acting as principal or agent for the order. The agency responsibilities of a specialist have virtually been eliminated, as the Exchange's trading systems have become increasingly automated, particularly with the completed roll-out of Phlx XL II, the Exchange's new, enhanced options trading system.[5]

The Exchange's By-Laws give broad authority for the Exchange to impose and regulate fees.[6] Given market developments and changes in market structure, the Exchange believes that it is inappropriate for specialists to be charging commissions and fees; specialists occupy an important status in the Exchange's options marketplace and the Exchange believes that it is not good market practice for specialists to charge commissions in connection with specialist functions. The Exchange feels that it is necessary to file this proposed rule change to eliminate any ambiguity with respect to its position on the topic. Adoption of this rule should not be interpreted to mean that any specialist fee or commission charged before the adoption was valid or permitted.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, because specialist commissions increase the cost of doing business on the Exchange, which, in turn, weakens the Exchange's competitive position and potentially increase the cost of options trading for investors. For these same reasons, the Exchange also believes that the proposed rule change is consistent with Section 11(A)(a)(1)(C) of the Act,[9] which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, economically efficient execution of securities transactions, and fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

In addition, the Exchange believes that the proposal is consistent with Section 6(e)(1) of the Act,[10] because it is not designed to permit unfair discrimination between customers, issuers, brokers and dealers, or to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members. Section 6(e) of the Act [11] was adopted by Congress in 1975 to statutorily prohibit the fixed minimum commission rate system. The fixed minimum commission rate system allowed exchanges to set minimum commission rates that their members had to charge their customers, but allowed members to charge more. The Exchange's proposal, by contrast, does not establish a minimum commission rate, but instead prohibits the Exchange's specialists from charging a commission for handling an order, as part of their responsibilities as a specialist. Accordingly, the Exchange does not believe that this proposed rule constitutes fixing commissions, allowances, discounts, or other fees for purposes of Section 6(e)(1) of the Act.[12] Indeed, the Commission has previously noted that limits on fees that specialists may charge apply only to members who choose to be specialists, and that, by limiting fees, an exchange is merely imposing a condition, which is consistent with the Act, on a member's appointment as a specialist.[13]

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

Pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) [15] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. Furthermore, a proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [16] normally does not become operative for 30 days after the date of its filing.

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.

[3] The term ''specialist'' is used interchangeably with ''specialist unit.''

[4] *See* Rule 1080.

[5] *See e.g.,* Rule 1080(m), which covers the Exchange's routing of orders to other markets, which was previously done by specialists.

[6] *See* Exchange By-Law Article XIV, Section 14–1(a) and Article XII, Section 12–6(b).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78K–1(a)(1)(C).

[10] 15 U.S.C. 78f(e)(1).

[11] 15 U.S.C. 78f(e).

[12] 15 U.S.C. 78f(e)(1).

[13] *See* text preceding note 27 in Securities Exchange Act Release No. 55913 (June 15, 2007), 72 FR 34323 (June 21, 2007) (SR–Amex–2007–13).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

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–2009–69 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–2009–69. 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 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–69 and should be submitted on or before October 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24355 Filed 10–8–09; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60766; File No. SR–NYSEArca–2009–86]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Activity Assessment Fees

October 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 28, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE Arca filed the proposed rule change as a ''non-controversial'' proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to, among other changes, (1) amend NYSE Arca Equities Rule 2.17(a) to provide for an Activity Assessment Fee to be paid by ETP Holders in connection with the Exchange's required payments to the Commission under Section 31 of the Exchange Act; [5] (2) add Commentary .01 to NYSE Arca Equities Rule 2.17 to allow ETP Holders to voluntarily submit to the Exchange, on or before December 31, 2009, funds that may have been previously accumulated by them to satisfy their, and subsequently NYSE Arca's, obligation to remit Section 31-related fees; and (3) amend NYSE Arca Options Rule 2.18(a) to provide for an Activity Assessment Fee to be paid by OTP Firms and Holders in connection with the required payments to the Commission under Section 31 of the Exchange Act.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Public Reference Room of 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, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 31 of the Exchange Act and Rule 31 thereunder,[6] national securities exchanges and associations (collectively, ''SROs'') are required to pay a transaction fee to the SEC that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. To offset this obligation, the ETP Holders (under NYSE Arca Equities Rule 2.17) and OTP Firms and OTP Holders (under NYSE Arca Options Rule 2.18) are assessed charges in connection with satisfaction of the Exchange's payment obligations under Section 31. The Exchange calculates such fees by multiplying the aggregate dollar amount of ''covered sales'' (as defined in Section 31 of the Exchange Act) effected on the Exchange during the appropriate period by the Section 31(b) fee rate in effect during that period. Clearing members may in turn seek to charge a fee to their customers or correspondent firms. Any allocation of the fee between the clearing member and its correspondent firm or customer is the responsibility of the clearing member.

NYSE Arca Equities Rule 2.17 and NYSE Arca Options Rule 2.18 relate to payment by ETP Holders (pursuant to NYSE Arca Equities Rule 2.17) and by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78ee.

[6] 17 CFR 240.31.

OTP Firms and OTP Holders (pursuant to NYSE Arca Options Rule 2.18) of charges imposed by the Exchange in connection with the Exchange's payment to the Commission of amounts required under Section 31 of the Exchange Act. The Exchange proposes to (1) provide for an Activity Assessment Fee to be paid by ETP Holders in connection with the Exchange's required payments to the Commission under Section 31 of the Exchange Act; (2) add Commentary .01 to NYSE Arca Equities Rule 2.17 to allow ETP Holders to voluntarily submit to the Exchange, on or before December 31, 2009, funds that may have been previously accumulated by them to satisfy their, and subsequently NYSE Arca's, obligation to remit Section 31-related fees; and (3) amend NYSE Arca Options Rule 2.18(a) to provide for an Activity Assessment Fee to be paid by OTP Firms and Holders in connection with the required payments to the Commission under Section 31 of the Exchange Act.

Proposed Amendments to NYSE Arca Equities Rule 2.17

The Exchange proposes to amend NYSE Arca Equities Rule 2.17(a) to delete outdated language regarding amounts payable under Section 31. The rule, as amended, characterizes the fees payable under such rule as Activity Assessment Fees. The proposed rule states that each ETP Holder that effects securities transactions on the Corporation that are defined in Section 31 of the Exchange Act as ''covered sales'' of securities shall pay to the Corporation Activity Assessment Fees based upon all of their covered sales. The proposed rule provides that the Exchange shall calculate Activity Assessment Fees by multiplying the aggregate dollar amount of covered sales effected on the Corporation by the ETP Holder during the appropriate computational period by the Section 31(b) fee rate in effect during that computational period. The proposed rule provides that Activity Assessment Fees shall be due and payable at such times and intervals as prescribed by the Exchange, and that ETP Holders that cease to effect securities transactions on the Corporation shall promptly pay to the Corporation any sum due pursuant to the rule. In addition, the Exchange proposes to add paragraph (c) to NYSE Arca Equities Rule 2.17 to provide that, to the extent that there may be excess monies collected under NYSE Arca Equities Rule 2.17(a), the Corporation may retain those monies to help fund its regulatory expenses.

Program for Payment of Accumulated Funds or Designation of Exchange Accumulated Excess

Reconciling the amounts billed by the Exchange and the amounts collected from the customers historically had been difficult for ETP Holders, possibly causing surpluses to accumulate at some broker-dealer firms (referred to herein as ''accumulated funds''). Such accumulated funds may not have been remitted to the Exchange by certain firms, despite the fact that these charges may have been previously identified as ''Section 31 Fees'' or ''SEC Fees'' by the firms.[7] In addition, the Exchange has accumulated amounts remitted to the Corporation by ETP Holders collected by such ETP Holders in excess of their Rule 2.17 assessment, and in excess of amounts paid by the Corporation to the SEC pursuant to Section 31 of the Exchange Act (''Corporation accumulated excess'').

In November 2004, the Exchange and other self-regulatory organizations (''SROs'') received a letter from the SEC's Division of Market Regulation (now the Division of Trading and Markets) requesting, among other things, that the Exchange conduct an analysis to ascertain the amount of accumulated funds and present a plan for broker-dealers to dispose of or otherwise resolve title to such accumulated funds. Following discussion among the SROs and staff of the Division of Market Regulation, in an effort to ascertain the amount of accumulated funds, the NASD (now FINRA) surveyed 240 member clearing and self-clearing firms to review their practices regarding the collection of such fees from customers. After compiling and analyzing the data provided by member firms, NASD staff found that over half of the firms surveyed did not have an accumulated funds balance. NASD worked with the other SROs to recommend a potential solution to allow NASD and other SRO member firms to resolve title to the accumulated funds. It was determined, based upon information provided in connection with NASD's survey, that it would be virtually impossible to return customer-related accumulated funds to the customers that had paid these funds to the firms.[8]

The proposed rule change is aimed at enabling those fees that may have been collected for purposes of paying an ''SEC Fee'' or ''Section 31 Fee'' to be used to pay such fees. The Exchange is proposing new NYSE Arca Equities Rule 2.17, Commentary .01 that will allow ETP Holders, on a one-time-only basis, voluntarily to remit historically accumulated funds to the Exchange. These funds then would be used to pay the Exchange's current Section 31 fees in conformity with prior representations made by ETP Holders. In addition, an ETP Holder may designate all or part of the Exchange accumulated excess held by the Exchange and allocated to ETP Holder to be used by the Exchange in accordance with the terms of NYSE Arca Equities Rule 2.17, Commentary .01.

Finally, to the extent the payment of these historically accumulated funds or Exchange accumulated excess is in excess of the fees due the SEC from NYSE Arca under Section 31 of the Exchange Act, such surplus shall be used by the Exchange to offset Exchange regulatory costs. Specifically, the Exchange will subject such surplus to the same treatment utilized with respect to unused fine income that has accumulated beyond a level reasonably necessary for future contingencies. That is, the board of directors of NYSE Regulation, Inc. will utilize such surplus to fund one or more special projects of NYSE Regulation, Inc., to reduce fees charged by NYSE Regulation, Inc. to its member organizations or the markets that it serves, or for a charitable purpose.[9]

The Exchange proposes that the effective date of the proposed rule change would be the date of filing with the Commission pursuant to Rule 19b–4(f)(6) under the Exchange Act.[10] In addition, NYSE Arca Equities Rule 2.17, Commentary .01 would automatically sunset on December 31, 2009.

Proposed Amendments to NYSE Arca Options Rule 2.18

Similar to the proposed changes to NYSE Arca Equities Rule 2.17, described above, the Exchange also

[7] The SEC stated in its release adopting new Rule 31 and Rule 31T that ''it is misleading to suggest that a customer or an SRO member incurs an obligation to the Commission under Section 31.'' *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004).

[8] NASD has asked all surveyed firms whether they could ''identify and relate the funds to specific customers on a transaction by transaction basis.'' The surveyed firms universally stated that tracking fractions of a penny to individual customers would be impossible and any over-collections could not be passed back at the customer level. *See* Securities Exchange Act Release No. 34–55697 (May 2, 2007), 72 FR 26432 (May 9, 2007) (SR–NASD–2007–027).

[9] *See* Securities Exchange Act Release No. 55003 (December 22, 2006), 71 FR 78497 (December 29, 2007) (SR–NYSE–2006–109) (approved in Securities Exchange Act Release No. 55216 (January 31, 2007), 72 FR 5779 (February 7, 2007), relating to NYSE Regulation, Inc. policies regarding exercise of power to fine NYSE member organizations and use of money collected as fines).

[10] 17 CFR 240.19b–4(f)(6).

proposes to delete outdated language regarding amounts payable under Section 31 in NYSE Arca Options Rule 2.18 and to characterize the fees payable under such rule as Activity Assessment Fees. The proposed rule states the current practice relating to collection and payment of Section 31-related fees for options transactions, namely, that Activity Assessment Fees are collected from OTP Firms and OTP Holders through their clearing firms by the Options Clearing Corporation on behalf of the Exchange. In addition, the Exchange proposes to add paragraph (c) to NYSE Arca Options Rule 2.18 to provide that, to the extent that there may be excess monies collected under NYSE Arca Equities Rule 2.18(a), the Corporation may retain those monies to help fund its regulatory expenses.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [11] of the Exchange Act, in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act,[12] which permits the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and issuers and other persons using its facilities. In addition, the proposed rule change is consistent with Section 6(b)(5) [13] of the Exchange Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposed rule change will provide a transparent way of addressing the issue of accumulated funds held at the member firm level as well as the Corporation accumulated excess. As this proposed rule change would automatically sunset, it will be of a limited duration. Moreover, based on the reminder set forth in the proposed NYSE Arca Equities Rule 2.17, Commentary .01 and the issuance of prior Information Memos on this matter, any accumulation of funds that are collected and disclosed as ''Section 31 Fees'' or ''SEC Fees'' should not reoccur.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] 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 [16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

The Exchange requests that the Commission waive the 30-day operative delay to allow for implementation of the proposed voluntary program in a timely manner to accommodate the proposed December 31, 2009 sunset date. The Commission has previously approved proposals for similar programs at other exchanges.[18] Therefore, the Commission believes that waiving the 30-day operative delay to allow the Exchange to implement this proposed rule change without delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–86. 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

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[18] *See, e.g.,* Securities Exchange Act Release Nos. 55886 (June 8, 2007), 72 FR 32935 (June 14, 2007) (SR–NASD–2007–027); 57829 (May 16, 2008), 73 FR 30173 (May 23, 2008) (SR–Amex-2007–107); and 58108 (July 7, 2008), 73 FR 40413 (July 14, 2008) (SR–NYSE–2007–64).

[19] 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).

submissions should refer to File Number SR–NYSEArca–2009–86 and should be submitted on or before October 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24351 Filed 10–8–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60773; File No. SR–NYSEArca–2009–83]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Grail American Beacon International Equity ETF

October 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 18, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Exchange Act,[3] NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): The Grail American Beacon International Equity ETF.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyx.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares[4] (''Shares'') under NYSE Arca Equities Rule 8.600: The Grail American Beacon International Equity ETF (''Fund'').[5] The Shares will be offered by Grail Advisors' ETF Trust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6] Grail Advisors, LLC (the ''Manager''), a majority-owned subsidiary of Grail Partners, LLC, acts as the Fund's investment manager. The Fund is subadvised by American Beacon Advisors, Inc. (''ABA''). The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the Fund. ALPS Distributors, Inc. (the ''Distributor'') serves as the distributor for the Fund.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3[7] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

Commentary .07 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.[8] In addition, Commentary .07 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .07 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .07 in connection

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission previously approved listing and trading on the Exchange of the following actively managed funds under Rule 8.600. *See* Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25) (order approving Rule 8.600 and Exchange listing and trading of PowerShares Active AlphaQ Fund, PowerShares Active Alpha Multi-Cap Fund, PowerShares Active Mega-Cap Portfolio and PowerShares Active Low Duration Portfolio); Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); Securities Exchange Act Release No. 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR–NYSEArca–2009–22) (order approving Exchange listing and trading of Grail American Beacon Large Cap Value ETF); Securities Exchange Act Release No. 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving Exchange listing and trading of Dent Tactical ETF).

[6] The Trust is registered under the 1940 Act. On April 29, 2009, the Trust filed with the Commission pre-effective Amendment No. 3 to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–148082 and 811–22154) (''Registration Statement''). The description of the operation of the Trust herein is based on the Registration Statement.

[7] 17 CFR 240.10A–3.

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the investment adviser is subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Grail Advisors, LLC is affiliated with a broker-dealer, Grail Securities, LLC, and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.[9]

ABA, the Fund's primary sub-adviser, is not affiliated with a broker-dealer. In addition, Lazard Asset Management LLC, Templeton Investment Counsel, LLC and The Boston Company Asset Management, LLC each is a sub-adviser to the Fund and each is affiliated with a broker-dealer. The sub-advisers have represented that they have implemented a fire wall with respect to their respective broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio.

Description of the Fund

According to the Registration Statement, the Fund's objective is long-term capital appreciation. Ordinarily, at least 80% of the Fund's net assets (plus the amount of any borrowings for investment purposes) will be invested in common stocks and securities convertible into common stocks of issuers based in at least three different countries located outside the United States and the Fund will primarily hold securities of large capitalization companies that have last sale reporting in the countries in which it invests. The Fund will primarily invest in countries in the Morgan Stanley Capital International Europe Australasia Far East Index (''MSCI EAFE Index''). The MSCI EAFE Index is comprised of equity securities of companies from various industrial sectors whose primary trading markets are located outside the United States. Companies included in the MSCI EAFE Index are selected from among the larger capitalization companies in these markets.[10] The Fund considers companies with market capitalizations of more than $1 billion to be large capitalization companies. Thus, at least 50% of the Fund's assets invested in securities of companies will be in companies with market capitalizations of more than $1 billion.

According to the Registration Statement, the investment sub-advisers will select stocks that, in their opinion, have most or all of the following characteristics (relative to that stock's country, sector or industry): Above-average return on equity or earnings growth potential, below-average price to earnings or price to cash flow ratio, below-average price to book value ratio, and above-average dividend yields.

The investment sub-advisers may consider potential changes in currency exchange rates when choosing stocks. Each of the investment sub-advisers determines the earnings growth prospects of companies based upon a combination of internal and external research using fundamental analysis and considering changing economic trends. The decision to sell a stock is typically based on the belief that the company is no longer considered undervalued or shows deteriorating fundamentals, or that better investment opportunities exist in other stocks. The Manager and ABA believe that this strategy will help the Fund outperform other investment styles over the longer term while minimizing volatility and downside risk. An investment sub-adviser may trade forward foreign currency contracts or currency futures in an attempt to reduce the Fund's risk exposure to adverse fluctuations in currency exchange rates.

The Fund's assets are allocated among one or more investment sub-advisers by the Manager and/or ABA. With respect to any assets allocated to it, each investment sub-adviser has discretion to purchase and sell securities in accordance with the Fund's objectives, policies, restrictions and more specific policies provided by the Manager and ABA.

According to the Registration Statement, in addition to the investment strategies described in the Registration Statement, the Fund may invest up to 20% of its total assets in debt securities that are investment grade at the time of purchase, including obligations of the U.S. Government, its agencies and instrumentalities, corporate debt securities, mortgage-backed securities, asset-backed securities, and other debt securities, as specified in the Registration Statement. Such assets may include non-U.S. debt securities that are rated at the time of purchase in one of the three highest rating categories by any Rating Organization (as defined in the Registration Statement) or, if unrated, are deemed to be of comparable quality by the applicable investment sub-adviser and traded publicly on a world market. In addition, although not currently anticipated except to reduce the Fund's exposure to adverse fluctuations in currency exchange rates, the Fund may use options and futures for various purposes, including for hedging and investment purposes. In addition, the Fund may purchase or otherwise receive warrants or rights, or convertible and non-convertible preferred and preference stocks. The Fund may also invest in over-the-counter options. To the extent consistent with applicable law, the Fund may invest in futures contracts on, among other things, financial instruments (such as a U.S. government security or other fixed income security), individual equity securities (''single stock futures''), securities indices, interest rates, currencies, inflation indices, and commodities or commodities indices. The Fund's purchase and sale of index futures is limited to contracts and exchanges approved by the U. S. Commodity Futures Trading Commission.

[9] The Exchange represents that Grail Advisors, LLC, as the investment adviser of the Fund, and each of the sub-advisers of the Fund, and their respective related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer (''CCO'') or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above. E-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Edward Cho, Special Counsel, and Arisa Tinaves, Special Counsel, Division of Trading and Markets, Commission, dated September 30, 2009.

[10] The Commission has previously approved the listing and trading of funds based on MSCI EAFE Indexes. *See, e.g.,* Securities Exchange Act Release Nos. 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (SR–Amex–2001–34) (approving shares of a fund based on the MSCI EAFE Index); 52178 (July 29, 2005), 70 FR 46244 (August 9, 2005) (SR–NYSE–2005–41) (order approving iShares MSCI EAFE Growth Index Fund and iShares MSCI EAFE Value Index Fund); 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR–Amex–2007–60) (order approving fund of the Proshares Trust based on the MSCI EAFE Index).

According to the Registration Statement, the Fund may engage in transactions involving the use of interest rate futures; use options on futures contracts, interest rate caps, floors, and collars; and directly or indirectly use various different types of swaps, such as swaps on securities and securities indices, interest rate swaps, currency swaps, credit default swaps, commodity swaps, inflation swaps, and other types of available swap agreements. The Fund may enter into repurchase agreements with banks and broker-dealers. The Fund may temporarily invest a portion of its assets in cash or cash items pending other investments or to maintain liquid assets required in connection with some of the Fund's investments. The Fund may invest in pooled real estate investment vehicles. In addition, the Fund may invest up to 15% of its net assets in illiquid securities. For this purpose, ''illiquid securities'' are securities that the Fund may not sell or dispose of within seven days in the ordinary course of business at approximately the amount at which the Fund has valued the securities. The Fund may invest in the securities of other investment companies to the extent permitted by law.

Under adverse market conditions, the Fund may, for temporary defensive purposes, invest up to 100% of its assets in cash or cash equivalents, including investment grade short-term obligations. Investment grade obligations include securities issued or guaranteed by the U.S. Government, its agencies and instrumentalities, as well as securities rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations rating that security (such as Standard & Poor's Ratings Services or Moody's Investors Service, Inc.) or rated in one of the four highest rating categories by one rating organization if it is the only organization rating that security.

As stated in the Registration Statement, the following are fundamental policies of the Fund: (1) Regarding diversification, the Fund may not invest more than 5% of its total assets (taken at market value) in securities of any one issuer, other than obligations issued by the U.S. Government, its agencies and instrumentalities, or purchase more than 10% of the voting securities of any one issuer, with respect to 75% of an ETF's total assets; [11] and (2) regarding concentration, the Fund may not invest more than 25% of its total assets in the securities of companies primarily engaged in any one industry or group of industries provided that: (i) This limitation does not apply to obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities; and (ii) municipalities and their agencies and authorities are not deemed to be industries.

Creations and redemptions of Fund shares will generally be in-kind, with a specified Cash Component, as described in the Registration Statement. Authorized Participants or the investors on whose behalf the Authorized Participants are acting (''Investors''), however, may deliver in connection with creations or receive in connection with redemptions cash in lieu of one or more in-kind securities. Specifically, in connection with creations (or redemptions), an Authorized Participant or Investor may transact in cash, in whole or in part, at the sole discretion of the Fund, provided, however, that the cash amount delivered (or received) shall not exceed 10% of the value of the In-Kind Creation (or Redemption) Basket, unless the Authorized Participant or Investor is subject to legal restrictions with respect to delivery or receipt of one or more securities in the In-Kind Creation (or Redemption) Basket, or the Fund is in a temporary defensive position. The Creation Unit size for the Fund is 50,000 Shares.

Availability of Information

The Fund's Web site (*http://www.grailadvisors.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[12] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in proposed Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[13] The Registration Statement provides that the Fund's portfolio holdings are publicly disseminated each day the Fund is open for business through its internet Web site. In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, is publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation (''NSCC''). The basket represents one Creation Unit of the Fund. The Web site information will be publicly available at no charge.

On a daily basis, the Fund will disclose on the Fund's Web site for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

The NAV of the Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4 p.m. Eastern time) on each business day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov.* Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'')

[11] The diversification standards are included in Section 5(b)(1) of the 1940 Act. The Fund's fundamental policies may be changed with respect to an ETF only by a vote of the holders of a majority of the Fund's outstanding voting securities.

[12] The Bid/Ask Price of the Fund is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[13] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T + 1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be disseminated by the Exchange at least every 15 seconds during the Core Trading Session through the facilities of CTA. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[14] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG.[15] In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[16] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[14] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[15] For a list of the current members of ISG, see *http://www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG and the Exchange may not have in place comprehensive surveillance sharing agreements with such markets.

[16] 15 U.S.C. 78f(b)(5).

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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–83 and should be submitted on or before October 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24353 Filed 10–8–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60783; File No. SR–MSRB–2009–15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Amendments to Rule A–13, on Underwriting Assessments and Rule G–32, on Disclosures in Connection With Primary Offerings

October 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2009, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), 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 MSRB. The MSRB has designated the proposed rule change as changing a fee applicable to brokers, dealers and municipal securities dealers pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing amendments to Rule A–13, which provides for fee assessments based on underwriting activity and Rule G–32, by adding a definition of commercial paper. The proposed rule change would apply to primary offerings of municipal securities for which submission of Form G–32 under Rule G–32(b)(i)(A) is initiated on or after December 1, 2009. The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/msrb1/sec.asp,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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 assess reasonable fees necessary to defray the costs and expenses of operating and administering the MSRB. The proposed rule change would partially accomplish this purpose by amending Rule A–13 to eliminate exemptions in Rule A–13 pertaining to underwriting assessments for primary offerings of municipal securities that: (i) Have an aggregate par value less than $1,000,000; (ii) have a final stated maturity of nine months or less, except commercial paper; (iii) at the option of the holder thereof, may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent; and (iv) have authorized denominations of $100,000 or more and are sold to no more than thirty-five persons each of whom the broker, dealer or municipal securities dealer (''dealer'') reasonably believes: (A) Has the knowledge and experience necessary to evaluate the merits and risks of the investment; and (B) is not purchasing for more than one account, with a view toward distributing the securities (''limited offering''). The underwriting fee for primary offerings of these securities will be $.03 per $1000 par value, which is the current underwriting fee for primary offerings of municipal bonds. Additionally, the proposed rule change will further harmonize the underwriting fees of notes and bonds by changing the underwriting fee on primary offerings in which all securities offered have a final stated maturity less than two years to the rate of $.03 per

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

$1000 par value. For purposes of the underwriting assessment under Rule A–13, a primary offering will be defined to mean a primary offering under Exchange Act Rule 15c2–12, but excludes subsequent remarketings after the initial issuance of the bonds or notes. Rule G–32 has also been amended to include a new definition of commercial paper.

The MSRB currently levies three types of fees that are generally applicable to dealers. Rule A–12 provides for a $100 initial fee paid once by a dealer when it enters the municipal securities business. Rule A–13 provides for an underwriting fee of $.03 per $1000 par value of bonds and $.01 per $1000 par value of notes (with specified exceptions), and a transaction fee of $.005 per $1000 par value of sale transactions of specified securities. Rule A–14 provides for an annual fee of $500 from each dealer who conducts municipal securities activities.

The underwriting and transaction fees in Rule A–13 assess fees that are generally proportionate to a dealer's activity within the industry. Historically, municipal notes were either exempt from underwriting fees or were subject to reduced underwriting fees ($.01 per $1000), and variable rate demand obligations, small issues, and limited offerings also were exempt from underwriting fees. The MSRB believes that such a fee structure has become increasingly inequitable as the volume of primary offerings in these categories (including in particular note issues) has grown, and the MSRB's resources have been devoted to supporting both notes and bonds. The elimination of exemptions for these categories of primary offerings will result in fees that are more fairly, reasonably and equitably allocated to reflect dealer participation in the overall municipal debt market.

During the past five years, the Board's ongoing expenses have increased significantly due to increased regulatory activities and expanded market information products and services, including the new Electronic Municipal Market Access system (''EMMA'') to implement the new ''access equals delivery'' primary market disclosure service under MSRB Rule G–32 and the new continuing disclosure service to implement the Commission's amendments to Exchange Act Rule 15c2–12 as well as the Short-term Obligation Rate Transparency system (''SHORT'') for interest rate transparency for variable rate demand obligations and auction rate securities. These new systems and their associated rules greatly enhance the efficiency of the municipal securities market and provide critical information to dealers and investors. The proposed rule change is designed to better match the MSRB's revenues with the operating costs associated with these important new systems and the costs of regulating the municipal securities market.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the requirements of Section 15B(b)(2)(J) of the Act,[5] which requires, in pertinent part, that the MSRB's rules shall:

> Provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

The proposed rule change provides for reasonable fees, based on dealer involvement in the municipal securities market that are necessary to defray MSRB expenses. The proposed rule change will result in a more equitable distribution of fees among dealers in the municipal securities market based on their level of activity in the primary market for municipal bonds and notes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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, since it would apply equally to all dealers and would be apportioned based on such dealers' level of participation in the municipal securities primary market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2) thereunder,[7] in that the proposed amendments to Rule A–13 and Rule G–32 change fees applicable to brokers, dealers and municipal securities dealers. The proposed rule change would apply to primary offerings of municipal securities for which submission of Form G–32 under MSRB Rule G–32(b)(i)(A) is initiated on or after December 1, 2009. 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.[8]

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–MSRB–2009–15 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–MSRB–2009–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All

[5] 15 U.S.C. 78o–4(b)(2)(J).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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–MSRB–2009–15 and should be submitted on or before October 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24354 Filed 10–8–09; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 699X)]

CSX Transportation, Inc.—Abandonment Exemption—in McMinn County, TN

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.22-mile line of railroad on CSXT's Southern Region, Huntington-West Division, KD Subdivision, extending from milepost OKW 333.40 to milepost OKW 333.62, in Athens, McMinn County, TN.[1] The line traverses United States Postal Service Zip Code 37303.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 10, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 19, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 29, 2009, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Kathryn R. Barney, 500 Water Street, J–150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 16, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by October 9, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 2, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–24258 Filed 10–8–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Offices Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Offices Performances Review Board.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental Offices Performance Review Board (PRB). The purpose of this Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in the Departmental Offices, excluding the Legal Division. The Board will perform PRB functions for other bureau positions if requested.

Composition of Departmental Offices PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Board members are as follows:

Coloretti, Nani Ann, Deputy Assistant Secretary for Management and Budget.

Dohner, Robert S., Deputy Assistant Secretary for South and East Asia.

Duffy, Michael D., Deputy Assistant Secretary for Information Systems and Chief Information Officer.

Fitzpayne, Alistair M., Deputy Chief of Staff.

[9] 17 CFR 200.30–3(a)(12).

[1] By decision and notice served on July 27, 2001, in STB Docket No. AB–55 (Sub–No. 586X), CSXT was granted an exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon a larger rail line between milepost OKW 333.40, and milepost OKW 334.24. That exemption included the smaller line segment at issue here, between milepost OKW 333.40 and milepost OKW 333.62. CSXT allowed the abandonment authority for this smaller segment to expire when it did not, by July 27, 2002, file with the Board a notice of consummation of abandonment of this smaller segment.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

Fleetwood, Nancy, Deputy Assistant Secretary (Accounting Policy).
Fuller, Reese H., Advanced Counterfeit Deterrence Program Director.
Gerardi, Geraldine A., Director for Business and International Taxation.
Gillette, Robert E., Director for Economic Modeling and Computer Analysis.
Glaser, Daniel L., Deputy Assistant Secretary (Terrorist Financing and Financial Crimes).
Granat, Rochelle F., Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer.
Gregg, Richard L., Acting Fiscal Assistant Secretary.
Grippo, Gary E., Deputy Assistant Secretary (Fiscal Operations and Policy).
Hammerle, Barbara C., Deputy Director, Office of Foreign Assets Control.
Hampl, Eric E., Director, Executive Office of Asset Forfeiture.
Harvey, Mariam G., Director, Office of Civil Rights and Diversity.
Hastings, Charles R., Deputy Chief Human Capital Officer.
Jaskowiak, Mark M., Director, Office of Specialized Development.
Kuziemko, Ilyana M., Deputy Assistant Secretary (Microeconomic Analysis).
Mahaffie, Robert F, Departmental Budget Director.
Mayock, Andrew J., Executive Secretary.
Lee, Nancy, Deputy Assistant Secretary (Western Hemisphere).
Mathiasen, Karen V., Director, Office of Multilateral Development Banks.
McDonald, William L., Deputy Assistant Secretary (Technical Assistance Policy).
Mendelsohn, Howard S., Deputy Assistant Secretary (Intelligence & Analysis).
Ostrowski, Nancy, Director, Office of D.C. Pensions.
Patterson, Mark A., Chief of Staff.
Ramanathan, Karthik, Director, Office of Debt Management.
Skud, Timothy E., Deputy Assistant Secretary (Tax, Trade and Tariff Policy).
Sobel, Mark D., Deputy Assistant Secretary (International Monetary and Financial Policy).
Szubin, Adam J., Director, Office of Foreign Assets Control.
Tangherlini, Dan, Assistant Secretary for Management and Chief Financial officer.
Tvardek, Steven F., Director, Office of Trade Finance.
Vandivier, David P., Deputy Assistant Secretary for Legislative Affairs (Tax and Budget).
Warthin, Thomas W., Director, Office of Financial Services Negotiations.
Worth, John D., Director, Office of Microeconomic Analysis.

DATES: *Effective Date:* Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Christine Nalli, Supervisory Human Resources Specialist, 1500 Pennsylvania Avenue, NW., ATTN: National Press Building, Room 200, Washington, DC 20220. Telephone: 202–622–1105.

This notice does not meet the Department's criteria for significant regulations.

Barbara Pabotoy,

Acting Director, Office of Human Resources.

[FR Doc. E9–24368 Filed 10–8–09; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Legal Division Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice of members of the Legal Division Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Legal Division PRB. The purpose of this Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, and other appropriate personnel actions for incumbents of SES positions in the Legal Division.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 3000, Washington, DC 20220, Telephone: (202) 622–0283 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Composition of Legal Division PRB

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed in this notice.

The names and titles of the PRB members are as follows: Rupa Bhattacharyya, Deputy Assistant General Counsel (International Affairs);

Peter A. Bieger, Deputy Assistant General Counsel (Banking and Finance);

Himamauli Das, Assistant General Counsel (International Affairs);

John Harrington, International Tax Counsel;

Bernard J. Knight, Jr., Assistant General Counsel (General Law, Ethics and Regulation);

Richard G. Lepley, Deputy Assistant General Counsel (General Law and Regulation);

M.J.K. Maher, Jr., Deputy Assistant General Counsel (Enforcement & Intelligence);

Margaret V. Marquette, Chief Counsel, Financial Management Service;

Shira Pavis Minton, Deputy Assistant General Counsel (Ethics);

Mark Monborne, Assistant General Counsel (Enforcement & Intelligence);

Clarissa C. Potter, Deputy Chief Counsel (Technical), Internal Revenue Service;

Kevin Rice, Chief Counsel, Bureau of Engraving and Printing;

Laurie Schaffer, Assistant General Counsel (Banking and Finance);

Daniel P. Shaver, Chief Counsel, United States Mint;

Sean M. Thornton, Chief Counsel, Office of Foreign Assets Control;

Robert M. Tobiassen, Chief Counsel, Alcohol and Tobacco Tax and Trade Bureau;

William J. Wilkins, Chief Counsel, Internal Revenue Service and Paul Wolfteich, Chief Counsel, Bureau of Public Debt.

Dated: September 18, 2009.

George W. Madison,

General Counsel.

[FR Doc. E9–24370 Filed 10–8–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

Composition of Departmental PRB: The Board shall consist of at least three members. In the case of an appraisal of

a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Daniel M. Tangherlini, Assistant Secretary for Management and Chief Financial Officer,
Nani Ann Coloretti, Deputy Assistant Secretary for Management and Budget,
Richard L. Gregg, Acting Fiscal Assistant Secretary,
Rochelle F. Granat, Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer,
Charles R. Hastings, Deputy Chief Human Capital Officer,
Timothy E. Skud, Deputy Assistant Secretary for Tax, Trade, and Tariff Policy,
Linda E. Stiff, Deputy Commissioner, Services and Enforcement, Internal Revenue Service,
Mark A. Ernst, Deputy Commissioner, Operations Support, Internal Revenue Service,
John J. Manfreda, Administrator, Alcohol and Tobacco Tax and Trade Bureau,
Vicky I. McDowell, Deputy Administrator, Alcohol and Tobacco Tax and Trade Bureau,
James H. Freis, Jr., Director, Financial Crimes Enforcement Network,
William F. Baity, Deputy Director, Financial Crimes Enforcement Network,
David A. Lebryk, Commissioner, Financial Management Service,
Wanda J. Rogers, Deputy Commissioner, Financial Management Service,
Frederic Van Zeck, Commissioner, Bureau of the Public Debt,
Anita D. Shandor, Deputy Commissioner, Bureau of the Public Debt,
Larry R. Felix, Director, Bureau of Engraving and Printing,
Pamela J. Gardiner, Deputy Director, Bureau of Engraving and Printing,
Andrew D. Brunhart, Deputy Director, United States Mint.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Catherine R. Schmader, Executive Resources Program Manager, 1500 Pennsylvania Avenue, NW., ATTN: 1750 Pennsylvania Avenue, NW.—Suite 8100, Washington, DC 20220, Telephone: (202) 622–0396.

This notice does not meet the Department's criteria for significant regulations.

Charles R. Hastings,

Deputy Chief Human Capital Officer.

[FR Doc. E9–24371 Filed 10–8–09; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee October 2009 Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee October 2009 Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for October 14, 2009.

Date: October 14, 2009.

Time: 9 a.m. to 12 p.m.

Location: Second Floor, Conference Room C, United States Mint, 801 9th Street, NW., Washington, DC 20220.

Subject: Review obverse and reverse candidate designs for the Constantino Brumidi Congressional Gold Medal and obverse and reverse candidate designs for the Women Airforce Service Pilots Congressional Gold Medal.

Interested persons should call 202–354–7502 or visit the website: www.ccac.gov for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

■ Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.

■ Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.

■ Makes recommendations with respect to the mintage level for any commemorative coin recommended.

For Further Information Contact: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: October 6, 2009.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E9–24459 Filed 10–8–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of three individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the three individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on October 2, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person

determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On October 2, 2009, OFAC removed from the SDN List the three individuals listed below, whose property and interests in property were blocked pursuant to the Order:

MALDONADO ESCOBAR, Mauricio, c/o MAYOR COMERCIALIZADORA LTDA., Bogota, Colombia; c/o MOR GAVIRIA Y CIA. S.C.S., Bogota, Colombia; c/o AUDITORES ESPECIALIZADOS LTDA., Bogota, Colombia; DOB 22 Oct 1962; POB Colombia; Cedula No. 79266443 (Colombia) (individual) [SDNT].

MONTES OCAMPO, Jose Alberto, Carrera 4 No. 12–20 of. 206, Cartago, Valle, Colombia; c/o AGRICOLA DOIMA DEL NORTE DEL VALLE LTDA., Cartago, Valle, Colombia; c/o GANADERIA EL VERGEL LTDA., Cartago, Valle, Colombia; c/o GANADERIAS BILBAO LTDA., Cartago, Valle, Colombia; DOB 24 Feb 1965; Cedula No. 79339330 (Colombia); Passport 79339330 (Colombia) (individual) [SDNT].

ZAMORA RUIZ, Alexander, c/o INPESCA S.A., Buenaventura, Colombia; Cedula No. 16498805 (Colombia) (individual) [SDNT].

Dated: October 2, 2009.

Barbara Hammerle,

Deputy Director, Office of Foreign Assets Control.

[FR Doc. E9–24374 Filed 10–8–09; 8:45 am]

BILLING CODE 4811–45–P

Federal Register

Friday,
October 9, 2009

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 226

Endangered and Threatened Wildlife and Plants: Final Rulemaking To Designate Critical Habitat for the Threatened Southern Distinct Population Segment of North American Green Sturgeon; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 080730953–91263–02]

RIN 0648–AX04

Endangered and Threatened Wildlife and Plants: Final Rulemaking To Designate Critical Habitat for the Threatened Southern Distinct Population Segment of North American Green Sturgeon

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

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), designate critical habitat for the threatened Southern distinct population segment of North American green sturgeon (Southern DPS of green sturgeon) pursuant to section 4 of the Endangered Species Act (ESA). Specific areas proposed for designation include: Coastal U.S. marine waters within 60 fathoms (fm) depth from Monterey Bay, California (including Monterey Bay), north to Cape Flattery, Washington, including the Strait of Juan de Fuca, Washington, to its United States boundary; the Sacramento River, lower Feather River, and lower Yuba River in California; the Sacramento-San Joaquin Delta and Suisun, San Pablo, and San Francisco bays in California; the lower Columbia River estuary; and certain coastal bays and estuaries in California (Humboldt Bay), Oregon (Coos Bay, Winchester Bay, Yaquina Bay, and Nehalem Bay), and Washington (Willapa Bay and Grays Harbor). This rule designates approximately 515 kilometer (km) (320 miles (mi)) of freshwater river habitat, 2,323 km^2 (897 mi^2) of estuarine habitat, 29,581 km^2 (11,421 mi^2) of marine habitat, 784 km (487 mi) of habitat in the Sacramento-San Joaquin Delta, and 350 km^2 (135 mi^2) of habitat within the Yolo and Sutter bypasses (Sacramento River, CA) as critical habitat for the Southern DPS of green sturgeon.

This rule excludes the following areas from designation because the economic benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species: Coastal U.S. marine waters within 60 fm depth from the California/Mexico border north to Monterey Bay, CA, and from the Alaska/Canada border northwest to the Bering Strait; the lower Columbia River from river kilometer (RKM) 74 to the Bonneville Dam; and certain coastal bays and estuaries in California (Elkhorn Slough, Tomales Bay, Noyo Harbor, and the estuaries to the head of the tide in the Eel and Klamath/Trinity rivers), Oregon (Tillamook Bay and the estuaries to the head of the tide in the Rogue, Siuslaw, and Alsea rivers), and Washington (Puget Sound). Particular areas are also excluded based on impacts on national security and impacts on Indian lands. The areas excluded from the designation comprise approximately 0.2 km (0.1 mi) of freshwater habitat, 2,945 km^2 (1,137 mi^2) of estuarine habitat and 1,034,935 km^2 (399,590 mi^2) of marine habitat.

This final rule responds to and incorporates public comments received on the proposed rule and supporting documents, as well as peer reviewer comments received on the draft biological report and draft ESA section 4(b)(2) report.

DATES: This rule will take effect on November 9, 2009.

ADDRESSES: Reference materials regarding this determination can be obtained via the Internet at: *http://www.nmfs.noaa.gov* or by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS, Southwest Region (562) 980–4115; Steve Stone, NMFS, Northwest Region (503) 231–2317; or Lisa Manning, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Under the ESA, we are responsible for determining whether certain species, subspecies, or distinct population segments (DPS) are threatened or endangered, and designating critical habitat for them (16 U.S.C. 1533). On April 7, 2006, we determined that the Southern DPS of green sturgeon is likely to become endangered in the foreseeable future throughout all or a significant portion of its range and listed the species as threatened under the ESA (71 FR 17757). A proposed critical habitat rule for the Southern DPS was published in the **Federal Register** on September 8, 2008 (73 FR 52084), with a technical correction and notification of a public workshop published on October 7, 2008 (73 FR 58527). Pursuant to a court-ordered settlement agreement, NMFS agreed to make a final critical habitat designation for the Southern DPS by June 30, 2009. However, an extension was requested and granted, with a new deadline of October 1, 2009. This rule describes the final critical habitat designation, including responses to public comments and peer reviewer comments, a summary of changes from the proposed rule, and supporting information on green sturgeon biology, distribution, and habitat use, and the methods used to develop the final designation.

We considered various alternatives to the critical habitat designation for the green sturgeon. The alternative of not designating critical habitat for the green sturgeon would impose no economic, national security, or other relevant impacts, but would not provide any conservation benefit to the species. This alternative was considered and rejected because such an approach does not meet the legal requirements of the ESA and would not provide for the conservation of green sturgeon. The alternative of designating all potential critical habitat areas (*i.e.,* no areas excluded) also was considered and rejected because, for a number of areas, the economic benefits of exclusion outweighed the benefits of inclusion, and NMFS did not determine that exclusion of these areas would significantly impede conservation of the species or result in extinction of the species. The total estimated annualized economic impact associated with the designation of all potential critical habitat areas would be $64 million to $578 million (discounted at 7 percent) or $63.9 million to $578 million (discounted at 3 percent).

An alternative to designating critical habitat within all of the units considered for designation is the designation of critical habitat within a subset of these units. Under section 4(b)(2) of the ESA, NMFS must consider the economic impacts, impacts to national security, and other relevant impacts of designating any particular area as critical habitat. NMFS has the discretion to exclude an area from designation as critical habitat if the benefits of exclusion (*i.e.,* the impacts that would be avoided if an area were excluded from the designation) outweigh the benefits of designation (*i.e.,* the conservation benefits to the Southern DPS if an area were designated), so long as exclusion of the area will not result in extinction of the species. Exclusion under section 4(b)(2) of the ESA of one or more of the units considered for designation would reduce the total impacts of designation. The determination of which units and how many to exclude depends on NMFS' ESA 4(b)(2) analysis, which is conducted for each unit and described

in detail in the ESA 4(b)(2) analysis report. Under this preferred alternative, NMFS originally proposed to exclude 13 out of 40 units considered. The total estimated economic impact associated with the proposed rule was $22.5 million to $76.4 million (discounted at 7 percent) or $22.5 million to $76.3 million (discounted at 3 percent). In response to public comments and additional information received, this final rule excludes 14 units out of 41 units considered where the economic benefits of exclusion outweighed the conservation benefits of designation. NMFS determined that the exclusion of these 14 units would not significantly impede the conservation of the Southern DPS. The total estimated economic impact associated with this final rule is $20.2 million to $74.1 million (discounted at 7 percent) or $20.1 million to $74 million (discounted at 3 percent). NMFS selected this alternative because it results in a critical habitat designation that provides for the conservation of the Southern DPS while reducing the economic impacts on entities. This alternative also meets the requirements under the ESA and our joint NMFS–USFWS regulations concerning critical habitat.

Green Sturgeon Natural History

The green sturgeon (*Acipenser medirostris*) is an anadromous fish species that is long-lived and among the most marine oriented sturgeon species in the family Acipenseridae. Green sturgeon is one of two sturgeon species occurring on the U.S. west coast, the other being white sturgeon (*Acipenser transmontanus*). Green sturgeon range from the Bering Sea, Alaska, to Ensenada, Mexico, with abundance increasing north of Point Conception, CA (Moyle *et al.* 1995). Green sturgeon occupy freshwater rivers from the Sacramento River up through British Columbia (Moyle 2002), but spawning has been confirmed in only three rivers, the Rogue River in Oregon and the Klamath and Sacramento rivers in California. Based on genetic analyses and spawning site fidelity (Adams *et al.* 2002; Israel *et al.* 2004), NMFS has determined green sturgeon are comprised of at least two distinct population segments (DPSs): (1) A Northern DPS consisting of populations originating from coastal watersheds northward of and including the Eel River (*i.e.,* the Klamath and Rogue rivers) (''Northern DPS''); and (2) a southern DPS consisting of populations originating from coastal watersheds south of the Eel River, with the only known spawning population in the Sacramento River (''Southern DPS''). The Northern DPS and Southern DPS are distinguished based on genetic data and spawning locations, but their distribution outside of natal waters generally overlap with one another (Chadwick 1959; Miller 1972; California Department of Fish and Game (CDFG) 2002; Israel *et al.* 2004; Moser and Lindley 2007; Erickson and Hightower 2007; Lindley *et al.* 2008.). Both Northern DPS and Southern DPS green sturgeon occupy coastal estuaries and coastal marine waters from southern California to Alaska, including Humboldt Bay, the lower Columbia river estuary, Willapa Bay, Grays Harbor, and coastal waters between Vancouver Island, BC, and southeast Alaska (Israel *et al.* 2004; Moser and Lindley 2007; Lindley *et al.* 2008).

Spawning frequency is not well known, but the best information suggests adult green sturgeon spawn every 2—4 years (pers. comm. with Steve Lindley, NMFS, and Mary Moser, NMFS, 2004, cited in 70 FR 17386, April 6, 2005; Erickson and Webb 2007). Beginning in late February, adult green sturgeon migrate from the ocean into fresh water to begin their spawning migrations (Moyle *et al.* 1995). Spawning occurs from March to July, with peak activity from mid-April to mid-June (Emmett *et al.* 1991; Poytress *et al.* 2009). Spawning in the Sacramento River occurs in fast, deep water over gravel, cobble, or boulder substrates (Emmett *et al.* 1991; Moyle *et al.* 1995; Poytress *et al.* 2009). Eggs and larvae develop in freshwater, likely near the spawning site (Kynard *et al.* 2005). Development of early life stages is affected by water flow and temperature (optimal temperatures from 11 to 17–18 °C; Cech *et al.* 2000, cited in COSEWIC 2004; Van Eenennaam *et al.* 2005). Juvenile green sturgeon rear and feed in fresh and estuarine waters from 1 to 4 years prior to dispersing into marine waters as subadults (Nakamoto *et al.* 1995).

Adults are defined as sexually mature fish, subadults as sexually immature fish that have entered into coastal marine waters (usually at 3 years of age), and juveniles as fish that have not yet made their first entry into marine waters. Green sturgeon spend a large portion of their lives in coastal marine waters as subadults and adults. Subadult male and female green sturgeon spend at least approximately 6 and 10 years, respectively, at sea before reaching reproductive maturity and returning to freshwater to spawn for the first time (Nakamoto *et al.* 1995). Adult green sturgeon spend as many as 2–4 years at sea between spawning events (pers. comm. with Steve Lindley, NMFS, and Mary Moser, NMFS, cited in 70 FR 17386, April 6, 2005; Erickson and Webb 2007). Prior to reaching sexual maturity and between spawning years, subadults and adults occupy coastal estuaries adjacent to their natal rivers, as well as throughout the West coast, and coastal marine waters within 110 meters (m) depth. Green sturgeon inhabit certain estuaries on the northern California, Oregon, and Washington coasts during the summer, and inhabit coastal marine waters along the central California coast and between Vancouver Island, British Columbia, and southeast Alaska over the winter (Lindley *et al.* 2008). Green sturgeon likely inhabit these estuarine and marine waters to feed and to optimize growth (Moser and Lindley 2007). Particularly large aggregations of green sturgeon occur in the Columbia River estuary and Washington estuaries and include green sturgeon from all known spawning populations (Moser and Lindley 2007). Although adult and subadult green sturgeon occur in coastal marine waters as far north as the Bering Sea, green sturgeon have not been observed in freshwater rivers or coastal bays and estuaries in Alaska.

Detailed information on the natural history of green sturgeon is provided in the proposed rule to designate critical habitat (73 FR 52084; September 8, 2008) and in the final biological report (NMFS 2009a) prepared in support of this final rule.

Summary of Comments and Responses

We requested comments on the proposed rule to designate critical habitat for the Southern DPS of green sturgeon (73 FR 52084; September 8, 2008) and on the supporting documents (*i.e.,* the draft biological report, draft economic analysis report, and draft ESA section 4(b)(2) report). To facilitate public participation, the proposed rule and supporting documents were made available on our Southwest Region Web site (*http://swr.nmfs.noaa.gov*) and on the Federal eRulemaking Portal Web site (*http://www.regulations.gov*). Public comments were accepted via standard mail, fax, or through the Federal eRulemaking Portal. In response to requests from the public, the original 60-day public comment period was extended an additional 45 days (73 FR 65283; November 3, 2008), ending on December 22, 2008. A public workshop was held in Sacramento, CA, on October 16, 2008, and attended by 21 participants, including researchers and representatives from industries and Federal, State, and local agencies. The draft biological report and draft

economic analysis report were also each reviewed by three peer reviewers.

Thirty-nine written public comments were received on the proposed rule and supporting documents from Federal agencies, State agencies, local entities, non-governmental organizations, Tribes, and industry representatives. Seven comments generally supported the proposed rule, 29 comments did not agree with the designation of critical habitat in particular areas, and 3 comments provided additional information but did not support or oppose the proposed rule. Several commenters requested that certain particular areas or specific areas be considered ineligible for designation because they do not meet the definition of critical habitat. Several commenters also requested exclusion of areas based on economic impacts, impacts on national security, or impacts on Indian lands. Additional data were provided to inform the biological and economic analyses, as well as comments regarding the methods used in these analyses. NMFS considered all public and peer reviewer comments. A summary of the comments by major issue categories and the responses thereto are presented here. Similar comments are combined where appropriate.

Physical or Biological Features Essential for Conservation

Comment 1: Several commenters felt that the critical habitat designation is not supported by the relatively sparse data and that the physical or biological habitat features or primary constituent elements (PCE) identified for green sturgeon are too general and vague, such that no habitat would exist without them. One commenter noted that the level of detail provided on the PCEs in the supplementary information section of the proposed rule is greater than the level of detail provided in the regulatory text section of the proposed rule.

Response: The critical habitat designation was developed using the best available scientific data, as required by the ESA. We recognize that uncertainties exist and have noted where they occur in the final rule and supporting documents. When appropriate, we incorporated additional data provided by the public comments regarding the PCEs, the biological evaluation, and the economic analysis. The level of specificity of the PCEs was consistent with that provided in previous critical habitat designations (*e.g.,* for West coast salmon and steelhead evolutionarily significant units (ESU) and Southern Resident killer whales). In addition, specific ranges of values for the PCEs cannot be provided (*e.g.,* water flow levels, adequately low contaminant levels), because the data are not currently available and because these values may vary based on the location, time of year, and other factors specific to an area. The level of detail provided in different sections of the proposed rule differs because the regulatory text section typically provides a more brief description of the PCEs, whereas the supplementary information section typically provides a more thorough description. The supplementary information section and the supporting documents provide additional details to describe the process of the critical habitat designation and the biological and economic analyses that were conducted in support of the designation, whereas the regulatory text reports the final designation.

Comment 2: One commenter requested clarification regarding how acceptably low levels of contaminants would be determined on a case-by-case basis (as it pertains to the water quality and sediment quality PCEs). Specifically, the commenter asked whether case-by-case meant that this would be determined for each Permittee/Project (and if so, what would be the basis for differentiation) or by contaminant (and if so, how this would be determined and disseminated to the public).

Response: Consultations under section 7 of the ESA on contaminants may be conducted on a case-by-case basis for each project or by contaminant, depending on the scope of the consultation. NMFS has typically dealt with consultations for contaminants, such as pesticides, on a project-by-project basis. These consultations have generally resulted in recommended measures to avoid exposure of the listed species to the contaminants in question, for example, by spatially or temporally limiting the introduction of the contaminant into waterways occupied by the species. However, the recommended measures are site-specific and will vary depending on the site, the contaminant(s) in question, the type of use, the purpose of the project, and the species potentially affected. NMFS recently conducted two consultations on the national level with the Environmental Protection Agency (EPA) addressing the registration of pesticides containing carbaryl, carbofuran, and methomyl (NMFS 2009b) and pesticides containing chlorpyrifos, diazinon, and malathion (NMFS 2008a). In both consultations, NMFS issued a biological opinion finding that the registration of these pesticides would jeopardize the continued existence of most listed salmonids and adversely modify critical habitat. The reasonable and prudent alternatives provided to the EPA recommended labeling requirements that specify criteria for the use and application of the pesticides, including no-application buffer zones adjacent to salmonid habitat, restrictions on application during high wind speeds and when a rain storm is predicted, reporting of any fish mortalities within four days, and implementation of a monitoring plan for off-channel habitats. To the extent the alternatives minimize entry of pesticides into water bodies and result in better information, green sturgeon and other aquatic species will benefit.

Comment 3: One commenter provided additional information from recent studies indicating that green sturgeon are more sensitive to methylmercury and selenium (two contaminants found in sediments) than white sturgeon (Kaufman *et al.* 2008). The commenter noted that the studies were unable to determine a ''no effect'' concentration for selenomethionine for green sturgeon, a contaminant found in bays including the San Francisco, San Pablo, and Suisun bays and the Sacramento-San Joaquin Delta (hereafter, the Delta). The commenter stated that it may be unlikely that many areas will qualify as having the sediment quality PCE as it is described in the proposed rule.

Response: We appreciate the updated information regarding the sensitivity of green sturgeon to contaminants and have incorporated this information into the final rule and biological report. We recognize the concern expressed by the commenter that few, if any, areas have sediments free of elevated levels of contaminants (*i.e.,* levels at which green sturgeon are not negatively affected). This brings up two issues. First, whether this affects the eligibility of the specific areas considered for designation. Because all of the proposed areas containing the sediment quality PCE also contained at least one other PCE, the eligibility of the specific areas is not affected. Related to this is the question of whether a PCE can be considered to exist within an area if it has been altered and degraded by past, current, or ongoing activities. The ESA's definition of critical habitat focuses on PCEs that may require special management considerations or protection. Thus, the ESA recognizes that the PCEs may exist at varying levels of quality and allows for the consideration of PCEs that have been or may be altered or degraded. Second, this brings up the question of how this PCE will be addressed in consultations under section 7 of the ESA. The

specifics of each consultation would vary depending on each project, but would likely focus on measures to control the introduction of selenium into the environment. The Sacramento River basin is naturally very low in selenium and little selenium enters the watercourses from the surrounding watershed. Conversely, the San Joaquin River basin, due to the geology of the west side of the valley and the human agricultural practices conducted in this region, create conditions of elevated selenium in the waters of the basin draining the west side and running through the valley floor towards the Delta. It should also be recognized that selenium is a micronutrient which is necessary for life, though toxic at levels above trace amounts. Continued monitoring of selenium levels in sediments and research on the sensitivity of green sturgeon to this and other contaminants would be supported.

Geographical Area Occupied by the Species

Comment 4: One commenter stated that the range of the Southern DPS needs to be clarified as previous publications in the **Federal Register** do not clearly define the range. Another commenter stated that the final decision to list the Southern DPS as threatened under the ESA only applied the listing to the population in California and that, although Southern DPS green sturgeon move into the Northern DPS' range outside California, the protections under the listing do not apply to Southern DPS fish once they enter the Northern DPS' range. The commenter felt that NMFS should not designate Oregon and Washington rivers and marine waters as critical habitat if the species is not listed in these areas.

Response: We acknowledge that in the final listing rule and the corresponding regulatory language at 50 CFR 223.102(a)(23), it is stated, ''Where listed: USA, CA. The southern DPS includes all spawning populations of green sturgeon south of the Eel River (exclusive), principally including the Sacramento River green sturgeon spawning population.'' This statement limits the listing to the Southern DPS of green sturgeon, but does not limit the geographic range to which the listing applies. A Southern DPS green sturgeon is defined to originate from spawning populations south of the Eel River (*i.e.,* from the Sacramento River). Each individual Southern DPS fish carries the listing, and the protections afforded to it under the ESA, wherever it goes. In other words, a Southern DPS green sturgeon is listed as threatened and protected under the ESA no matter where that individual is found. Thus, Southern DPS green sturgeon are listed throughout their range, including waters north of California within the range of the Northern DPS.

NMFS recognizes that previous publications in the **Federal Register** have defined the range of Southern DPS green sturgeon with varying levels of specificity and that this may have resulted in confusion. The range of the Southern DPS is more clearly defined in the proposed critical habitat rule and in the draft biological report (NMFS 2008b). We restate this definition here to further clarify the definition and range of the Southern DPS of green sturgeon. The proposed critical habitat rule (73 FR 52084, September 8, 2008) and the draft biological report (NMFS 2008b) define the Southern DPS as consisting of populations originating from coastal watersheds south of the Eel River, with the only confirmed spawning population in the Sacramento River. The Northern DPS consists of populations originating from coastal watersheds northward of and including the Eel River, with the only confirmed spawning populations in the Klamath and Rogue rivers. Thus, the Northern DPS and the Southern DPS of green sturgeon are defined based on their natal streams. However, the ranges of the Northern DPS and Southern DPS are defined by the distribution of each DPS including and beyond their natal waters. Based on genetic information and telemetry data from tagged Southern DPS green sturgeon, the occupied geographic range of the Southern DPS extends from Monterey Bay, CA, to Graves Harbor, AK. Within this geographic range, the presence of Southern DPS green sturgeon has been confirmed in the following areas: Sacramento River, CA; lower Feather River, CA; lower Yuba River, CA; the Sacramento-San Joaquin Delta, CA; Suisun Bay, CA; San Pablo Bay, CA; San Francisco Bay, CA; Monterey Bay, CA; Humboldt Bay, CA; Coos Bay, OR; Winchester Bay, OR; Yaquina Bay, OR; the lower Columbia River and estuary; Willapa Bay, WA; Grays Harbor, WA; the Strait of Juan de Fuca, WA; Puget Sound, WA; and Graves Harbor, AK (*see* final biological report (NMFS 2009a) for references for each area). Northern DPS and Southern DPS green sturgeon co-occur across much of their occupied ranges, are not morphologically distinguishable, and, based on the best available data at this time, do not appear to differ in temporal or spatial distribution within areas where their ranges overlap. Thus, within areas where the Southern DPS has been confirmed, protections for the Southern DPS would apply to all green sturgeon based on similarity of appearance. The critical habitat designation recognizes not only the importance of natal habitats, but of habitats throughout their range for the conservation of Southern DPS green sturgeon.

Comment 5: One commenter stated that the genetic analysis does not provide sufficient information to determine the presence or absence of Southern DPS green sturgeon in the bays and estuaries on the Oregon coast.

Response: To determine the presence of Southern DPS green sturgeon in an area, a critical habitat review team (CHRT), comprised of 9 Federal biologists from various agencies, primarily relied on the best available information from tagging studies. Monitoring of tagged Southern DPS green sturgeon has confirmed their use of several coastal bays and estuaries from Monterey Bay, California, north to Puget Sound, Washington (Moser and Lindley 2007; Lindley *et al.* 2008; pers. comm. with Steve Lindley, NMFS, and Mary Moser, NMFS, February 24–25, 2008). Therefore, presence has already generally been established based on the tagging data. The available genetic data supports the tagging data by assigning or confirming the DPS of individuals (*e.g.,* assigning individuals caught in non-natal waters to the Northern DPS or Southern DPS) and has also been useful in estimating what proportion of green sturgeon observed in non-natal estuaries belong to the Southern DPS. In addition, the genetic data would provide supplemental presence information once the data set is large enough to ensure detection of Southern DPS fish, particularly if the estuary or bay has a low frequency of use.

Comment 6: One commenter requested that additional telemetry data regarding green sturgeon use of coastal marine waters at Siletz Reef and Seal Rock Reef off the coast of Oregon be incorporated into the final biological report and considered in the final critical habitat designation. The commenter also requested that additional information be included to support the designation of coastal marine waters from 0 to 20 m depth and from 90 to 110 m depth.

Response: NMFS is currently analyzing the data on green sturgeon detections off the Oregon coast. Preliminary results indicate that green sturgeon use deeper depths (between 40 to 80 m) more than shallower depths, but reasons for this observation are not known. Detection data for shallower depths may be affected by noise. However, because these data represent

only two areas along the Oregon coast, it may not be appropriate to extrapolate these observations to other areas along the West coast. Other available data indicate that green sturgeon occur throughout all depths from 0 to 110 m depth. Some green sturgeon have been caught deeper than 110 m depth, but the majority occur in waters shallower than 110 m depth (Erickson and Hightower 2007).

Specific Areas

Comment 7: Two commenters felt that the areas proposed for designation as critical habitat were too broad. One commenter stated that NMFS failed to show that the areas are essential for conservation of the Southern DPS. Another commenter suggested that the areas be refined based on the spatial and temporal presence of the PCEs. For example, the commenter stated that riverine areas designated as critical habitat for spawning purposes should be designated only if actually used for spawning and only during the time of year that spawning occurs, because areas spatially or temporally outside of this would not contain the PCEs for spawning. The commenter stated that such refinement would help ensure that the designation is not applied in an overly restrictive manner to activities that occur in areas where no green sturgeon spawn and that this reasoning can be applied to other PCEs and habitat uses.

Response: The joint NMFS/U.S. Fish and Wildlife Service (USFWS) regulations regarding the designation of critical habitat focus on the primary biological or physical constituent elements (PCEs) that are essential to the conservation of the species. The ESA states that an area qualifies as critical habitat if it is occupied and has one or more PCE(s) that may require special management considerations or protection. Specific areas are eligible for designation if they meet these criteria. Neither the ESA definition of critical habitat nor the joint NMFS/USFWS regulations require that critical habitat be designated only within the most important core habitats of the species.

In addition, the ESA focuses on the spatial presence of the PCEs, but does not mention the temporal presence of the PCEs. The level of refinement described by the commenter is typically considered during the consultation process under section 7 of the ESA, not during the critical habitat designation process. Consistent with ESA section 7 consultation practices, spatial and temporal considerations are commonly assessed during the impact analysis of the proposed action. While temporal considerations generally look at impacts to individual fish (*i.e.,* avoidance of exposure as inferred by work windows), actions can, and often do, affect the habitat that fish use or occupy after the action is completed. The commenter's example of spawning areas does not address what potential impacts the ''action'' may have on the quality of the spawning area after the action is completed. Actions that temporally avoid areas of use (*i.e.,* spawning activities on the spawning grounds) during the implementation of the action may still impact the use of the area after the action is completed. For example, installing bridge piers upstream of a spawning area still impacts the spawning area after-the-fact through road runoff entering the river channel from the bridge, traffic vibrations being transmitted through the column into the substrate of the river channel during ''normal use,'' and sedimentation from roadway runoff and altered riparian habitat. Furthermore, actions that do not occur exactly in the same place as the area of concern may nonetheless still affect the area of concern. For example, wastewater discharge upstream of a spawning area can generate an effluent plume that travels downstream to spawning areas, and reservoir releases occurring upstream may affect water flow, velocity, and temperature in the area of concern. Thus, details such as the specific activities being conducted, the location, and the spatial and temporal scale are considered in order to determine the potential effects of the activity on critical habitat and, ultimately, whether the activity is likely to destroy or adversely modify critical habitat. Then a determination is made of what, if any, additional actions or modifications to the proposed action will need to be implemented to provide protection to the species and their designated critical habitat. The section 7 consultation process allows NMFS to address the action's impacts on a case-by-case basis and incorporate the appropriate level of analysis as needed. A categorical exemption would not allow this level of review to occur and in fact would diminish the ability to consistently and accurately assess action impacts and adjust actions to fit the current status of the species and the condition of the critical habitat used by the species.

Comment 8: One commenter suggested that the shoreward boundary for coastal marine habitats should extend to the line of mean lower low water (MLLW) instead of extreme high tide, and that the seaward boundary of 110 m depth should be rounded to the 60 fm contour line.

Response: The CHRT, a team of Federal biologists who conducted the biological analysis, considered and agreed with the recommendations. The area between the MLLW line and the extreme high tide line along the coast is small and likely not occupied by green sturgeon. Whereas studies indicate that intertidal zones within estuaries and protected bays are important habitat for green sturgeon, green sturgeon likely do not occupy shallow intertidal areas or high energy surf zones along the open coast. The CHRT compared the MLLW line along the coast with the extreme high tide line and found that the area that would be excluded by defining the shoreward boundary using the MLLW line would be small and would not contain any areas identified to be important for green sturgeon. Thus, the CHRT agreed to extend the coastal marine areas to the area inundated by mean lower low water, rather than to the extreme high tide. The CHRT also agreed to round the 110 m depth contour line to the 60 fm contour line, because the 60-fm contour is already described in Federal regulations for the West Coast groundfish bottom trawl fishery and is approximately equal to 110 m (60 fm = 109.7 m).

Comment 9: Several comments were received regarding the proposed designation of the lower Columbia River estuary. The commenters felt that the geographic definition of the estuary used was too broad and that the boundary for the estuary in the lower Columbia River should be defined by the maximum extent of saltwater intrusion, which was defined by one commenter to occur at RKM 64 and another commenter to occur at RKM 74. The commenters recommended that the Willamette River and the lower Columbia River from RKM 64 or RKM 74 to Bonneville Dam should be excluded from the designation. One commenter asserted that there are no data indicating that green sturgeon captured above Columbia RKM 64 are part of the Southern DPS, and that because recent green sturgeon tagging data indicate that Northern DPS green sturgeon occupy more interior habitats in the Columbia River estuary than Southern DPS green sturgeon, a smaller critical habitat area for the Columbia River estuary is justified.

Response: In the proposed rule, the specific area in the lower Columbia River estuary was defined as the area from the river mouth to the Bonneville Dam (RKM 146). The CHRT considered the comments received and agreed that this specific area should be divided into

two specific areas as follows: (1) The lower Columbia River estuary from the river mouth to RKM 74; and (2) the lower Columbia River from RKM 74 to the Bonneville Dam (RKM 146). This division was based on differences in environmental parameters and green sturgeon use and presence between the lower estuary (river mouth to RKM 74) and the lower river (RKM 74 to Bonneville Dam). River kilometer 74 marks the approximate location of the maximum extent of saltwater intrusion into the lower Columbia River and has been used in other reports as the location to divide the lower estuary and tidal freshwater (Johnson *et al.* 2003). Commercial gillnet harvest data for green sturgeon from 1981–2004 (Washington Department of Fish and Wildlife (WDFW) 2007, ESA informal consultation) indicate the greatest numbers of green sturgeon catch in zone 1 (RKM 1–32; 29,124 green sturgeon harvested) and zone 2 (RKM 32–84; 8,082 green sturgeon harvested). Green sturgeon catch declines sharply upstream of RKM 84, with a total of 290 green sturgeon caught in zones 3–5 (RKM 84–227) from 1981–2004. Observations by WDFW and Oregon Department of Fish and Wildlife (ODFW) also indicate concentrations of green sturgeon in the lower estuary with fewer numbers moving upstream. Unpublished telemetry data support these observations, showing greater numbers of detections of both Southern DPS and Northern DPS green sturgeon in the lower portion of the estuary compared to the upper portion (pers. comm. with Mary Moser, NMFS, February 25, 2009). However, because the most upstream monitor location is at RKM 74, the telemetry data provide data on the distribution of tagged Southern DPS and Northern DPS fish within the lower estuary but do not provide data on the movement and distribution of tagged green sturgeon upstream of RKM 74. Tagged Southern DPS green sturgeon have been detected at the monitor at RKM 74 and are able to access the lower Columbia River upstream of RKM 74, though data are not available to determine the number of Southern DPS green sturgeon moving upstream of RKM 74 or the relative levels of Southern DPS and Northern DPS fish in this area. Based on information provided in the public comments indicating that green sturgeon have not been observed in the lower Willamette River, the CHRT agreed that the Willamette River should not be included in the areas considered for designation. Thus, the specific area delineated in the lower Columbia River from RKM 74 to the Bonneville Dam does not now include the Willamette River. The CHRT's evaluation of the two specific areas resulted in a conservation value rating of High for the lower Columbia River estuary from the river mouth to RKM 74 and a conservation value rating of Low for the lower Columbia River from RKM 74 to RKM 146 (*see* response to Comment 14 and the section titled ''Methods for Assessment of Specific Areas'' for an explanation of how the conservation value ratings were determined). The final biological report (NMFS 2009a) provides additional information about the CHRT's evaluation of each specific area.

Comment 10: One commenter recommended that South San Francisco Bay be considered a separate area from Central San Francisco Bay and that South San Francisco Bay should be excluded from the designation because use of the area by green sturgeon is moderate and it is not needed for any life history stage that is not supported by the northern reach of the Bay.

Response: The CHRT acknowledged that Central San Francisco Bay and South San Francisco Bay can be distinguished by different environmental and oceanographic features. However, these differences likely do not affect green sturgeon use of the areas. The best available catch data for the San Francisco Bay indicate that comparably low numbers of green sturgeon have been caught in both Central and South San Francisco Bay. In 2006, a local sport fishing group reported 2 green sturgeon caught in Central San Francisco Bay, 3 caught in South-Central San Francisco Bay, and 4 caught in South San Francisco Bay (pers. comm. with Pete Davidson, Coastside Fishing Club, May 31, 2006). The total green sturgeon catch in the sport fishery for 2006 is not known, because sturgeon report cards were not required in California until March 2007 (Gleason 2007). Low numbers of green sturgeon were caught in CDFG's otter trawl (1980 to 2004) and midwater trawl (1980 to 2001) surveys in the bays and the Delta (Delta: n = 19; Suisun Bay/Carquinez Strait: n = 27; San Pablo Bay: n = 9; Central San Francisco Bay: n = 8; South San Francisco Bay: n = 2) (Jahn 2006). It is important to note that the surveys and sampling gear were not designed to target green sturgeon, and thus the data may not be truly representative of the relative levels of green sturgeon use among the bays and the Delta. For example, given that all green sturgeon must migrate through Central San Francisco Bay in their migrations to and from the ocean, much larger numbers of green sturgeon catch would be expected in this area. In addition, the catch data do not provide information about the distribution of juvenile green sturgeon throughout the bays and the Delta. Based on the best available information, juvenile green sturgeon are believed to distribute widely throughout the bays and Delta for feeding and rearing and are present in all months of the year (Ganssle 1966, CDFG 2002, Bay Delta and Tributaries Project 2005). Thus, the CHRT determined that the best available information does not support dividing the specific area in San Francisco Bay into Central San Francisco Bay and South San Francisco Bay, and reconfirmed that this specific area has a High conservation value for the Southern DPS (*see* response to Comment 14 and the section titled ''Methods for Assessment of Specific Areas'' for an explanation of how the conservation value ratings were determined). Based on the CHRT's assessment of San Francisco Bay, NMFS determined that this area should be included in the final critical habitat designation. Studies focused on green sturgeon, particularly on the juvenile life stages, would help address the data gaps and inform ESA section 7 consultations resulting from this critical habitat designation as well as future revisions to the designation.

Comment 11: One commenter recommended consideration of Nehalem Bay, Oregon, as a specific area and designation of critical habitat in Tillamook Bay, Oregon. Sport fish catch from 1986 to 2007 indicate that 279 green sturgeon were taken in the fishery in Tillamook Bay (corrected catch data provided via pers. comm. with Mary Hanson, ODFW, July 16, 2009). The habitat in Tillamook Bay is comparable to other Oregon Bays and estuaries, and genetic analyses have not excluded the presence of southern DPS green sturgeon. Nehalem Bay was not considered in the designation and had a sport fish catch record of 254 green sturgeon from 1986 to 2007 (corrected catch data provided via pers. comm. with Mary Hanson, ODFW, July 16, 2009). Another commenter stated that a tagged Southern DPS green sturgeon was detected in Yaquina Bay, Oregon, in May 2006 and recommended that the biological report be revised to state that the presence of the Southern DPS in this area is confirmed.

Response: Based on the additional green sturgeon catch and telemetry data provided by the commenters, the CHRT added Nehalem Bay as a new specific area to be considered and re-evaluated Tillamook Bay and Yaquina Bay. The

CHRT assigned Nehalem Bay a Medium conservation value rating based on the large number of green sturgeon captured from 1986 to 2007 and its location between Tillamook Bay and the Columbia River. The CHRT also assigned Tillamook Bay a Medium conservation value rating (compared to its previous Low conservation value rating), based on the large number of green sturgeon captured in this bay from 1986 to 2007 and information indicating that Tillamook Bay contains suitable depths for green sturgeon. The CHRT assigned Yaquina Bay a Low conservation value rating, which was the same rating given previously. The CHRT then considered whether Southern DPS presence has been confirmed within the areas. If Southern DPS green sturgeon presence is likely, but not yet confirmed, the conservation value rating was reduced by one level. Because Southern DPS green sturgeon have not yet been confirmed in Nehalem Bay and Tillamook Bay, the conservation value ratings were reduced to Low. Because Southern DPS green sturgeon have been confirmed in Yaquina Bay, the conservation value rating stayed at Low and was not reduced to Ultra-Low. These ratings were then used as the final conservation value ratings for the areas. The final biological report provides more information about the CHRT's evaluation of Nehalem Bay and re-evaluation of Tillamook Bay and Yaquina Bay. Ultimately only Tillamook Bay was excluded because the benefits of exclusion outweigh the benefits of designation.

Comment 12: Two commenters felt that the Umpqua River may warrant designation because green sturgeon occur in this river, and it was identified as a potential spawning river in the 2005 status review.

Response: The CHRT evaluated Winchester Bay, the estuary at the mouth of the Umpqua River, as a specific area eligible for designation as critical habitat. The Southern DPS consists of green sturgeon originating from coastal watersheds south of the Eel River, CA (currently, the only confirmed spawning river is the Sacramento River, CA). The Northern DPS consists of green sturgeon originating from coastal watersheds north of and including the Eel River, CA (confirmed spawning rivers are the Klamath River, CA, and Rogue River, OR). As described in the proposed rule and biological report, NMFS defined the Southern DPS' occupied range to include coastal bays and estuaries upstream to the head of the tide in areas north of and including the Eel River. In waters north of and including the Eel River, green sturgeon occurring upstream of the head of the tide are presumed to belong to the Northern DPS because it is unlikely that Southern DPS green sturgeon would venture further into non-natal streams beyond the head of tide. Thus, green sturgeon observed in the Umpqua River upstream of the head of tide are presumed to be Northern DPS fish. Genetic analyses have confirmed the presence of Southern DPS green sturgeon in Winchester Bay and Umpqua River, but the tissue samples were collected downstream of the head of tide on the Umpqua River (between RKM 6.4 and 19.3). Thus, the available genetic data also do not provide information on the presence of Southern DPS green sturgeon in the Umpqua River upstream of the head of tide (pers. comm. with Josh Israel, University of California, Davis (UC Davis), July 10, 2009). The Umpqua River was therefore not identified as an area occupied by the Southern DPS.

Comment 13: One commenter felt that Chinook salmon should be used as a surrogate species in place of white sturgeon, because green sturgeon do not have populations that are isolated from the sea. The commenter presented a Chinook salmon-based conceptual model for the life history of green sturgeon in San Francisco Bay, which indicated that, like Chinook, juvenile green sturgeon most likely migrate from the San Francisco Bay as soon as possible to coastal marine waters where food is abundant for feeding and growth.

Response: The CHRT considered the Chinook salmon-based conceptual model. The CHRT noted that, while green sturgeon may share some similarities with Chinook salmon with regard to habitat use and needs, the best available data indicate there are several important differences between the life history and distribution of green sturgeon and Chinook salmon that limit the application of the Chinook salmon-based conceptual model to green sturgeon. Unlike Chinook salmon, green sturgeon will transit through the San Francisco Bay and Delta complex several times during their lifetime. Laboratory studies indicate that Chinook salmon juveniles may occupy fresh to brackish waters at any age, but do not completely transition to salt water until about 1.5 years of age. Studies in the Klamath River show that juvenile green sturgeon rear in fresh and estuarine waters for 1 to 4 years before dispersing into salt water, at lengths of about 300 to 750 mm. Although there have been few studies on juvenile green sturgeon distribution throughout the San Francisco Bay, the available data indicate that juvenile green sturgeon also rear in the area's bays and estuaries for 1 to 4 years before migrating out to coastal marine waters as subadults. Residence times in the Delta appear to be variable, based on the temporal frequency of juvenile fish recovered at the fish salvage facilities of the Central Valley Project and State Water Project and the data collected from both the 2007 and 2008 sturgeon report cards from CDFG (Gleason 2008). Green sturgeon can be found in any month of the year, and apparently multiple year classes are present in the Delta based on the size distribution of catches, although for green sturgeon few fish were actually measured (sizes ranged from 12 inches to 68 inches, 19 fish measured out of 240 reported caught; Gleason 2008). Based on the 2008 report cards, adult green sturgeon were caught by sport fishermen in every season of the year in the Delta and in the Sacramento River (from Rio Vista to Chipps Island and from Red Bluff to Colusa). This year-round presence of adult and juvenile green sturgeon in the Central Valley differs from the typical Chinook salmon life history as described by the commenter's conceptual model, in which juveniles rear in freshwater prior to migrating to the San Francisco Bay estuary, through which they move rapidly to get to marine waters, where conditions are better for feeding and growth. In addition, subadult and adult green sturgeon migrate throughout the West coast from southern California to Alaska, and are known to occupy oversummering habitats in coastal bays and estuaries from northern California to Washington (including Humboldt Bay, Coos Bay, Winchester Bay, the lower Columbia River estuary, Willapa Bay, and Grays Harbor) for weeks to months to feed during multiple summers over the course of their lives. In contrast, Chinook salmon generally use estuaries only at the beginning and end of their ocean residence (Quinn 2005). Unlike green sturgeon, they spend their summers in the ocean and do not rely nearly as heavily on estuarine habitats over their lifespans.

Biological Evaluation of Conservation Value

Comment 14: One commenter stated that the qualitative approach used by the CHRT to assess the biological conservation benefits of designation was not adequate because the approach did not provide an objective estimate of the relative conservation benefit of including a specific area or a clear standard to compare with the estimated economic impacts. The commenter

noted that the approach did not contain an estimate of the species' current population level, the increase in survival or abundance expected from the designation of critical habitat, or an estimate of the economic or monetary value of the conservation benefits.

Response: The ESA requires that a critical habitat designation be based on the best available scientific data. Data are not available regarding the current absolute population abundance of the Southern DPS or green sturgeon in general. Data are also not available to estimate the monetary value of the conservation benefits of designation and thereby make a direct comparison to the economic impacts of designation. In the absence of these data, a qualitative conservation value rating approach was developed to evaluate the conservation benefits of designation. The approach incorporated the best available data and allowed for consideration of the best professional judgment of the CHRT. The conservation value ratings (High, Medium, Low, Ultra-low) provided a relative measure of the benefits of designation for each specific area, at a level appropriate for the level of data available. This approach has been used in critical habitat designations for salmonids and has been recognized as an appropriate alternative where data are not available to monetize the benefits of designation.

Comment 15: One commenter recommended that further evaluation of whether green sturgeon use particular coastal estuaries and their habitat value be conducted prior to designation of these areas as critical habitat. The commenter focused on the coastal estuaries considered for designation in Oregon, stating that the proposed rule did not provide information regarding the use or extent of use by green sturgeon in these areas or the habitat value of these areas to green sturgeon. Specifically, the commenter stated that: (1) The genetic analyses do not provide sufficient information to determine the presence of Southern DPS green sturgeon in Winchester Bay and more sampling is needed; (2) it is not clear whether tissue samples collected for genetic analyses were taken from green sturgeon in Winchester Bay or in the Umpqua River and the results regarding the proportion of Southern DPS green sturgeon in the area may be affected by sample size; (3) it is not clear why the Rogue River was excluded, but Coos Bay was not; and (4) reasons for the designation of Yaquina Bay and the exclusion of Tillamook Bay and the Siuslaw River estuary are not clear.

Response: We agree that additional studies are needed to address information gaps regarding the extent of use of coastal estuaries by Northern DPS and Southern DPS green sturgeon and to better understand the habitat function and value of these areas for the species. However, the ESA requires that NMFS use the best available scientific and commercial data to designate critical habitat within specific statutory timelines. Thus, in the face of uncertainty and varying levels of information available for different areas, NMFS relied on the best available information and used its best professional judgment where data were lacking or uncertainty was great.

To evaluate specific areas considered for designation as critical habitat, the CHRT considered both the use of each area by green sturgeon and the value of the habitat to green sturgeon. Specifically, the CHRT evaluated the presence and condition of the PCEs, the habitat functions provided, and the life stages of green sturgeon confirmed or most likely to occur there. To confirm the presence of the PCEs, the CHRT used the presence of green sturgeon, along with the best available habitat data. To evaluate the relative habitat value of each area, the CHRT considered the abundance of green sturgeon along with the best available data on the life stages and uses supported, the consistency of use, and the temporal and spatial distribution of green sturgeon within an area. To determine the extent to which Southern DPS green sturgeon used an area, and the relative value of each area to the Southern DPS, the CHRT used the best available tagging and genetic data. The CHRT's analyses and the data used are summarized in this final rule and described in greater detail in the final biological report (NMFS 2009a). In the following paragraph, we summarize the relevant information in response to the comments on specific coastal estuaries in Oregon.

First, the presence of Southern DPS green sturgeon within coastal estuaries in Oregon was primarily confirmed by telemetry data and supported by genetic data, where available. For Winchester Bay, genetic tissue samples were collected between RKM 6.4 and 19.3, which is downstream of the head of tide in Umpqua River (head of tide = RKM 40) and within the boundaries of the specific area delineated for the bay (pers. comm. with Josh Israel, UC Davis, July 10, 2009; pers. comm. with Pete Baki, ODFW, July 17, 2009). It is possible that the sample size affected the analysis of the proportion of Southern DPS green sturgeon in the bay, but that does not negate the use of these data to confirm the presence of Southern DPS fish in this area. The CHRT assigned Winchester Bay a Medium conservation value rating based on high use of the area by green sturgeon and the presence of suitable habitat features (*see* final biological report, NMFS 2009a).

Second, certain coastal estuaries in Oregon were excluded from the designation because the economic benefits of exclusion outweighed the conservation benefits of designation. Coastal estuaries in Oregon are primarily occupied by green sturgeon during the summer and contain PCEs (including prey resources, water quality, and migratory corridors) that support feeding and aggregation of subadult and adult green sturgeon. During the public comment period, additional data were provided by the ODFW regarding green sturgeon sport catch records in coastal Oregon estuaries. These data were used to update the data reported in the draft biological report (NMFS 2008b). The data were considered by the CHRT and incorporated into the final rule and biological report (*see* response to Comment 11). The data indicate that from 1986 to 2007, the largest numbers of green sturgeon were caught in Winchester Bay (n = 1,889), Tillamook Bay (n = 279), and Nehalem Bay (n = 254), followed by Coos Bay and Yaquina Bay (n = 201) (ODFW 2009a, b). Southern DPS green sturgeon tagged in the Sacramento River and San Pablo Bay have been detected in Coos Bay, Winchester Bay, and Yaquina Bay (pers. comm. with Steve Lindley, NMFS, and Mary Moser, NMFS, February 24–25, 2008; pers. comm. with Dan Erickson, ODFW, September 3, 2008). The CHRT initially assigned a Medium conservation value to Winchester Bay, Coos Bay, Tillamook Bay, and Nehalem Bay, based on data indicating consistent use by and relatively large numbers of green sturgeon in these estuaries. However, the conservation value for Tillamook Bay and Nehalem Bay was reduced by one level to Low, because there was no evidence to confirm that any green sturgeon in those areas belong to the Southern DPS. Although Southern DPS presence has been confirmed in Yaquina Bay, the CHRT assigned the area a Low conservation value (NMFS 2009a). Finally, the estuaries at the mouths of the Siuslaw and Alsea rivers were assigned a Low conservation value based on relatively low numbers of green sturgeon recorded in the sport catch data (sport catch = 50 green sturgeon in Siuslaw estuary and 30 green sturgeon in Alsea estuary from 1986 to 2007; ODFW 2009a, b). The conservation value was reduced to an

Ultra-low because we lack data to confirm the presence of Southern DPS green sturgeon in these estuaries.

Under section 4(b)(2) of the ESA, NMFS has the discretion to exclude an area from the designation if the benefits of exclusion outweigh the benefits of designation. Tillamook Bay, Siuslaw River estuary, Alsea River estuary, Coos Bay, and the Rogue River estuary were all determined to be potentially eligible for exclusion under ESA section 4(b)(2) based on economic impacts. All of these, except for Coos Bay, were excluded based on NMFS' determination that the economic benefits of exclusion outweighed the conservation benefits of designation. Although data demonstrate that the Rogue River estuary is consistently used by large numbers of green sturgeon, the area was assigned an Ultra-Low conservation value because the best available data indicate that the green sturgeon observed there belong to the Northern DPS. Thus, the designation of critical habitat in the Rogue River estuary would not likely benefit the conservation of the Southern DPS. Coos Bay was not excluded, because the data indicate consistent use by relatively large numbers of green sturgeon that include Southern DPS fish. The CHRT determined that protection of Coos Bay as critical habitat is important for the conservation of green sturgeon, and exclusion of Coos Bay would significantly impede conservation. Based on the CHRT's recommendation, NMFS determined that the economic benefits of exclusion do not outweigh the conservation benefits of designation for Coos Bay and included Coos Bay in the final critical habitat designation. We recognize that the level of data available varies across areas and may affect the evaluation of these areas. We encourage additional studies of green sturgeon distribution in, and use of, coastal estuaries to inform NMFS' consultations under section 7 of the ESA, recovery planning and implementation, and future revisions to the critical habitat designation for the Southern DPS.

Comment 16: One commenter noted that many of the coastal marine and estuarine areas proposed for designation as critical habitat are already altered habitats, wanting NMFS to recognize that routine, regular maintenance activities (including maintenance dredging of navigation channels) are conducted within these areas by the U.S. Army Corps of Engineers to support ongoing multi-purpose projects.

Response: NMFS acknowledges that many of the coastal marine and estuarine areas proposed for designation as critical habitat contain habitats that have been altered by past and ongoing activities. These past and ongoing activities have likely affected the PCEs within each area, but have not degraded the PCEs such that they no longer exist within the areas. The continued presence and use by green sturgeon of each area indicate that the PCEs exist and still provide habitat functions to support the species. In addition, the presence of regular routine maintenance indicates that the PCEs within the coastal marine and estuarine areas may require special management considerations or protection.

Comment 17: One commenter noted that the proposed rule incorrectly stated that green sturgeon present in estuaries of the Eel, Klamath/Trinity, and Rogue rivers are believed to belong to the Northern DPS, based on the fact that these are spawning rivers for the Northern DPS (73 FR page 52091, bottom of third column). The commenter requested clarification that green sturgeon spawning has not been confirmed in the Eel River.

Response: We acknowledge this error in the proposed rule. The final rule corrects this error and states that green sturgeon present in estuaries of the Klamath/Trinity and Rogue rivers are presumed to belong to the Northern DPS because these are spawning rivers for the Northern DPS and no tagged Southern DPS green sturgeon have ever been detected in the estuaries. Green sturgeon in the Eel River estuary are presumed to belong to the Northern DPS based on the definition of the Northern DPS (which includes the Eel River). In 2008, a hydroacoustic array was installed in the Eel River estuary and detected one tagged Northern DPS green sturgeon. More data from tagging and genetics studies are needed to confirm whether or not Southern DPS green sturgeon occupy the Eel River estuary.

Comment 18: Commenters requested additional information to be presented in the biological report, including: A table citing the references used to determine the presence of green sturgeon in each specific area; the results from the CHRT's three approaches for evaluating the conservation value of the species areas; and additional telemetry data and references provided by reviewers and commenters. Two commenters also noted an error in Table 5 of the draft biological report regarding the tally of conservation value rating votes for Grays Harbor, WA.

Response: The final biological report incorporates the changes requested and the additional information provided by the peer reviewers and public comments. First, a table listing each specific area, the life stages of green sturgeon that are present, and the relevant references was added to the report. Second, the CHRT had used three different approaches for assigning conservation values to the specific areas, but only the results of the final method were reported in the draft biological report. The final biological report provides the results for all three approaches for comparison. Third, additional telemetry data and information regarding green sturgeon spawning in the Sacramento River were incorporated into the report and considered by the CHRT. Finally, corrections were made to the conservation value rating tally for Grays Harbor in Table 7 of the final biological report (formerly Table 5 in the draft biological report). Specifically, the draft biological report incorrectly reported 6 votes for Medium and 2 votes for Low conservation values. The correct tally was 6 votes for High and 2 votes for Medium conservation values.

Special Management Considerations

Comment 19: One commenter stated that most of the 13 types of activities that potentially require special management are already regulated under existing environmental regulations that address effects on the PCEs. The commenter requested additional information to describe the cause/effect relationship between the PCEs and each of the 13 types of activities that potentially require special management.

Response: This comment raises the concern of whether the specific areas considered for designation as critical habitat are eligible for designation. To be eligible for designation, the specific area must meet the definition of critical habitat. That is, the specific area must contain at least one PCE that may require special management considerations or protection. The focus of this comment is on whether the ''special management considerations or protection'' criterion is satisfied. Special management considerations or protection mean ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species'' (50 CFR 424.02). In determining whether a specific area met the definition of critical habitat, the CHRT was asked to identify whether any PCE could be found in the specific area, whether there were any actions (either ongoing or anticipated) occurring in the area that may threaten the PCE(s), and whether there would be any methods or procedures useful in protecting the PCE(s). The CHRT based

their assessment on their knowledge of the areas and the PCEs and their experience conducting section 7 consultations or field research on green sturgeon in the areas. The CHRT was not asked to identify existing protections within each area, nor was the CHRT asked to evaluate whether existing protections were adequate. The existence of environmental regulations does not negate the fact that the PCEs within an area may require special management considerations or protection. Thus, the existence of environmental regulations that already regulate the activities of concern was not a factor to be considered by the CHRT in determining the eligibility of an area for consideration as critical habitat. Instead, the consideration of existing environmental regulations and other protections that address the PCEs is a question to be considered in the ESA 4(b)(2) analysis when weighing the benefits of exclusion against the benefits of designation. The final biological report was revised to include a more detailed description of the 13 types of activities that may require special management and how these types of activities may affect the PCEs.

Comment 20: One commenter recommended that gravel augmentation should not be under the ''in-water construction or alteration'' category, but should be included in the ''habitat restoration'' category because there will be potential habitat benefits from gravel augmentation. Otherwise, the commenter noted that a large number of restoration activities should also be included in the ''in-water construction or alteration'' category. The commenter requested that in-water construction or alteration activities and habitat restoration activities be more clearly defined.

Response: We revised the final rule and supporting documents to more clearly define in-water construction or alteration activities and habitat restoration activities. In-water construction or alteration activities include activities that involve the construction or maintenance of some physical in-water structure (*e.g.*, breakwaters, docks, piers, pilings, bulkheads, boat ramps, utility lines) or the alteration of physical in-water habitat features (*e.g.*, channel modification/diking, sand and gravel mining), including activities occurring outside of the water but that may affect in-water habitat (such as road building and maintenance, forestry, grazing, and urbanization that may lead to increased erosion and sedimentation). Habitat restoration activities are activities conducted for the primary purpose of restoring natural aquatic or riparian habitat conditions or processes. We agree that gravel augmentation can be included as a habitat restoration activity and have included it in this category in addition to the in-water construction or alteration activity category. We note, however, that gravel augmentation and other habitat restoration activities may have either positive or negative effects on critical habitat for green sturgeon, depending on the type of activity, location, time of year, scale, and other factors. For example, gravel augmentation could possibly fill in deep pools (greater than 5 meters in depth) used by green sturgeon for holding and spawning. These activities would be subject to requirements under section 7 of the ESA to address potential effects on critical habitat.

Comment 21: Two commenters were concerned about the effect that invasive submerged aquatic vegetation may have on the physical or biological features essential for conservation in shallow water habitats and felt that this should be considered in the designation. One commenter also requested that the CHRT consider activities that may result in a large increase of erosion, including logging, gravel mining, and the use of recreational off-road vehicles near riparian areas, and their effects on present or future spawning streams.

Response: The CHRT identified the introduction and spread of non-native species as a potential threat to the PCEs that may result in the need for special management considerations or protection. We recognize that invasive submerged aquatic vegetation, such as the *Egeria densa* mentioned by one commenter, may affect shallow waters by trapping sediments, forming thick mats that obstruct passage, and crowding out native vegetation. Activities that result in increased erosion were also considered by the CHRT under the ''in-water construction or alterations'' category. The final rule clarifies that activities that occur outside of designated critical habitat, including those conducted upstream, upland, or adjacent to designated critical habitat areas, can destroy or adversely modify critical habitat and would also be subject to requirements under section 7 of the ESA with regard to critical habitat. Therefore, the commenters' concerns have been addressed.

Comment 22: Several commenters provided information on additional activities that should be considered which occur within the specific areas and that may threaten the PCEs.

Response: We considered the information provided on additional activities and incorporated the information into the final rule and supporting documents. The changes include: (1) Feather River—added habitat restoration activities; (2) Yolo Bypass—added dams (Lisbon Weir and Fremont Weir), water diversions, pollution, and habitat restoration; (3) Sutter Bypass—added dams (weirs located in the toe drain), water diversions, pollution, habitat restoration, and in-water construction or alteration activities; (4) Sacramento-San Joaquin Delta—added dams (locks, weirs, and temporary barriers) and commercial shipping; (5) lower Columbia River estuary (from RKM 0 to 74)—the two LNG projects identified by the commenters were already considered in the proposed rule, however, based on public comments received, we divided the lower Columbia River and estuary into two specific areas (the lower Columbia River estuary from RKM 0 to 74 and the lower Columbia River from RKM 74 to 146; *see* response to comment 15) and the LNG projects were assigned to the lower Columbia River estuary specific area; and (6) coastal marine waters off Oregon—added 5 proposed wave energy projects.

Potential Effects of the Critical Habitat Designation on Activities

Comment 23: One commenter requested that further clarification be given whether a Federal nexus exists for the commercial crab and pink shrimp State-managed fisheries that may trigger section 7 requirements. The commenter noted that consultation may also be required for bottom trawl fisheries conducted in coastal marine waters off Oregon.

Response: Based on the information provided by the commenters and the current management regime at this time, NMFS does not believe that a Federal nexus exists for the commercial crab and pink shrimp State-managed fishery off Oregon. However, the fishery may be subject to the ESA section 4(d) rule for the Southern DPS of green sturgeon (proposed May 21, 2009, 74 FR 23822) if take of green sturgeon occurs in this fishery. NMFS is working with the Pacific Fishery Management Council (PFMC) to prepare for a consultation under section 7 of the ESA on the groundfish bottom trawl fishery conducted off California, Oregon, and Washington. The consultation would address impacts on green sturgeon critical habitat within coastal marine waters.

Comment 24: Several commenters requested additional information on what changes might be recommended

for the California State Water Project (SWP) and the Central Valley Project (CVP) operations and how these areas may require special management.

Response: The effects of the combined CVP and SWP operations on the Southern DPS were analyzed by NMFS in the recently issued Biological and Conference Opinion (2009 OCAP BO). The most conspicuous change to CVP operations is the operations of Red Bluff Diversion Dam (RBDD). Following the issuance of the 2009 OCAP BO, gates will remain open from September 1st through June 14th until May of 2012. By May 14th, 2012, the Red Bluff alternative intake pumps are anticipated to be operational. This will allow the Tehama-Colusa Canal Authority (TCCA) to divert sufficient water through screened pumps to meet its obligations without relying on the operations of the RBDD to back up water to supply its current gravity fed diversion. The operation of the screened pumps will allow for the decommissioning and eventual removal of the RBDD. During the interim period (2009 to 2012), screened pumps will be installed adjacent to the current location of the RBDD to divert sufficient volumes of water to meet TCCA needs through June 14th of each year. After June 14th, the RBDD gates will be lowered to back up river water and supply the gravity fed diversions. When the gates are operational, a minimum of 18 inches of clearance will be maintained beneath the radial gate to allow for downstream passage of adult green sturgeon. In addition, the TCCA and the Bureau of Reclamation will fund studies over the next 3 years specifically focused on green sturgeon to determine population size, movements of fish within the system, and habitat preferences and usage within the Central Valley. Within the Delta, reoperation of the Delta Cross Channel gates will result in closing the gates earlier to prevent emigrating fish from entering the Delta interior. Although primarily designed for salmonid protection, the closing of the gates may have some utility in protecting adult and juvenile green sturgeon emigrating during the same time period (better conditions in the Sacramento River migratory corridor versus less hospitable conditions within the Mokelumne River corridor). Likewise, export curtailments designed to benefit emigrating salmonids are expected to benefit juvenile green sturgeon and reduce their entrainment by the pumps during the periods of export reduction. Modifications to the fish salvage facilities to enhance the efficiency of the overall salvage will benefit green sturgeon. Increases in sampling rate/duration at the fish salvage facilities will better quantify the effects of the export actions on green sturgeon. The section 7 consultation on the Federal Energy Regulatory Commission (FERC) relicensing of Oroville Dam is assessing the river temperature profile downstream of the Thermalito Afterbay outlet to ascertain whether additional spawning habitat can be gained through modifications of facilities, and/or operations of dam releases, or reconfiguration of the Thermalito Afterbay itself.

Economic Analysis

Comment 25: One commenter felt that NMFS cannot adequately estimate the incremental economic effects of the critical habitat designation, because NMFS has not yet issued an ESA 4(d) rule for the Southern DPS.

Response: The economic analysis (Industrial Economics Inc. (Indecon) 2009) complies with the ESA's mandate to use the best available information, and NMFS believes it provides a sufficient assessment of the baseline and incremental economic impacts of designating critical habitat for green sturgeon. The baseline for the incremental impacts analysis includes the estimated costs attributed to the listing of the species and the protections under section 7 of the ESA requiring Federal agencies to ensure their actions do not jeopardize ESA-listed species. The baseline also includes protections already provided to green sturgeon critical habitat under existing protections for other listed species, such as West Coast salmon and steelhead, delta smelt, and marine mammal species. The incremental analysis of impacts looks at what is required to avoid adverse modification of green sturgeon critical habitat, above and beyond what is already required to avoid jeopardy of listed species and adverse modification of existing critical habitat, and to comply with other existing Federal, State, and local protections.

To assess the baseline and incremental impacts, the best available information was used from the short consultation history for green sturgeon, as well as information from surrogate species (*e.g.*, salmonids) whose distribution and life history traits overlap with the green sturgeon's, because the protective measures that have been established for these species are similar to what NMFS would anticipate for green sturgeon. Uncertainties related to assessing incremental impacts exist, but this is partly due to the project-specific nature of the ESA section 7 consultations that NMFS conducts with other Federal agencies. To address this uncertainty, a conservative approach was taken to ensure that the analysis adequately represents the potential impacts and incremental costs associated with the critical habitat designation. Therefore, promulgation of take prohibitions under an ESA 4(d) rule is not necessary to assess the baseline and incremental impacts of the critical habitat designation.

Comment 26: Several commenters disagreed with the draft economic analysis' method for assessing incremental impacts. One commenter also noted the draft economic analysis did not adequately define the baseline used in the analysis. Specifically, commenters suggested that the baseline should not include protections for green sturgeon offered by conservation measures undertaken for Pacific salmon. One commenter noted that the economic analysis should consider both incremental and baseline impacts. In particular, the commenter suggested that baseline impacts should be considered because if one of the listed salmonids were delisted, the designation of critical habitat for green sturgeon could become the primary reason certain conservation measures are undertaken. Another commenter stated that NMFS' consideration of all potential project modifications that may be required under section 7 of the ESA, regardless of whether those changes may also be required under the jeopardy provision, appears to be contrary to the reasoning of the *Cape Hatteras Access Preservation Alliance* v. *U.S. Department of Interior* (344 F. Supp. 2d 108 (D.D.C., 2004)) (*Cape Hatteras*) court decision that the effects of listing and the jeopardy provision should not be considered as part of the impacts of a designation in the ESA 4(b)(2) analysis for a critical habitat designation.

Response: As outlined in Section 1.3 of the final economic analysis report (Indecon 2009), the analysis does not attribute all potential project modifications required under section 7 to the critical habitat designation. Rather, it takes an incremental approach, comparing the state of the world with and without the designation of critical habitat for green sturgeon. The ''without critical habitat'' scenario represents the baseline for the analysis, considering habitat protections already afforded green sturgeon under its Federal listing or under other Federal, State, and local regulations, including protections afforded green sturgeon resulting from protections for other listed species, such as West Coast

salmon and steelhead, delta smelt, and marine mammal species. The ''with critical habitat'' scenario attempts to describe the incremental impacts associated specifically with green sturgeon critical habitat designation. The courts in several cases have held that an incremental analysis is proper (*see* for example: *Cape Hatteras; Center for Biological Diversity* v. *United States Bureau of Land Management,* 422 F. Supp. 2d. 1115 (N.D. Calif. 2006); and *Arizona Cattle Growers* v. *Kempthorne,* 534 F. Supp. 2d 1013 (D. Ariz. 2008)).

Section 1.4 of the final economic analysis report clarifies how the economic analysis defines its baseline, or ''without critical habitat'' scenario. As described in Section 1.4.5 of the final economic analysis report, project-specific conservation efforts that benefit green sturgeon are frequently undertaken due to the joint presence of multiple anadromous fish species and habitats and may therefore be implemented regardless of the presence of green sturgeon critical habitat. This complicates the identification of changes in behavior associated specifically with the green sturgeon critical habitat. This analysis employs best professional judgment in calculating the probability that green sturgeon conservation needs are a primary driver of the implementation of a joint conservation effort. Thus, this analysis estimates the likelihood that consideration of green sturgeon critical habitat will weigh heavily in the implementation of a conservation effort undertaken due to the presence of multiple species and habitats. This probability is dependent upon a number of factors, including the details of the project and conservation effort in question and the number of sensitive species present. By excluding impacts for which green sturgeon critical habitat is not a key reason for a conservation effort implementation, this analysis focuses the quantification of impacts on those associated specifically with green sturgeon habitat conservation. Because the probability that any given conservation effort is being driven by green sturgeon conservation as opposed to other species is subject to significant uncertainty, the final economic analysis report presents a sensitivity analysis for these assumptions. Appendix E of the final economic analysis describes alternative results assuming the extreme case that green sturgeon is always a primary driver of the conservation efforts (*e.g.,* that 100 percent of the time fish screens are installed, it is primarily due to green sturgeon conservation needs).

Comment 27: Several commenters noted that it would be helpful if the draft economic analysis provided additional, detailed explanations of the methodology for calculating impacts for specific activities, including dam projects.

Response: Section 1.4 of the final economic analysis report provides a revised discussion of how the various cost estimates are developed and aggregated to develop total annualized impacts per unit. Every section for a specific economic activity contains exhibits on these three data points: (1) Number of affected projects by unit; (2) expected annualized costs of conservation efforts for anadromous fish species per project; and (3) the probability that green sturgeon drives the impact for that activity in that unit (for units where listed salmon and steelhead habitat overlap occurs). The analysis multiplies the number of affected projects in each unit by the annualized costs per project and the probability score for each unit to arrive at projected impacts. For example, costs of fish screens at water diversions are developed by estimating average costs of fish screens ($80,000 to $130,000), annualizing over 20 years, and multiplying by the number of water diversions in affected units. For units where listed salmon and steelhead species are present, the costs are again multiplied by the probability that green sturgeon will be the driver of passage costs. Specific costs of fish passage projects in critical habitat areas provided by public commenters have been incorporated into the analysis of impacts on dam projects.

Comment 28: One commenter noted that the designation of critical habitat may result in economic activities not being carried out (*e.g.,* dredging, project, in-water construction, development project) or otherwise lead to time delays. The draft economic analysis should address losses in consumer surplus resulting from these potential delays.

Response: As discussed in Section 1.3.2 of the final economic analysis report, the analysis does consider time delay impacts associated with the section 7 consultation process and/or compliance with other laws triggered by designation where applicable. For example, estimated impacts to dredging projects include impacts associated with possible work window constraints (*see* Exhibit 2–4).

Comment 29: One commenter stated that the draft economic analysis employed a ''cost-effectiveness'' analysis to analyze impacts; however, the draft economic analysis did not provide sufficient data to determine which areas would provide the greatest biological benefit for each dollar of associated impact.

Response: As discussed in Section 1.2.1 of the final economic analysis report, we used an alternative form of cost-effectiveness analysis for this rulemaking. This alternative form develops an ordinal measure of the benefits of critical habitat designation. Although it is difficult to monetize or quantify benefits of critical habitat designation, it is possible to differentiate among habitat areas based on their estimated relative value to the conservation of the species. For example, habitat areas can be rated as having a high, medium, or low biological value. The output, a qualitative ordinal ranking, may better reflect the state of the science for the geographic scale considered here than a quantified output and can be done with available information. The final ESA section 4(b)(2) report (NMFS 2009c) discusses the specific weighing process that we performed for this rule.

Comment 30: One commenter stated that the cumulative economic impact of baseline protections was not included in the economic analysis.

Response: The economic analysis estimates costs associated with conducting an ESA section 7 consultation to ensure Federal agency actions are not likely to destroy or adversely modify critical habitat. We did not have information available to determine the cumulative economic impacts of baseline protections, nor did the commenter provide us data that would allow us to make such a determination.

Comment 31: One commenter stated that although little impact is expected on the part of the Bureau of Land Management, additional review is needed to ensure that the economic analysis accurately reflects increased administrative costs associated with section 7 consultation for other Federal agencies.

Response: The final economic analysis report now includes an overview in section 1.3.2 of the estimated future annual administrative costs associated with section 7 consultations for green sturgeon. Based on the consultation history for completed consultations that included green sturgeon to date (2006–2009), the economic analysis forecasts an average future annual rate of section 7 consultation for green sturgeon of 12 formal consultations, 67 informal consultations, and eight technical assistance efforts. The additional, incremental administrative effort

associated with these consultations is estimated to be approximately $251,000 per year, including efforts by the Service, Action agencies, and third parties.

Comment 32: Several commenters stated that the economic analysis failed to consider community level impacts.

Response: We acknowledge that modifications to economic activities within one unit may affect economic activities in other units. The analysis also acknowledges that potential impacts could result in regional economic effects, for example in fishing communities, should the level of bottom trawl fishing catch be curtailed as a result of this designation. However, the regional economic effects of the critical habitat designation are unknown because many uncertainties exist. For example, potential reductions in fishing effort in critical habitat areas may or may not lead to reductions in profits, depending on the availability and quality of alternative sites. Therefore, the economic analysis report describes the potential regional economic effects and the uncertainties associated with their analysis, but does not quantify these effects.

Comment 33: One commenter thought that the draft economic analysis failed to consider energy impacts resulting from potential changes in management at the Red Bluff Diversion Dam and other water diversions. Specifically, the commenter was concerned the farmers may need to seek out replacement water supplies that may require additional energy consumption. The commenter also was concerned that permanent crop loss in some areas could lead to losses of carbon dioxide conversion and result in widespread changes in energy consumption over a wide geographic area.

Response: Appendix D of the final economic analysis report now presents an energy impacts analysis. This energy impacts analysis assesses whether the green sturgeon critical habitat designation would result in one of nine outcomes that may constitute ''a significant adverse effect'' as outlined by the Office of Management and Budget in their guidance on implementing Executive Order 13211. These include: (1) Reductions in crude oil supply in excess of 10,000 barrels per day; (2) reductions in fuel production in excess of 4,000 barrels per day; (3) reductions in coal production in excess of 5 million tons per year; (4) reductions in natural gas production in excess of 25 million Mcf per year; (5) reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity; (6) increases in energy use required by the regulatory action that exceed the thresholds above; (7) increases in the cost of energy production in excess of one percent; (8) increase in the cost of energy distribution in excess of one percent; or (9) other similarly adverse outcomes. Of these, the most relevant criteria to green sturgeon critical habitat are potential changes in natural gas and electricity production, as well as changes in the cost of energy production. Possible energy impacts may occur as the result of requested project modifications to hydropower dams, alternative energy hydrokinetic projects, and LNG facilities. The potential impacts of permanent crop loss on carbon dioxide levels in the atmosphere and the potential changes in climate and energy consumption in affected regions are unclear at this time due to many uncertainties. For example, it is uncertain what the effects of crop loss are on atmospheric carbon dioxide levels and subsequently on climate and on energy consumption by consumers. Further complicating matters is the uncertainty regarding how these relationships may be affected by other impacts on atmospheric carbon dioxide levels from activities related to or outside of this critical habitat designation. Therefore, these impacts cannot be analyzed at this time.

Comment 34: One commenter asked how the lost revenue figures estimated in the small business analysis related to the estimated impacts calculated in the rest of the economic report. In addition, the commenter specifically requested that the small business analysis provide information about the potential revenue losses for farmers as a share of their total revenues.

Response: The estimated lost revenues per small business included in the Final Regulatory Flexibility Analysis (Indecon 2009) are calculated by taking the mid-range scenario impacts presented in Chapters 3 through 5 of the final economic analysis report, and then dividing by the estimated number of small entities by activity by unit, as presented in Exhibit C–3. Average net operational dollar gain per farm (ignoring government payments) in the study area ($147,000, average for affected communities) are now included in the analysis for context.

Comment 35: One commenter stated that impacts to the Yaquina River unit were underestimated because there are on-going dredging and in-water construction projects in that area.

Response: The final economic analysis report considers dredging and in-water construction projects as potential threats to green sturgeon in the Yaquina River unit. However, the 404 permit data from the U.S. Army Corps of Engineers used to estimate the level of dredging and in-water construction activity taking place in the Yaquina River Unit do not indicate current projects in that area.

Comment 36: One commenter noted that the critical habitat designation could result in a significant, additional regulatory burden for the Port of Portland for in-water work activities (*e.g.,* dredging, wharf construction, and routine dock repairs).

Response: The economic analysis considers potential impacts to the Port's in-water work activities. The Port of Portland appears to fall within Unit 24b, the Lower Columbia River. For this unit, the final economic analysis report forecasts total annualized impacts of between $106,000 and $413,000 for dredging projects and $151,000 to $1,230,000 for in-water construction in this unit. A discussion of potentially affected commercial shipping resources is included in Section 4 of the final economic analysis report, and includes the Port of Portland.

Comment 37: Several commenters thought that the draft economic analysis failed to consider impacts to shoreline development. Specifically, the commenters argued that the proposed rule identified development and upland activities as economic activities that may adversely modify critical habitat and therefore may need to be altered. Therefore, the commenters believed that shoreline development should be addressed in the economic analysis.

Response: Typically the development issue of most concern is the potential for critical habitat to inhibit the development potential of affected land parcels, thereby constraining (or reducing) the land available for future development. In areas that are highly developed, or where developable land is scarce (for non-critical habitat related reasons), the reduction in available land due to critical habitat can impose significant economic impacts. However, the designation of critical habitat for the green sturgeon is not expected to result in these types of direct impacts on residential development for multiple reasons.

First, unlike terrestrial species, habitat for the green sturgeon is not itself part of the supply of developable land. For this reason, protection of the aquatic habitat need not take the form of supplanting development if the impacts of the development can be mitigated. Given the minimal consultation history for green sturgeon, a review of the information available for west coast

salmon and steelhead can provide further insight on this issue. For salmon and steelhead, NOAA fisheries personnel indicated that consultations regarding development projects are rare. Review of the salmon consultation history further supports this assessment, but more importantly, development consultations only addressed specific development activities with a Federal nexus, such as stormwater outfall structures (*i.e.,* consultations did not address the entire residential project, nor were any mitigation or land offsetting required). Based on this information, residential development for salmon and steelhead were not expected to have direct impact on the supply of land or housing for residential development. However, potential impacts on National Pollutant Discharge Elimination System (NPDES) permitted facilities were included.

Following this same approach, the final economic analysis report similarly does not anticipate any direct impacts to residential development in the form of reduced developable land. Rather, impacts to development activities are limited to the additional costs that would result from NPDES-related activities where a Federal nexus exists. The estimated number of NPDES-permitted facilities and the costs associated with these facilities as a result of the rulemaking are provided in Section 2.3 of the final economic analysis report. Potential threats from industrial or municipal runoff do not have a clear Federal connection; therefore, they are assumed to be dealt with primarily outside of the section 7 consultation realm.

Comment 38: Several commenters stated that the economic analysis did not consider impacts to specific projects involving dams and water diversions. One commenter stated that the draft economic analysis failed to discuss implications of the designation on the operations of the State Water Project and Central Valley Project. Another commenter inquired as to why specific discussion of Red Bluff Diversion Dam was not included in the draft economic analysis, and provided information on costs of constructing the Red Bluff Pumping Plant. In particular, the commenter noted that RBDD has undertaken a $165 million screened pumping plant as part of a Fish passage Improvement Project in the hope of minimizing impacts resulting from critical habitat designation. Another commenter provided information on potential costs of fish passage and dam removal at Daguerre Point Dam.

Response: Because of the large geographic area covered by proposed green sturgeon critical habitat and the large number of dams and water diversions located within the study area, Section 2.5 of the final economic analysis report broadly assumes that all dams do not currently have, but will require fish passage, and that all water diversions in affected watersheds do not currently have, but will require fish screens. For projects that already have fish passage facilities or fish screens, the analysis may overstate potential impacts. Because the analysis relies on average ranges of costs of these requirements, this approach may understate potential impacts for some individual projects. As a result, where public commenters provided specific cost estimates associated with potential fish passage issues in green sturgeon critical habitat areas, these have been incorporated into the final economic analysis report. Due to the regional importance the State Water Project and Central Valley Project, the final economic analysis report incorporates a more detailed discussion of these projects than was included in the draft economic analysis (*also see* response to Comment 24). Particularly relevant to the green sturgeon critical habitat area are the Red Bluff Diversion Dam and Daguerre Point Dam, which are now discussed in more detail.

Comment 39: One commenter stated that costs on the Upper and Lower Sacramento River units appear to be inordinately low. Specifically, the commenter noted that incremental impacts from possible special management measures and protections involving releases from dams or limiting diversions have potential to greatly magnify the economic impacts of the proposed rule and were not accurately captured in the economic analysis or proposed rule. The commenter also stated that agricultural operations are greatly affected by the operations of the Red Bluff Diversion Dam, which may not have been taken into account in the analysis.

Response: The amount of water within particular areas that may be diverted from activities such as irrigation, flood control, municipal water supply, and hydropower, for the purposes of green sturgeon is uncertain. As a result, a comprehensive prospective analysis of the impacts of potential water diversion from these activities would be highly speculative. In addition, the interrelated nature of dam and diversion projects, and hydrology, across river systems makes it impossible to attribute flow-related impacts from potential green sturgeon conservation measures to specific units. We acknowledge this limitation in the economic analysis. The final economic analysis, however, includes an expanded discussion of the potential impacts of changes in flow regimes on hydropower production and prices and water diversions on irrigation based on historical examples.

Comment 40: One commenter stated that the number of affected water diversions on the Upper Sacramento River may be underestimated because the designation may result in impacts to every single farm turnout in each of 17 water agencies.

Response: The final economic analysis report applies a watershed-based approach to determine the dams and water diversions potentially affected by this rule in riverine and estuarine areas. That is, all water diversions that fall within watersheds that contain proposed critical habitat for green sturgeon are assumed to require fish screens. The analysis does not expect that diversions outside of these watersheds will require fish screens on behalf of green sturgeon. In California, the final economic analysis report uses available GIS data from CalFish (A California Cooperative Anadromous Fish and Habitat Data Program; *http://www.calfish.org*) to estimate an aggregate number of potentially affected dams and water diversions by unit (*see* Exhibits 2–15 and 2–16). To the extent that the GIS data used does not reflect the locations of all water diversions, impacts could be understated for particular diversions.

Comment 41: One commenter noted that a recent ESA section 7 consultation for salmonids expanded pesticide buffer zones beyond the buffers used in the economic analysis. Specifically, the consultation widens the pesticide buffer to 1,000 feet for aerial applications and 500 feet for ground applications. The commenter noted that in the draft economic analysis, the buffer zone on which agricultural impacts were based was 300 feet for aerial application and 60 feet for ground application. The commenter stated that, consequently, the estimated impacts of green sturgeon critical habitat on agriculture were likely underestimated in the draft economic analysis. The commenter requested NMFS to clarify that no buffer is or will be required for green sturgeon regarding agricultural impacts, or alternatively, to revise the economic analysis consistent with the recent biological opinion.

Response: Section 2.4.3 of the final economic analysis report discusses the history of the Washington Toxics litigation (*Washington Toxics Coalition et al.* v. *EPA,* No. 04–35138), and the two recent consultations on salmon and

steelhead species with regard to specific pesticides and their use. Listed salmon and steelhead species are found in all units where agricultural pesticide application is a threat to green sturgeon habitat. There is evidence that triphenyltin, a common agricultural fungicide, has caused skeletal and/or morphological deformities in Chinese sturgeon (Hu *et al.* 2009). Also, laboratory studies conducted by researchers at UC Davis have shown that certain toxins cause deformities in white sturgeon and green sturgeon (Kruse and Scarnecchia 2002; Feist *et al.* 2005). At this time we do not have information on the effects of the use of agricultural chemicals on green sturgeon in the wild. However, given the similar responses of sturgeon (multiple species) to contaminants as compared to rainbow trout (representing salmonids), the application of buffer zones to protect salmonids from the application of pesticides and herbicides would be appropriate. Therefore, wherever and whenever protective buffer zones are applied for salmonid protection through the section 7 consultation process, green sturgeon would also benefit from the buffer zone guidelines.

The final economic analysis report assumes that the court-ordered injunction restricting pesticide use represents the dominant outcome of section 7 consultations for this activity, and that although the injunction is specifically for listed salmonid species, green sturgeon requirements could result in spray buffer increases of 20 percent, either through wider buffers or additional river segments requiring buffers.

The final economic analysis report also assumes that the agricultural net revenue generated by land within specified distances in critical habitat areas will be completely lost. That is, the analysis assumes that no changes in behavior are undertaken to mitigate the impact of pesticide restrictions. For example, this analysis assumes that no adjustments in cropping or pesticide practices are possible that would allow continued crop production without these pesticides. This assumption may lead to overestimated impacts of restricting pesticide use.

It should be noted that buffer distances have not yet been determined for many pesticides, and it may be that the salmon and steelhead injunction and subsequent consultation requirements will prove to be adequately protective of green sturgeon. As such, green sturgeon critical habitat would not be expected to add costs to those already expected to occur without the current rulemaking. Since the particular sensitivities of green sturgeon are not well understood, this analysis assumes that green sturgeon may require additional protections over and above those required for salmon species. To the extent that no additional requirements for green sturgeon are imposed over and above those put in place for salmonids, impacts of green sturgeon critical habitat could be overstated. To the extent that much wider buffers are identified than were included in the injunction, overall impacts to agriculture in green sturgeon critical habitat areas could be underestimated.

Comment 42: One commenter requested that the impacts to fisheries using other bottom tending gear be considered. The commenter stated that the economic analysis underestimated the economic impact of the proposed rule because it did not consider potential impacts on the shrimp fishery, gear types other than bottom trawl, or community level impacts.

Response: NMFS specifically identified the use of bottom trawl gear as a potential threat to green sturgeon and its habitat (*see* 73 FR 52093–52094), and other gears have not been identified as a threat. The best available information indicates that other bottom tending gear (*e.g.,* pot traps, long line) does not adversely affect benthic habitats, whereas the use of bottom trawl gear has a much more apparent effect on benthic habitats. Therefore, the economic analysis does not quantify economic impacts to fishing activities with other gear types. This analysis assumes that State-managed fisheries, such as the commercial crab fishery and pink shrimp fishery will not be affected by this rule. Information provided by the commenter, including the estimate that between two and 11 percent of shrimp tows may occur within the critical habitat area, have been included in the final economic analysis report.

Comment 43: One commenter noted that with regard to bottom trawl fishing impacts, the draft economic analysis could have produced more precise and geographically specific estimates for Washington Coast units. In particular, the commenter stated that catch attributed to Unit 37 should be attributed to Unit 36. Another commenter stated that the estimates of bottom trawl revenues seemed low for the area from Humboldt Bay to Cape Flattery, and provides alternative estimates based on log book data. In addition, the commenter noted that the broad scope of the economic analysis obscures the fact that impacts associated with critical habitat likely would fall disproportionately on particular vessels and coastal communities rather than evenly through a unit.

Response: The draft economic analysis used a series of assumptions to estimate the level of bottom trawl fishing effort occurring within proposed boundaries. The final economic analysis report revises this methodology, utilizing data provided by the Washington Department of Fish and Wildlife. As part of this effort, bottom trawl fishing estimates have been reallocated from Unit 37 to Unit 36, and landings data have been better tailored to appropriate units in California, Oregon and Washington. In addition, the economic analysis now discusses the potential for uneven distribution of green sturgeon impacts across fishing vessels and communities.

Comment 44: One comment provided additional information on the location of proposed tidal- and wave-energy projects. The comment specifically described five wave energy projects in Oregon waters.

Response: All of the projects described by the commenter are included in the final economic analysis report, as presented in Exhibit 3–3.

Comment 45: One commenter noted that the economic analysis failed to consider proposed wave and wind energy projects in Grays Harbor and other areas in Washington.

Response: The final economic analysis report does consider and project potential costs associated with wave and wind energy projects in the State of Washington. Specifically, Exhibit 3–3 of the final economic analysis report identifies one project (Grays Harbor Ocean Energy and Coastal Protection) in Grays Harbor and nine additional projects in Willapa Bay and Puget Sound.

Comment 46: One comment identified three LNG terminals approved or proposed in Oregon: the Jordan Cove LNG project (proposed) located in Coos Bay and the Bradford Landing LNG project (approved) and Oregon LNG project (proposed) located in the lower Columbia River estuary. The commenter stated that proposed dredging activities associated with these projects will impact green sturgeon feeding habitat. The commenter also noted other potential impacts associated with these projects from effects on water quality and quantity, an influx of invasive species, or entrainment of fish at water intake structures.

Response: The three LNG terminals identified by the commenter were already included and analyzed in the economic analysis for Coos Bay and the lower Columbia River estuary. The information regarding the potential

impacts of LNG projects on green sturgeon critical habitat are incorporated into this final rule and supporting documents.

Comment 47: According to one commenter, the draft economic analysis mischaracterized impacts to aquaculture operations in Willapa Bay and Grays Harbor. Specifically, the commenter noted that operations in these areas have not adopted the conservation measures outlined in the draft economic analysis, and that the adoption of these measures is economically infeasible. The commenter also noted that the draft economic analysis failed to consider the economic contribution of these operations to the regional economy.

Response: Section 4.2.4 of the final economic analysis report incorporates the comments provided, including a more detailed discussion of aquaculture practices in Washington and the economic significance of the aquaculture industry to Grays Harbor and Pacific counties. In addition, the final economic analysis report discusses the high level of uncertainty regarding potential conservation measures for aquaculture. The final economic analysis report now includes a discussion of the outcome of a recent consultation on aquaculture in Willapa Bay and Grays Harbor, which concluded that no reasonable and prudent measures were necessary for either salmonid or green sturgeon under the ESA. As such, it may be that no impacts to aquaculture are likely in these units related to green sturgeon critical habitat.

ESA Section 4(b)(2) Analysis—Exclusion of Areas

Comment 48: Several commenters requested an explanation of how the monetary thresholds used to determine the eligibility of an area for exclusion were derived.

Response: The economic impact level at which the economic benefits of exclusion outweigh the conservation benefits of designation is a matter of discretion. The ESA provides NMFS with the discretion to consider making exclusions if the benefits of exclusion outweigh the benefits of designation, unless exclusion will result in extinction of the species. The ESA gives NMFS broad discretion in what weight to give benefits. The benefits of exclusion (economic impacts) are estimated in monetary values, whereas the benefits of designation (conservation value of the areas) are expressed in qualitative conservation values. Because we could not directly compare the benefits of exclusion and benefits of designation, we applied a set of decision rules based on selected dollar thresholds representing the levels at which the potential economic impact associated with a specific area may outweigh the conservation benefits of designating that area. These thresholds varied depending on the conservation value of the area, where areas with a higher conservation value rating had a higher threshold dollar value. To determine these threshold values, we examined the range in economic impacts across all areas within a conservation value rating category, determined where the breakpoint occurred between relatively low economic impacts and relatively high economic impacts, and selected a value within the range of that breakpoint where the economic impacts may outweigh the conservation benefits for that area.

Our consideration of economic impacts under section 4(b)(2) of the ESA consisted of two parts. First, we applied the threshold dollar values to identify areas that may be eligible for exclusion based on economic impacts. We then presented the areas to the CHRT and asked the CHRT to further characterize the conservation benefit of designation for these areas by determining whether exclusion of the identified areas would significantly impede conservation of the Southern DPS. If the CHRT determined that exclusion of an area would significantly impede conservation of the Southern DPS, we used this information to analyze the conservation benefit of designation, leading to the final conservation value of the area being increased by one level.

Comment 49: One commenter stated that the economic thresholds established for the ESA section 4(b)(2) process only trigger consideration or eligibility of an area for potential exclusion. The commenter requested that an upper threshold be established above which the economic impact becomes disproportionate to the relative conservation benefit of designation and exclusion is definite. The commenter focused on the lower Feather River, stating that the economic costs are well above the $100,000 threshold.

Response: Section 4(b)(2) of the ESA requires that NMFS consider the economic impacts, impacts on national security, and other relevant impacts of designating any particular area as critical habitat. The ESA also provides NMFS with the discretion to exclude areas if the benefits of exclusion outweigh the benefits of designation, but does not require that exclusions be made. To weigh the economic benefits of exclusion against the benefits of designation, NMFS established monetary thresholds above which an area was potentially eligible for exclusion. These thresholds represent the level at which the economic impact may outweigh the relative conservation benefit of designation. NMFS did not define an upper threshold at which exclusion is required, however, because within a conservation value rating category there is variation, with some areas being of higher conservation value to the Southern DPS than others. In the case of the lower Feather River, the estimated economic impacts exceeded the dollar threshold value, signaling that the economic benefits of exclusion may outweigh the conservation benefits of exclusion for this area and that it may be eligible for exclusion. However, the CHRT determined that exclusion of the lower Feather River would significantly impede conservation of the Southern DPS, adding more weight to the conservation benefit of designation for this area, and leading to NMFS' determination that the economic benefits of exclusion do not outweigh the conservation benefits of designation. Thus, the lower Feather River was proposed for designation.

Comment 50: One commenter disagreed with the decision rule for areas with a High conservation value, that no economic impact could outweigh the benefit of designation for these specific areas (*i.e.,* specific areas with a High conservation value are not eligible for exclusion). The commenter stated that this decision rule is arbitrary and unreasonable.

Response: Section 4(b)(2) of the ESA provides NMFS the discretion to exclude any area from critical habitat if the benefits of exclusion (based on economic, national security, or other relevant impacts) outweigh the benefits of designation, unless exclusion of the area will result in extinction of the species. The ESA does not describe how this weighing process is to be conducted. Because data were not available to quantify or monetize the benefits of designation, we used the CHRT's conservation value ratings to represent the relative benefits of designation for each specific area. Areas with a High conservation value rating were identified by the CHRT as areas with a relatively high likelihood of promoting the conservation of the Southern DPS compared to the other areas. Based on the purposes of the ESA, which include providing a program for the conservation of threatened and endangered species, and the policy of Congress that all Federal agencies shall seek to conserve threatened and endangered species, NMFS exercised its broad discretion to designate all of the areas with a High conservation value.

This decision rule was also applied in the ESA 4(b)(2) analysis to support the 2005 critical habitat designations for listed West coast salmon and steelhead ESUs.

Comment 51: Two commenters requested the exclusion of Federal navigation channels and dredged material placement sites within Humboldt Bay, San Francisco Bay, Suisun Bay, San Pablo Bay, the Delta, and the Sacramento River and tributaries. The commenters asserted that the benefits of navigation traffic outweigh the conservation benefits of designation because these areas are dredged annually, are often deeper than green sturgeon depth preferences for all life stages, lack the PCEs, and make up a small proportion of the total area proposed for designation in estuaries and freshwater rivers.

Response: We appreciate the data provided by the commenter regarding dredging and disposal operations in the Central Valley, California, and in Humboldt Bay. We recognize that routine maintenance dredging and disposal operations are conducted to maintain the Federal navigation channels and that these activities have already altered the habitat within these channels and associated disposal sites. The CHRT considered the information provided, but determined that the areas requested for exclusion do contain PCEs that may require special management considerations or protection and provide valuable habitat for the Southern DPS. The Sacramento River supports all life stages and is the only confirmed spawning river for the Southern DPS. The Delta and the San Francisco, Suisun, and San Pablo bays support feeding, rearing, and migration by juvenile, subadult, and adult Southern DPS green sturgeon. Subadult and adult Southern DPS green sturgeon occupy Humboldt Bay for long periods of time, presumably for feeding during summer months. The best available data indicate that subadult and adult green sturgeon occur widely throughout these areas, based on detections of tagged green sturgeon through the estuaries and the Sacramento River. In addition, juvenile green sturgeon are believed to occur throughout the Delta and the San Francisco, Suisun, and San Pablo bays throughout all months of the year. The PCEs to support Southern DPS green sturgeon within these areas are affected by activities such as dredging and disposal (as described in the comments), dams and water diversions, in-water construction or alteration activities, and other activities as described in the final rule and supporting documents.

It is important to note that designation of critical habitat within these areas does not preclude dredging and disposal operations, but requires that Federal activities, or those requiring a Federal permit or funding and that may affect critical habitat, be evaluated under section 7 of the ESA to ensure that they do not destroy or adversely modify the habitat. The protective measures that may be required to address effects of dredging and disposal activities on critical habitat will depend on the specifics of the activity (*e.g.,* scale, location, time of year, *etc.*). NMFS will continue to work with the affected entities to determine the effects of the activities on critical habitat and to develop protective measures to address those effects.

Comment 52: One commenter stated that Central San Francisco Bay and Suisun Bay do not meet the definition of critical habitat because these specific areas are not essential for conservation of the Southern DPS and do not require special management considerations or protection. The commenter focused on sand mining activities, stating that sand mining operations result in localized, temporary disturbances that do not pose a serious threat to the PCEs and will not adversely affect migration and foraging. Also, the commenter stated that sand mining is heavily regulated and occurs in limited specific designated lease areas, only a portion of which is actually mined.

Response: The ESA defines critical habitat as specific areas within the geographical area occupied that contain physical or biological features essential to the conservation of the species and which may require special management considerations or protection. The CHRT considered the comments and verified that both Central San Francisco Bay and Suisun Bay meet the definition of critical habitat. Central San Francisco Bay and Suisun Bay were both rated as High conservation value areas that support feeding and migration for juvenile, subadult, and adult Southern DPS green sturgeon. Both areas contain at least one PCE that may require special management considerations or protection. We appreciate the information provided regarding the effects of sand mining on critical habitat and will consider such information in future consultations under section 7 of the ESA regarding sand mining operations. Final determinations will be made on a case-by-case basis during the section 7 consultation process. However, sand mining is only one of several activities identified that may affect the PCEs. Thus, even if sand mining does not adversely affect critical habitat, other activities occur within the areas that may affect the PCEs, including but not limited to: dredging and disposal of dredged material, in-water construction or alteration activities, and pollution. Finally, the fact that activities may already be regulated does not negate the need for special management considerations or protection. In determining whether a PCE may require special management considerations or protection, the CHRT focused on whether or not any activities may threaten the PCE.

Comment 53: One commenter requested the exclusion of nearshore regions where industrial activities occur within the San Francisco Bay, because these areas are not essential to the conservation of green sturgeon.

Response: The CHRT considered the comments but determined that the best available scientific data do not support the exclusion of these nearshore regions. San Francisco Bay supports feeding, rearing, and migration for juvenile, subadult, and adult Southern DPS green sturgeon. Green sturgeon occupy a diversity of depths throughout their different life stages, including shallow nearshore areas. Recent telemetry data and literature references indicate green sturgeon distribute widely throughout the bay and use extensive mudflats and sand flats for feeding. Based on the available data, it is reasonable to believe that green sturgeon use nearshore regions within San Francisco Bay. NMFS encourages research to better understand the use of these areas by different life stages of green sturgeon.

Comment 54: A commenter suggested that the Port of Stockton be excluded because it consists of deep water and developed shoreline and does not have the sediment quality that green sturgeon require.

Response: The CHRT considered this request to exclude the Port of Stockton from critical habitat, but ultimately decided that sufficient data to support exclusion are not available at this time. The best available data indicate that the Port of Stockton provides PCEs to support the rearing, feeding, and migration of juvenile, subadult, and adult Southern DPS green sturgeon. The PCEs may be affected by activities conducted within the area, but still continue to support the presence and use of this area by Southern DPS green sturgeon. Adult and subadult Southern DPS green sturgeon have been observed in the eastern Delta, including in the area adjacent to the Port of Stockton. Tagged green sturgeon have been detected at all three hydroacoustic monitors in the Deep Water Channel adjacent to the Port of Stockton.

Hydroacoustic monitors have not yet been installed in the Port of Stockton, however, and specific data on use of this area are lacking. In addition, juvenile green sturgeon rearing and feeding habitats are believed to occur throughout the Delta, but data are lacking on juvenile green sturgeon distribution in the Delta. At this time, the CHRT believes that juvenile green sturgeon are distributed widely throughout the Delta, and are, therefore, presumed to be in the Port of Stockton area. Studies focused on juvenile green sturgeon distribution in the Delta and San Francisco, San Pablo, and Suisun bays would help to address these data gaps and inform future revisions to the critical habitat designation.

Comment 55: One commenter requested that the area of the Sacramento River immediately upstream and downstream of RBDD be excluded from the critical habitat designation, because data for this area are not sufficient to support designation of critical habitat. The commenter was unclear whether RBDD is included as an existing structure as part of critical habitat or not. If it is, the commenter asserted that operation of the dam has no specific relationship to the numbers, range, or viability of green sturgeon. The commenter also stated that no analysis was done on the impacts that will result from restrictions on water diversions at RBDD.

Response: The CHRT identified the lower and upper Sacramento River, including the area immediately upstream and downstream of RBDD, as areas of High conservation value, recognizing that the areas support all life stages of Southern DPS green sturgeon and provide PCEs (including food resources, depth, migratory corridor, substrates, water quality, and water flow) to support migration, feeding, spawning, and rearing. The presence and operation of the RBDD has several effects on the Southern DPS. For example, the RBDD can hinder or block upstream and downstream migration when the gates are down, or cause injury or mortality if the gate opening is too small. In 2007, 10 green sturgeon were found injured and dead at or just downstream of RBDD, purportedly injured while trying to move under the gates. In addition, the RBDD may alter water quality and spawning habitats by altering the flow regime. Spawning by adult Southern DPS green sturgeon has been confirmed to occur both upstream and downstream of the RBDD, although conditions directly below the RBDD may not be favorable for spawning success due to high sedimentation levels (Poytress *et al.* 2009). Thus, the area immediately upstream and downstream of RBDD is of high conservation value to the Southern DPS and would benefit from protections under a critical habitat designation. The Sacramento River would be designated as critical habitat, but the RBDD itself would not be designated as critical habitat. The effects of operations at RBDD on critical habitat would be subject to consultation under section 7 of the ESA to address effects on critical habitat in the Sacramento River. As described in the response to comments 38 and 39, the potential impacts on RBDD are discussed in more detail in the final economic analysis report.

Comment 56: One commenter agreed with the CHRT that exclusion of the lower Feather River would significantly impede conservation of the Southern DPS, but two commenters disagreed and stated that the lower Feather River should be excluded from the designation because: (1) The estimated economic impacts substantially exceeded the $100,000 threshold for exclusion; (2) the area is not a confirmed spawning river and habitat improvements needed to make this area of High conservation value are not financially and logistically feasible; (3) designating the lower Feather River as a second spawning river for the Southern DPS is not warranted because the population is already protected from catastrophic risk by a naturally occurring second population in marine waters; and (4) the jeopardy provision under section 7 of the ESA provides adequate protection for the species. One commenter was unclear whether the biological analysis was based on current conditions or future conditions in the area. One commenter stated that there is little evidence to suggest green sturgeon occupy the lower Feather River above RKM 95, and another commenter stated that Fish Barrier Dam is the uppermost barrier, not Oroville Dam.

Response: The CHRT's evaluation of the lower Feather River was based on current conditions within the area as well as the potential future conditions if efforts to improve habitat conditions and passage are conducted. The best available data from surveys and anecdotal observations of green sturgeon indicate that green sturgeon consistently occupy and use the lower Feather River. Although spawning has not yet been confirmed, the CHRT believes the lower Feather River is the area most likely to serve as a second spawning river for the Southern DPS. The CHRT recognized that only part of the population returns to the Sacramento River to spawn each year, providing some protection should a catastrophic event occur. However, a second spawning river would provide not only additional protection from a catastrophic event but also additional spawning habitat should spawning habitats be inaccessible or subject to disturbance in the Sacramento River. Current and ongoing habitat monitoring and improvement activities are being conducted within the lower Feather River that may benefit the Southern DPS. NMFS encourages continued efforts to restore habitat and improve fish passage within the lower Feather River. The CHRT considered all of this information in making their determination that exclusion of this area would significantly impede conservation of the Southern DPS. This led NMFS to determine that, although the economic impacts for this area exceeded the $100,000 threshold, the economic benefit of exclusion did not outweigh the conservation benefit of designation. Thus, the lower Feather River was proposed for designation.

The CHRT considered the public comments received but, based on the information as described above, maintained its determination that exclusion of the Feather River would significantly impede conservation of the Southern DPS. NMFS also maintains its determination that the benefits of exclusion do not outweigh the benefits of designation for this area. However, the CHRT agreed that the upstream boundary for the lower Feather River should be changed from the Oroville Dam to the Fish Barrier Dam (RKM 109), because the Fish Barrier Dam represents the current upstream extent of green sturgeon passage. Green sturgeon have been observed at the Thermalito Outlet and in riffles between Thermalito Outlet and the Fish Barrier Dam (pers. comm. with Alicia Seesholtz, California Department of Water Resources (CDWR), March 10, 2009), confirming that green sturgeon do occur upstream of RKM 95, up to the Fish Barrier Dam (RKM 109). Thus, the specific area in the Lower Feather River was redefined as the area from the river mouth at the confluence with the Sacramento River, upstream to the Fish Barrier Dam.

Comment 57: Two commenters suggested that the lower Yuba River downstream of Daguerre Dam should not be designated as critical habitat, because data do not support that the lower Yuba River was historically a spawning river for green sturgeon as no green sturgeon juveniles, larvae, or eggs have been observed in the lower Yuba River to date and because adult and subadult green sturgeon occur infrequently in this area. The commenters cited numerous surveys that have been conducted since the

1970s with only one sighting of an adult green sturgeon in 2006. In addition, the commenters noted that flow regimes for green sturgeon may differ from those established under the Yuba Accord to protect salmonids and their habitat, which may result in conflicts in management and potentially high economic costs.

Response: We recognize that spawning has not been confirmed in the lower Yuba River downstream of Daguerre Dam and have revised the final rule accordingly. However, the CHRT determined that the lower Yuba River likely provides spawning habitat for Southern DPS green sturgeon. Although only one confirmed green sturgeon has been observed in the lower Yuba River, this does not indicate green sturgeon do not use the area more frequently. Surveys have been conducted in this area, but have not targeted green sturgeon. Observations of green sturgeon are difficult even during surveys targeting green sturgeon. For example, green sturgeon surveys in the lower Feather River conducted in 2000—2004 did not observe any green sturgeon, despite anecdotal observations of green sturgeon during the time surveys were conducted (CDWR 2005). More information is needed to determine the optimal flow regime for green sturgeon in the lower Yuba River and how this compares with flows established for salmonids. Consultation under section 7 of the ESA would take into account the needs of both the Southern DPS and the listed salmonid species.

Comment 58: Two commenters suggested that in the Columbia River, Grays Harbor, and Willapa Bay, critical habitat should be confined to certain portions of the estuaries because sturgeon are not evenly dispersed throughout these waters. The commenters requested that shellfish aquaculture areas be excluded from critical habitat, because green sturgeon do not use shellfish beds but instead occupy areas of high burrowing shrimp density outside of shellfish farming areas. In addition, the commenters asserted that carbaryl does not affect burrowing shrimp populations outside of treated areas and thus does not adversely affect green sturgeon prey resources. The commenters cited a recent study (Dumbauld *et al.* 2008) that suggests burrowing shrimp populations are abundant throughout the estuaries and are not likely to be a limiting factor for green sturgeon. The commenters also noted that carbaryl will be phased out by 2012 and replaced by more benign chemical, biological, or mechanical methods of eradication.

Response: The CHRT considered the comments but determined that the best available data do not support confining the critical habitat designation to certain portions of the lower Columbia River estuary, Grays Harbor, and Willapa Bay. Telemetry data show that tagged green sturgeon disperse widely throughout these estuaries, most likely for foraging. In addition, anecdotal accounts have noted observations of sturgeon in intertidal aquaculture beds in the past, likely when populations of sturgeon were more abundant in these estuaries, and have suggested that predation by sturgeon and other predators may help control burrowing shrimp populations in these beds (Dumbauld *et al.* 2008). Designation of critical habitat would require shellfish aquaculture activities that are funded, permitted, or carried out by Federal agencies to comply with section 7 of the ESA. During the consultation, factors such as the location and size of the project and the entity's initial evaluation of the effects of the project on critical habitat would be considered in determining whether the project adversely affects critical habitat. Information such as that provided by the commenters regarding the effects of carbaryl on green sturgeon prey resources would also be taken into account in the consultation.

Comment 59: One commenter suggested that the inner half of the Strait of Juan de Fuca and the area around the San Juan Islands should be excluded from the designation because these are areas of low use by green sturgeon.

Response: The CHRT considered the comment but determined that the best available scientific data support inclusion of the Strait of Juan de Fuca. Tagged Southern DPS green sturgeon are known to use the inner half of the Strait of Juan de Fuca, because they have been detected at receivers in the Strait of Juan de Fuca as well as in Puget Sound and Rosario Strait. The low numbers of detections may be due to relatively few tagged green sturgeon and relatively few receiver arrays located in the area. In addition, the receiver arrays were installed and operated to monitor other species and may not be programmed or positioned for optimal monitoring of green sturgeon.

Comment 60: One commenter stated that critical habitat should not be designated in coastal marine waters because there is insufficient data to show that bottom trawl fisheries affect green sturgeon migration or prey resources within coastal marine waters. The commenter noted that bottom trawling is not allowed in State waters off California and Washington and trawling off Oregon occurs deeper than 40 fm, leaving ample area for green sturgeon feeding and movement. The commenter suggested that coastal marine waters off southeast Alaska should be considered for designation because, although bottom trawling does not occur there, other bottom tending gear is used. The commenter stated that if critical habitat is to be designated in coastal marine waters, then other bottom tending gear should be considered and coastal marine waters off southeast Alaska should be designated.

Response: The CHRT considered all coastal marine waters within 110 m depth from the California-Mexico border to the Bering Sea, Alaska. The coastal marine areas off southeast Alaska were excluded based on economic impacts, not because bottom trawling fisheries do not occur in the area. Bottom trawling was only one of several activities identified that may affect the PCEs within the coastal marine areas. Other activities include hydrokinetic projects, disposal of dredged material, and pollution from activities such as commercial shipping. Thus, even if bottom trawl fisheries did not adversely affect the PCEs, there are other activities affecting the PCEs within the coastal marine areas. The CHRT focused on bottom trawl gear because bycatch of green sturgeon occurs in bottom trawl fisheries and this gear was identified by NMFS biologists as being the most likely to affect bottom habitat used by green sturgeon, compared with other bottom tending gear. However, all activities that may affect critical habitat would be subject to section 7 of the ESA even if not specifically mentioned in the final rule. Whether bottom trawl or other gear types adversely affect critical habitat would be determined through the ESA section 7 consultation process and would depend on factors such as the location, scale, and frequency of potential disturbances.

Comment 61: One commenter agreed that exclusion of Coos Bay from the designation would significantly impede conservation of the Southern DPS, whereas one commenter disagreed, stating that the inclusion of Coos Bay is not supported by the available data that indicate low numbers of green sturgeon and no evidence of use by Southern DPS fish.

Response: Coos Bay was identified as an area that may be eligible for exclusion based on economic impacts, but was proposed for designation and is included in this final designation based on a determination that exclusion of this area would significantly impede conservation of the Southern DPS and, therefore, the economic benefits of

exclusion do not outweigh the conservation benefits of designation. The CHRT considered the comments and maintained its determination that exclusion of Coos Bay would significantly impede conservation of the Southern DPS based on the best available information showing that Coos Bay is one of two large estuaries on the Oregon coast where relatively large numbers of green sturgeon are consistently observed (ODFW 2009a, b) and Southern DPS are confirmed to occur (Lindley and Moser, unpublished data, cited in the Memo to the Record from C. Grimes, October 23, 2006; pers. comm. with Dan Erickson, ODFW, September 3, 2008). In addition, there is uncertainty regarding the economic impact estimates for Coos Bay. As described in the ESA 4(b)(2) report, a large proportion of the estimated economic costs (ranging from $73,000 to $16 million) for Coos Bay was associated with impacts to a proposed LNG project in the bay. The high economic cost estimate of $16 million includes the estimated costs to re-site an LNG project due to this rule. The upper bound of the economic cost range is unlikely because: (1) It is highly uncertain whether the LNG project will be constructed; and (2) the high economic cost was associated with having to relocate the project, which is unlikely to occur. The low economic cost estimate of $73,000 was based on the assumption that additional measures would not be required for LNG projects for the protection of green sturgeon critical habitat, or that any required measures would result in minimal costs (*i.e.,* the economic impact for LNG projects is $0). We recognize, however, that an estimated economic impact of $0 for potential economic impacts to LNG projects is highly unlikely. Therefore, the actual economic impact on LNG projects is likely to be within this range (greater than $0, but much lower than $16 million), but we currently lack sufficient information to estimate this cost. Based on the information regarding the conservation value of Coos Bay to the Southern DPS and uncertainty regarding the estimated economic impacts, NMFS determined that the economic benefits of exclusion do not outweigh the conservation benefits of designation and Coos Bay is included in the final critical habitat designation.

Comment 62: One commenter requested an explanation for the exclusion of some waterways in the Sacramento-San Joaquin Delta, CA, from the proposed designation.

Response: The specific area designated as critical habitat in the Delta includes all tidally influenced areas up to the mean higher high water line within the legal boundaries of the Delta as defined in California Water Code Section 12220, except for two modifications. The CHRT defined the boundary between the Delta and Suisun Bay by a line extending from the mouth of Spoonbill Creek across the channel to the city of Pittsburg, CA, resulting in Chipps Island being fully contained within the Suisun Bay specific area. In addition, the following slough areas are excluded from the Delta specific area: Five Mile Slough, Seven Mile Slough, Snodgrass Slough (at Lambert Road), Tom Paine Slough, and Trapper Slough. These areas were identified and excluded by the CHRT as areas that all have manmade barriers isolating them from the rest of the Delta and where green sturgeon do not occur. Structures such as gated culverts, tidal gates, and siphons control the flow of water into the channels of these sloughs, which then primarily serve as ''reservoirs'' for irrigation water delivered to surrounding farm fields.

Comment 63: One commenter agreed with NMFS' proposal to exclude the waters off Alaska from the critical habitat designation, stating that Southern DPS green sturgeon rarely occur off the coast of southeast Alaska and that green sturgeon observed off Alaska most likely belong to the Northern DPS.

Response: There have been few observations of green sturgeon, particularly Southern DPS green sturgeon, in coastal marine waters off Alaska compared to coastal marine and estuarine waters in Washington, Oregon, and California. NMFS would like to clarify, however, that green sturgeon observed off Alaska could belong to either the Northern DPS or the Southern DPS. Since 1990, a total of 8 green sturgeon have been observed in the groundfish bottom trawl fishery conducted around the Aleutian Islands and in the Bering Sea (pers. comm. with Vanessa Tuttle, NMFS, November 20, 2006; pers. comm. with Jennifer Ferdinand, NMFS, November 24, 2006). Tissue samples were collected from 2 individuals captured in 2006, but genetic analyses to determine to which DPS the individuals belong were inconclusive (pers. comm. with Josh Israel, UC Davis). Two tagged Southern DPS green sturgeon were detected at the monitor in Graves Harbor, AK (currently the only monitor located on the Alaska coast; Lindley *et al.* 2008; pers. comm. with Steve Lindley, NMFS, September 12, 2007), showing that Southern DPS green sturgeon do migrate as far north as southeast Alaska. Given that there are no physical or environmental barriers present, it is possible that these fish migrate further north to the Aleutian Islands and the Bering Sea. Expansion of the monitoring array and collection of more tissue samples for genetic analyses are needed to better characterize the presence and distribution of Northern DPS and Southern DPS green sturgeon in coastal marine waters off Alaska.

Impacts on National Security

Comment 64: The Department of Defense (DOD) requested the exclusion of coastal marine waters in Oregon adjacent to the military training facility, Camp Rilea, due to national security concerns. The area requested for exclusion included an area from one-half mile north to one-half mile south of Camp Rilea to a distance of two miles offshore of Camp Rilea. This area encompasses the surface danger zone for weapons training ranges on Camp Rilea, but is not part of the Camp Rilea facility.

Response: We corresponded with representatives from Camp Rilea to discuss the activities occurring within the coastal marine waters adjacent to Camp Rilea and the potential impacts of the critical habitat designation on national security within this area. The activities identified to occur within this area included shooting range training exercises and amphibious landings. No in-water construction activities or activities affecting water quality were identified. The representatives for Camp Rilea agreed that the activities occurring within the area requested for exclusion would not likely affect critical habitat for the Southern DPS and that the critical habitat designation would not likely affect national security within the area. Thus, the benefits to national security of excluding this area were low. In addition, the area is located within a specific area with High conservation value that provides an important connectivity corridor for green sturgeon and is located just south of the lower Columbia River estuary, another specific area with High conservation value, and there are other Federal activities occurring in the area (*e.g.,* a submarine cable installation project) that may affect critical habitat. Thus, we determined that the benefits to national security of excluding this area did not outweigh the conservation benefits of designating the area. A more detailed analysis is provided in the final ESA section 4(b)(2) report (NMFS 2009c).

Comment 65: The DOD requested that the following areas off the coast of Washington be excluded from the critical habitat designation: (1) Strait of Juan de Fuca and Whidbey Island Naval Restricted Areas adjacent to the runways at the Naval Air Station (NAS)

Whidbey Island; (2) Strait of Juan de Fuca Naval Air-to-Surface Weapon Range Restricted Area; (3) Admiralty Inlet Naval Restricted Area; (4) Navy 3 Operating Area in the Strait of Juan de Fuca; (5) Navy 7/Admiralty Bay Naval Restricted Area 6701 in Puget Sound; and (6) the surf zone portion of the Quinault Underwater Tracking Range (QUTR) within the Pacific Northwest Operating Area.

Response: NMFS considered the DOD's request and the information provided by representatives from the Navy regarding the activities occurring within each of the areas requested for exclusion and the potential impacts on national security. NMFS determined that the benefits to national security of excluding the following areas outweigh the conservation benefits of designating the areas: Strait of Juan de Fuca and Whidbey Island Naval Restricted Area; Strait of Juan de Fuca Naval Air-to-Surface Weapon Range Restricted Area; Admiralty Inlet Naval Restricted Area; and Navy 3 Operating area (NMFS 2009c). We determined that the benefits of designation are low for these areas, because there are relatively few detections of green sturgeon in the area and the consultation history indicates that there are currently no other Federal activities occurring within these areas that may affect critical habitat. In addition, the size of the areas are small relative to the Strait of Juan de Fuca and the total critical habitat designation, and the Navy's presence provides some protection for green sturgeon habitat, either through regulatory control of public access or the nature of the Navy's activities that limit the kinds of other Federal activities that would occur in the areas. We also determined that the potential impacts on national security are low for these areas, because the Navy's current activities have a low likelihood of affecting critical habitat. However, we recognize that the range of activities that may be carried out in these areas are often critical to national security and that a critical habitat designation in these areas could delay or halt these activities in the future. Based on this information, we determined that the benefits of exclusion outweigh the benefits of designation and exclude the areas from the final designation. We note, however, that consultation under section 7 of the ESA would still be required to address activities that may cause jeopardy to or take of Southern DPS green sturgeon.

The Navy 7/Admiralty Bay Naval Restricted Area 6701 occurs in Puget Sound (an area that is excluded from the final critical habitat designation) and does not overlap with the specific area delineated in the Strait of Juan de Fuca (*see* ''Corrections from proposed rule''). Therefore, the Navy 7/Admiralty Bay Naval Restricted Area 6701 does not overlap with the critical habitat designation for the Southern DPS. In addition, at this time NMFS cannot determine whether the surf zone portion of the QUTR warrants exclusion from the critical habitat designation because the surf zone area has not yet been defined by the Navy. The surf zone portion of the QUTR is part of a proposed extension of the QUTR range that has not yet been finalized. The Navy informed NMFS that one of three alternative sites for the surf zone portion will be selected following completion of analyses under the National Environmental Policy Act (NEPA), estimated to be completed by the end of the year 2009. Until the area has been defined, NMFS cannot evaluate the impacts on national security and determine if those impacts outweigh the benefits of designating the area as critical habitat, because the location and size of the areas could change. Thus, the area will not be excluded from the critical habitat designation at this time. Once the location of the surf zone portion of the QUTR has been selected, the Navy may request that NMFS revise the critical habitat designation to exclude the area from critical habitat based on impacts on national security. A more detailed analysis for each of the areas requested for exclusion by the Navy is provided in the final ESA section 4(b)(2) report (NMFS 2009c).

Comment 66: The DOD commented that the area within the boundaries of the Mare Island US Army Reserve Center (USAR) near Vallejo, California, should not be eligible for consideration as critical habitat, because an integrated natural resources management plan (INRMP) is currently in place that provides the same, if not better, protection for listed species in waters adjacent to the Mare Island USAR Center. In addition, the DOD requested that the Mare Island USAR Center be excluded from designation based on impacts on national security.

Response: NMFS corresponded with representatives from the Mare Island USAR Center to discuss the INRMP and the potential impacts on national security. The Mare Island USAR Center is located in Mare Island Strait, where the Napa River flows into San Pablo Bay, California. The Mare Island USAR Center facilities include the waters between and around Piers 22 and 23, which overlap with the habitat areas considered for designation as critical habitat. NMFS' primary concerns were that: (1) The INRMP discusses the status and occurrence of green sturgeon in the area, but does not include protective measures specifically for green sturgeon; and (2) in-bay disposal of dredged material from dredging activities between and around the piers may affect proposed green sturgeon critical habitat.

Based on the information provided by the DOD, NMFS determined that the benefits to national security of excluding waters within the boundaries of the Mare Island USAR Center facility between and around Piers 22 and 23 outweigh the conservation benefit of designating the area (NMFS 2009c). One of the major national security concerns is that limitations on pier maintenance activities or on dredging activities between and around the piers could hinder the ability of vessels to move in and out of the piers for missions. Thus, the Mare Island USAR Center is excluded from the critical habitat designation for the Southern DPS. However, NMFS determined that the INRMP does not provide adequate protection for the threatened Southern DPS (*i.e.,* the INRMP does not provide a benefit to the species, as required by ESA section 4(a)(3)(B)(i)) and recommended revisions to the INRMP to adequately address the Southern DPS, including: (1) Providing updated data on tagged green sturgeon detections from monitors placed at Piers 22 and 23; and (2) providing conservation measures to address the effects of activities on green sturgeon. In addition, NMFS requests that, upon publication of this final rule, the INRMP be updated to incorporate information about the designation of critical habitat for the Southern DPS in waters adjacent to the Mare Island USAR Center in San Pablo Bay. Although the Mare Island USAR Center is excluded from the critical habitat designation, consultation under section 7 of the ESA would be required to address activities that may cause jeopardy to or take of Southern DPS green sturgeon, and to address activities that may affect designated critical habitat (for example, consultation would be required for the disposal of dredged material within designated critical habitat areas).

Comment 67: The DOD commented that the Military Ocean Terminal Concord (MOTCO) facility in Suisun Bay should not be eligible for consideration as critical habitat, because an existing INRMP for the facility already includes fishery measures that benefit green sturgeon. In addition, the DOD requested that the area be excluded from designation based on impacts on national security. The MOTCO operates within the property of the former Naval Weapons Station,

Detachment Concord, California, which was transferred from the U.S. Navy to the U.S. Army in fiscal year 2009. The U.S. Army is continuing operations at the MOTCO facilities in accordance with the INRMP prepared for the Naval Weapons Station Concord, as well as a Memorandum of Understanding (MOU) with the USFWS relating to the designation of a wetland preserve on the Naval Weapons Station Concord.

Response: NMFS corresponded with a representative from MOTCO to discuss the MOTCO facilities and the INRMP. Upon further review of the MOTCO facility maps and the information provided by the MOTCO representative, NMFS determined that the MOTCO facilities are adjacent to, but do not overlap with, the habitat areas considered for designation as critical habitat for the Southern DPS in Suisun Bay, California. The MOTCO representative agreed with the determination that there is no overlap between the MOTCO facilities and the areas considered for designation as critical habitat in Suisun Bay. Thus, the MOTCO facilities are not included in the critical habitat designation for Southern DPS green sturgeon. However, NMFS clarified that consultation under section 7 of the ESA would still be required to address jeopardy to or take of Southern DPS green sturgeon, or to address effects on designated critical habitat areas. NMFS also requested to be involved in reviewing the INRMP for the MOTCO facilities to ensure that green sturgeon are adequately addressed.

Impacts on Indian Lands

Comment 68: Several Tribes in Oregon and Washington requested the exclusion of Indian lands from the critical habitat designation. Some of the Tribes also requested the exclusion of the Tribes' usual and accustomed fishing areas due to concerns regarding the potential effects of the critical habitat designation on Tribal fisheries. The Tribes provided information regarding Tribal activities that may be affected by the critical habitat designation and maps showing the location of Indian lands and usual and accustomed fishing areas that may overlap with the areas considered for designation as critical habitat.

Response: NMFS corresponded with several Tribes in Washington and Oregon to discuss and better understand their concerns regarding the critical habitat designation. Based on the information received from the Tribes, NMFS determined that the areas of overlap between Indian lands and the areas considered for designation is small. In contrast, the benefits of excluding Indian lands from the designation are high and include: maintenance of NMFS' co-management and trust relationship with the Tribes and continued respect for Tribal sovereignty and self-governance, particularly with regard to the management of natural resources on Indian lands. Thus, NMFS determined that the benefits of exclusion outweigh the benefits of designation for Indian lands and that Indian lands are eligible for exclusion. This final rule excludes from the critical habitat designation Indian lands (as defined under the Secretarial Order titled ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'') of the following Tribes: the Hoh, Jamestown S'Klallam, Lower Elwha, Makah, Quileute, Quinault, and Shoalwater Bay Tribes in Washington; the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians and the Coquille Tribe in Oregon; and the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community, Cher-Ae Heights Trinidad Rancheria, Wiyot Tribe, and Yurok Tribe in California. This exclusion applies only to current Indian lands and would not apply to additional Indian lands acquired by the Tribes in the future. The Tribes would need to request that NMFS revise the critical habitat designation for the Southern DPS to exclude any Indian lands acquired after the publication of this final rule. The final ESA section 4(b)(2) report (NMFS 2009c) documents NMFS' correspondence with the Tribes and NMFS' determination regarding the exclusion of Indian lands.

Three Tribes in Washington also requested the exclusion of usual and accustomed fishing areas from the critical habitat designation. The Tribes were primarily concerned with the potential impact of the critical habitat designation on Tribal fisheries in coastal estuaries and coastal marine waters. Based on the information provided by the Tribes, NMFS would expect the critical habitat designation to have minimal effects on Tribal fisheries. Tribal fisheries may cause take of Southern DPS green sturgeon and thus are more likely to be affected by take prohibitions as established in the proposed ESA 4(d) Rule for green sturgeon (74 FR 23822; May 21, 2009) than by the proposed critical habitat designation. In addition, usual and accustomed fishing areas are not necessarily coextensive with areas defined as ''Indian lands'' in various Federal policies, orders, and memoranda. Thus, we conclude that exclusion of usual and accustomed fishing areas outside those identified as Indian lands is not warranted. Tribal activities conducted outside of identified Indian lands and that have a Federal nexus (such as participation or funding by the Bureau of Indian Affairs), including those conducted within usual and accustomed fishing areas, would be subject to requirements under section 7 of the ESA to ensure no destruction or adverse modification of critical habitat.

Unoccupied Areas

Comment 69: Several commenters agreed with NMFS' decision not to designate unoccupied areas at this time, whereas two commenters disagreed with this decision. Several commenters urged NMFS not to designate critical habitat in unoccupied areas, stating that there is insufficient information to determine that any of the currently unoccupied areas identified are essential for conservation, catastrophic risk can be addressed by focusing on habitat improvements in currently occupied areas, and designation of unoccupied areas would result in high economic impacts. Commenters stated that the restoration of passage or habitat for green sturgeon in currently inaccessible or unsuitable habitats can be more appropriately addressed in the recovery planning process. Two commenters asserted that recovery would be impossible without establishing additional spawning populations for the Southern DPS with at least one inhabiting a separate basin from the Sacramento River. One commenter recommended that the removal or alteration of the Daguerre Dam on the Yuba River should be regarded as critical, to allow passage and access to potential spawning habitats in the Yuba River.

Response: Although the CHRT identified seven unoccupied areas that *may be essential* for conservation, they did not have data to support a determination that any of the unoccupied areas *are essential* for conservation of the Southern DPS. Of greatest importance was the lack of data on the historical use of these areas by green sturgeon. The CHRT did not have any evidence to confirm that green sturgeon historically occupied any of the seven unoccupied areas identified. In addition, green sturgeon do not appear to occupy the lower American River or the San Joaquin River presently, even though both systems are accessible to green sturgeon (*i.e.,* there is no physical barrier blocking upstream migration). The public comments did

not provide additional information on historical green sturgeon presence and use of these unoccupied areas. Thus, the CHRT maintained their determination that the unoccupied areas *may be essential* but that data are not available to determine that any of the unoccupied areas *are essential* for the conservation of the Southern DPS. The CHRT and NMFS recommend that future research be conducted to monitor these areas for green sturgeon presence and to better understand the current habitat conditions.

National Environmental Policy Act of 1969 (NEPA)

Comment 70: Two commenters stated that NMFS failed to comply with NEPA and that the absence of the NEPA review causes important impacts to remain unidentified, unrecognized, or ignored.

Response: We believe that in *Douglas County* v. *Babbitt,* 48 F. 3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996), the Ninth Circuit Court of Appeals correctly interpreted the relationship between NEPA and the designation of critical habitat under the ESA. The Court rejected the suggestion that irreconcilable statutory conflict or duplicative statutory procedures are the only exceptions to application of NEPA to Federal actions. The Court held that the legislative history of the ESA demonstrated that Congress intended to displace NEPA procedures with carefully crafted procedures specific to the designation of critical habitat. Further, the Douglas County Court held that the critical habitat mandate of the ESA conflicts with NEPA in that, although the Secretary may exclude areas from critical habitat if such exclusion would be more beneficial than harmful, the Secretary has no discretion to exclude areas from designation if such exclusion would result in extinction. The Court noted that the ESA also conflicts with NEPA's demand for an impact analysis, in that the ESA dictates that the Secretary ''shall'' designate critical habitat for listed species based upon an evaluation of economic and other ''relevant'' impacts, which the Court interpreted as narrower than NEPA's directive. Finally, the Court, based upon a review of precedent from several circuits including the Fifth Circuit, held that an environmental impact statement is not required for actions that do not change the physical environment. The impacts of the critical habitat designation on activities occurring within the critical habitat areas were evaluated and considered in the economic analysis (Indecon 2009) and ESA section 4(b)(2) analysis (NMFS 2009c).

Correction From Proposed Rule

We made modifications to the boundaries for the Strait of Juan de Fuca to more accurately reflect the major basins associated with Puget Sound (Batelle Marine Sciences Laboratory *et al.* 2001). The boundary between the Strait of Juan de Fuca and Puget Sound should be defined by a line between Partridge Point on Whidbey Island and Point Wilson at Port Townsend. This final rule makes this correction in the regulatory text.

Critical Habitat Identification and Designation

Section 4(b)(2) of the ESA requires the designation of critical habitat for threatened and endangered species ''on the basis of the best scientific data available and after taking into consideration the economic impact, impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.'' This section grants the Secretary [of Commerce] discretion to exclude any area from critical habitat if he determines ''the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat.'' The Secretary may not exclude an area if it ''will result in the extinction of the species.''

The ESA defines critical habitat under Section 3(5)(A) as:

> (i) [T]he specific areas within the geographical area occupied by the species, at the time it is listed * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
>
> (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination by the Secretary that such areas are essential for the conservation of the species.

The ESA defines conservation under section 3(3) to mean ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.''

Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure they do not fund, authorize, or carry out any actions that will destroy or adversely modify that habitat. This requirement is in addition to the ESA section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of listed species.

In the following sections, we describe our methods for evaluating the areas considered for designation as critical habitat, our final determinations, and the final critical habitat designation. This description incorporates the changes described above in response to the public comments and peer reviewer comments.

Methods and Criteria Used To Identify Critical Habitat

In accordance with section 4(b)(2) of the ESA and our implementing regulations (50 CFR 424.12(a)), this rule is based on the best scientific information available concerning the Southern DPS' present and historical range, habitat, and biology, as well as threats to its habitat. In preparing this rule, we reviewed and summarized current information on the green sturgeon, including recent biological surveys and reports, peer-reviewed literature, NMFS status reviews for green sturgeon (Moyle *et al.* 1992; Adams *et al.* 2002; Biological Review Team (BRT) 2005), and the proposed and final listing rules for the green sturgeon (70 FR 17386, April 6, 2005; 71 FR 17757, April 7, 2006).

To assist with the evaluation of critical habitat, we convened the CHRT, comprised of nine Federal biologists from NMFS, the USFWS, and the U.S. Bureau of Reclamation (USBR) with experience in green sturgeon biology, consultations, and management, or experience in the critical habitat designation process. The CHRT used the best available scientific and commercial data and their best professional judgment to: (1) Verify the geographical area occupied by the Southern DPS at the time of listing; (2) identify the physical and biological features essential to the conservation of the species; (3) identify specific areas within the occupied area containing those essential physical and biological features; (4) verify whether the essential features within each specific area may need special management considerations or protection and identify activities that may affect these essential features; (5) evaluate the conservation value of each specific area; and (6) determine if any unoccupied areas are essential to the conservation of the Southern DPS. The CHRT's evaluation and conclusions are described in detail in the following sections, as well as in the final biological report (NMFS 2009a).

Physical or Biological Features Essential for Conservation

Joint NMFS–USFWS regulations, at 50 CFR 424.12(b), state that in

determining what areas are critical habitat, the agencies ''shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection.'' Features to consider may include, but are not limited to: ''(1) Space for individual and population growth, and for normal behavior; (2) Food, water, air, light, minerals, or other nutritional or physiological requirements; (3) Cover or shelter; (4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.'' The regulations also require the agencies to ''focus on the principal biological or physical constituent elements'' (hereafter referred to as ''Primary Constituent Elements'' or PCEs) within the specific areas considered for designation that are essential to conservation of the species, which ''may include, but are not limited to, the following: * * * spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, * * * geological formation, vegetation type, tide, and specific soil types.''

The CHRT recognized that the different systems occupied by green sturgeon at specific stages of their life cycle serve distinct purposes and thus may contain different PCEs. Based on the best available scientific information, the CHRT identified PCEs for freshwater riverine systems, estuarine areas, and nearshore marine waters.

The specific PCEs essential for the conservation of the Southern DPS in freshwater riverine systems include:

(1) *Food resources.* Abundant prey items for larval, juvenile, subadult, and adult life stages. Although the CHRT lacked specific data on food resources for green sturgeon within freshwater riverine systems, juvenile green sturgeon most likely feed on fly larvae, amphipods, and bivalves, based on nutritional studies on the closely-related white sturgeon (Schreiber 1962; Radtke 1966; pers. comm. with Jeff Stuart, NMFS, January 14, 2008, and August 13, 2009). Food resources are important for juvenile foraging, growth, and development during their downstream migration to the Delta and bays. In addition, subadult and adult green sturgeon may forage during their downstream post-spawning migration, while holding within deep pools (Erickson *et al.* 2002), or on non-spawning migrations within freshwater rivers. Subadult and adult green sturgeon in freshwater rivers most likely feed on benthic prey species similar to those fed on in bays and estuaries, including shrimp, clams, and benthic fishes (Moyle *et al.* 1995; Erickson *et al.* 2002; Moser and Lindley 2007; Dumbauld *et al.* 2008).

(2) *Substrate type or size (i.e., structural features of substrates).* Substrates suitable for egg deposition and development (*e.g.,* bedrock sills and shelves, cobble and gravel, or hard clean sand, with interstices or irregular surfaces to ''collect'' eggs and provide protection from predators, and free of excessive silt and debris that could smother eggs during incubation), larval development (*e.g.,* substrates with interstices or voids providing refuge from predators and from high flow conditions), and subadults and adults (*e.g.,* substrates for holding and spawning). For example, spawning is believed to occur over substrates ranging from clean sand to bedrock (Emmett *et al.* 1991; Moyle *et al.* 1995), with preferences for gravel, cobble, and boulder (Poytress *et al.* 2009; pers. comm. with Dan Erickson, ODFW, September 3, 2008). Eggs likely adhere to substrates, or settle into crevices between substrates (Deng 2000; Van Eenennaam *et al.* 2001; Deng *et al.* 2002). Both embryos and larvae exhibited a strong affinity for benthic structure during laboratory studies (Van Eenennaam *et al.* 2001; Deng *et al.* 2002; Kynard *et al.* 2005), and may seek refuge within crevices, but use flat-surfaced substrates for foraging (Nguyen and Crocker 2007).

(3) *Water flow.* A flow regime (*i.e.,* the magnitude, frequency, duration, seasonality, and rate-of-change of fresh water discharge over time) necessary for normal behavior, growth, and survival of all life stages. Such a flow regime should include stable and sufficient water flow rates in spawning and rearing reaches to maintain water temperatures within the optimal range for egg, larval, and juvenile survival and development (11–19 °C) (Cech *et al.* 2000, cited in COSEWIC 2004; Mayfield and Cech 2004; Van Eenennaam *et al.* 2005; Allen *et al.* 2006). Sufficient flow is needed to reduce the incidence of fungal infestations of the eggs (Deng *et al.* 2002; Parsley *et al.* 2002). In addition, sufficient flow is needed to flush silt and debris from cobble, gravel, and other substrate surfaces to prevent crevices from being filled in (and potentially suffocating the eggs; Deng *et al.* 2002) and to maintain surfaces for feeding (Nguyen and Crocker 2007). Successful migration of adult green sturgeon to and from spawning grounds is also dependent on sufficient water flow. Spawning success is associated with water flow and water temperature. Spawning in the Sacramento River is believed to be triggered by increases in water flow to about 400 m^3/s (average daily water flow during spawning months: 198–306 m^3/s) (Brown 2007). Post-spawning downstream migrations are triggered by increased flows, ranging from 174–417 m^3/s in the late summer (Vogel 2005) and greater than 100 m^3/s in the winter (Erickson *et al.* 2002; Benson *et al.* 2007; pers. comm. with Richard Corwin, USBR, June 5, 2008).

(4) *Water quality.* Water quality, including temperature, salinity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages. Suitable water temperatures would include: relatively stable water temperatures within spawning reaches (wide fluctuations could increase egg mortality or deformities in developing embryos); temperatures within 11–17 °C (optimal range = 14–16 °C) in spawning reaches for egg incubation (March–August) (Van Eenennaam *et al.* 2005); temperatures below 20 °C for larval development (Werner *et al.* 2007); and temperatures below 24 °C for juveniles (Mayfield and Cech 2004; Allen *et al.* 2006a). Suitable salinity levels range from fresh water (<3 parts per thousand (ppt)) for larvae and early juveniles (about 100 dph) to brackish water (10 ppt) for juveniles prior to their transition to salt water. Exposure to higher salinities may affect the temperature tolerances of juvenile green sturgeon (Sardella *et al.* 2008) and prolonged exposure to higher salinities may result in decreased growth and activity levels and even mortality (Allen and Cech 2007). Adequate levels of dissolved oxygen are needed to support oxygen consumption by fish in their early life stages (ranging from 61.78 to 76.06 mg O_2 hr^{-1} kg^{-1} for juveniles) (Allen and Cech 2007). Suitable water quality would also include water containing acceptably low levels of contaminants (*e.g.,* pesticides, polyaromatic hydrocarbons (PAHs), elevated levels of heavy metals) that may disrupt normal development of embryonic, larval, and juvenile stages of green sturgeon. Water with acceptably low levels of such contaminants would protect green sturgeon from adverse impacts on growth, reproductive development, and reproductive success (*e.g.,* reduced egg size and abnormal gonadal development) likely to result from exposure to contaminants (Fairey *et al.* 1997; Foster *et al.* 2001a; Foster *et al.* 2001b; Kruse and Scarnecchia 2002; Feist *et al.* 2005; Greenfield *et al.* 2005).

(5) *Migratory corridor.* A migratory pathway necessary for the safe and timely passage of Southern DPS fish within riverine habitats and between riverine and estuarine habitats (*e.g.,* an unobstructed river or dammed river that still allows for safe and timely passage). We define safe and timely passage to mean that human-induced impediments, either physical, chemical or biological, do not alter the migratory behavior of the fish such that its survival or the overall viability of the species is compromised (*e.g.,* an impediment that compromises the ability of fish to reach their spawning habitat in time to encounter con-specifics and reproduce). Unimpeded migratory corridors are necessary for adult green sturgeon to migrate to and from spawning habitats, and for larval and juvenile green sturgeon to migrate downstream from spawning/rearing habitats within freshwater rivers to rearing habitats within the estuaries.

(6) *Water depth.* Deep (≥5 m) holding pools for both upstream and downstream holding of adult or subadult fish, with adequate water quality and flow to maintain the physiological needs of the holding adult or subadult fish. Deep pools of ≥5 m depth with high associated turbulence and upwelling are critical for adult green sturgeon spawning and for summer holding within the Sacramento River (Poytress *et al.* 2009). Adult green sturgeon in the Klamath and Rogue rivers also occupy deep holding pools for extended periods of time, presumably for feeding, energy conservation, and/or refuge from high water temperatures (Erickson *et al.* 2002; Benson *et al.* 2007).

(7) *Sediment quality.* Sediment quality (*i.e.,* chemical characteristics) necessary for normal behavior, growth, and viability of all life stages. This includes sediments free of elevated levels of contaminants (*e.g.,* selenium, PAHs, and pesticides) that may adversely affect green sturgeon. Based on studies of white sturgeon, bioaccumulation of contaminants from feeding on benthic species may adversely affect the growth, reproductive development, and reproductive success of green sturgeon.

The specific PCEs essential for the conservation of the Southern DPS in estuarine areas include:

(1) *Food resources.* Abundant prey items within estuarine habitats and substrates for juvenile, subadult, and adult life stages. Prey species for juvenile, subadult, and adult green sturgeon within bays and estuaries primarily consist of benthic invertebrates and fishes, including crangonid shrimp, burrowing thalassinidean shrimp (particularly the burrowing ghost shrimp), amphipods, isopods, clams, annelid worms, crabs, sand lances, and anchovies. These prey species are critical for the rearing, foraging, growth, and development of juvenile, subadult, and adult green sturgeon within the bays and estuaries.

(2) *Water flow.* Within bays and estuaries adjacent to the Sacramento River (*i.e.,* the Sacramento-San Joaquin Delta and the Suisun, San Pablo, and San Francisco bays), sufficient flow into the bay and estuary to allow adults to successfully orient to the incoming flow and migrate upstream to spawning grounds. Sufficient flows are needed to attract adult green sturgeon to the Sacramento River to initiate the upstream spawning migration (Kohlhorst *et al.* 1991, cited in CDFG 2002; pers. comm. with Jeff Stuart, NMFS, February 24–25, 2008).

(3) *Water quality.* Water quality, including temperature, salinity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages. Suitable water temperatures for juvenile green sturgeon should be below 24 °C. At temperatures above 24 °C, juvenile green sturgeon exhibit decreased swimming performance (Mayfield and Cech 2004) and increased cellular stress (Allen *et al.* 2006). Suitable salinities range from brackish water (10 ppt) to salt water (33 ppt). Juveniles transitioning from brackish to salt water can tolerate prolonged exposure to salt water salinities, but may exhibit decreased growth and activity levels and a restricted temperature tolerance range (Allen and Cech 2007; Sardella *et al.* 2008), whereas subadults and adults tolerate a wide range of salinities (Kelly *et al.* 2007). Subadult and adult green sturgeon occupy a wide range of dissolved oxygen levels, but may need a minimum dissolved oxygen level of at least 6.54 mg 0_2/l (Kelly *et al.* 2007; Moser and Lindley 2007). As described above, adequate levels of dissolved oxygen are also required to support oxygen consumption by juveniles (ranging from 61.78 to 76.06 mg O_2 hr^{-1} kg^{-1}) (Allen and Cech 2007). Suitable water quality also includes water with acceptably low levels of contaminants (*e.g.,* pesticides, PAHs, elevated levels of heavy metals) that may disrupt the normal development of juvenile life stages, or the growth, survival, or reproduction of subadult or adult stages.

(4) *Migratory corridor.* A migratory pathway necessary for the safe and timely passage of Southern DPS fish within estuarine habitats and between estuarine and riverine or marine habitats. We define safe and timely passage to mean that human-induced impediments, either physical, chemical, or biological, do not alter the migratory behavior of the fish such that its survival or the overall viability of the species is compromised (*e.g.,* an impediment that compromises the ability of fish to reach thermal refugia by the time they enter a particular life stage). Within the bays and estuaries adjacent to the Sacramento River, unimpeded passage is needed for juvenile green sturgeon to migrate from the river to the bays and estuaries and eventually out into the ocean. Passage within the bays and the Delta is also critical for adults and subadults for feeding and summer holding, as well as to access the Sacramento River for their upstream spawning migrations and to make their outmigration back into the ocean. Within bays and estuaries outside of the Delta and the Suisun, San Pablo, and San Francisco bays, unimpeded passage is necessary for adult and subadult green sturgeon to access feeding areas, holding areas, and thermal refugia, and to ensure passage back out into the ocean.

(5) *Water depth.* A diversity of depths necessary for shelter, foraging, and migration of juvenile, subadult, and adult life stages. Subadult and adult green sturgeon occupy a diversity of depths within bays and estuaries for feeding and migration. Tagged adults and subadults within the San Francisco Bay estuary primarily occupied waters over shallow depths of less than 10 m, either swimming near the surface or foraging along the bottom (Kelly *et al.* 2007). In a study of juvenile green sturgeon in the Delta, relatively large numbers of juveniles were captured primarily in shallow waters from 1–3 meters deep, indicating juveniles may require even shallower depths for rearing and foraging (Radtke 1966). Thus, a diversity of depths is important to support different life stages and habitat uses for green sturgeon within estuarine areas.

(6) *Sediment quality.* Sediment quality (*i.e.,* chemical characteristics) necessary for normal behavior, growth, and viability of all life stages. This includes sediments free of elevated levels of contaminants (*e.g.,* selenium, PAHs, and pesticides) that can cause adverse effects on all life stages of green sturgeon (*see* description of ''Sediment quality'' for riverine habitats above).

The specific PCEs essential for the conservation of the Southern DPS in coastal marine areas include:

(1) *Migratory corridor.* A migratory pathway necessary for the safe and

timely passage of Southern DPS fish within marine and between estuarine and marine habitats. We define safe and timely passage to mean that human-induced impediments, either physical, chemical, or biological, do not alter the migratory behavior of the fish such that its survival or the overall viability of the species is compromised (*e.g.,* an impediment that compromises the ability of fish to reach abundant prey resources during the summer months in Washington and Oregon estuaries). Subadult and adult green sturgeon spend the majority of their lives in marine and estuarine waters outside of their natal rivers. Unimpeded passage within coastal marine waters is critical for subadult and adult Southern DPS green sturgeon to access oversummering habitats within coastal bays and estuaries and overwintering habitats within coastal waters between Vancouver Island, BC, and southeast Alaska (Lindley *et al.* 2008), as well as to return to its natal waters in the Sacramento River to spawn.

(2) *Water quality.* Coastal marine waters with adequate dissolved oxygen levels and acceptably low levels of contaminants (*e.g.,* pesticides, PAHs, heavy metals that may disrupt the normal behavior, growth, and viability of subadult and adult green sturgeon). Based on studies of tagged subadult and adult green sturgeon in the San Francisco Bay estuary, CA, and Willapa Bay, WA, subadults and adults may need a minimum dissolved oxygen level of at least 6.54 mg O_2/l (Kelly *et al.* 2007; Moser and Lindley 2007). As described above, exposure to and bioaccumulation of contaminants may adversely affect the growth, reproductive development, and reproductive success of subadult and adult green sturgeon. Thus, waters with acceptably low levels of such contaminants are required for the normal development of green sturgeon for optimal survival and spawning success.

(3) *Food resources.* Abundant prey items for subadults and adults, which may include benthic invertebrates and fish. Green sturgeon spend more than half their lives in coastal marine and estuarine waters, spending from 3–20 years at a time out at sea. Abundant food resources are important to support subadults and adults over long-distance migrations, and may be one of the factors attracting green sturgeon to habitats far to the north (off the coasts of Vancouver Island and Alaska) and to the south (Monterey Bay, CA, and off the coast of southern California) of their natal habitat. Although the CHRT lacked direct evidence, prey species likely include benthic invertebrates and fish similar to those fed upon by green sturgeon in bays and estuaries (*e.g.,* shrimp, clams, crabs, anchovies, sand lances).

Geographical Area Occupied by the Species and Specific Areas Within the Geographical Area Occupied

One of the first steps in the critical habitat designation process is to define the geographical area occupied by the species at the time of listing. The CHRT relied on data from tagging and tracking studies, genetic analyses, field observations, records of fisheries take and incidental take (*e.g.,* in water diversion activities), and opportunistic sightings to provide information on the current range and distribution of green sturgeon and of the Southern DPS. The range of green sturgeon extends from the Bering Sea, Alaska, to Ensenada, Mexico. Within this range, Southern DPS fish are confirmed to occur from Graves Harbor, Alaska, to Monterey Bay, California (Lindley *et al.* 2008; pers. comm. with Steve Lindley, NMFS, and Mary Moser, NMFS, February 24–25, 2008), based on telemetry data and genetic analyses. Green sturgeon have been observed northwest of Graves Harbor, AK, and south of Monterey Bay, CA, but have not been identified as belonging to either the Northern or Southern DPS. The CHRT concluded that there are no barriers or habitat conditions preventing Southern DPS fish detected in Monterey Bay, CA, or off Graves Harbor, AK, from moving further south or further north, and that the green sturgeon observed in these areas could belong to either the Northern DPS or the Southern DPS. Based on this reasoning, the geographical area occupied by the Southern DPS was defined as the entire range occupied by green sturgeon (*i.e.,* from the Bering Sea, AK, to Ensenada, Mexico), encompassing all areas where the presence of Southern DPS fish has been confirmed, as well as areas where the presence of Southern DPS fish is likely (based on the presence of confirmed Northern DPS fish or green sturgeon of unknown DPS).

Areas outside of the United States cannot be designated as critical habitat (50 CFR 424.12(h)). Thus, the occupied geographical area under consideration for this designation is limited to areas from the Bering Sea, AK, to the California/Mexico border, excluding Canadian waters. For freshwater rivers, the CHRT concluded that green sturgeon of each DPS are likely to occur throughout their natal river systems, but, within non-natal river systems, are likely to be limited to the estuaries and would not occur upstream of the head of the tide. For the purposes of our evaluation of critical habitat, we defined all green sturgeon observed upstream of the head of the tide in freshwater rivers south of the Eel River (*i.e.,* the Sacramento River and its tributaries) as belonging to the Southern DPS, and all green sturgeon observed upstream of the head of the tide in freshwater rivers north of and including the Eel River as belonging to the Northern DPS. Thus, for freshwater rivers north of and including the Eel River, the areas upstream of the head of the tide were not considered part of the geographical area occupied by the Southern DPS.

The CHRT then identified ''specific areas'' within the geographical area occupied. To be eligible for designation as critical habitat under the ESA, each specific area must contain at least one PCE that may require special management considerations or protection. For each specific occupied area, the CHRT noted whether the presence of Southern DPS green sturgeon is confirmed or likely (based on the presence of Northern DPS fish or green sturgeon of unknown DPS) and verified that each area contained one or more PCE(s) that may require special management considerations or protection. The following paragraphs provide a brief description of the presence and distribution of Southern DPS green sturgeon within each area and summarize the CHRT's methods for delineating the specific areas.

Freshwater Rivers, Bypasses, and the Delta

Green sturgeon occupy several freshwater river systems from the Sacramento River, CA, north to British Columbia, Canada (Moyle 2002). As described in the previous section, Southern DPS green sturgeon occur throughout their natal river systems (*i.e.,* the Sacramento River, lower Feather River, and lower Yuba River), but are believed to be restricted to the estuaries in non-natal river systems (*i.e.,* north of and including the Eel River). The CHRT defined the specific areas in the Sacramento, Feather, and Yuba rivers in California to include riverine habitat from the river mouth upstream to and including the furthest known site of historic and/or current sighting or capture of green sturgeon, as long as the site is still accessible. The specific areas were extended upstream to a geographically identifiable point. The riverine specific areas include areas that offer at least periodic passage of Southern DPS fish to upstream sites and include sufficient habitat necessary for each riverine life stage (*e.g.,* spawning,

egg incubation, larval rearing, juvenile feeding, passage throughout the river, and/or passage into and out of estuarine or marine habitat).

The CHRT delineated specific areas where Southern DPS green sturgeon occur, including: the Sacramento River, the Yolo and Sutter bypasses, the lower Feather River, and the lower Yuba River. The CHRT also delineated a specific area in the Sacramento-San Joaquin Delta. The mainstem Sacramento River is the only area where spawning by Southern DPS green sturgeon has been confirmed and where all life stages of the Southern DPS are supported. Beginning in March and through early summer, adult green sturgeon migrate as far upstream as the Keswick Dam (RKM 486) to spawn (Brown 2007; Heublein *et al.* 2008; Poytress *et al.* 2009). Spawning has been confirmed by the collection of larvae and juveniles at the RBDD and the Glenn-Colusa Irrigation District (GCID) (CDFG 2002; Brown 2007) and by the collection of green sturgeon eggs upstream and downstream of the RBDD (Brown 2007; Poytress *et al.* 2009). The Sacramento River provides important spawning, holding, and migratory habitat for adults and important rearing, feeding, and migratory habitat for larvae and juveniles. The Yolo and Sutter bypasses adjacent to the lower Sacramento River also serve as important migratory corridors for Southern DPS adults, subadults, and juveniles on their upstream or downstream migration and provide a high macroinvertebrate forage base that may support green sturgeon feeding. Southern DPS adults occupy the lower Feather River up to Fish Barrier Dam (RKM 109) and the lower Yuba River up to Daguerre Dam (RKM 19). Based on observations of Southern DPS adults occurring right up to the dams and of spawning behavior by adults on the Feather River, spawning may have occurred historically in the lower Feather River and, to a lesser extent, in the lower Yuba River. However, no green sturgeon eggs, larvae, or juveniles have ever been collected within these rivers. Further downstream, the Delta provides important rearing, feeding, and migratory habitat for juveniles, which occur throughout the Delta in all months of the year. Subadults and adults also occur throughout the Delta to feed, grow, and prepare for their outmigration to the ocean. The final biological report (NMFS 2009a) provides more detailed information on each specific area, including a description of the PCEs present, special management considerations or protection that may be needed, and the presence and distribution of Southern DPS green sturgeon. The final biological report is available upon request (*see* **ADDRESSES**), via our Web site at *http://swr.nmfs.noaa.gov,* or via the Federal eRulemaking Web site at *http://www.regulations.gov.* For additional discussion of the special management considerations or protection that may be needed for the PCEs, please *see* also the description of ''Special management considerations or protection'' below.

Bays and Estuaries

Southern DPS green sturgeon occupy coastal bays and estuaries from Monterey Bay, CA, to Puget Sound, WA. In the Central Valley, CA, juvenile, subadult, and adult life stages occur throughout the Suisun, San Pablo, and San Francisco bays. These bays support the rearing, feeding, and growth of juveniles prior to their first entry into marine waters. The bays also serve as important feeding, rearing, and migratory habitat for subadult and adult Southern DPS green sturgeon.

Outside of their natal system, subadult and adult Southern DPS fish occupy coastal bays and estuaries in California, Oregon, and Washington, including estuarine waters at the mouths of non-natal rivers. Subadult and adult Southern DPS green sturgeon have been confirmed to occupy the following coastal bays and estuaries: Monterey Bay and Humboldt Bay in California; Coos Bay, Winchester Bay, and Yaquina Bay in Oregon; the lower Columbia River estuary; and Willapa Bay, Grays Harbor, and Puget Sound in Washington (Chadwick 1959; Miller 1972; Lindley *et al.* 2008; Pinnix 2008; pers. comm. with Steve Lindley, NMFS, and Mary Moser, NMFS, February 24–25, 2008; pers. comm. with Dan Erickson, ODFW, September 3, 2008). The presence of Southern DPS green sturgeon is likely (based on limited records of confirmed Northern DPS fish or green sturgeon of unknown DPS), but not confirmed within the following coastal bays and estuaries: Elkhorn Slough, Tomales Bay, Noyo Harbor, Eel River estuary, and Klamath/Trinity River estuary in California; and the Rogue River estuary, Siuslaw River estuary, Alsea River estuary, Tillamook Bay, and Nehalem Bay in Oregon (Emmett *et al.* 1991; Moyle *et al.* 1992; Adams *et al.* 2002; Erickson *et al.* 2002; Yoklavich *et al.* 2002; Farr and Kern 2005; ODFW 2009a, b).

Subadult and adult green sturgeon are believed to occupy coastal bays and estuaries outside of their natal waters for feeding and optimization of growth (Moser and Lindley 2007; Lindley *et al.* 2008). Occupied coastal bays and estuaries north of San Francisco Bay, CA, contain oversummering habitats for subadults and adults, whereas coastal bays and estuaries south of San Francisco Bay, CA, are believed to contain overwintering habitats (Lindley *et al.* 2008). The largest concentrations of green sturgeon, including Southern DPS fish, occur within the lower Columbia River estuary, Willapa Bay, and Grays Harbor (Emmett *et al.* 1991; Adams *et al.* 2002; WDFW and ODFW 2002; Israel and May 2006; Moser and Lindley 2007; Lindley *et al.* 2008). Large numbers of green sturgeon also occur within Winchester Bay, Tillamook Bay, Coos Bay, Yaquina Bay, and Humboldt Bay (Moyle *et al.* 1992; Rien *et al.* 2000; Farr *et al.* 2001; Adams *et al.* 2002; Farr and Rien 2002, 2003; Farr and Kern 2004, 2005; Israel and May 2006; Lindley *et al.* 2008; Pinnix 2008; ODFW 2009a, b). Smaller numbers of green sturgeon occur in Tomales Bay in California (Moyle *et al.* 1992); the Siuslaw River estuary and Alsea River estuary in Oregon (ODFW 2009a, b); the lower Columbia River from RKM 74 to the Bonneville Dam (WDFW 2008); and Puget Sound in Washington (pers. comm. with Mary Moser, NMFS, March 11, 2008). Based on limited available data, green sturgeon presence is believed to be rare in Elkhorn Slough and Noyo Harbor in California (Emmett *et al.* 1991; Moyle *et al.* 1992; Yoklavich *et al.* 2002). Green sturgeon are present in the estuaries of the Eel River, Klamath/Trinity rivers, and Rogue River, but are believed to most likely belong to the Northern DPS. This is based on the fact that the Klamath/Trinity and Rogue rivers are spawning rivers for the Northern DPS and that the Northern DPS is defined to be inclusive of green sturgeon originating in coastal watersheds north of and including the Eel River. To date, no tagged Southern DPS subadults or adults have been detected in the estuaries of the three rivers, although Southern DPS fish have been observed in coastal marine waters just outside the mouth of the Klamath River (pers. comm. with Steve Lindley, NMFS, March 5, 2008).

The CHRT included all coastal bays and estuaries for which there was evidence to confirm the presence of green sturgeon, noting where there were confirmed Southern DPS fish, confirmed Northern DPS fish, or confirmed green sturgeon of unknown DPS. As stated in the previous section, based on our definitions for the Northern DPS and Southern DPS, any green sturgeon observed upstream of the head of the tide in freshwater rivers

north of and including the Eel River were assigned to the Northern DPS. Thus, areas upstream of the head of the tide on these rivers were not included as part of the occupied specific areas for the Southern DPS. Each specific area was defined to extend from the mouth of the bay or estuary upstream to the head of the tide. The boundary at the mouth of each bay or estuary was defined by the COLREGS demarcation line. COLREGS demarcation lines delineate ''those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) and those waters upon which mariners shall comply with the Inland Navigation Rules'' (33 CFR 80.01). Waters inside of the 72 COLREGS lines are Inland Rules waters and waters outside of the 72 COLREGS lines are COLREGS waters. The final biological report (NMFS 2009a) provides additional information for each specific area. For a copy of the report, *see* **ADDRESSES,** our Web site at *http://swr.nmfs.noaa.gov,* or the Federal eRulemaking Web site at *http://www.regulations.gov.* For additional discussion of the special management considerations or protection that may be needed for the PCEs, *see* the description of ''Special management considerations or protection'' below.

Coastal Marine Waters

Subadult and adult green sturgeon spend most of their lives in coastal marine and estuarine waters. The best available data indicate coastal marine waters are important for seasonal migrations from southern California to Alaska to reach distant foraging and aggregation areas. Green sturgeon occur primarily within the 110 m (60 fm) depth bathymetry (Erickson and Hightower 2007). Green sturgeon tagged in the Rogue River and tracked in marine waters typically occupied the water column at 40–70 m depth, but made rapid vertical ascents to or near the surface, for reasons yet unknown (Erickson and Hightower 2007). Green sturgeon use of waters shallower than 110 m (60 fm) depth was confirmed by coastal Oregon and Washington bottom-trawl fisheries records indicating that most reported locations of green sturgeon occurred inside of the 110 m depth contour from 1993–2000, despite the fact that most of the fishing effort occurred in water deeper than 110 m (Erickson and Hightower 2007).

Based on tagging studies of both Southern and Northern DPS fish, green sturgeon spend a large part of their time in coastal marine waters migrating between coastal bays and estuaries, including sustained long-distance migrations of up to 100 km per day (pers. comm. with Steve Lindley, NMFS, and Mary Moser, NMFS, cited in BRT 2005). These seasonal long-distance migrations are most likely driven by food resources. Some tagged individuals were observed swimming at slower speeds and spending several days within certain areas, suggesting that the individuals were feeding (pers. comm. with Steve Lindley, NMFS, and Mary Moser, NMFS, February 24–25, 2008).

Within the geographical area occupied (from the California/Mexico border to the Bering Sea, Alaska), the CHRT divided the coastal marine waters into 12 specific areas between those estuaries or bays that had been confirmed to be occupied by the Southern DPS. The presence of green sturgeon and Southern DPS fish within each area was based on data from tagging and tracking studies, records of fisheries captures, and NOAA Observer Program records. Tagged Southern DPS subadults and adults have been detected in coastal marine waters from Monterey Bay, CA, to Graves Harbor, AK, including the Strait of Juan de Fuca (Lindley *et al.* 2008). Green sturgeon bycatch data from NOAA's West Coast Groundfish Observer Program (WCGOP) support the telemetry results, showing green sturgeon occur from Monterey Bay, CA, to Cape Flattery, WA, with the greatest catch per unit effort in coastal waters from Monterey Bay to Humboldt Bay, CA (pers. comm. with Jon Cusick, NMFS, August 7, 2008). Because green sturgeon were only observed in the bottom trawl fishery, there were no data on green sturgeon bycatch off southeast Alaska, where bottom trawl fishing is prohibited. Green sturgeon have, however, been captured in bottom trawl fisheries along the coast off British Columbia. Although critical habitat cannot be designated within Canadian waters, it is important to note that several tagged Southern DPS green sturgeon have been detected off Brooks Peninsula on the northern tip of Vancouver Island, BC (Lindley *et al.* 2008). Patterns of telemetry data suggest that Southern DPS fish use oversummering grounds in coastal bays and estuaries along northern California, Oregon, and Washington and overwintering grounds off central California and between Vancouver Island, BC, and southeast Alaska (Lindley *et al.* 2008).

Based on the tagging data and the information described above regarding green sturgeon use of coastal bays and estuaries in California, Oregon, and Washington, the CHRT identified the coastal marine waters from Monterey Bay, CA, to Vancouver Island, BC, as the primary migratory/connectivity corridor for subadult and adult Southern DPS green sturgeon to migrate to and from oversummering habitats and overwintering habitats. Coastal marine waters off southeast Alaska were not considered part of the primary migratory/connectivity corridor for green sturgeon, but were recognized as an important area at the northern extent of the overwintering range, based on the detection of two tagged Southern DPS fish off Graves Harbor, AK, (pers. comm. with Steve Lindley, NMFS, September 12, 2007) and green sturgeon bycatch data along the northern coast of British Columbia (Lindley *et al.* 2008). For marine waters off northwest Alaska, data on green sturgeon occurrence include the capture of two green sturgeon of unknown DPS in bottom trawl groundfish fisheries off Kodiak Island, AK, and in the Bering Sea off Unimak Island, AK, in 2006 (pers. comm. with Duane Stevenson, NMFS, September 8, 2006). For the area south of Monterey Bay, a few green sturgeon of unknown DPS have been captured off Huntington Beach and Newport (Roedel 1941), Point Vicente (Norris 1957), Santa Barbara, and San Pedro (pers. comm. with Rand Rasmussen, NMFS, July 18, 2006). More detailed information on the specific areas within coastal marine waters can be found in the final biological report (NMFS 2009a), available at our Web site at *http://swr.nmfs.noaa.gov,* at the Federal eRulemaking Web site at *http://www.regulations.gov,* or upon request (*see* **ADDRESSES**). For additional discussion of the special management considerations or protection that may be needed for the PCEs, please *see* the description of ''Special management considerations or protection'' below.

Special Management Considerations or Protection

Joint NMFS and USFWS regulations at 50 CFR 424.02(j) define ''special management considerations or protection'' to mean ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.'' Based on discussions with the CHRT and consideration of the draft economic report, a number of activities were identified that may threaten the PCEs such that special management considerations or protection may be required. Major categories of habitat-related activities include: (1) Dams; (2) water diversions; (3) dredging and disposal of dredged material; (4) in-water construction or alterations, including channel

modifications/diking, sand and gravel mining, gravel augmentation, road building and maintenance, forestry, grazing, agriculture, urbanization, and other activities; (5) NPDES permit activities and activities generating non-point source pollution; (6) power plants; (7) commercial shipping; (8) aquaculture; (9) desalination plants; (10) proposed alternative energy projects; (11) liquefied natural gas (LNG) projects; (12) bottom trawling; and (13) habitat restoration. These activities may have an effect on one or more PCE(s) via their alteration of one or more of the following: stream hydrology, water level and flow, water temperature, dissolved oxygen, erosion and sediment input/transport, physical habitat structure, vegetation, soils, nutrients and chemicals, fish passage, and stream/estuarine/marine benthic biota and prey resources. The CHRT identified the activities occurring within each specific area that may necessitate special management considerations or protection for the PCEs and these are described briefly in the following paragraphs. These activities are documented more fully in the final biological report and final economic analysis report.

Table 1 lists the specific areas and the river miles or area (square miles) covered, the PCEs present, and the activities that may affect the PCEs for each specific area and necessitate the need for special management considerations or protection. Several activities may affect the PCEs within the freshwater rivers, bypasses, and the Sacramento-San Joaquin Delta (the Delta). Within the rivers, dams and diversions pose threats to habitat features essential for the Southern DPS by obstructing migration, altering water flows and temperature, and modifying substrate composition within the rivers. Pollution from agricultural runoff and water returns, as well as from other point and non-point sources, adversely affects water quality within the rivers, bypasses and the Delta. Water management practices in the bypasses may pose a threat to Southern DPS fish residing within or migrating through the bypasses. For example, low water levels may obstruct passage through the bypasses, resulting in stranded fish. Within the Delta, activities such as dredging, pile driving, water diversion, and the discharge of pollutants from point and non-point sources can adversely affect water quality and prey resources, as well as alter the composition and distribution of bottom substrates within the Delta.

Several activities were also identified that may threaten the PCEs in coastal bays and estuaries and may necessitate the need for special management considerations or protection (Table 1). The application of pesticides may adversely affect prey resources and water quality within the bays and estuaries. For example, in Willapa Bay and Grays Harbor, the use of carbaryl in association with aquaculture operations reduces the abundance and availability of burrowing ghost shrimp, an important prey species for green sturgeon (Moser and Lindley 2007; Dumbauld *et al.* 2008). In the San Francisco, San Pablo, and Suisun bays, several pesticides have been detected at levels exceeding national benchmarks for the protection of aquatic life (Domagalski *et al.* 2000). These pesticides pose a water quality issue and may affect the abundance and health of prey items as well as the growth and reproductive health of Southern DPS green sturgeon through bioaccumulation. Other activities of concern include those that may disturb bottom substrates, adversely affect prey resources, or degrade water quality through re-suspension of contaminated sediments.

Several activities were identified that may affect the PCEs within coastal marine areas such that the PCEs would require special management consideration or protection (Table 1). The fact that green sturgeon were only captured in the bottom trawl fishery (pers. comm. with Jon Cusick, NMFS, August 7, 2008) provides evidence that green sturgeon are associated with the benthos and thus exposed to activities that disturb the bottom. Of particular concern are activities that affect prey resources. Prey resources likely include species similar to those fed on by green sturgeon in bays and estuaries (*e.g.,* burrowing ghost shrimp, mud shrimp, crangonid shrimp, amphipods, isopods, Dungeness crab), and can be affected by: commercial shipping and activities generating point source pollution (subject to NPDES requirements) and non-point source pollution that can discharge contaminants and result in bioaccumulation of contaminants in green sturgeon; disposal of dredged materials that can bury prey resources; and bottom trawl fisheries that can disturb the bottom (but may result in beneficial or adverse effects on prey resources for green sturgeon). In addition, petroleum spills from commercial shipping activities and proposed alternative energy hydrokinetic projects may affect water quality or hinder the migration of green sturgeon along the coast and may necessitate special management of the PCEs.

TABLE 1—SUMMARY OF OCCUPIED SPECIFIC AREAS WITHIN FRESHWATER RIVERS, THE BYPASSES, THE SACRAMENTO-SAN JOAQUIN DELTA, COASTAL BAYS AND ESTUARIES, AND COASTAL MARINE AREAS (WITHIN 60 FM DEPTH)

[The river kilometers or surface area covered, the PCEs present, and activities that may affect the PCEs and necessitate the need for special management considerations or protection within each area are listed. PCEs: Wd = depth, Fd = food, Fl = water flow, P = passage, S = substrates, Sq = sediment quality, Wq = water quality. Activities: AG = agriculture, AQ = aquaculture, BOT = bottom trawl fishing, CON = in-water construction or alterations, DAM = dams, DESAL = desalination plants, DIV = water diversions, DR = dredging and deposition of dredged material, EP = alternative energy hydrokinetic projects, LNG = LNG projects, POLL = point and non-point source pollution, PP = power plants, REST = restoration, SHIP = commercial shipping]

Specific area	River km	PCEs present	Activities
Freshwater Rivers			
Upper Sacramento River, CA	95	Wd, Fd, Fl, P, S, Sq, Wq	CON, DAM, DIV, POLL, REST
Lower Sacramento River, CA	294	Wd, Fd, Fl, P, S, Sq, Wq	AG, CON, DAM, DIV, DR, POLL, REST
Lower Feather River, CA	109	Wd, Fl, P, Wq	AG, CON, DAM, DIV, POLL, REST
Lower Yuba River, CA	18	Wd, Fl, P, Wq	AG, CON, DAM, DIV, POLL, REST
Sacramento-San Joaquin Delta, CA	784	Wd, Fd, Fl, P, S, Sq, Wq	CON, DAM, DIV, DR, POLL, PP, REST, SHIP

TABLE 1—SUMMARY OF OCCUPIED SPECIFIC AREAS WITHIN FRESHWATER RIVERS, THE BYPASSES, THE SACRAMENTO-SAN JOAQUIN DELTA, COASTAL BAYS AND ESTUARIES, AND COASTAL MARINE AREAS (WITHIN 60 FM DEPTH)—(Continued)

[The river kilometers or surface area covered, the PCEs present, and activities that may affect the PCEs and necessitate the need for special management considerations or protection within each area are listed. PCEs: Wd = depth, Fd = food, Fl = water flow, P = passage, S = substrates, Sq = sediment quality, Wq = water quality. Activities: AG = agriculture, AQ = aquaculture, BOT = bottom trawl fishing, CON = in-water construction or alterations, DAM = dams, DESAL = desalination plants, DIV = water diversions, DR = dredging and deposition of dredged material, EP = alternative energy hydrokinetic projects, LNG = LNG projects, POLL = point and non-point source pollution, PP = power plants, REST = restoration, SHIP = commercial shipping]

Specific area	Area (sq km)	PCEs present	Activities
Bypasses and the Delta			
Yolo Bypass, CA	289	Fd, P, Sq, Wq	AG, DAM, DIV, POLL, REST
Sutter Bypass, CA	61	Fd, P, Sq, Wq	AG, CON, DAM, DIV, POLL, REST
Coastal Bays and Estuaries			
Elkhorn Slough, CA	3	Fd, Sq, P, Wq	CON, DR, POLL, PP
Suisun Bay, CA	131	Wd, Fd, Fl, P, Sq, Wq	CON, DR, POLL, PP, REST, SHIP
San Pablo Bay, CA	329	Wd, Fd, P, Sq, Wq	CON, DR, POLL, PP, REST, SHIP
San Francisco Bay, CA	700	Wd, Fd, P, Sq, Wq	CON, DR, EP, POLL, PP, REST, SHIP
Tomales Bay, CA	30	Fd, P, Sq, Wq	AG, AQ, CON, DIV, POLL, REST
Noyo Harbor, CA	0.1	Fd, P, Sq, Wq	CON, DR, POLL
Eel R. estuary, CA	22	Fd, P, Sq, Wq	CON, POLL
Humboldt Bay, CA	68	Fd, P, Sq, Wq	AG, AQ, CON, DR, POLL, SHIP
Klamath/Trinity R. estuary, CA	6	Fd, P, Sq, Wq	CON, POLL
Rogue R. estuary, OR	1	Fd, P, Sq, Wq	CON, POLL
Coos Bay, OR	48	Fd, P, Sq, Wq	CON, DR, LNG, POLL, SHIP
Winchester Bay, OR	22	Fd, P, Sq, Wq	CON, POLL
Siuslaw R. estuary, OR	1	Fd, P, Sq, Wq	CON, POLL
Alsea R. estuary, OR	2	Fd, P, Sq, Wq	CON, DIV, POLL
Yaquina Bay, OR	12	Fd, P, Sq, Wq	CON, DR, POLL
Tillamook Bay, OR	37	Fd, P, Sq, Wq	CON, DR, POLL
Nehalem Bay, OR	8	Fd, P, Sq, Wq	CON, DR, POLL
Lower Columbia river estuary (RKM 0 to 74).	414	Fd, P, Sq, Wq	CON, DAM, DR, LNG, POLL, SHIP
Lower Columbia River (RKM 74 to Bonneville Dam).	207	Fd, P, Sq, Wq	CON, DAM, DR, POLL, SHIP
Willapa Bay, WA	347	Fd, P, Sq, Wq	AQ, CON, DR, EP, POLL
Grays Harbor, WA	245	Fd, P, Sq, Wq	AQ, CON, DR, POLL, SHIP
Puget Sound, WA	2,636	Fd, P, Sq, Wq	AQ, CON, DR, EP, POLL, SHIP
Coastal Marine Waters Within 60 fm Depth			
CA/Mexico border to Monterey Bay, CA	6,534	Fd, P, Wq	AQ, BOT, CON, DESAL, DR, EP, LNG, POLL, PP
Monterey Bay, CA, to San Francisco Bay, CA.	3,868	Fd, P, Wq	BOT, CON, DESAL, DR, EP, LNG, POLL, PP
San Francisco Bay, CA, to Humboldt Bay, CA.	5,385	Fd, P, Wq	BOT, DR, EP, LNG, POLL, PP
Humboldt Bay, CA, to Coos Bay, OR	4,865	Fd, P, Wq	BOT, DR, EP, LNG, POLL, PP
Coos Bay, OR, to Winchester Bay, OR	463	Fd, P, Wq	BOT, DR, EP, LNG
Winchester Bay, OR, to Columbia R. estuary.	6,789	Fd, P, Wq	BOT, DR, EP, LNG, POLL
Columbia R. estuary to Willapa Bay, WA	1,167	Fd, P, Wq	BOT, DR, EP, LNG
Willapa Bay, WA, to Grays Harbor, WA	1,087	Fd, P, Wq	BOT, DR, EP, LNG
Grays Harbor, WA, to WA/Canada border	4,924	Fd, P, Wq	BOT, DR, EP, LNG, POLL
Strait of Juan de Fuca, WA	1,352	Fd, P, Wq	BOT, DR, EP, LNG, POLL
Canada/AK border to Yakutat Bay, AK	53,577	Fd, P, Wq	DR, EP, LNG, POLL, SHIP
Coastal Alaskan waters northwest of Yakutat Bay, AK, including the Bering Sea to the Bering Strait.	974,505	Fd, P, Wq	BOT, DR, EP, LNG, POLL, SHIP

Unoccupied Areas

Section 3(5)(A)(ii) of the ESA authorizes the designation of ''specific areas outside the geographical area occupied at the time [the species] is listed'' if these areas are essential for the conservation of the species. Regulations at 50 CFR 424.12(e) emphasize that the agency ''shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' The CHRT considered that a critical habitat designation limited to presently occupied areas may not be sufficient for conservation, because such a designation would not address one of the major threats to the population identified by the Status Review Team—

the concentration of spawning into one spawning river (*i.e.,* the Sacramento River), and, as a consequence, the risk of extirpation due to a catastrophic event.

In the proposed rule, we described seven unoccupied areas identified by the CHRT in the Central Valley, California that may provide additional spawning habitat for the Southern DPS of green sturgeon. These seven areas include areas behind dams that are currently inaccessible to green sturgeon and areas below dams that are not currently occupied by green sturgeon. The areas include: (1) Reaches upstream of Oroville Dam on the Feather River; (2) reaches upstream of Daguerre Dam on the Yuba River; (3) areas on the Pit River upstream of Keswick and Shasta dams; (4) areas on the McCloud River upstream of Keswick and Shasta dams; (5) areas on the upper Sacramento River upstream of Keswick and Shasta dams; (6) reaches on the American River; and (7) reaches on the San Joaquin River. We did not propose to designate any of these unoccupied areas, however, because we lacked sufficient data to determine whether any of these areas actually are essential for conservation of the Southern DPS. Instead, we solicited additional information from the public to inform the CHRT's evaluation of these areas, particularly regarding: (1) The historical use of the currently unoccupied areas by green sturgeon; and (2) the likelihood that habitat conditions within these unoccupied areas will be restored to levels that would support green sturgeon presence and spawning (*e.g.,* restoration of fish passage and sufficient water flows and water temperatures).

As described above in the Responses to Comments section, several comments were received supporting or opposing the designation of unoccupied areas, but no substantive information was provided to support designation of these areas. The CHRT maintained its determination that these seven unoccupied areas *may be essential,* but there is insufficient data at this time to determine whether any of these areas actually *are essential* to the conservation of the Southern DPS. This final rule does not designate any unoccupied areas as critical habitat for the Southern DPS. NMFS encourages additional study of green sturgeon use of these areas and actions that would protect, conserve, and/or enhance habitat conditions for the Southern DPS (*e.g.,* habitat restoration, removal of dams, and establishment of fish passage) within these areas. Additional information would inform our consideration of these areas for future revisions to the critical habitat designation as well as future recovery planning for the Southern DPS.

Military Lands

Under the Sikes Act of 1997 (Sikes Act) (16 U.S.C. 670a), ''each military installation that includes land and water suitable for the conservation and management of natural resources'' is required to develop and implement an integrated natural resources management plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes: An assessment of the ecological needs on the military installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management, fish and wildlife habitat enhancement or modification, wetland protection, enhancement, and restoration where necessary to support fish and wildlife and enforcement of applicable natural resource laws.

The ESA was amended by the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) to address the designation of military lands as critical habitat. ESA section 4(a)(3)(B)(i) states: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

During the development of the proposed rule, we contacted the DOD and requested information on all INRMPs for DOD facilities that overlap with the specific areas considered for designation as critical habitat and that might provide benefits to green sturgeon. The INRMPs for one facility in California (Camp San Luis Obispo) and for nine facilities in Puget Sound, WA, were provided to us. Of these, the following six facilities with INRMPs were determined to overlap with the specific areas under consideration for critical habitat designation (all located in Puget Sound, WA): (1) Bremerton Naval Hospital; (2) Naval Air Station, Everett; (3) Naval Magazine Indian Island; (4) Naval Fuel Depot, Manchester; (5) Naval Undersea Warfare Center, Keyport; and (6) Naval Air Station, Whidbey Island. We reviewed the INRMPs for measures that would benefit green sturgeon. The INRMPs for four of the facilities (Bremerton Naval Hospital, NAS Everett, Naval Fuel Depot (Manchester), and Naval Magazine (Indian Island)) contain measures for listed salmon and bull trout that provide benefits for green sturgeon. The INRMPs for the two remaining facilities (NAS Whidbey Island and NUWC Keyport) do not contain specific requirements for listed salmon or bull trout, but also include measures that benefit fish species, including green sturgeon. Examples of the types of benefits include measures to control erosion, protect riparian zones and wetlands, minimize stormwater and construction impacts, and reduce contaminants. Based on these benefits provided for green sturgeon under the INRMPs, we determined that the areas within these six DOD facilities in Puget Sound, WA, were not eligible for designation as critical habitat.

During the public comment period, the DOD provided the INRMPs for two additional facilities that may overlap with the areas considered for designation as critical habitat: (1) Mare Island U.S. Army Reserve Center in Mare Strait, San Pablo Bay, CA; and (2) Military Ocean Terminal Concord (MOTCO), located in Suisun Bay, CA. Upon review of the INRMPs for each facility and correspondence with DOD contacts, we determined that: (1) The INRMP for the Mare Island U.S. Army Reserve Center did not provide adequate protection for the Southern DPS of green sturgeon; and (2) the MOTCO facilities do not overlap with the specific area considered for designation as critical habitat in Suisun Bay. Thus, neither facility was considered ineligible for designation under section 4(a)(3)(B)(i) of the ESA (however, *see* ''Exclusions based on impacts on national security'' below).

Application of ESA Section 4(b)(2)

Section 4(b)(2) of the ESA requires the Secretary to consider the economic, national security, and any other relevant impacts of designating any particular area as critical habitat. Any particular area may be excluded from critical habitat if the Secretary determines that the benefits of excluding the area outweigh the benefits of designating the area. The Secretary may not exclude a particular area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is

not required for any areas. In this final designation, the Secretary has applied his statutory discretion to exclude 14 occupied specific areas, 5 DOD areas, and Indian lands from the critical habitat designation where the benefits of exclusion outweigh the benefits of designation.

The first step in conducting the ESA section 4(b)(2) analysis is to identify the ''particular areas'' to be analyzed. Where we considered economic impacts and weighed the economic benefits of exclusion against the conservation benefits of designation, we used the same biologically-based ''specific areas'' we identified in the previous sections pursuant to section 3(5)(A) of the ESA (*e.g.,* the upper Sacramento River, the lower Sacramento River, the Delta, *etc.*). Delineating the ''particular areas'' as the same units as the ''specific areas'' allowed us to most effectively consider the conservation value of the different areas when balancing conservation benefits of designation against economic benefits of exclusion. Delineating particular areas based on impacts on national security or other relevant impacts (*e.g.,* impacts on Indian lands) was based on land ownership or control (*e.g.,* land controlled by the DOD within which national security impacts may exist, or Indian lands). No other relevant impacts were identified during the public comment period.

The next step in the ESA section 4(b)(2) analysis involves identification of the impacts of designation (*i.e.,* the benefits of designation and the benefits of exclusion). We then weigh the benefits of designation against the benefits of exclusion to identify areas where the benefits of exclusion outweigh the benefits of designation. These steps and the resulting list of areas excluded from designation are described in detail in the sections below.

Impacts of Designation

The primary impact of a critical habitat designation stems from the requirement under section 7(a)(2) of the ESA that Federal agencies insure their actions are not likely to result in the destruction or adverse modification of critical habitat. Determining this impact is complicated by the fact that section 7(a)(2) contains the overlapping requirement that Federal agencies must also ensure their actions are not likely to jeopardize the species' continued existence. One incremental impact of designation is the extent to which Federal agencies modify their actions to insure their actions are not likely to adversely modify the critical habitat of the species, beyond any modifications they would make because of the listing and the jeopardy requirement. When a modification would be required due to impacts to both the species and critical habitat, the impact of the designation may be co-extensive with the ESA listing of the species. Additional impacts of designation include State and local protections that may be triggered as a result of the designation and the benefits from educating the public about the importance of each area for species conservation. The benefits of designation were evaluated by considering the conservation value of each occupied specific area to the Southern DPS. In the ''Benefits of Designation'' section below, we discuss how the conservation values of the specific areas were assessed.

In determining the impacts of designation, we focused on the incremental change in Federal agency actions as a result of the critical habitat designation and the adverse modification prohibition, beyond the changes predicted to occur as a result of listing and the jeopardy provision. In recent critical habitat designations for salmon and steelhead and for Southern Resident killer whales, the ''co-extensive'' impact of designation was considered in accordance with a Tenth Circuit Court decision (*New Mexico Cattle Growers Association* v. *U.S. Fish and Wildlife Service,* 248 F.3d 1277 (10th Cir. 2001)) (*NMCA*). The ''co-extensive'' impact of designation considers the predicted change in the Federal agency action resulting from the critical habitat designation and the adverse modification prohibition (whereby the action's effect on the PCEs and the value of the habitat is analyzed), even if the same change would result from application of the listing and the jeopardy provision (whereby the action's effect on the species itself and individual members of the species is analyzed). Shortly after the *NMCA* decision, however, the Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service,* 243 F.3d 434 (5th Cir. 2001) (*Sierra Club*) and the Court of Appeals for the Ninth Circuit (*Gifford Pinchot Task Force* v. *FWS,* 378 F.3d 1059 (9th Cir. 2004)) (*Gifford Pinchot*) invalidated our regulatory definition of ''adverse modification'' of critical habitat. Following that decision, a District Court in Washington, DC issued a decision involving the USFWS's critical habitat designation for the piping plover (*Cape Hatteras Access Preservation Alliance* v. *Norton,* 344 F. Supp. 2d 1080 (D.D.C. 2004)) (*Cape Hatteras*). In that decision, the Court reasoned that the impact of a regulation should be based on a comparison of the world with and without the action, and that the effects of listing and the jeopardy provision should not be considered as part of the impacts of a designation in the ESA 4(b)(2) analysis for a critical habitat designation.

Consistent with the *Cape Hatteras* decision, we estimated and analyzed the incremental impacts of designation, beyond the impacts that would result from the listing and jeopardy provision. Uncertainties exist with regard to future management actions associated with green sturgeon critical habitat, because of the short consultation history for green sturgeon and overlap with protections provided under the listing. Due to these uncertainties, it was difficult to exclude potential impacts that may already occur under the baseline (*i.e.,* protections already afforded green sturgeon under its listing or under other Federal, State, and local regulations, such as protections for other listed species). Thus, the analysis included some impacts that would have occurred under the baseline regardless of the critical habitat rule. As such, the impacts are more correctly characterized as green sturgeon conservation impacts as opposed to exclusively incremental impacts of the critical habitat designation. That is, the impacts analyzed are those associated with the conservation of green sturgeon critical habitat, some of which may overlap with impacts resulting from the baseline protections. Our methods for estimating the impacts of designation for economic impacts, impacts on national security, and impacts on Indian lands are summarized in the sections below titled ''Determining the Benefits of Excluding Particular Areas.''

Because section 4(b)(2) requires a balancing of competing considerations, we must uniformly consider impacts and benefits. We recognize that excluding an area from designation will not likely avoid all of the impacts because the jeopardy provision under section 7 still applies. Similarly, much of the section 7 benefit would still apply as well.

A final economic analysis report (Indecon 2009) describes in more detail the types of activities that may be affected by the designation, the potential range of changes we might seek in those actions, and the estimated economic impacts that might result from such changes. A final biological report (NMFS 2009a) describes in detail the CHRT's evaluation of the conservation value of each specific area and reports the final conservation value ratings. The final ESA section 4(b)(2) report (NMFS 2009c) describes the analysis of all

impacts and the weighing of the benefits of designation against the benefits of exclusion for each area. All of these reports are available on the NMFS Southwest Region Web site at *http://swr.nmfs.noaa.gov/,* on the Federal E–Rulemaking Web site at *http://www.regulations.gov,* or upon request (*see* **ADDRESSES**).

Benefits of Designation

The primary benefit of designation is the protection afforded under section 7 of the ESA, requiring all Federal agencies to insure their actions are not likely to destroy or adversely modify designated critical habitat. This is in addition to the requirement that all Federal agencies ensure their actions are not likely to jeopardize the continued existence of the species. In addition, the designation may provide education and outreach benefits by informing the public about areas and features important to species conservation. By delineating areas of high conservation value, the designation may help focus and contribute to conservation efforts for green sturgeon and their habitats.

These benefits are not directly comparable to the costs of designation for purposes of conducting the ESA section 4(b)(2) analysis described below. Ideally, the benefits should be monetized. With sufficient information, it may be possible to monetize the benefits of a critical habitat designation by first quantifying the benefits expected from an ESA section 7 consultation and translating that into dollars. We are not aware, however, of any available data that would support such an analysis for green sturgeon (*e.g.,* estimates of the monetary value associated with conserving the PCEs within areas designated as critical habitat, or with education and outreach benefits). As an alternative approach, we used the CHRT's conservation value ratings to represent the qualitative conservation benefits of designation for each of the particular areas identified as critical habitat for the Southern DPS (*see* the section titled Methods for Assessment of Specific Areas). These conservation value ratings represent the estimated incremental benefit of designating critical habitat for the species. In evaluating the conservation value of each specific area, the CHRT focused on the habitat features and functions provided by each area and the importance of protecting the habitat for the overall conservation of the species. The final biological report (NMFS 2009a) sets forth detailed information on the qualitative conservation benefits of the specific areas proposed for designation, which is summarized briefly in the following paragraphs.

Methods for Assessment of Specific Areas

After identifying the PCEs, the geographical area occupied, and the specific areas, the CHRT scored and rated the relative conservation value of each occupied specific area. The conservation value ratings provided an assessment of the relative importance of each specific area to the conservation of the Southern DPS. Areas rated as ''High'' were deemed to have a high likelihood of promoting the conservation of the Southern DPS. Areas rated as ''Medium'' or ''Low'' were deemed to have a moderate or low likelihood of promoting the conservation of the Southern DPS, respectively. The CHRT considered several factors in assigning the conservation value ratings, including the PCEs present, the condition of the PCEs, the life stages and habitat functions supported, and the historical, present, and potential future use of the area by green sturgeon. These factors were scored by the CHRT and summed to generate a total score for each specific area, which was considered in the CHRT's evaluation and assignment of the final conservation value ratings.

The CHRT also considered the importance of connectivity among habitats in order for green sturgeon to access upstream spawning sites in the Sacramento River and oversummering and overwintering habitats in coastal bays and estuaries. In addition to providing high-value habitat, the San Francisco, San Pablo, and Suisun bays and the Delta contain high-value connectivity corridors for green sturgeon migration to and from upstream spawning grounds in the Sacramento River. Specific areas in coastal marine waters may provide low to medium value habitat for green sturgeon based on the PCEs present, but contain high-value connectivity corridors for green sturgeon migrating out of the San Francisco Bay system to bays and estuaries in California, Oregon, Washington, and Canada. The CHRT recognized that even within an area of Low to Medium conservation value, the presence of a connectivity corridor that provides passage to high value areas would warrant increasing the overall conservation value of the area to a High. To account for this, a separate conservation value rating was assigned to areas containing a connectivity corridor, equal to the rating of the highest-rated area for which it served as a connectivity corridor.

Members of the CHRT were then asked to re-examine the conservation value ratings for the specific areas where the presence of Southern DPS green sturgeon is likely (based on the presence of Northern DPS fish or green sturgeon of unknown origin), but not confirmed. These areas include the coastal marine waters within 60 fm depth from the California/Mexico border to Monterey Bay, CA, and from Yakutat Bay, AK, to the Bering Strait (including the Bering Sea), as well as the following coastal bays and estuaries: Elkhorn Slough, Tomales Bay, Noyo Harbor, the Eel River estuary, and the Klamath/Trinity River estuary in California; and the Rogue River estuary, Siuslaw River estuary, Alsea River estuary, Tillamook Bay, and Nehalem Bay in Oregon. Although these areas are considered occupied for the reasons provided above, the CHRT recognized that a lack of documented evidence for Southern DPS presence (perhaps because of the lack of monitoring or sampling effort within these areas) is indicative of a high degree of uncertainty as to the extent to which Southern DPS fish use these areas. In most of these areas, there are also few observations of green sturgeon both historically and presently. The CHRT scored all of these areas, except for Tomales Bay, Tillamook Bay, and Nehalem Bay, much lower than other areas, reflecting the CHRT's assessment that these areas contribute relatively little to the conservation of the species. For the bays and estuaries, this was based on the limited area and depth to support green sturgeon migration and feeding, as well as the low use by green sturgeon. Tomales Bay was given a higher score and rated as ''Medium,'' because it is a large, deep embayment providing good habitat for feeding by green sturgeon and is likely the first major bay to be encountered by subadults making their first migration into marine waters. Tillamook Bay and Nehalem Bay were both rated as ''Medium'' based on relatively high green sturgeon catch data for these areas (ODFW 2009a, b) and information indicating good habitat conditions for green sturgeon. Green sturgeon are more commonly observed in the Eel River estuary, Klamath/Trinity River estuary, and Rogue River estuary, but are presumed to primarily belong to the Northern DPS. Again, there is great uncertainty as to the extent of use of these estuaries by Southern DPS fish. The coastal marine waters south of Monterey Bay, CA, and northwest of Yakutat Bay, AK, are outside of the connectivity corridor identified by the

CHRT and also lack confirmed Southern DPS presence. Although the CHRT did not include the area in southeast Alaska up to Yakutat Bay, AK, as part of the primary migratory corridor, this area was rated as ''Medium'' because it represents the northern extent of the area containing important overwintering grounds for Southern DPS green sturgeon (Lindley *et al.* 2008). Based on this information, the CHRT agreed that the conservation value ratings should be reduced by one rating for these specific areas where the presence of the Southern DPS is likely, but not confirmed. This necessitated the creation of a fourth conservation value rating (''Ultra-low''). Those specific areas that initially received a ''Low'' rating were assigned a final conservation value rating of ''Ultra-low,''and those that initially received a ''Medium'' rating were assigned a final conservation value rating of ''Low.'' None of the specific areas where the presence of Southern DPS fish was likely but not confirmed had received a rating of ''High.'' Yaquina Bay, OR, was one of the areas rated as ''Ultra-Low'' in the proposed rule, but additional information was provided confirming the presence of Southern DPS green sturgeon in Yaquina Bay (pers. comm. with Dan Erickson, ODFW, September 3, 2008), and the conservation value rating for this area remained a ''Low''.

The final conservation ratings and the justifications for each specific area are summarized in the final biological report (NMFS 2009a; available via our Web site at *http://swr.nmfs.noaa.gov,* via the Federal eRulemaking Web site at *http://www.regulations.gov*, or upon request—*see* **ADDRESSES**). The CHRT recognized that even within a rating category, variation exists. For example, freshwater riverine areas rated as ''High'' may be of greater conservation value to the species than coastal marine areas with the same rating. This variation was captured in the comments provided by the CHRT members for each specific area. The final biological report describes in detail the evaluation process used by the CHRT to assess the specific areas, as well as the biological information supporting the CHRT's assessment.

Determining the Benefits of Excluding Particular Areas: Economic Impacts

To determine the benefits of excluding particular areas from designation, we first considered the Federal activities that may be subject to an ESA section 7 consultation and the range of potential changes that may be required for each of these activities under the adverse modification provision, regardless of whether those changes may also be required under the jeopardy provision. These consultation and project modification costs represent the economic benefits of excluding each particular area (that is, the economic costs that would be avoided if an area were excluded from the designation).

The CHRT identified and examined the types of Federal activities that occur within each of the specific areas and that may affect Southern DPS green sturgeon and the critical habitat (also *see* the section on ''Special Management Considerations or Protection''). Because the Southern DPS was recently listed under the ESA in 2006, we lack an extensive consultation history. Thus, the CHRT relied on NMFS' experience in conducting ESA section 7 consultations and their best professional judgment to identify the types of Federal activities that might trigger a section 7 consultation. The best available information was used to predict the number of these types of activities within the areas considered for designation as critical habitat. However, we recognize that some of these activities, in particular alternative energy hydrokinetic projects, are relatively new and anticipated to increase in number in the future. Additional information was received regarding proposed LNG and alternative energy hydrokinetic projects within the specific areas considered for designation as critical habitat and was included in the final economic analysis report. In the face of remaining uncertainties, however, a conservative approach was taken in the economic analysis by assuming that all of the proposed projects would be completed. Thus, the number of activities and their estimated costs are likely overestimated, because we do not expect all of the proposed projects to be completed.

Next, the range of modifications we might seek in these activities to avoid destroying or adversely modifying critical habitat of the Southern DPS was considered. Because of the limited consultation history, we relied on information from consultations conducted for salmon and steelhead, comments received during green sturgeon public scoping workshops conducted for the development of protective regulations, and information from green sturgeon and section 7 biologists to determine the types of activities and potential range of changes. We recognize that differences exist between the biology of Southern DPS green sturgeon and listed salmonids, but that there is also overlap in the types of habitat they use, their life history strategies and their behavior. As discussed in the final economic analysis report (Indecon 2009), the occupied geographical range and the specific areas considered for designation as critical habitat for the Southern DPS largely overlaps with the distribution and designated critical habitat of listed salmonids. Every consultation of the approximately 49 completed formal consultations addressing impacts on green sturgeon in California, Oregon, and Washington through May 2009 also address impacts to one or more listed salmon or steelhead species. In several consultations, the recommended conservation measures to address effects on green sturgeon and listed salmonids were the same or similar. It is important to note, however, that differences do exist between green sturgeon and salmonids that may require different conservation measures. For example, juvenile green sturgeon occupy the Delta and the San Francisco, San Pablo, and Suisun bays in California throughout all months of the year, for as long as one to three years before they disperse into marine waters. In contrast, the presence of juvenile salmon or steelhead in the Delta and bays is limited to certain months of the year. In addition, the feeding behavior and spawning requirements of green sturgeon subadults and adults may differ from that of listed salmonids. For example, subadult and adult green sturgeon make extensive use of summer feeding habitats in coastal estuaries in California, Oregon, and Washington. During their spawning migrations, adult green sturgeon likely have different water flow, temperature, and passage requirements compared to listed salmonids. We recognized these differences, but, given the limited amount of direct information regarding the types of modifications we might seek to avoid adverse modification of Southern DPS critical habitat, we also recognized that the information available for analog species (*i.e.,* listed salmonids) was the best information available to guide our decision-making. As demonstrated by our recent consultation history, the conservation measures implemented for green sturgeon in the early stages of its listing history are likely to be the same or similar to those implemented for listed salmonids. Additional information on differences in the habitat needs, life history strategies, and behavior of these species may allow us to refine our analysis.

A number of uncertainties exist in this stage of the analysis. First, we recognize there is uncertainty regarding the potential effects of activities on

green sturgeon and the potential conservation measures that may be required, particularly for relatively new activities like LNG projects and alternative energy hydrokinetic projects. Second, as is the case for all of the categories of activities identified, the project-specific nature of ESA section 7 consultations creates another level of uncertainty that likely results in over- or under-estimation of the economic impacts. Finally, we attempted to focus on the incremental benefits of the critical habitat designation beyond the benefits already afforded to the Southern DPS under its listing and under other Federal, State, and local regulations. To do this, we tried to provide information on whether each impact is more closely associated with adverse modification or with jeopardy. It is difficult, however, to isolate conservation efforts resulting solely from critical habitat. Thus, as described above, the estimated economic impacts are more correctly characterized as green sturgeon conservation impacts rather than exclusively incremental impacts of the designation. In other words, the impacts analyzed are those associated with the conservation of green sturgeon critical habitat, some of which may overlap with impacts resulting from the baseline protections.

We were able to monetize estimates of the economic impacts resulting from a critical habitat designation; however, because of the limited consultation history for green sturgeon and uncertainty about specific management actions likely to be required under a consultation, there was a great degree of uncertainty in the cost estimates for some specific areas. Several factors were considered in developing the estimated economic impacts, including the level of economic activity within each area, the level of baseline protection afforded to green sturgeon by existing regulations for each economic activity within each area, and the estimated economic impact (in dollars) associated with each activity type. The baseline included the protections afforded to green sturgeon by the listing and jeopardy provision, as well as protections provided for salmon and steelhead and their critical habitat including existing laws, regulations, and initiatives. Estimates of the economic costs were based on project modifications that might be required during consultation to avoid the destruction or adverse modification of critical habitat (*see* final economic analysis report for additional details). To focus on the incremental impacts of the critical habitat designation, the economic cost estimates were multiplied by a probability score (assigned for each specific area and economic activity type), representing the probability that green sturgeon critical habitat is a primary driver for the conservation effort. The final economic analysis report (Indecon 2009) provides detailed information on the economic impacts of designating particular areas as critical habitat, as well as consultation costs anticipated as a result of this proposed designation.

Exclusions Based on Economic Impacts

A final ESA section 4(b)(2) report (NMFS 2009c) describes in detail our approach to weighing the benefit of designation against the economic benefit of exclusion. The results of our analysis contained in this report are summarized below.

The benefits associated with species conservation are not directly comparable to the economic benefit that would result if an area were excluded from designation. We had sufficient information to monetize the economic benefits of excluding an area, but were not able to monetize the conservation benefits of designating an area. Thus, for each area we compared the qualitative final conservation value against the monetary economic impact estimate to determine if the cost estimate exceeded a threshold dollar amount. To make this comparison, we selected dollar thresholds for each conservation value rating above which the potential economic impact associated with a specific area appeared to outweigh the potential conservation benefits of designating that area. We determined these dollar thresholds by first examining the range in economic impacts across all specific areas within a conservation value rating category and then determining where the breakpoint occurred between relatively low economic impacts and relative high economic impacts. We then selected a dollar value within the range of that breakpoint as the threshold at which the economic impacts may outweigh the benefits of designation for the area.

Using this method, we developed and applied four decision rules to identify areas eligible for exclusion: (1) All areas with a conservation value rating of ''High'' were not eligible for exclusion, because we determined that the estimated economic benefits of exclusion for these areas would not outweigh the conservation benefits of designation, based on the threatened status of the Southern DPS of green sturgeon and the likelihood that exclusion of areas with a High conservation value would significantly impede conservation of the species; (2) areas with a conservation value rating of ''Medium'' were potentially eligible for exclusion if the estimated economic impact exceeded $100,000; (3) areas with a conservation value rating of ''Low'' were potentially eligible for exclusion if the estimated economic impact exceeded $10,000; and (4) areas with a conservation value rating of ''Ultra-low'' were potentially eligible for exclusion if the estimated economic impact exceeded $0 (*see* final ESA section 4(b)(2) Report for additional details). These dollar thresholds do not represent an objective judgment that Medium-value areas are worth no more than $100,000, Low-value areas are worth no more than $10,000, or Ultra-Low value areas are worth $0. The ESA emphasizes that the decision to exclude is discretionary. Thus, the economic impact level at which the economic benefits of exclusion outweigh the conservation benefits of designation is a matter of discretion and depends on the policy context. For critical habitat, the ESA provides NMFS the discretion to consider exclusions where the benefits of exclusion outweigh the benefits of designation, as long as exclusion does not result in extinction of the species. In this policy context, we selected dollar thresholds representing the levels at which the economic impact associated with a specific area may outweigh the conservation benefits of designating that area. These dollar thresholds and decision rules provided a relatively simple process to identify, in a limited amount of time, specific areas warranting consideration for exclusion.

Based on this analysis, we identified 18 occupied areas as eligible for exclusion, including Medium, Low, and Ultra-Low conservation value areas. The Medium conservation value areas eligible for exclusion included: the Yolo Bypass, lower Feather River, and lower Yuba River in California; Coos Bay in Oregon; Puget Sound in Washington; and coastal marine waters within 60 fm depth from the U.S.-Alaska/Canada border to Yakutat Bay, AK. The Low conservation value areas eligible for exclusion included: Tomales Bay in California; Tillamook Bay in Oregon; and the lower Columbia River (from RKM 74 to the Bonneville Dam at RKM 146). The Ultra-Low conservation value areas eligible for exclusion included: Elkhorn Slough, Noyo Harbor, Eel River estuary, and Klamath/Trinity River estuary in California; the Rogue River estuary, Siuslaw River estuary, and Alsea River estuary in Oregon; and coastal marine waters within 60 fm depth from the CA-Mexico border to Monterey Bay, CA, and northwest

Yakutat Bay, AK, to the Bering Strait (including the Bering Sea). All of these areas were eligible for exclusion in the proposed rule, except for the Yolo Bypass, lower Yuba River, and the lower Columbia River.

We then presented these 18 areas to the CHRT for their review. To further characterize the conservation benefit of designation for each area, we asked the CHRT to determine whether excluding any of the areas eligible for exclusion would significantly impede conservation of the Southern DPS. The CHRT considered this question in the context of all of the areas eligible for exclusion, as well as the information they had developed in determining the conservation value ratings. If the CHRT determined that exclusion of an area would significantly impede conservation of the Southern DPS, the conservation benefits of designation were increased one level in the weighing process.

The CHRT determined, and we concur, for the reasons described by the CHRT, that exclusion of the following 12 specific areas eligible for exclusion would not significantly impede conservation or result in extinction of the species: Elkhorn Slough, Tomales Bay, Noyo Harbor, Eel River estuary, and Klamath/Trinity River estuary in California; the Rogue River estuary, Siuslaw River estuary, Alsea River estuary, and Tillamook Bay in Oregon; the lower Columbia River (from RKM 74 to the Bonneville Dam); and coastal marine waters within 60 fm depth from the U.S.-California/Mexico border to Monterey Bay, CA, and northwest of Yakutat Bay, AK, to the Bering Strait (including the Bering Sea). The CHRT based their determination on the fact that each of these 12 specific areas was assigned a Low or Ultra-low final conservation value and Southern DPS green sturgeon have not been documented to use these areas extensively. The CHRT recognized that the apparent low use by Southern DPS green sturgeon of these bays and estuaries listed above may be because: (1) Most are small systems compared to other bays and estuaries that are used extensively and consequently received higher conservation ratings; and (2) Southern DPS fish do not appear to use Northern DPS spawning systems extensively. In addition, few green sturgeon (of unknown DPS) have been observed in the coastal marine waters within 60 fm depth from the U.S.-California/Mexico border to Monterey Bay, CA, and northwest of Yakutat Bay, AK, to the Bering Strait (including the Bering Sea). For these reasons, the CHRT concluded that excluding the bays, estuaries, and coastal marine areas mentioned above from the designation would not significantly impede conservation of the Southern DPS nor result in extinction of the species. Thus, these 12 areas are excluded from the critical habitat designation for the Southern DPS. We recognize that the lack of documented evidence for Southern DPS presence in these areas may be because these areas are not adequately monitored for green sturgeon. We encourage directed surveys to be conducted in these areas to gather more information on green sturgeon presence and use. For example, the lower Columbia River (from RKM 74 to Bonneville Dam) may have been a historically important area for green sturgeon prior to the hydrographical changes that have occurred in the river and has the potential for being an important area in certain water years. Monitoring of green sturgeon upstream of RKM 74 would provide valuable information for future consideration of this area.

The CHRT re-evaluated the six areas of Medium conservation value that were eligible for exclusion (Yolo Bypass, lower Yuba River, lower Feather River, Coos Bay, Puget Sound, and coastal marine waters within 60 fm depth from the U.S.-Alaska/Canada border to Yakutat Bay, AK) to determine whether excluding these areas would significantly impede conservation of the Southern DPS.

The CHRT maintained their determination that exclusion of Puget Sound would not significantly impede conservation of the Southern DPS or result in extinction of the species. Observations of green sturgeon in Puget Sound are much less common compared to the other estuaries in Washington. Although two confirmed Southern DPS fish were detected there in 2006, the extent to which Southern DPS green sturgeon use Puget Sound remains uncertain. Puget Sound has a long history of commercial and recreational fishing and fishery-independent monitoring of other species that use habitats similar to those of green sturgeon, but very few green sturgeon have been observed there. In addition, Puget Sound does not appear to be part of the coastal migratory corridor that Southern DPS fish use to reach overwintering grounds north of Vancouver Island (pers. comm. with Steve Lindley, NMFS, and Mary Moser, NMFS, February 24–25, 2008), thus corroborating the assertion that Southern DPS do not use Puget Sound extensively. The economic cost of designating this area was well above the $100,000 threshold because of the large number of activities affecting sediment and water quality (*i.e.,* dredging, in-water construction, and point and non-point sources of pollution) that might require special management if critical habitat were to be designated. Thus, this final rule excludes Puget Sound from the critical habitat designation for the Southern DPS, because the benefits of designation are outweighed by the economic benefits of exclusion. The exclusion of this area will not result in the extinction of the species.

The CHRT was unable to conclude that exclusion of the coastal marine waters within 60 fm depth from the Alaska/Canada border to Yakutat Bay, AK, would significantly impede conservation. The proposed rule had sought public comments regarding: (1) The presence of green sturgeon in coastal waters off southeast Alaska; (2) the spatial distribution of the PCEs in southeast Alaska; (3) activities occurring in the area that may affect the PCEs; (4) the types of changes that might be proposed for these activities to avoid impacts to the PCEs; and (5) estimated costs associated with making these changes. However, few comments were received regarding this area. In the proposed rule, some CHRT members noted that exclusion of this area from the designation might impede conservation of the Southern DPS, because this area is at the northern extent of the overwintering range and may provide important overwintering habitat for the species. The CHRT cited the detection of two tagged Southern DPS green sturgeon at the array in Graves Harbor, AK, despite the short monitoring period for this array (data are available only from 2005 to 2006) and the fact that the system is not positioned or programmed specifically for detecting green sturgeon. However, given that this is a relatively low number of Southern DPS detections compared to other areas and the level of uncertainty concerning activities occurring in southeast Alaska that may affect critical habitat (*i.e.,* proposed alternative energy projects and commercial shipping activities, both of which are associated with a high degree of uncertainty), the CHRT agreed that it is uncertain whether exclusion of this area would significantly impede conservation of the Southern DPS. Based on the CHRT's conclusion, we determined that the economic benefits of exclusion outweigh the conservation benefits of designation for this area. Thus, this area is excluded from the critical habitat designation.

The CHRT unanimously agreed that exclusion of the lower Feather River or lower Yuba River would significantly

impede conservation of the Southern DPS. The CHRT identified the lower Feather River as an important area for the conservation of the Southern DPS, because it has been consistently occupied by the species and most likely contains spawning habitat for the Southern DPS, potentially providing a spawning river for the Southern DPS in addition to the Sacramento River. The CHRT also considered the lower Yuba River an important area for green sturgeon that may contain spawning habitats. The CHRT had assigned both the lower Feather River and the lower Yuba River a Medium conservation value, but noted that future improvements to habitat conditions (*e.g.,* improved passage, restoration of water flow) would raise the conservation value to a High. Thus, the CHRT agreed that conservation of the species could not be achieved without the inclusion of the lower Feather River and lower Yuba River in the critical habitat designation, based on the importance of the lower Feather River and lower Yuba River as potential spawning rivers for the Southern DPS, their proximity to the Sacramento River, and the potential increased value of these two areas given certain characteristics of the habitat, the PCEs, and future habitat improvements. Based on the CHRT's conclusion, we increased the final conservation value for these two areas from Medium to High. In addition, the CHRT noted uncertainties in the economic impact estimates for these two areas. The economic cost estimates for these two areas had increased substantially from the draft economic analysis (lower Yuba River: from $53,000 to $600,000–$610,000; lower Feather River: from $770,000 to $2 million), making the economic costs well above the dollar threshold of $100,000. However, this increase is primarily attributed to two revisions to the economic analysis. First, economic costs associated with agricultural pesticide application increased substantially. The draft economic analysis had estimated the costs for applying a 60 ft buffer to agricultural pesticide application projects. Based on public comments received, the buffer was revised to a 1,000 ft buffer (consistent with recommendations in recent consultations for listed salmonids), resulting in large increases in economic costs. However, green sturgeon co-occur with listed salmonids species in all waterways where this 1,000 ft buffer would be applied. Thus, the 1,000 ft buffer would be applied for listed salmonids regardless of whether green sturgeon critical habitat exists in the area or not. Based on this reasoning, the incremental economic impacts estimated for agricultural pesticide application due to green sturgeon critical habitat is more likely closer to zero, rather than the $1.5 million estimated for the lower Feather River and the $228,000 estimated for the lower Yuba River. Second, for the lower Yuba River, the economic cost estimate for installing fish passage facilities at Daguerre Point Dam increased from $21,000 to $351,000. This was based on a public comment estimating that current passage plans at the dam for salmonids will cost $17.5 million to implement. The revised economic cost estimate of $351,000 for providing green sturgeon passage at Daguerre Point Dam was calculated by attributing 20 percent of the expected costs for salmonid passage plans to green sturgeon critical habitat (annualized over 20 years). It is uncertain whether this may be an overestimate or underestimate of costs. Thus, based on the importance of the lower Feather River and lower Yuba River to the conservation of the Southern DPS and the uncertainty with regard to the estimated economic costs, we determined that the benefits of excluding the lower Feather River and lower Yuba River do not outweigh the benefits of designating these particular areas and they should not be excluded based on economic impacts. The lower Feather River and lower Yuba River are included in the final designation.

The CHRT also agreed that exclusion of the Yolo Bypass would significantly impede conservation of the Southern DPS. The Yolo Bypass was assigned a Medium conservation value because it provides a migratory corridor to and from spawning habitats in the Sacramento River during high flow years. The area may be particularly important for juvenile Southern DPS green sturgeon that can use this shallow, productive, and protected off-channel area for rearing and feeding. The Yolo Bypass currently contains good habitat for supporting the Southern DPS, and the potential for the quality of this habitat to improve is likely if efforts to improve passage, reduce stranding risks, and improve water quality are made. Based on this information, the CHRT concluded that exclusion of this area would significantly impede conservation of the Southern DPS, and the final conservation value for the Yolo Bypass was increased from Medium to High. In addition, the CHRT noted that the economic impact estimate may be greatly overestimated for this area. The estimated economic impacts for the Yolo Bypass increased from the proposed rule to final rule stage, due to a large increase in the costs to address agricultural pesticide application. Increasing the buffer zone from 60 ft to 1000 ft resulted in an increase in the economic impacts for this area from $29,000 to $449,000, making this area eligible for exclusion. However, similar to the lower Yuba River and lower Feather River, green sturgeon co-occur with listed salmonids in this area and the 1000 ft buffer zone for agricultural pesticide application would likely be applied with or without the existence of green sturgeon critical habitat in the area. Thus, the incremental impact of green sturgeon critical habitat is more likely to be closer to zero rather than $449,000. Based on the importance of the Yolo Bypass to the Southern DPS and the likelihood that the economic impacts are overestimated, we determined that the benefits of excluding the Yolo Bypass particular area do not outweigh the benefits of designating the area and it therefore should not be excluded. Thus, the Yolo Bypass is included in the final critical habitat designation.

Finally, the CHRT reconfirmed its determination that exclusion of Coos Bay would significantly impede the conservation of the species. The CHRT identified Coos Bay as an important area for the Southern DPS because it is the largest and deepest estuary along the Oregon coast presently occupied by green sturgeon (including confirmed Southern DPS green sturgeon), has a large mixing zone, provides a protected area for green sturgeon aggregation and feeding, and is an important ''stepping-stone'' estuary between San Francisco Bay and the lower Columbia River estuary. Based on the CHRT's conclusion, the final conservation value for Coos Bay was increased from Medium to High. In addition, there is a great degree of uncertainty regarding the economic costs associated with a designation in this area. We had identified Coos Bay as potentially eligible for exclusion because the estimated economic impacts (ranging from $73,000 to $16 million) exceeded the threshold value over which an area was considered eligible for exclusion ($100,000 for areas with a Medium conservation value; this decision rule was applied prior to increasing the conservation value from Medium to High). The wide range in estimated costs was primarily due to the uncertainty regarding economic costs associated with a proposed LNG project within Coos Bay. This uncertainty was driven largely by the limited understanding of how LNG projects

would affect the PCEs and uncertainty regarding how LNG activities might be altered to avoid adverse modification of green sturgeon critical habitat. The low cost estimate of $73,000 assumes that this rule would not require any additional measures for LNG projects or that any additional measures would result in minimal costs (*i.e.,* the economic costs to LNG projects is $0). The high cost estimate of $16 million is based on the potential requirement to relocate the LNG project due to green sturgeon critical habitat in the area. However, NMFS has never required relocation as a result of an ESA section 7 consultation on an LNG facility, and it is unlikely that proposed modifications to the project in Coos Bay would include relocation. Because we consider both the low cost estimate and the high cost estimate to be highly unlikely, as stated above, we believe the economic impact to LNG projects would likely be greater than $0, but much lower than $16 million, but do not have sufficient information at this time to estimate those costs. Therefore, we concluded that the economic impacts associated with Coos Bay are likely to be greater than $73,000 but much lower than $16 million. Based on the importance of Coos Bay to the conservation of the Southern DPS and the uncertainty regarding the estimated economic impacts, we determine that the benefits of excluding Coos Bay do not outweigh the benefits of designating this particular area and it therefore should not be excluded. Thus, Coos Bay is included in the final critical habitat designation.

In summary, this final rule will exclude the following 14 specific areas from the critical habitat designation for Southern DPS green sturgeon: Elkhorn Slough, Tomales Bay, Noyo Harbor, the Eel River estuary, and the Klamath/Trinity River estuary in California; the Rogue River estuary, Siuslaw River estuary, Alsea River estuary, and Tillamook Bay in Oregon; the lower Columbia River (from RKM 74 to Bonneville Dam); Puget Sound in Washington; and coastal marine waters within 60 fm depth from the U.S.-California/Mexico border to Monterey Bay, CA, from the U.S.-Alaska/Canada border to Yakutat Bay, AK, and from Yakutat Bay northwest to the Bering Strait (including the Bering Sea). Based on the best scientific and commercial data available, we have determined that the exclusion of these 14 areas from the designation would not result in the extinction of the species.

Determining the Benefits of Excluding Particular Areas: Impacts on National Security

At the time of the proposed rule, we had not yet received any information from the DOD regarding impacts on national security within the specific areas considered for designation as critical habitat. During the public comment period and the development of the final rule, the DOD identified several areas that may warrant exclusion based on national security impacts and corresponded with us to evaluate these areas (Table 2). As in the analysis of economic impacts, we weighed the benefits of exclusion (*i.e.,* the impacts on national security that would be avoided) with the conservation benefits of designation.

The primary benefit of exclusion is that the DOD agency would not be required to consult with NMFS under section 7 of the ESA regarding DOD actions that may affect critical habitat, and thus potential delays or costs associated with conservation measures for critical habitat would be avoided. To assess the benefits of exclusion, we evaluated the intensity of use of the particular area by the DOD, the likelihood that DOD actions in the particular area would affect critical habitat and trigger an ESA section 7 consultation, and the potential conservation measures that may be required and that may result in delays or costs that affect national security. We also considered the level of protection provided to critical habitat by existing DOD safeguards, such as regulations to control public access and use of the area and other means by which the DOD may influence other Federal actions in the particular area.

The primary benefit of designation is the protection afforded green sturgeon under the ESA section 7 critical habitat provision. To evaluate the benefit of designation for each particular area, we considered the final conservation value of the specific area within which the particular area was contained, the best available information on green sturgeon presence in and use of the particular area, the size of the particular area compared to the specific area and the total critical habitat area, and the likelihood that other Federal actions occur in the area that may affect critical habitat and trigger a consultation.

Unlike in the economic analysis, neither the benefits of exclusion for impacts on national security nor the benefits of designation could be quantified. Instead, we used the best available information to evaluate and assign each of the factors considered under the benefits of exclusion and the benefits of designation with a High or Low rating and compared these qualitative ratings. A particular area was eligible for exclusion if the benefits of exclusion outweighed the benefits of designation.

TABLE 2—SUMMARY OF ASSESSMENT OF PARTICULAR AREAS REQUESTED FOR EXCLUSION BY THE DOD BASED ON IMPACTS ON NATIONAL SECURITY. LISTED FOR EACH PARTICULAR AREA IS: THE SPECIFIC AREA THAT THE PARTICULAR AREA OCCURS IN AND ITS CONSERVATION VALUE; THE SIZE OF THE SPECIFIC AREA; THE SIZE OF THE PARTICULAR AREA; AND WHETHER EXCLUSION BASED ON NATIONAL SECURITY IMPACTS IS WARRANTED

DOD sites & agency	Overlapping specific area & conservation value	Specific area size (km^2)	DOD site overlap (km^2)	Exclude?
(1) Mare Island US Army Reserve (Army)	San Pablo Bay, CA (High)	331.0	0.05	Yes.
(2) Camp Rilea (Army)	Coastal marine area from Winchester Bay, OR, to Columbia R, estuary (High).	6,796.9	20.3	No.
(3) Admiralty Inlet Naval Restricted Area (Navy).	Strait of Juan de Fuca, WA (High)	1,348.6	134.7	Yes.
(4) Strait of Juan de Fuca & Whidbey Island Naval Restricted Area (Navy).	Strait of Juan de Fuca, WA (High)	1,348.6	4.9	Yes.
(5) Strait of Juan de Fuca Naval Air-to-Surface Weapon Range Restricted Area (Navy).	Strait of Juan de Fuca, WA (High)	1,348.6	16.8	Yes.
(6) Navy 3 Operating Area (Navy)	Strait of Juan de Fuca, WA (High)	1,348.6	162.5	Yes.
(7) Surf zone portion of Quinault Underwater Tracking Range (QUTR).	Coastal marine area from Grays Harbor, WA, to U.S.-WA/Canada border (High).	4,923.5	N/A	No.

The DOD also identified the following three particular areas for exclusion based on impacts on national security, but these areas were not included in the ESA section 4(b)(2) analysis. First, the Army requested the exclusion of the Military Ocean Terminal Concord (MOTCO) facilities in Suisun Bay, CA. The MOTCO facilities are covered by an existing INRMP. This area was not analyzed because it was determined that the MOTCO facilities do not overlap with the specific area considered for designation as critical habitat in Suisun Bay. Second, the Navy requested the exclusion of the Navy 7/Admiralty Bay Naval Restricted Area 6701 in Puget Sound, WA. This area was not analyzed because it overlaps with the specific area in Puget Sound, WA, which will be excluded in the final designation. Finally, the Navy requested the exclusion of one of the proposed surf zone sites of the Pacific Northwest Operating Area Quinault Underwater Tracking Range (in the coastal marine area from Grays Harbor, WA, to the U.S.-WA/Canada border). This area was not analyzed, however, because the Navy has not yet made a final selection on the surf zone site location and the particular area has yet to be defined.

Exclusions Based on Impacts on National Security

The final ESA section 4(b)(2) report (NMFS 2009c) provides a detailed description of our analysis of the impacts on national security and our approach to weighing the benefits of designation against the benefits of exclusion. The results of our analysis are summarized in Table 2 and in the following paragraphs.

(1) *Mare Island U.S. Army Reserve (USAR) Center in San Pablo Bay, CA:* The area of overlap between the USAR facilities and the specific area in San Pablo Bay consists of the area between two piers and is very small (0.02 mi^2 or 0.02% of the San Pablo Bay specific area). The main activity of concern is the in-bay disposal of the dredged sediments from dredging activities between the piers. We determined that the INRMP does not provide adequate protection for the Southern DPS because it does not address concerns regarding in-bay disposal of dredged material. However, we determined that the benefits of excluding this area outweigh the benefits of designating it for two reasons. First, restrictions on dredging operations between the piers pose a national security risk (*i.e.,* build-up of sediment such that vessels cannot move in and out of the piers). The dredging activities are not a major concern to green sturgeon because the dredged area is small, the frequency of dredging is low (about once every 3 years), and the Army is already using the recommended dredge type. Second, we are primarily concerned about the use of in-bay disposal sites, which are located outside of the USAR area and would not be affected by this exclusion. We determine that the benefits of excluding the Mare Island USAR facilities outweigh the benefits of designation and that exclusion of this area would not significantly impede conservation for the previously described reasons (small area, infrequent dredging, and current use of recommended dredge type), and that exclusion of this area would not result in extinction of the species. Therefore, the area is excluded from the critical habitat designation.

(2) *Coastal marine waters adjacent to Camp Rilea, OR:* The Army requested the exclusion of coastal marine waters adjacent to Camp Rilea (Clatsop County, OR), delineated as an area one-half mile north to one-half mile south of Camp Rilea, to a distance of two miles offshore of Camp Rilea. The primary activities of concern identified by the Army that might affect critical habitat are amphibious landings operations and the rare occurrence of stray bullets entering the water within this particular area. We determined that neither amphibious landings nor a stray bullet entering the water would be likely to affect the critical habitat features identified for coastal marine areas (*i.e.,* prey resources, water quality, migratory corridors). Thus, based on the information provided by the Army, we determined there is a low likelihood that the Army's activities within the area would affect critical habitat and trigger an ESA section 7 consultation and, consequently, the benefit of exclusion for this area is low. In contrast, the benefits of designation are likely high for this area because it occurs within a High conservation value specific area just south of the lower Columbia River estuary and our consultation history indicates that there are other Federal activities occurring in this area that may affect critical habitat and trigger a consultation under section 7 of the ESA. For these reasons, we determined that the benefits of exclusion do not outweigh the benefits of designation for this area and that the area will be included in the critical habitat designation.

(3) *Three naval restricted areas and one operating area located in the Strait of Juan de Fuca, WA:* The Navy requested the exclusion of 3 naval restricted areas and one operating area (Navy 3 OPAREA) in the eastern portion of the Strait of Juan de Fuca. We corresponded with the Navy extensively throughout the analysis of national security impacts, to better define the impacts on national security and the Navy's control of the particular areas requested for exclusion.

We determined that the benefits of designation for these areas is low. Although the Strait of Juan de Fuca received a High conservation value, this was based on the existence of a connectivity corridor within this area. From observations of tagged green sturgeon, it appears that the eastern portion of the Strait of Juan de Fuca is used at a lower frequency than the western portion of the Strait. In addition, the areas are small compared to the critical habitat areas being designated, our consultation history indicates that there are currently no other Federal activities occurring within these particular areas that may affect critical habitat, and the Navy's limits on public access in restricted areas and presence in operating areas (which are likely to deter certain activities from the area) provide some protection for green sturgeon and its habitat in the areas. Based on the information provided by the Navy, we also determined that the benefits to national security of excluding these areas is low, because the Navy's current activities within the areas have a low likelihood of affecting critical habitat and triggering a section 7 consultation. However, we recognize that the range of activities that may be carried out in these areas are often critical to national security and that a critical habitat designation in these areas could delay or halt these activities in the future. Therefore, we determined that the benefits of exclusion outweigh the benefits of designation for the three naval restricted areas and the Navy 3 Operation Area within the Strait of Juan de Fuca. We also determined that exclusion of these areas would not significantly impede conservation or result in extinction of the species. Thus, the 4 areas requested for exclusion by the Navy in the Strait of Juan de Fuca are excluded from the final designation.

Determining the Benefits of Excluding Particular Areas: Impacts on Indian Lands

The only other relevant impacts identified for the ESA section 4(b)(2) analysis were impacts on Indian lands. In the proposed rule, we solicited comments regarding lands owned by the following Federally-recognized Tribes (73 FR 18553, April 4, 2008) that may be in close proximity to areas considered for designation as critical habitat for Southern DPS green sturgeon: the Hoh, Jamestown

S'Klallam, Lower Elwha, Makah, Quileute, Quinault, and Shoalwater Bay Tribes in Washington; the Confederated Tribes of Coos Lower Umpqua and Siuslaw Indians and the Coquille Tribe in Oregon; and the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community, Wiyot Tribe, and Yurok Tribe in California. We later also identified lands owned by the Trinidad Rancheria that may overlap with the critical habitat areas in California. We corresponded with these Tribes during the public comment period and development of the final rule to confirm where their lands occur and may overlap with the areas considered for designation as critical habitat and to understand the Tribal activities and concerns within those areas. We then analyzed and determined whether the benefits of exclusion outweigh the benefits of designation for these identified Indian lands under ESA section 4(b)(2). Because we were unable to quantify the benefits, we instead compared qualitative ratings of the benefits of exclusion and benefits of designation.

The primary benefit of designation is the protection provided under section 7 of the ESA, requiring every Federal agency to ensure that any action it authorizes, funds, or carries out is not likely to result in the destruction or adverse modification of the designated critical habitat. To assess the benefit of designation, we considered the final conservation value of the specific area within which the overlap with Indian lands occur (*i.e.,* the greater the conservation value of an area, the greater the benefit of protection under section 7 of the ESA), the Federal actions likely to occur within the area that may affect critical habitat, and the size of the area of overlap. The conservation values of the specific areas included High and Medium (none of the areas had Low or Ultra-Low conservation value). Federal actions occurring in the areas that may trigger a section 7 consultation include transportation projects, alternative energy hydrokinetic projects, in-water construction or alterations, NPDES activities, and dredging. However, the area of overlap between Indian lands and the areas considered for designation as critical habitat is very small and we anticipate there would be very few Federal actions undergoing a section 7 consultation in these areas. Thus, we determine that the benefit of designation for these Indian lands is relatively low.

To determine the benefits of exclusion, we evaluated the Tribal activities conducted within the areas and the Federal government's policies regarding Indian lands and relationships with the Tribes. Indian lands are those defined in the Secretarial Order ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997), including: (1) Lands held in trust by the United States for the benefit of any Indian Tribe; (2) land held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation; (3) fee lands, either within or outside the reservation boundaries, owned by the Tribal government; and (4) fee lands within the reservation boundaries owned by individual Indians. Activities within Indian lands include many activities that may affect critical habitat, including fisheries activities, in-water construction or alterations, energy projects, and habitat restoration. The benefits of exclusion would include avoiding the need to consult with NMFS under section 7 of the ESA for activities that may affect critical habitat, as well as the benefits identified in recent critical habitat designations for Pacific salmon and steelhead (70 FR 52630; September 2, 2005), specifically: (1) The furtherance of established national policies, our Federal trust obligations and our deference to the Tribes in management of natural resources on their lands; (2) the maintenance of effective long-term working relationships to promote species conservation on an ecosystem-wide basis; (3) the allowance for continued meaningful collaboration and cooperation in scientific work to learn more about the conservation needs of the species on an ecosystem-wide basis; and (4) continued respect for Tribal sovereignty over management of natural resources on Indian lands through established Tribal natural resource programs. Thus, we determine that the benefit of exclusion for Indian lands is relatively high.

Exclusions Based on Impacts on Indian Lands

The final ESA section 4(b)(2) analysis report provides a detailed description of our approach and analysis of impacts on Indian lands. Based on the analysis of the benefits of designation and exclusion described above and in the report, we determined that the benefits of excluding the identified Indian lands outweigh the benefits of designating those lands. Exclusion of Indian lands benefits the Federal government's policy of promoting respect for Tribal sovereignty and self-governance. In addition, critical habitat on Indian lands represents such a small proportion of total critical habitat. Because the percentage of critical habitat on Indian lands is minimal, we determined that exclusion would not significantly impede conservation or result in extinction of the Southern DPS. Table 3 lists the Tribes whose lands are excluded from the critical habitat designation and the estimated area of overlap that is excluded.

We also received comments from Tribes in Washington requesting the exclusion of usual and accustomed fishing areas from the critical habitat designation. The Tribes were primarily concerned about the potential impact of the critical habitat designation on Tribal fisheries within usual and accustomed fishing areas located in coastal estuaries and coastal marine waters. Based on the information provided by the Tribes, we would expect the critical habitat designation to have minimal effects on Tribal fisheries. Tribal fisheries may cause take of Southern DPS green sturgeon and thus are more likely to be affected by take prohibitions as established in the proposed ESA 4(d) Rule for green sturgeon (74 FR 23822; May 21, 2009) than by the critical habitat designation. In addition, and as described below, usual and accustomed fishing areas are not necessarily coextensive with areas defined as ''Indian lands'' in various Federal policies, orders, and memoranda. Thus, we conclude that exclusion of usual and accustomed fishing areas outside those identified as Indian lands is not warranted, because the benefits of exclusion do not outweigh the benefits of designation for these areas.

TABLE 3—SUMMARY OF THE TRIBES WITH LANDS OVERLAPPING WITH THE CRITICAL HABITAT DESIGNATION, THE SPECIFIC AREA WHERE THE OVERLAP OCCURS AND ITS ASSOCIATED CONSERVATION VALUE RATING, AND THE ESTIMATED AREA OF OVERLAP BETWEEN INDIAN LANDS AND THE SPECIFIC AREA

Tribe**	Specific area & conservation value	Estimated km of excluded shoreline
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community, CA.	Sacramento River, CA (High)	0.2
Cher-Ae Heights Trinidad Rancheria	Coastal marine area from Humboldt Bay, CA, to Coos Bay, OR (High)	0.6
Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw, OR.	(a) Coos Bay, OR (Medium) and (b) coastal marine area from Humboldt Bay, CA, to Coos Bay, OR (High).	1.1 (total), (a) 0.3, (b) 0.8
Coquille Indian Tribe	Coos Bay, OR (Medium)	2.6
Hoh Tribe	Coastal marine area from Grays Harbor, WA, to Cape Flattery (High)	2.6
Jamestown S'Klallam Tribe	Strait of Juan de Fuca, WA (High)	<0.1
Lower Elwha Tribe	Strait of Juan de Fuca, WA (High)	1.8
Makah Tribe	(a) Strait of Juan de Fuca, WA (High) and (b) coastal marine area from Grays Harbor, WA, to Cape Flattery (High).	40.4 (total), (a) 19.2, (b) 21.2
Quileute Tribe	Coastal marine area from Grays Harbor, WA, to Cape Flattery (specifically, Quillayute River) (High).	3.9
Quinault Tribe	Coastal marine area from Grays Harbor, WA, to Cape Flattery (High)	40.6
Shoalwater Bay Tribe	Willapa Bay, WA (High)	3.1
Wiyot Tribe	Humboldt Bay, CA (Medium)	1.8
Yurok Tribe	Coastal marine area from Humboldt Bay, CA, to Coos Bay, OR (High)	1.4

**We also corresponded with the Lummi Tribe and Swinomish Tribe in Washington, but determined that their Indian lands do not overlap with the specific areas considered for designation as critical habitat.

Critical Habitat Designation

This final rule will designate approximately 515 km (320 mi) of riverine habitat and 2,323 km² (897 mi²) of estuarine habitat in California, Oregon, and Washington, and 29,581 km² (11,421 mi²) of coastal marine habitat off California, Oregon, and Washington within the geographical area presently occupied by the Southern DPS of green sturgeon. We are also designating approximately 784 km (487 mi) of habitat in the Sacramento-San Joaquin Delta, and 350 km² (135 mi²) of habitat within the Yolo and Sutter bypasses, adjacent to the Sacramento River, California. These critical habitat areas contain physical or biological features essential to the conservation of the species that may require special management considerations or protection. This final rule will exclude from the designation: (1) 14 specific areas based on economic impacts; (2) the Mare Island USAR Center in San Pablo Bay, three naval restricted areas in the Strait of Juan de Fuca, and one Navy operating area in the Strait of Juan de Fuca based on impacts on national security; and (3) Indian lands owned by 12 Federal-recognized Tribes that overlap with the critical habitat designation, based on impacts on Indian lands. We conclude that the exclusion of these areas will not result in the extinction of the Southern DPS. Although we have identified 7 presently unoccupied areas that may, at a later time, be determined as essential to conservation, we are not designating any unoccupied areas at this time, because we do not have sufficient information showing that any of the unoccupied areas are essential to the conservation of the species.

Lateral Extent of Critical Habitat

For freshwater riverine habitats, we described the lateral extent of critical habitat units as the width of the stream channel defined by the ordinary high-water line, as defined by the U.S. Army Corps of Engineers (ACOE) in 33 CFR 329.11. The ordinary high-water line on non-tidal rivers is defined as ''the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas'' (33 CFR 329.11(a)(1)). In areas for which the ordinary high-water line has not been defined pursuant to 33 CFR 329.11, we defined the width of the stream channel by its bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain (Rosgen 1996) and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series (Leopold *et al.* 1992). For bays and estuarine areas, we defined the lateral extent by the mean higher high water (MHHW) line. For coastal marine habitats, the lateral extent to the west is defined by the 60 fm depth bathymetry contour relative to the line of MLLW and shoreward to the area that is inundated by MLLW, or to the COLREGS demarcation lines delineating the boundary between estuarine and marine habitats. The textual descriptions of critical habitat in 50 CFR 226.215 (under ''Critical habitat for the Southern Distinct Population Segment of North American Green Sturgeon (Acipenser medirostris)'') are the definitive source for determining the critical habitat boundaries. The overview maps provided in 50 CFR 226.215 (under ''Critical habitat for the Southern Distinct Population Segment of North American Green Sturgeon (*Acipenser medirostris*)'') are provided for general guidance purposes only and not as a definitive source for determining critical habitat boundaries.

As discussed in previous critical habitat designations, the quality of aquatic and estuarine habitats within stream channels and bays and estuaries is intrinsically related to the adjacent riparian zones and floodplain, to surrounding wetlands and uplands, and to non-fish-bearing streams above occupied stream reaches. Human activities that occur outside of designated streams, bays, or estuaries can destroy or adversely modify the essential physical and biological features within these areas. In addition,

human activities occurring within and adjacent to reaches upstream or downstream of designated stream reaches or estuaries can also destroy or adversely modify the essential physical and biological features of these areas. Similarly, human activities that occur outside of designated coastal marine areas inundated by extreme high tide can destroy or adversely modify the essential physical and biological features of these areas. This designation will help to ensure that Federal agencies are aware of these important habitat linkages.

Effects of Critical Habitat Designation

ESA Section 7 Consultation

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to insure that any action authorized, funded, or carried out by the agency (agency action) does not jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat.

When a species is listed or critical habitat is designated, Federal agencies must consult with NMFS on any agency actions to be conducted in an area where the species is present and that may affect the species or its critical habitat. During the consultation, NMFS evaluates the agency action to determine whether the action may adversely affect listed species or critical habitat and issues its findings in a biological opinion. If NMFS concludes in the biological opinion that the agency action would likely result in the destruction or adverse modification of critical habitat, NMFS would also recommend any reasonable and prudent alternatives to the action. Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where: (1) Critical habitat is subsequently designated; or (2) new information or changes to the action may result in effects to critical habitat not previously considered in the biological opinion. Consequently, some Federal agencies may request reinitiation of consultation or conference with NMFS on actions for which formal consultation has been completed, if those actions may affect designated critical habitat.

Activities subject to the ESA section 7 consultation process include activities on Federal lands and activities on private or State lands requiring a permit from a Federal agency (*e.g.,* a section 10(a)(1)(B) permit from NMFS) or some other Federal action, including funding (*e.g.,* Federal Highway Administration (FHA) or Federal Emergency Management Agency (FEMA) funding). ESA section 7 consultation would not be required for Federal actions that do not affect listed species or critical habitat and for actions on non-Federal and private lands that are not Federally funded, authorized, or carried out.

Activities Likely To Be Affected

ESA section 4(b)(8) requires in any final regulation to designate critical habitat an evaluation and brief description of those activities (whether public or private) that may adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect critical habitat for the Southern DPS and may be subject to the ESA section 7 consultation process when carried out, funded, or authorized by a Federal agency. These include water and land management actions of Federal agencies (*e.g.,* U.S. Forest Service (USFS), Bureau of Land Management (BLM), ACOE, USBR, Natural Resource Conservation Service (NRCS), National Park Service (NPS), Bureau of Indian Affairs (BIA), the FERC, and the Nuclear Regulatory Commission (NRC)) and related or similar Federally-regulated projects and activities on Federal lands, including hydropower sites and proposed alternative energy hydrokinetic projects licensed by the FERC; nuclear power sites licensed by the NRC; dams built or operated by the ACOE or USBR; timber sales and other vegetation management activities conducted by the USFS, BLM and BIA; irrigation diversions authorized by the USFS and BLM; and road building and maintenance activities authorized by the USFS, BLM, NPS, and BIA. Other actions of concern include dredge and fill, mining, diking, and bank stabilization activities authorized or conducted by the COE, habitat modifications authorized by the FEMA, and approval of water quality standards and pesticide labeling and use restrictions administered by the Environmental Protection Agency (EPA).

Private entities may also be affected by this final critical habitat designation if a Federal permit is required, Federal funding is received, or the entity is involved in or receives benefits from a Federal project. For example, private entities may have special use permits to convey water or build access roads across Federal land; they may require Federal permits to construct irrigation withdrawal facilities, or build or repair docks; they may obtain water from Federally funded and operated irrigation projects; or they may apply pesticides that are only available with Federal agency approval. These activities will need to be evaluated with respect to their potential to destroy or adversely modify critical habitat. Changes to the actions to minimize or avoid destruction or adverse modification of designated critical habitat may result in changes to some activities, such as the operations of dams and dredging activities. Transportation and utilities sectors may need to modify the placement of culverts, bridges, and utility conveyances (*e.g.,* water, sewer, and power lines) to avoid barriers to fish migration. Developments (*e.g.,* marinas, residential, or industrial facilities) occurring in or near streams, estuaries, or marine waters designated as critical habitat that require Federal authorization or funding may need to be altered or built in a manner to ensure that critical habitat is not destroyed or adversely modified as a result of the construction or subsequent operation of the facility.

Questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat should be directed to NMFS (*see* **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Peer Review

On July 1, 1994, a joint USFWS/NMFS policy for peer review was issued stating that the Services would solicit independent peer review to ensure the best biological and commercial data is used in the development of rulemaking actions and draft recovery plans under the ESA (59 FR 34270). On December 16, 2004, the Office of Management and Budget (OMB) issued its Final Information Quality Bulletin for Peer Review (Bulletin). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664), and went into effect on June 16, 2005. The primary purpose of the Bulletin is to improve the quality and credibility of scientific information disseminated by

the Federal government by requiring peer review of ''influential scientific information'' and highly influential scientific information'' prior to public dissemination. Influential scientific information is defined as ''information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. Stricter standards were established for the peer review of ''highly influential scientific assessments'', defined as information whose ''dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.'' The draft biological report and draft economic analysis report supporting this final rule to designate critical habitat for the Southern DPS of green sturgeon are considered influential scientific information and subject to peer review. These two reports were each distributed to three independent peer reviewers for review. The final biological report and final economic analysis report incorporate the comments and additional information provided by the peer reviewers. The peer reviewer comments were compiled into a peer review report, which is available on the Southwest Region Web site at *http://swr.nmfs.noaa.gov,* on the Federal eRulemaking Web site at *http://www.regulations.gov,* or upon request (*see* **ADDRESSES**).

Required Determinations

Regulatory Planning and Review (E.O. 12866)

This final rule has been determined to be significant for purposes of E.O. 12866. A final economic analysis report and ESA section 4(b)(2) report have been prepared to support the exclusion process under section 4(b)(2) of the ESA and our consideration of alternatives to this rulemaking as required under E.O. 12866. The final economic analysis report and final ESA section 4(b)(2) report are available on the Southwest Region Web site at *http://swr.nmfs.noaa.gov,* on the Federal eRulemaking Web site at *http://www.regulations.gov,* or upon request (*see* **ADDRESSES**).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis describing the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). We have prepared a final regulatory flexibility analysis (FRFA), which is part of the final economic analysis report. This document is available upon request (*see* **ADDRESSES**), via our Web site at *http://swr.nmfs.noaa.gov,* or via the Federal eRulemaking Web site at *http://www.regulations.gov.* The results of the FRFA are summarized below.

At the present time, little information exists regarding the cost structure and operational procedures and strategies in the sectors that may be directly affected by the potential critical habitat designation. In addition, given the short consultation history for green sturgeon, there is significant uncertainty regarding the activities that may trigger an ESA section 7 consultation or how those activities may be modified as a result of consultation. With these limitations in mind, we considered which of the potential economic impacts we analyzed might affect small entities. These estimates should not be considered exact estimates of the impacts of potential critical habitat to individual businesses.

The impacts to small businesses were assessed for the following eight activities: dredging, in-water construction or alterations, NPDES activities and other activities resulting in non-point pollution, agriculture, dam operations, water diversion operations, bottom trawl fisheries, and power plant operations. The impacts on small entities were not assessed for LNG projects, desalination plants, tidal and wave energy projects, and restoration projects because there is great uncertainty regarding impacts to these activities, the activities are unlikely to be conducted by small entities, or the impacts to small businesses are expected to be minor.

Small entities were defined by the Small Business Administration size standards for each activity type. The majority (>70 percent) of entities affected within each specific area would be considered a small entity. A total of 10,398 small businesses involved in the activities listed above would most likely be affected by the final critical habitat designation. The estimated economic impacts on small entities vary depending on the activity type and location. The largest total estimated annualized impacts borne by small entities were for bottom trawl fisheries and the operation of dams and water diversions.

In accordance with the requirements of the RFA (as amended by SBREFA, 1996) this analysis considered various alternatives to the critical habitat designation for the green sturgeon. The alternative of not designating critical habitat for the green sturgeon was considered and rejected because such an approach does not meet the legal requirements of the ESA and would not provide for the conservation of the Southern DPS. The alternative of designating all potential critical habitat areas (*i.e.,* no areas excluded) was also considered and rejected because NMFS has the discretionary authority to exclude areas under the ESA and, for several areas, the economic benefits of exclusion outweighed the benefits of inclusion. The total annualized impacts borne by small entities under this alternative were $60.1 million to $210 million (discounted at 7 percent) or $60 million to $210 million (discounted at 3 percent).

An alternative to designating critical habitat within all 41 units is the designation of critical habitat within a subset of these units. This approach would help to reduce the number of small entities potentially affected. Under section 4(b)(2) of the ESA, NMFS must consider the economic impacts, impacts to national security, and other relevant impacts of designating any particular area as critical habitat. NMFS has the discretion to exclude an area from designation as critical habitat if the benefits of exclusion (*i.e.,* the impacts that would be avoided if an area were excluded from the designation) outweigh the benefits of designation (*i.e.,* the conservation benefits to the Southern DPS if an area were designated), as long as exclusion of the area will not result in extinction of the species. Exclusion under section 4(b)(2) of the ESA of one or more of the 41 units considered for designation would reduce the potential effects on small entities. The extent to which the economic impact to small entities would be reduced depends on how many, and which, units would be excluded. The determination of which units and how many to exclude depends on NMFS' ESA 4(b)(2) analysis, which is conducted for each unit and described in detail in the final ESA

section 4(b)(2) analysis report (NMFS 2009c). The total estimated annualized impacts borne by small entities under this alternative were $17.9 million to $24.5 million (discounted at 7 percent) or $17.9 million to $24.4 million (discounted at 3 percent). It is estimated that the exclusions in this final rule will result in a reduction in total annualized impacts on small entities of between $42.2 million to $185.5 million (for estimates discounted at 7 percent) or between $42.1 million to $185.6 million (for estimates discounted at 3 percent). NMFS selected this alternative because it results in a critical habitat designation that provides for the conservation of the Southern DPS, reduces impacts on small entities, and meets the requirements under the ESA and our joint NMFS–USFWS regulations for designating critical habitat.

E.O. 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking an action expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. An energy impacts analysis was prepared under E.O. 13211 and is available as part of the final economic analysis report. The results of the analysis are summarized here.

Activities associated with the supply, distribution, or use of energy that may be affected by this final critical habitat designation include the operation of hydropower dams, alternative energy hydrokinetic projects, and LNG projects. Energy impacts would result from requested project modifications under an ESA section 7 consultation. The most relevant impacts include potential changes in natural gas and electricity production and changes in the cost of energy production.

In the final economic analysis, the effects of the critical habitat designation on 189 dams located within the critical habitat areas are evaluated. Of these 189 dams, 11 dams have hydropower capacity. Potential project modifications may be required to address impacts of the hydropower dams on flow regimes. These project modifications may include changes in water flow through the turbines or seasonal changes to flow through turbines. These changes may result in reductions in electricity production and increases in energy costs. However, the changes required and their effects on energy production and costs would vary depending on the characteristics of the dam and the hydrology of the river system. Because the areas overlap with existing critical habitat designations for salmon species, and because the guidelines we have in place for dam modifications focus on listed salmonids, we will likely recommend modifications to dams that are similar to those we recommend for salmonids until additional information on green sturgeon indicates otherwise. Thus, the additional effects of the critical habitat designation for green sturgeon would likely be minimal. In addition, modifications required for the protection of critical habitat would likely be similar to those required under the jeopardy standard.

The final economic analysis evaluated the effects of the critical habitat designation on a number of proposed alternative energy hydrokinetic projects (*e.g.,* tidal and wave energy projects). Future management and required project modifications for green sturgeon critical habitat related to these projects are uncertain and could vary widely in scope from project to project. Because these proposed projects are still in the preliminary stages, the potential impact of possible green sturgeon conservation efforts on energy production and the associated cost of that energy for each project are unclear. In the most extreme case (*i.e.,* the critical habitat designation results in all projects not being constructed), the reductions in electricity production would be significant (an estimated 2,000 megawatts). However, we do not anticipate that conservation efforts to address green sturgeon critical habitat will result in all project construction from being halted. It is more likely that any additional cost of green sturgeon conservation efforts would be passed on to the consumer in the form of slightly higher energy prices. More information is needed, however, to more precisely estimate the potential energy impacts resulting from the application of conservation measures to alternative energy projects. It is important to note, however, that many other environmental concerns have been raised and must be addressed in the development and construction of alternative energy projects, including concerns for other marine fish species (McIsaac 2008, Letter from the Pacific Fishery Management Council to Randall Luthi, Minerals Management Service). It is likely that management measures to minimize or avoid habitat impacts for other species will be required for alternative energy projects. Based on the best available information, the project modifications we would require to protect green sturgeon critical habitat would likely be similar to those applied for the protection of other marine species.

The final economic analysis also analyzed the potential effects of the critical habitat designation on proposed LNG projects. Because no LNG projects currently exist in the critical habitat areas, the potential impact of LNG facilities on green sturgeon critical habitat and the potential project modifications that may be required to mitigate those impacts remain uncertain. There are several proposed LNG projects in the critical habitat areas, with a combined natural gas production capacity of 7,800 million cubic feet per day. In the most extreme case, green sturgeon critical habitat would require that these proposed LNG projects be relocated to areas outside of the critical habitat areas. However, it is more likely that other less costly project modifications will be necessary, such as changes to dredging operations associated with the project, restoration of riparian habitat, or other changes depending on the specifics of the project. These project modifications may result in higher natural gas costs for consumers. Additional information is needed to address uncertainties regarding the potential impacts of the critical habitat designation on LNG projects and on energy production and costs associated with those projects. In cases where listed salmon and steelhead species or critical habitat designated for these species occurs within the areas where proposed LNG projects are located (*e.g.,* in the Lower Columbia River), the best available information indicates that measures implemented for the protection of these species would be similar to those required to protect critical habitat for green sturgeon.

Based on this energy impacts analysis, we recognize that many uncertainties exist and more information is needed to adequately estimate the potential impacts of the critical habitat designation on energy production and costs. Using the best available information, we have determined that the designation of critical habitat for Southern DPS green sturgeon may result in impacts on the supply, distribution, or use of energy, but that these impacts would not be significant because many of the impacts would already exist due to protections for other listed species.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, NMFS makes the following findings:

(A) This final rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (I) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.'' The designation of critical habitat does not impose an enforceable duty on non-Federal government entities or private parties. The only regulatory effect of a critical habitat designation is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under ESA section 7. Non-Federal entities who receive funding, assistance, or permits from Federal agencies, or otherwise require approval or authorization from a Federal agency for an action may be indirectly affected by the designation of critical habitat. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above to State governments.

(b) Due to the prohibition against take of the Southern DPS both within and outside of the designated areas, we do not anticipate that this final rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

Takings

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this final rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions. This final rule would not increase or decrease the current restrictions on private property concerning take of Southern DPS fish, nor do we expect the final critical habitat designation to impose substantial additional burdens on land use or substantially affect property values. Additionally, the final critical habitat designation does not preclude the development of Habitat Conservation Plans and issuance of incidental take permits for non-Federal actions. Owners of areas included within the proposed critical habitat designation would continue to have the opportunity to use their property in ways consistent with the survival of listed Southern DPS.

Federalism

In accordance with E.O. 13132, we determined that this final rule does not have significant Federalism effects and that a Federalism assessment is not required. In keeping with Department of Commerce policies, we request information from, and will coordinate development of this final critical habitat designation with, appropriate State resource agencies in California, Oregon, Washington, and Alaska. The final designation may have some benefit to State and local resource agencies in that the areas essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary for the survival of the Southern DPS of green sturgeon are specifically identified. While this designation does not alter where and what Federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case ESA section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988, we have determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the E.O. We are designating critical habitat in accordance with the provisions of the ESA. This final rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the Southern DPS of green sturgeon.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain new or revised information collections that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This final rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969 (NEPA)

NMFS has determined that an environmental analysis as provided for under the NEPA of 1969 for critical habitat designations made pursuant to the ESA is not required. *See Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct 698 (1996).

Government-to-Government Relationship With Tribes

The longstanding and distinctive relationship between the Federal and Tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate Tribal governments from the other entities that deal with, or are affected by, the Federal government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, Tribal trust

resources, and the exercise of Tribal rights. Pursuant to these authorities lands have been retained by Indian Tribes or have been set aside for Tribal use. These lands are managed by Indian Tribes in accordance with Tribal goals and objectives within the framework of applicable treaties and laws. E.O. 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal government in matters affecting Tribal interests.

There is a broad array of activities on Indian lands that may trigger ESA section 7 consultations. As described in the section above titled ''Exclusions Based on Impacts on Indian Lands,'' we have corresponded with potential affected Tribes and this final rule will exclude from the designation any Indian lands of the following Federally recognized Tribes (73 FR 18553, April 4, 2008) that overlap with the critical habitat designation for Southern DPS green sturgeon: the Hoh, Jamestown S'Klallam, Lower Elwha, Makah, Quileute, Quinault, and Shoalwater Bay Tribes in Washington; the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and the Coquille Tribe in Oregon; and the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community, Cher-Ae Heights Trinidad Rancheria, Wiyot Tribe, and Yurok Tribe in California.

References Cited

A complete list of all references cited herein is available upon request (*see* **ADDRESSES** section) or via our Web site at *http://swr.nmfs.noaa.gov.*

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: October 1, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, this final rule amends part 226, title 50 of the Code of Federal Regulations as set forth below:

PART 226—DESIGNATED CRITICAL HABITAT

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

Authority: 16 U.S.C. 1533.

■ 2. Add § 226.219, to read as follows:

§ 226.219 Critical habitat for the Southern Distinct Population Segment of North American Green Sturgeon (Acipenser medirostris).

Critical habitat is designated for the Southern Distinct Population Segment of North American green sturgeon (Southern DPS) as described in this section. The textual descriptions of critical habitat in this section are the definitive source for determining the critical habitat boundaries. The overview maps are provided for general guidance purposes only and not as a definitive source for determining critical habitat boundaries.

(a) *Critical habitat boundaries.* Critical habitat in freshwater riverine areas includes the stream channels and a lateral extent as defined by the ordinary high-water line (33 CFR 329.11). In areas for which the ordinary high-water line has not been defined pursuant to 33 CFR 329.11, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series. Critical habitat in bays and estuaries includes tidally influenced areas as defined by the elevation of mean higher high water. The boundary between coastal marine areas and bays and estuaries are delineated by the COLREGS lines (33 CFR 80). Critical habitat in coastal marine areas is defined by the zone between the 60 fathom (fm) depth bathymetry line and the line on shore reached by mean lower low water (MLLW), or to the COLREGS lines.

(1) *Coastal marine areas:* All U.S. coastal marine waters out to the 60 fm depth bathymetry line (relative to MLLW) from Monterey Bay, California (36°38′12″ N./121°56′13″ W.) north and east to include waters in the Strait of Juan de Fuca, Washington. The Strait of Juan de Fuca includes all U.S. marine waters: in Clallam County east of a line connecting Cape Flattery (48°23′10″ N./124°43′32″ W.), Tatoosh Island (48°23′30″ N./124°44′12″ W.), and Bonilla Point, British Columbia (48°35′30″ N./124°43′00″ W.); in Jefferson and Island counties north and west of a line connecting Point Wilson (48°08′38″ N./122°45′07″ W.) and Partridge Point (48°13′29″ N./122°46′11″ W.); and in San Juan and Skagit counties south of lines connecting the U.S.-Canada border (48°27′27″ N./123°09′46″ W.) and Pile Point (48°28′56″ N./123°05′33″ W.), Cattle Point (48°27′1″ N./122°57′39″ W.) and Davis Point (48°27′21″ N./122°56′03″ W.), and Fidalgo Head (48°29′34″ N./122°42′07″ W.) and Lopez Island (48°28′43″ N./122°49′08″ W.).

(2) *Freshwater riverine habitats:* Critical habitat is designated to include the following freshwater riverine areas in California:

(i) Sacramento River, California. From the Sacramento I-Street Bridge (40°9′10″ N./122°12′9″ W.) upstream to Keswick Dam (40°36′39″ N./122°26′46″ W.), including the waters encompassed by the Yolo Bypass and the Sutter Bypass areas and the lower American River from the confluence with the mainstem Sacramento River upstream to 38°35′47″ N./121°28′36″ W. (State Route 160 bridge over the American River).

(ii) Lower Feather River, California. From the confluence with the mainstem Sacramento River upstream to Fish Barrier Dam (39°31′13″ N./121°32′51″ W.).

(iii) Lower Yuba River, California. From the confluence with the mainstem Feather River upstream to Daguerre Dam (39°12′32″ N./121°35′53″ W.).

(3) *Sacramento-San Joaquin Delta, California:* Critical habitat is designated to include the Sacramento-San Joaquin Delta including all waterways up to the elevation of mean higher high water within the area defined in California Water Code Section 12220, except for the following excluded areas: Clifton Court and California Aqueduct Intake Channel (all reaches upstream from the Clifton Court Radial Gates at 37°49′47″ N./121°33′25″ W.); Delta-Mendota Canal (upstream from 37°48′58″ N./121°33′30″ W.); Fivemile Slough (all reaches upstream from its confluence with Fourteenmile Slough at 38°00′50″ N./121°22′09″ W.); Indian Slough and Werner Cuts (all reaches between the entrance to Discovery Bay at 37°55′8″ N./121°35′12″ W. and the junction of Werner Cut and Rock Slough at 37°58′14″ N./121°35′41″ W.); Italian Slough (all reaches upstream from 37°51′39″ N./121°34′53″ W.); Rock Slough (all reaches upstream from the junction with the Old River at 37°58′22″ N./121°34′40″ W.); Sand Mound Slough (all reaches upstream from 37°58′37″ N./121°37′19″ W.); Sacramento Deep Water Ship Channel (upstream from the confluence with Cache Slough at 38°14′13″ N./121°40′23″ W.); Sevenmile Slough (all reaches between Threemile Slough at 38°06′55″ N./121°40′55″ W. and Jackson Slough at 38°06′59″ N./121°37′44″ W.); Snodgrass Slough (all reaches upstream from Lambert Road at 38°18′33″ N./121°30′46″ W.); Tom Paine Slough (all reaches upstream from its confluence with Middle River at 37°47′25″ N./121°25′08″ W.); Trapper Slough (all reaches upstream from 37°53′36″ N./121°29′15″ W.); Unnamed oxbow loop (upstream from the confluence with the San Joaquin River at 37°43′9″ N./121°16′36″ W.); Unnamed oxbow loop (upstream from the

confluence with the San Joaquin River at 37°46′9″ N./121°18′6″ W.).

(4) *Coastal bays and estuaries:* Critical habitat is designated to include the following coastal bays and estuaries in California, Oregon, and Washington:

(i) *San Francisco Bay, San Pablo Bay, and Suisun Bay in California.* All tidally influenced areas of San Francisco Bay, San Pablo Bay, and Suisun Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Adobe Creek (38°12′42″ N./122°36′6″ W.); Alameda Creek (37°36′47″ N./122°4′18″ W.); Arroyo Corte Madera del Presidio (37°53′43″ N./122°31′48″ W.); Black John Slough (38°8′12″ N./122°33′42″ W.); Black John Slough (38°7′59″ N./122°32′54″ W.); Carneros Creek (38°13′52″ N./122°18′49″ W.); Colma Creek (37°39′6″ N./122°25′9″ W.); Coyote Creek (37°52′45″ N./122°31′31″ W.); Coyote Creek (37°27′17″ N./121°55′36″ W.); Coyote Creek, unnamed waterway (37°27′56″ N./121°55′40″ W.); Coyote Creek, unnamed waterway (37°26′23″ N./121°57′29″ W.); Coyote Creek, unnamed waterway (37°27′15″ N./121°56′12″ W.); Coyote Hills Slough (37°34′26″ N./122°3′36″ W.); Deverton Creek (38°13′38″ N./121°53′47″ W.); Gallinas Creek (38°0′50″ N./122°32′24″ W.); Gallinas Creek, South Fork (38°0′4″ N./122°32′9″ W.); Green Valley Creek (38°12′49″ N./122°7′51″ W.); Hastings Slough (38°1′30″ N./122°3′35″ W.); Huichica Creek, unnamed tributary (38°12′36″ N./122°21′35″ W.); Mt Eden Creek (37°37′6″ N./122°7′23″ W.); Mud Slough, unnamed waterway (37°29′48″ N./121°57′14″ W.); Mud Slough, unnamed waterway (37°28′43″ N./121°57′3″ W.); Newark Slough (37°31′36″ N./122°3′24″ W.); Newark Slough, unnamed waterway (37°31′51″ N./122°4′7″ W.); Novato Creek (38°5′50″ N./122°33′52″ W.); Petaluma River (38°14′53″ N./122°38′17″ W.); Petaluma River, unnamed tributary (38°12′58″ N./122°34′23″ W.); Railroad Slough (38°13′30″ N./122°26′28″ W.); Richardson Bay, unnamed tributary (37°54′2″ N./122°31′36″ W.); San Antonio Creek, unnamed tributary (38°9′45″ N./122°34′1″ W.); San Clemente Creek (37°55′12″ N./122°30′25″ W.); San Francisco Bay shoreline (37°40′44″ N./122°10′18″ W.); San Francisquito Creek (37°27′10″ N./122°7′40″ W.); San Pablo Bay shoreline (38°2′44″ N./122°15′44″ W.); San Pablo Creek (37°58′6″ N./122°22′42″ W.); San Rafael Creek (37°58′5″ N./122°31′35″ W.); Seal Slough (37°34′9″ N./122°17′30″ W.); Suisun Marsh (38°2′28″ N./121°57′55″ W.); Suisun Marsh (38°2′50″ N./121°58′39″ W.); Suisun Marsh (38°2′42″ N./121°56′16″ W.); Suisun Marsh (38°2′30″ N./121°55′18″ W.); Suisun Marsh, Grizzly Bay shoreline (38°5′53″ N./122°0′35″ W.); Suisun Marsh, Grizzly Bay shoreline (38°6′49″ N./121°58′54″ W.); Suisun Marsh, Grizzly Bay shoreline (38°8′19″ N./121°59′31″ W.); Suisun Marsh, Grizzly Bay shoreline (38°8′6″ N./121°59′33″ W.); Tolay Creek (38°9′42″ N./122°26′49″ W.); Tolay Creek (38°9′6″ N./122°26′49″ W.); Walnut Creek (38°0′16″ N./122°3′41″ W.); Wildcat Creek (37°57′26″ N./122°22′45″ W.).

(ii) *Humboldt Bay, California.* All tidally influenced areas of Humboldt Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Elk River (40°43′45″ N./124°11′15″ W.); Elk River (40°45′9″ N./124°10′57″ W.); Elk River (40°45′7″ N./124°10′58″ W.); Eureka Slough (40°48′14″ N./124°7′15″ W.); Eureka Slough (40°48′18″ N./124°8′29″ W.); Eureka Slough (40°48′14″ N./124°8′22″ W.); Eureka Slough (40°48′9″ N./124°8′14″ W.); Freshwater Creek (40°46′43″ N./124°4′48″ W.); Freshwater Slough (40°47′18″ N./124°6′54″ W.); Freshwater Slough (40°47′10″ N./124°6′15″ W.); Freshwater Slough (40°48′3″ N./124°6′53″ W.); Gannon Slough (40°50′48″ N./124°4′54″ W.); Gannon Slough (40°50′37″ N./124°4′53″ W.); Jacoby Creek (40°50′22″ N./124°4′16″ W.); Jacoby Creek (40°50′25″ N./124°4′56″ W.); Liscom Slough (40°52′35″ N./124°8′14″ W.); Mad River Slough (40°53′14″ N./124°8′9″ W.); Mad River Slough (40°53′59″ N./124°8′1″ W.); Mad River Slough (40°54′1″ N./124°8′9″ W.); McDaniel Slough (40°51′54″ N./124°8′52″ W.); McDaniel Slough (40°51′39″ N./124°6′2″ W.); Rocky Gulch/Washington Gulch (40°49′52″ N./124°4′58″ W.); Salmon Creek (40°41′12″ N./124°13′10″ W.); Unnamed tributary (40°42′36″ N./124°15′45″ W.); White Slough (40°41′56″ N./124°12′18″ W.).

(iii) *Coos Bay, Oregon.* All tidally influenced areas of Coos Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Boone Creek (43°16′31″ N./124°9′26″ W.); Catching Creek (43°16′31″ N./124°9′11″ W.); Coalbank Slough (43°21′10″ N./124°13′17″ W.); Coos River, South Fork (43°22′32″ N./123°59′34″ W.); Cox Canyon Creek (43°16′13″ N./124°18′52″ W.); Daniels Creek (43°21′10″ N./124°5′29″ W.); Davis Creek (43°17′29″ N./124°14′30″ W.); Day Creek (43°18′59″ N./124°18′24″ W.); Delmar Creek (43°15′24″ N./124°13′52″ W.); Deton Creek (43°24′15″ N./124°3′53″ W.); Elliot Creek (43°17′45″ N./124°17′45″ W.); Goat Creek (43°15′42″ N./124°12′58″ W.); Haynes Inlet (43°27′56″ N./124°11′22″ W.); Hayward Creek (43°19′7″ N./124°19′59″ W.); Joe Ney Slough (43°20′12″ N./124°17′39″ W.); John B Creek (43°16′59″ N./124°18′27″ W.); Kentuck Slough (43°25′19″ N./124°11′19″ W.); Larson Slough (43°27′43″ N./124°11′38″ W.); Lillian Creek (43°21′41″ N./124°8′41″ W.); Mart Davis Creek (43°22′58″ N./124°5′38″ W.); Matson Creek (43°18′27″ N./124°8′16″ W.); Millicoma River, East Fork (43°25′50″ N./124°1′2″ W.); Millicoma River, West Fork (43°25′48″ N./124°2′50″ W.); Noble Creek (43°15′16″ N./124°12′54″ W.); North Slough (43°29′26″ N./124°13′14″ W.); Pony Creek (43°24′6″ N./124°13′55″ W.); Seelander Creek (43°17′15″ N./124°8′41″ W.); Shinglehouse Slough (43°19′4″ N./124°13′14″ W.); Stock Slough (43°19′58″ N./124°8′22″ W.); Talbot Creek (43°17′1″ N./124°17′49″ W.); Theodore Johnson Creek (43°16′16″ N./124°19′22″ W.); Unnamed Creek (43°17′24″ N./124°17′56″ W.); Unnamed Creek (43°18′27″ N./124°7′55″ W.); Unnamed Creek (43°21′12″ N./124°9′17″ W.); Vogel Creek (43°22′10″ N./124°8′49″ W.); Wasson Creek (43°16′3″ N./124°19′23″ W.); Willanch Slough (43°24′5″ N./124°11′27″ W.); Wilson Creek (43°16′51″ N./124°9′2″ W.); Winchester Creek (43°15′49″ N./124°19′10″ W.).

(iv) *Winchester Bay, Oregon.* All tidally influenced areas of Winchester Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Brainard Creek (43°44′46″ N./124°1′39″ W.); Butler Creek (43°42′50″ N./124°3′0″ W.); Eslick Creek (43°47′46″ N./123°58′40″ W.); Frantz Creek (43°44′50″ N./124°5′25″ W.); Hudson Slough (43°44′56″ N./124°4′43″ W.); Joyce Creek (43°45′32″ N./124°1′49″ W.); Noel Creek (43°46′21″ N./124°0′6″ W.); Oar Creek (43°40′26″ N./124°3′41″ W.); Otter Creek (43°43′28″ N./124°0′4″ W.); Providence Creek (43°43′13″ N./124°7′44″ W.); Scholfield Creek (43°40′36″ N./124°5′38″ W.); Silver Creek (43°40′37″ N./124°9′21″ W.); Smith River (43°47′48″ N./123°53′3″ W.); Smith River, North Fork (43°48′17″ N./123°55′59″ W.); Umpqua River (43°40′3″ N./123°48′32″ W.); Unnamed Creek (43°40′6″ N./124°10′44″ W.); Unnamed Creek (43°40′14″ N./124°9′26″ W.); Winchester Creek (43°40′20″ N./124°8′49″ W.).

(v) *Yaquina Bay, Oregon.* All tidally influenced areas of Yaquina Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Babcock Creek (44°35′33″ N./123°55′42″ W.); Big Elk Creek (44°35′23″ N./123°50′43″ W.); Boone Slough

(44°35′5″ N./123°57′50″ W.); Depot Creek (44°38′30″ N./123°56′54″ W.); Flesher Slough (44°34′0″ N./123°58′53″ W.); Johnson Slough (44°34′60″ N./123°59′10″ W.); King Slough (44°35′35″ N./124°1′55″ W.); McCaffery Slough (44°33′56″ N./124°1′10″ W.); Mill Creek (44°35′7″ N./123°53′57″ W.); Montgomery Creek (44°35′8″ N./123°56′18″ W.); Nute Slough (44°35′19″ N./123°57′30″ W.); Olalla Creek (44°36′48″ N./123°55′30″ W.); Parker Slough (44°35′21″ N./124°0′50″ W.); Poole Slough (44°33′27″ N./123°58′46″ W.); Yaquina River (44°39′4″ N./123°51′26″ W.).

(vi) *Nehalem Bay, Oregon.* All tidally influenced areas of Yaquina Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Alder Creek (45°42′52″ N./123°54′12″ W.); Anderson Creek (45°44′25″ N./123°52′26″ W.); Coal Creek (45°44′49″ N./123°51′57″ W.); Foley Creek (45°41′48″ N./123°50′53″ W.); Gallagher Slough (45°42′4″ N./123°52′50″ W.); Messhouse Creek (45°40′0″ N./123°55′32″ W.); Nehalem River (45°41′48″ N./123°49′31″ W.); Nehalem River, North Fork (45°47′11″ N./123°49′19″ W.); Unnamed Creek (45°44′35″ N./123°51′53″ W.); Unnamed Creek (45°44′53″ N./123°51′12″ W.); Unnamed Creek (45°45′6″ N./123°50′56″ W.); Unnamed Creek (45°44′11″ N./123°51′40″ W.); Unnamed Creek (45°44′7″ N./123°51′40″ W.); Unnamed Creek (45°43′44″ N./123°52′35″ W.).

(vii) *Lower Columbia River estuary, Washington and Oregon.* All tidally influenced areas of the lower Columbia River estuary from the mouth upstream to river kilometer 74, up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Bear Creek (46°10′0″ N./123°40′6″ W.); Big Creek (46°10′33″ N./123°35′30″ W.); Blind Slough/Gnat Creek (46°10′47″ N./123°31′45″ W.); Chinook River (46°18′14″ N./123°58′1″ W.); Deep Creek (46°19′3″ N./123°42′23″ W.); Driscol Slough (46°8′35″ N./123°23′44″ W.); Ferris Creek (46°10′5″ N./123°39′8″ W.); Grays River (46°21′34″ N./123°35′5″ W.); Hunt Creek (46°11′46″ N./123°26′30″ W.); Jim Crow Creek (46°16′19″ N./123°33′26″ W.); John Day River (46°9′13″ N./123°43′16″ W.); John Day River (46°9′10″ N./123°43′27″ W.); Klaskanine River (46°5′33″ N./123°44′52″ W.); Lewis and Clark River (46°5′52″ N./123°51′4″ W.); Marys Creek (46°10′12″ N./123°40′17″ W.); Seal Slough (46°19′20″ N./123°40′15″ W.); Sisson Creek (46°18′25″ N./123°43′46″ W.); Skamokawa Creek (46°19′11″ N./123°27′20″ W.); Skipanon River (46°9′31″ N./123°55′34″ W.); Wallacut River (46°19′28″ N./123°59′11″ W.); Wallooskee River (46°7′7″ N./123°46′25″ W.); Westport Slough/Clatskanie River (46°8′4″ N./123°13′31″ W.); Youngs River (46°4′11″ N./123°47′9″ W.).

(viii) *Willapa Bay, Washington.* All tidally influenced areas of Willapa Bay up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Bear River (46°20′5″ N./123°56′8″ W.); Bone River (46°39′29″ N./123°54′2″ W.); Cedar River (46°45′37″ N./124°0′3″ W.); Naselle River (46°22′32″ N./123°49′19″ W.); Middle Nemah River (46°28′42″ N./123°51′13″ W.); North Nemah River (46°30′56″ N./123°52′27″ W.); South Nemah River (46°28′37″ N./123°53′15″ W.); Niawiakum River (46°36′39″ N./123°53′34″ W.); North River (46°48′51″ N./123°50′54″ W.); Palix River, Middle Fork (46°35′46″ N./123°52′29″ W.); Palix River, North Fork (46°36′10″ N./123°52′26″ W.); Palix River, South Fork (46°34′30″ N./123°53′42″ W.); Stuart Slough (46°41′9″ N./123°52′16″ W.); Willapa River (46°38′50″ N./123°38′50″ W.).

(ix) *Grays Harbor, Washington.* All tidally influenced areas of Grays Harbor up to the elevation of mean higher high water, including, but not limited to, areas upstream to the head of tide endpoint in: Andrews Creek (46°49′23″ N./124°1′23″ W.); Beaver Creek (46°54′20″ N./123°58′53″ W.); Campbell Creek (46°56′9″ N./123°53′12″ W.); Campbell Slough (47°2′45″ N./124°3′40″ W.); Chapin Creek (46°56′18″ N./123°52′30″ W.); Charley Creek (46°56′55″ N./123°49′53″ W.); Chehalis River (46°58′16″ N./123°35′38″ W.); Chenois Creek (47°2′36″ N./124°0′54″ W.); Elk River (46°50′8″ N./123°59′8″ W.); Gillis Slough (47°2′34″ N./124°2′29″ W.); Grass Creek (47°1′41″ N./124°0′40″ W.); Hoquiam River (47°3′3″ N./123°55′34″ W.); Hoquiam River, East Fork (47°3′7″ N./123°51′25″ W.); Humptulips River (47°5′42″ N./124°3′34″ W.); Indian Creek (46°55′55″ N./123°53′47″ W.); Jessie Slough (47°3′23″ N./124°3′0″ W.); Johns River (46°52′28″ N./123°57′2″ W.); Newskah Creek (46°56′26″ N./123°50′58″ W.); O'Leary Creek (46°54′51″ N./123°57′24″ W.); Stafford Creek (46°55′51″ N./123°54′28″ W.); Wishkah River (47°2′39″ N./123°47′20″ W.); Wynoochee River (46°58′19″ N./123°36′57″ W.).

(b) *Primary constituent elements.* The primary constituent elements essential for the conservation of the Southern DPS of green sturgeon are:

(1) *For freshwater riverine systems:*

(i) *Food resources.* Abundant prey items for larval, juvenile, subadult, and adult life stages.

(ii) *Substrate type or size (i.e., structural features of substrates).* Substrates suitable for egg deposition and development (*e.g.*, bedrock sills and shelves, cobble and gravel, or hard clean sand, with interstices or irregular surfaces to ''collect'' eggs and provide protection from predators, and free of excessive silt and debris that could smother eggs during incubation), larval development (*e.g.*, substrates with interstices or voids providing refuge from predators and from high flow conditions), and subadults and adults (*e.g.*, substrates for holding and spawning).

(iii) *Water flow.* A flow regime (*i.e.*, the magnitude, frequency, duration, seasonality, and rate-of-change of fresh water discharge over time) necessary for normal behavior, growth, and survival of all life stages.

(iv) *Water quality.* Water quality, including temperature, salinity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages.

(v) *Migratory corridor.* A migratory pathway necessary for the safe and timely passage of Southern DPS fish within riverine habitats and between riverine and estuarine habitats (*e.g.,* an unobstructed river or dammed river that still allows for safe and timely passage).

(vi) *Depth.* Deep (≥5 m) holding pools for both upstream and downstream holding of adult or subadult fish, with adequate water quality and flow to maintain the physiological needs of the holding adult or subadult fish.

(vii) *Sediment quality.* Sediment quality (*i.e.*, chemical characteristics) necessary for normal behavior, growth, and viability of all life stages.

(2) *For estuarine habitats:*

(i) *Food resources.* Abundant prey items within estuarine habitats and substrates for juvenile, subadult, and adult life stages.

(ii) *Water flow.* Within bays and estuaries adjacent to the Sacramento River (*i.e.*, the Sacramento-San Joaquin Delta and the Suisun, San Pablo, and San Francisco bays), sufficient flow into the bay and estuary to allow adults to successfully orient to the incoming flow and migrate upstream to spawning grounds.

(iii) *Water quality.* Water quality, including temperature, salinity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages.

(iv) *Migratory corridor.* A migratory pathway necessary for the safe and timely passage of Southern DPS fish within estuarine habitats and between estuarine and riverine or marine habitats.

(v) *Depth.* A diversity of depths necessary for shelter, foraging, and migration of juvenile, subadult, and adult life stages.

(vi) *Sediment quality.* Sediment quality (*i.e.,* chemical characteristics) necessary for normal behavior, growth, and viability of all life stages.

(3) *For nearshore coastal marine areas:*

(i) *Migratory corridor.* A migratory pathway necessary for the safe and timely passage of Southern DPS fish within marine and between estuarine and marine habitats.

(ii) *Water quality.* Nearshore marine waters with adequate dissolved oxygen levels and acceptably low levels of contaminants (*e.g.,* pesticides, organochlorines, elevated levels of heavy metals) that may disrupt the normal behavior, growth, and viability of subadult and adult green sturgeon.

(iii) *Food resources.* Abundant prey items for subadults and adults, which may include benthic invertebrates and fishes.

(c) *Sites owned or controlled by the Department of Defense.* Critical habitat does not include the following areas owned or controlled by the Department of Defense, or designated for its use, in the States of California, Oregon, and Washington:

(1) Mare Island U.S. Army Reserve Center, San Pablo Bay, CA;

(2) Strait of Juan de Fuca naval air-to-surface weapon range, restricted area, WA;

(3) Strait of Juan de Fuca and Whidbey Island naval restricted area, WA;

(4) Admiralty Inlet naval restricted area, Strait of Juan de Fuca, WA; and

(5) Navy 3 operating area, Strait of Juan de Fuca, WA.

(d) *Indian lands.* Critical habitat does not include any Indian lands of the following Federally-recognized Tribes in the States of California, Oregon, and Washington:

(1) Cachil DeHe Band of Wintun Indians of the Colusa Indian Community, California;

(2) Cher-Ae Heights Trinidad Rancheria, California;

(3) Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw, Oregon;

(4) Coquille Indian Tribe, Oregon;

(5) Hoh Tribe, Washington;

(6) Jamestown S'Klallam Tribe, Washington;

(7) Lower Elwha Tribe, Washington;

(8) Makah Tribe, Washington;

(9) Quileute Tribe, Washington;

(10) Quinault Tribe, Washington;

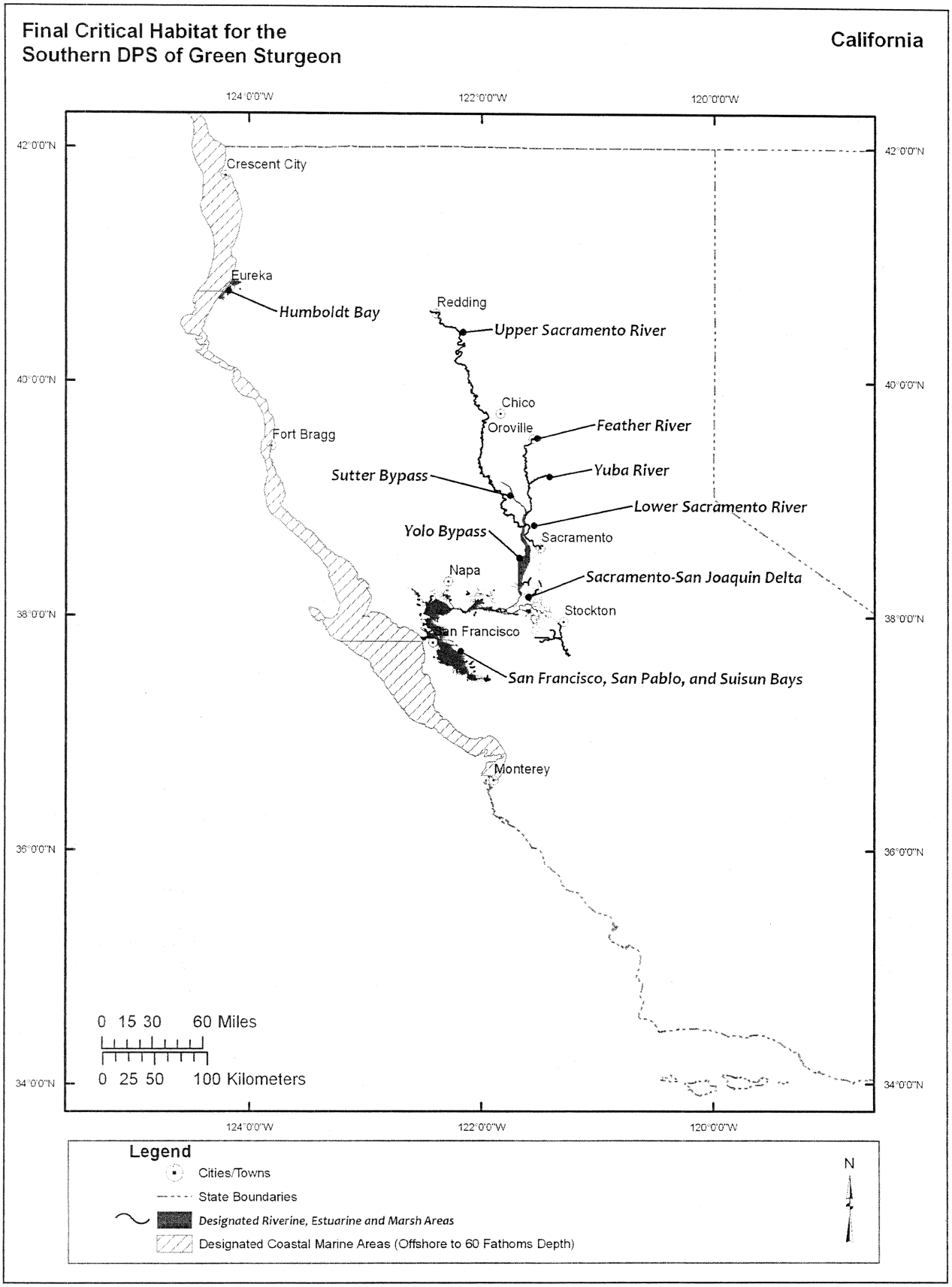
(11) Shoalwater Bay Tribe, Washington;

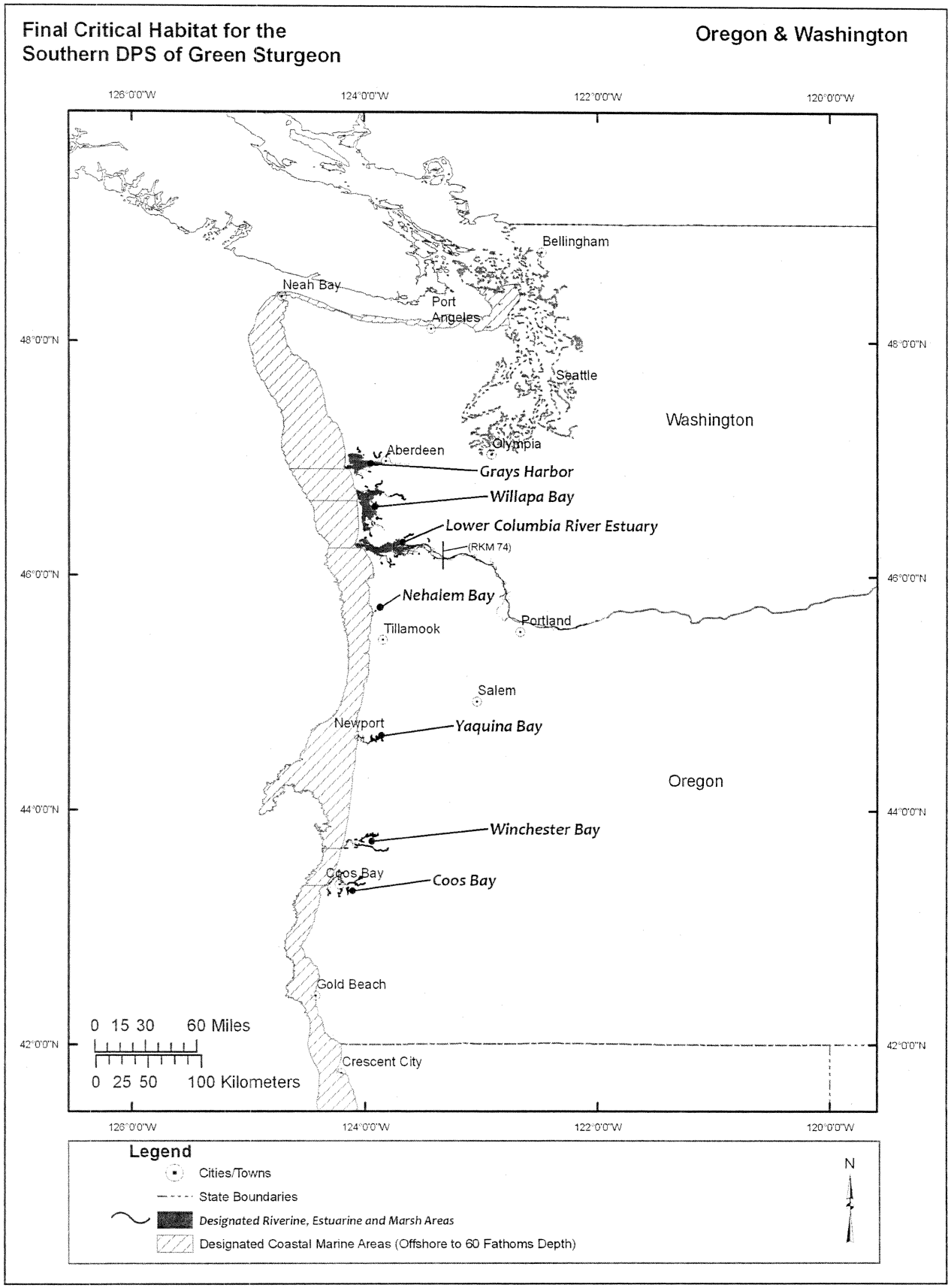
(12) Wiyot Tribe, California; and

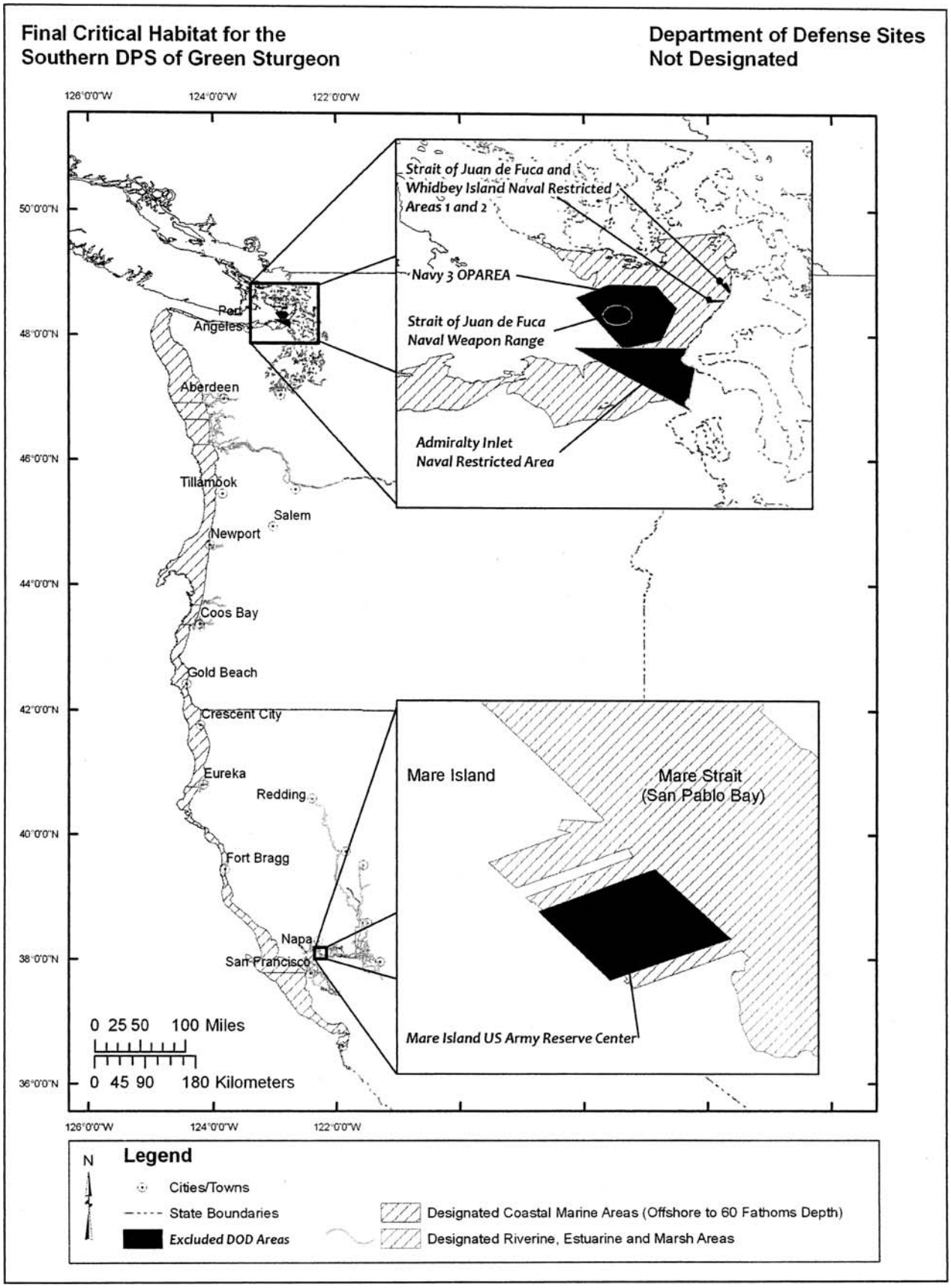
(13) Yurok Tribe, California.

(e) Overview maps of final critical habitat for the Southern DPS of green sturgeon follow:

BILLING CODE 3510–22–P


Final Critical Habitat for the
Southern DPS of Green Sturgeon
California
124°0'0"W
122°0'0"W
120°0'0"W
42°0'0"N
40°0'0"N
38°0'0"N
36°0'0"N
34°0'0"N
Crescent City
Eureka
Humboldt Bay
Redding
Upper Sacramento River
Chico
Oroville
Feather River
Fort Bragg
Yuba River
Sutter Bypass
Lower Sacramento River
Yolo Bypass
Sacramento
Napa
Sacramento-San Joaquin Delta
Stockton
San Francisco
San Francisco, San Pablo, and Suisun Bays
Monterey
0 15 30 60 Miles
0 25 50 100 Kilometers
Legend
Cities/Towns
State Boundaries
Designated Riverine, Estuarine and Marsh Areas
Designated Coastal Marine Areas (Offshore to 60 Fathoms Depth)
N


Final Critical Habitat for the
Southern DPS of Green Sturgeon
Oregon & Washington
126°0'0"W
124°0'0"W
122°0'0"W
120°0'0"W
48°0'0"N
46°0'0"N
44°0'0"N
42°0'0"N
Bellingham
Neah Bay
Port Angeles
Seattle
Washington
Aberdeen
Olympia
Grays Harbor
Willapa Bay
Lower Columbia River Estuary
(RKM 74)
Nehalem Bay
Portland
Tillamook
Salem
Newport
Yaquina Bay
Oregon
Winchester Bay
Coos Bay
Coos Bay
Gold Beach
Crescent City
0 15 30 60 Miles
0 25 50 100 Kilometers
Legend
Cities/Towns
State Boundaries
Designated Riverine, Estuarine and Marsh Areas
Designated Coastal Marine Areas (Offshore to 60 Fathoms Depth)
N



[FR Doc. E9–24067 Filed 10–8–09; 8:45 am]
BILLING CODE 3510–22–C

Federal Register

Friday,
October 9, 2009

Part III

Department of Housing and Urban Development

24 CFR Part 200
Prohibition of the Escrowing of Tax Credit Equity; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–5290–P–01]

RIN 2502–AI73

Prohibition of the Escrowing of Tax Credit Equity

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would conform HUD's Federal Housing Administration (FHA) multifamily mortgage insurance regulations to a provision in Title VIII of the Housing and Economic Recovery Act of 2008 that prohibits a requirement that tax credit sales proceeds be placed into escrow, at the time of initial endorsement, for assurance of project completion and to pay the initial service charge, carrying charges, and legal and organizational expenses incident to the construction of the project. This rule would not prohibit HUD from requiring escrows of funds for other purposes, such as for working capital. The rule would also make other changes intended to reduce burdens on the use of tax credits.

DATES: *Comments Due Date:* December 8, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. There are two methods for comments to be submitted as public comments and to be included in the public comment docket for this rule. Regardless of the method selected, all submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001.

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 commenters maximum time to prepare and submit comments, 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* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that Web site to submit comments electronically.

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

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free 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: Iris Agubuzo, Project Manager, Policy Division, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6158, Washington, DC 20410–8000, Telephone 202–402–2662 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The low-income housing tax credit is a tax incentive provided under section 42 of the Internal Revenue Code of 1986, 26 U.S.C. 42, to increase the availability of low-income housing. Section 42 provides a nonrefundable income tax credit to owners of qualified buildings. Qualified buildings are newly constructed or substantially rehabilitated buildings in which a percentage of the units are designated for low-income rental housing, or certain newly acquired, federally subsidized buildings. The owner of a qualified building may claim a credit against taxes for 10 years equivalent to the applicable credit percentage, dependent on the type of building, multiplied by the qualified basis of the building. The qualified basis is the applicable fraction of the eligible basis of the building. The fraction is calculated by one of two methods, either the floor space devoted to low-income units as a percentage of the total floor space of residential units, or the number of low-income units in the building as a percentage of the total number of units. To calculate the tax credit, the qualified basis is multiplied by a percentage that differs depending on the type of building, the year it was placed in service, and possibly other factors affecting the eligible basis, as stated in the statute. The owners of low-income housing buildings must apply to state and local agencies for the tax credits, which are actually granted only by state governments. The owners that receive tax credit allocations can then sell or syndicate the tax credits.

The New Markets Tax Credit is a tax credit provided under section 45D of the Internal Revenue Code of 1986, 26 U.S.C. 45D. This tax credit is for investments in a qualified community development entity that uses ''substantially all'' of the investment to make qualified low-income community investments, and designates the investment for the purposes of section 45D. The credit given is an applicable percentage of the investment at the date of initial issue, as determined under the statute.

The historic tax credit referenced in 24 CFR 200.54 is a credit against taxes for rehabilitation of historic structures authorized under section 47(a)(2) of the Internal Revenue Code of 1986, 26 U.S.C. 47(a)(2). The amount of the credit is 20 percent of the qualified rehabilitation expenditures for certified historic structures, or 10 percent for qualified rehabilitated buildings first placed in service before 1936, other than certified historic structures. The program is jointly administered by the U.S. Department of the Interior and the U.S. Department of the Treasury, and applies to rehabilitation of certified historic structures.

Section 2834(c) of HERA, Public Law 110–289 (approved July 30, 2008) adds a new section to the National Housing Act. This new section is codified at 12 U.S.C. 1715s, which is section 228 of the National Housing Act (this is a previously repealed section). This new section states, in relevant part:

> (b) Acceptance of Letters of Credit.—In the case of an insured mortgage covering a tax credit project, the Secretary may not require the escrowing of equity provided by the sale of any low-income housing tax credits for the project pursuant to section 42 of the Internal Revenue Code of 1986, or any other form of security, such as a letter of credit.

This provision changes the practice allowed by current HUD regulations and

policies, which is to require a substantial portion of the low-income housing tax credit equity under 26 U.S.C. 42 to be placed in escrow for potential future use over the life of the project at the time of initial endorsement. That requirement often means that mortgage borrowers, who have not realized their tax credit proceeds at this point, would have to obtain costly bridge loan financing. This requirement has had an inhibiting effect on the building of new low-income housing tax credit projects.

The new law prevents HUD from requiring the escrow of tax credit proceeds. HUD believes that, as a result, the need for bridge loans will be substantially reduced and hence make multifamily housing more available and affordable. The new law does not prohibit HUD from requiring the use of monies, which may derive from tax credit proceeds, for upfront expenses. Such an amount would vary depending on the underwriting requirements of the project.

HUD's regulation at 24 CFR 200.54 is designed to allow HUD to require a payment of funds sufficient to ensure project completion. That regulation states: ''The mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, carrying charges, and legal and organizational expenses incident to the construction of the project.'' (24 CFR 200.54 undesignated introductory paragraph.) The regulation also allows for a ''lesser cash deposit'' in cases where ''required funding is to be provided by a grant or loan from a Federal, State, or local government agency or instrumentality.'' However, because proceeds from tax credits are not explicitly mentioned, HUD's position has been that the allowance of a ''lesser cash deposit'' does not apply in cases where a portion of the funding will be realized from tax-credit proceeds. To be considered sufficient, HUD deemed it necessary to require the escrowing of all, or a substantial portion of, an amount equal to the tax credit proceeds expected to be realized. Thus, HUD has required a substantial cash deposit, often derived from a bridge loan, in such cases.

On July 22, 2008, HUD issued Mortgagee Letter 2008–19, entitled ''Streamlined Processing of Multifamily Mortgage Insurance Applications Involving Low-Income Housing Tax Credits.'' This mortgagee letter reduced the amount of tax-credit proceeds required for the cash escrow from 100 percent of such proceeds to a varying amount, but generally at least 20 percent of such proceeds, unless HUD authorizes a lower amount. This aspect of the mortgagee letter is now superseded by the new statutory provision, which precludes the ''escrowing of equity provided by the sale of *any* low-income housing tax credits [emphasis added].''

II. This 2009 Proposed Rule

This proposed rule would conform 24 CFR 200.54 to section 2834(c) of HERA, codified as 12 U.S.C. 1715s. The regulatory section would now specifically prohibit HUD from requiring the escrowing of equity from the sales of tax credits. This change is mandated directly by the statute, so HUD has no discretion in this regard.

In addition, the proposed rule would change the current treatment of historic and new market housing tax credits, which are not controlled by the statute. Hence, HUD has some discretion as to how these types of tax credits are considered in the underwriting of projects. Specifically, the escrow requirement would be eliminated when equity is provided from these types of tax credits. Finally, proceeds from New Market Tax Credits would be added to 24 CFR 200.54(b) as a type of funding that need not be fully disbursed prior to the disbursement of the mortgage proceeds, where approved by the Commissioner.

III. Findings and Certifications

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), this proposed rule was reviewed before publication, and the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of the rule with regard to small entities and there are no unusual procedures that need to be complied with by small entities. This rule will allow mortgagors to retain more of their tax credit proceeds and, in many cases, relieve them of the need to take out a costly bridge loan to pay the costs for assurance of completion. Therefore, this rule, in conformance with statutory mandate, removes a costly regulatory requirement and does not impose any substantial economic impact on small entities.

Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and that an initial regulatory flexibility analysis is not required.

Executive Order 13132, Federalism

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

Unfunded Mandates Reform Act

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

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program numbers for the programs related to this rulemaking are 14.112, 14.123, 14.126, 14.134,

14.135, 14.138, 14.139, 14.151, and 14.155.

For the foregoing reasons, HUD proposes to amend 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. Revise § 200.54 to read as follows:

§ 200.54 Project completion funding.

(a) Except as provided in paragraph (c) of this section, the mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, carrying charges, and legal and organizational expenses incident to the construction of the project. The Commissioner may accept a lesser cash deposit or an alternative to a cash deposit in accordance with terms and conditions established by the Commissioner, where the required funding is to be provided by a grant or loan from a federal, state, or local government agency or instrumentality.

(b) An agreement acceptable to the Commissioner shall require that funds provided by the mortgagor under requirements of this section must be disbursed in full for project work, material, and incidental charges and expenses before disbursement of any mortgage proceeds, except that low-income housing tax credit syndication proceeds, historic tax-credit syndication proceeds, New Markets Tax Credits proceeds, or funds provided by a grant or loan from a federal, state, or local governmental agency or instrumentality under requirements of this section need not be fully disbursed before the disbursement of mortgage proceeds, where approved by

(c) In the case of a mortgage insured under any provision of this title executed in connection with the purchase, construction, rehabilitation, or refinancing of a multifamily tax credit project, the Commissioner may not require:

(1) The escrowing of equity provided by Low-Income Housing Tax Credits for the project pursuant to Title 26, section 42 of the Internal Revenue Code of 1986;

(2) The escrowing of equity provided by historic rehabilitation tax credits, New Markets Tax Credits, or any other form of security, such as a letter of credit.

Dated: *September 4, 2009.*

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E9–24338 Filed 10–8–09; 8:45 am]

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Federal Register

Friday,
October 9, 2009

Part IV

Securities and Exchange Commission

17 CFR Parts 229, 230, 239 et al.

References to Ratings of Nationally Recognized Statistical Rating Organizations; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 242, 249 and 270

[Release Nos. 34–60789, IC–28939; File Nos. S7–17–08, S7–19–08]

RIN 3235–AK17, 3235–AK19

References to Ratings of Nationally Recognized Statistical Rating Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to certain of its rules and forms to remove references to securities credit ratings. The Commission is eliminating certain references to credit ratings issued by nationally recognized statistical rating organizations (''NRSROs'') in rules and forms under the Securities Exchange Act of 1934 related to the regulation of self-regulatory organizations and alternative trading systems, and in rules under the Investment Company Act of 1940 that affect an investment company's ability to purchase refunded securities and securities in underwritings in which an affiliate is participating. The Commission believes that the references to credit ratings in these rules and forms are no longer warranted as serving their intended purposes. The amendments are designed to address concerns that references to NRSRO ratings in Commission rules may have contributed to an undue reliance on those ratings by market participants. In a companion release, the Commission is re-opening the comment period for certain other proposed rule and form amendments that would eliminate additional references to NRSRO ratings.

DATES: *Effective Date:* November 12, 2009.

FOR FURTHER INFORMATION CONTACT: For the rule and form amendments under the Securities Exchange Act of 1934, Michael Gaw, Assistant Director, at (202) 551–5602, Brian Trackman, Special Counsel, at (202) 551–5616, and Sarah Albertson, Special Counsel, at (202) 551–5647, in the Division of Trading and Markets; for rules under the Investment Company Act of 1940, Penelope W. Saltzman, Assistant Director, and Daniel K. Chang, Attorney, at (202) 551–6792, in the Division of Investment Management, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rule 3a1–1[1] under the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] Rules 300, 301(b)(5) and 301(b)(6) of Regulation ATS,[3] Form ATS–R[4] and Form PILOT.[5] The Commission also is adopting amendments to Rules 5b–3[6] and 10f–3[7] under the Investment Company Act of 1940 (''Investment Company Act'').[8]

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I. Introduction

Last year the Commission issued rulemaking initiatives in furtherance of the Credit Rating Agency Reform Act of 2006.[9] The Commission also proposed to eliminate from certain Commission rules and forms references to credit ratings.[10] The Commission proposed to amend these rules and forms to address concerns that the inclusion of requirements relating to credit ratings could create the appearance that the Commission had, in effect, given its ''official seal of approval'' on ratings, which could adversely affect the quality of due diligence and investment analysis and lead to undue reliance on NRSRO ratings.[11]

Today the Commission is adopting several of the amendments that we proposed last year to rules and forms under the Exchange Act and rules under the Investment Company Act.[12] The Commission believes that the references to credit ratings in these rules are no longer warranted as serving their intended purposes. These amendments would reduce reliance on credit ratings in our rules under the Exchange Act and the Investment Company Act, consistent with the protection of investors.

II. Discussion

A. Amendments to Rules Under the Exchange Act

The Commission today is revising Rule 3a1–1 under the Exchange Act;[13] Rules 300, 301(b)(5) and 301(b)(6) of Regulation ATS;[14] Form ATS–R;[15] and Form PILOT[16] to remove references to NRSRO ratings. Each of these rules and forms was adopted in 1998 as part of the Commission's new framework for the regulation of exchanges and alternative

[1] 17 CFR 240.3a1–1.

[2] 15 U.S.C. 78a. Unless otherwise noted, all references to rules under the Exchange Act will be to Title 17, Part 240 or Part 242 of the Code of Federal Regulations [17 CFR 240 or 17 CFR 242].

[3] 17 CFR 242.300, 242.301(b)(5), and 242.301(b)(6).

[4] 17 CFR 249.638.

[5] 17 CFR 249.821.

[6] 17 CFR 270.5b–3.

[7] 17 CFR 270.10f–3.

[8] 15 U.S.C. 80a. Unless otherwise noted, all references to rules under the Investment Company Act will be to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270].

[9] Public Law 109–291, 120 Stat. 1327 (2006). *See, e.g.,* Proposed Rules for Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 57967 (June 16, 2008) [73 FR 36212 (June 25, 2008)].

[10] *See* References to Ratings of Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 58070 (July 1, 2008) [73 FR 40088 (July 11, 2008 (''Exchange Act Proposing Release'')] (proposing amendments to rules and forms under the Exchange Act); References to Ratings of Nationally Recognized Statistical Rating Organizations, Investment Company Act Release No. 28327 (July 1, 2008) [73 FR 40124 (July 11, 2008)] (''Investment Company Act Proposing Release'') (proposing amendments to rules under the Investment Company Act and Investment Advisers Act of 1940 (''Investment Advisers Act'')). *See also* Security Ratings, Securities Act Release No. 8940 (July 1, 2008) [73 FR 40106 (July 11, 2008)] (proposing amendments to rules and forms under the Securities Act of 1933 (''Securities Act'') and the Exchange Act).

[11] *See* Exchange Act Proposing Release, *supra* note 10, at Section I; Investment Company Act Proposing Release, *supra* note 10, at Section I. We note that the Department of the Treasury similarly has expressed concern that investors were overly reliant on credit rating agencies, and that credit ratings often failed to accurately describe the risk of rated products. The Department of the Treasury recommended that regulators reduce the use of credit ratings in regulations and supervisory practices wherever possible. *See* U.S. Department of the Treasury, Financial Regulatory Reform—A New Foundation: Rebuilding Financial Supervision and Regulation 6, 46 (July 2009).

[12] The Commission is deferring consideration of action and reopening the comment period on other proposed amendments to remove NRSRO ratings references to rules under the Securities Act, Exchange Act, Investment Company Act, and Investment Advisers Act. *See* References to Ratings of Nationally Recognized Statistical Rating Organizations, Securities Act Release No. 9069, Exchange Act Release No. 60790, Investment Advisers Act Release No. 2932, Investment Company Act Release No. 28940 (Oct 5, 2009) (''NRSRO Comment Re-Opening Release'').

[13] 17 CFR 240.3a1–1.

[14] 17 CFR 242.300, 242.301(b)(5), and 242.301(b)(6).

[15] 17 CFR 249.638.

[16] 17 CFR 249.821.

trading systems (''ATSs'').[17] That framework provides the operator of a securities market the choice whether to register as a national securities exchange or to register as a broker-dealer and comply with the requirements of Regulation ATS.

1. Rule 3a1–1

The amendments to Rule 3a1–1 are being adopted as proposed. Rule 3a1–1(a) provides an exemption from the Exchange Act definition of ''exchange''—and thus the requirement to register as an exchange—for a trading system that, among other things, is in compliance with Regulation ATS.[18] Rule 3a1–1(b) contains an exception to the exemption from the exchange definition. Under this exception, the Commission may require a trading system that is a ''substantial market'' to register as a national securities exchange if it finds that such action is necessary or appropriate in the public interest or consistent with the protection of investors.[19] Thus, pursuant to Rule 3a1–1, the Commission may require a ''dominant'' ATS to register as an exchange.[20]

Prior to the amendments being adopted today, Rule 3a1–1 set forth eight classes of securities in any one of which an ATS might achieve ''dominant'' status: (1) Equity securities; (2) listed options; (3) unlisted options; (4) municipal securities; (5) investment grade corporate debt securities; (6) non-investment grade corporate debt securities; (7) foreign corporate debt securities; and (8) foreign sovereign debt securities.[21] Under the definitions that were provided in Rule 3a1–1, investment grade and non-investment grade corporate debt securities have three elements in common. They are securities that: (1) Evidence a liability of the issuer of such security; (2) have a fixed maturity date that is at least one year following the date of issuance; and (3) are not exempted securities, as defined in Section 3(a)(12) of the Exchange Act.[22] The distinguishing characteristic of an investment grade corporate debt security was that it has been rated in one of the four highest categories by at least one NRSRO.[23] A non-investment grade corporate debt security under our rules was a corporate debt security that has not received such a rating.[24]

The Commission is revising Rule 3a1–1 by replacing paragraphs (b)(3)(v) and (b)(3)(vi), which define investment grade corporate debt securities and non-investment grade corporate debt securities, respectively, with a single category ''corporate debt securities'' in paragraph (b)(3)(v).[25] This new definition retains verbatim the three elements common to the existing definitions of investment grade and non-investment grade debt securities. The 5% and 40% thresholds beyond which the Commission could require an ATS to register as an exchange also remain unchanged.[26] Under amended Rule 3a1–1, the Commission can, for example, determine that an ATS must register as an exchange if the system had—during three of the preceding four calendar quarters—50% or more of the average daily dollar trading volume in any security and 5% or more of the average daily dollar trading volume in corporate debt securities, or 40% of the average daily dollar trading volume in corporate debt securities.[27]

2. Rules 300, 301(b)(5) and 301(b)(6) of Regulation ATS

As proposed, the Commission is making similar changes to Rules 300, 301(b)(5) and 301(b)(6) of Regulation ATS. Rule 300 sets forth definitions used in Regulation ATS, including of ''investment grade corporate debt security'' and ''non-investment grade corporate debt security.''[28]

Rule 301(b)(5) of Regulation ATS imposes a ''fair access'' requirement, whereby an ATS that exceeds certain volume thresholds in any class of securities must establish written standards for granting access to trading on its system and not unreasonably prohibit or limit any person in respect to access to the services it offers.[29] Prior to today's amendments, the fair access standard applied if an ATS had 5% or more of the average daily volume during at least four of the preceding six calendar months in any of the following: (1) Any individual National Market System stock (''NMS stock'');[30] (2) any individual equity security that is not an NMS stock and for which transactions are reported to a self-regulatory organization (''SRO''); (3) municipal securities; (4) investment grade corporate debt securities; or (5) non-investment grade corporate debt securities.

Rule 301(b)(6) of Regulation ATS[31] requires an ATS that exceeds certain volume thresholds in any class of securities to comply with standards regarding the capacity, integrity and security of its automated systems. Five classes of securities were identified in Rule 301(b)(6): (1) NMS stocks; (2) equity securities that are not NMS stocks and for which transactions are reported to a SRO; (3) municipal securities; (4) investment grade corporate debt securities; and (5) non-investment grade corporate debt securities.[32]

The Commission is amending Rules 300, 301(b)(5) and 301(b)(6) as proposed to establish a single class of ''corporate debt securities'' and to eliminate the existing separate classes of investment grade and non-investment grade corporate debt securities. Accordingly, paragraphs (i) and (j) of Rule 300 are replaced with a new paragraph (i) defining ''corporate debt security'' to mean any security that: (1) Evidences a liability of the issuer of such security; (2) has a fixed maturity date that is at least one year following the date of issuance; and (3) is not an exempted security, as defined in Section 3(a)(12)

[17] *See* Exchange Act Release No. 40760 (Dec. 8, 1998) [63 FR 70844 (Dec. 22, 1998)] (''Regulation ATS Adopting Release'').

[18] *See* 17 CFR 240.3a1–1(a)(2).

[19] *See* 17 CFR 240.3a1–1(b); Regulation ATS Adopting Release, 63 FR at 70857.

[20] Specifically, the Commission may—after notice to an ATS and an opportunity for it to respond—require the ATS to register as an exchange if, during three of the preceding four calendar quarters, the ATS had: (1) 50% or more of the average daily dollar trading volume in any security and 5% or more of the average daily dollar trading volume in any class of securities; or (2) 40% or more of the average daily dollar volume in any class of securities. *See* 17 CFR 240.3a1–1(b)(1).

[21] *See* 17 CFR 240.3a1–1(b)(3).

[22] *Compare* 17 CFR 240.3a1–1(b)(3)(v) *with* 17 CFR 240.3a1–1(b)(3)(vi).

[23] *See* 17 CFR 240.3a1–1(b)(3)(v).

[24] *See* 17 CFR 240.3a1–1(b)(3)(vi).

[25] Existing paragraphs (b)(3)(vii) and (b)(3)(viii) are unchanged but redesignated as paragraphs (b)(3)(vi) and (b)(3)(vii), respectively.

[26] *See supra* note 19. While the percentage thresholds remain unchanged, the dollar volume needed to reach these thresholds has increased. For example, under Rule 3a1–1 as it existed prior to today's action, an ATS that had 40% of the average daily dollar trading volume in non-investment grade corporate debt securities and 0% of the average daily dollar trading volume in investment grade corporate debt securities for three consecutive months could have been required by the Commission to register as an exchange. Under the amended Rule 3a1–1, the Commission will not be able to require the ATS to register as an exchange because the ATS's combined average daily dollar trading volume in corporate debt securities would be less than 40%.

[27] The other six classes of securities—equity securities, listed options, unlisted options, municipal securities, foreign corporate debt securities, and foreign sovereign debt securities—remain unchanged. Therefore, as under Rule 3a1–1 prior to today's amendments, the Commission may also determine that an ATS must register as an exchange if the system exceeds the volume thresholds in any of these other classes of securities.

[28] *See* 17 CFR 242.300(i) and (j).

[29] *See* 17 CFR 242.301(b)(5).

[30] *See* 17 CFR 240.600(a)(47) (defining ''NMS stock'').

[31] 17 CFR 242.301(b)(6).

[32] 17 CFR 242.301(b)(6)(i).

of the Exchange Act.[33] Former paragraphs (i)(D) and (i)(E) of Rule 301(b)(5) are replaced with a new paragraph (i)(D) providing that an ATS must comply with the access requirements set out in Rule 301(b)(5) if, with respect to corporate debt securities, such system accounts for 5% or more of the average daily volume traded in the United States for the requisite number of months. The 5% threshold at which an ATS would have to grant fair access to its system also remains unchanged.[34] Former paragraphs (i)(D) and (i)(E) of Rule 301(b)(6) are replaced with a new paragraph (i)(D) providing that an ATS must comply with the capacity, integrity and security requirements of Rule 301(b)(6) if, with respect to corporate debt securities, such system accounts for 20% or more of the average daily volume traded in the United States for the requisite number of months. The 20% threshold and the other three classes of securities remain unchanged. As with the changes to Rule 3a1–1, the other classes of securities referenced in these rules remain unchanged.

3. Form ATS–R and Form PILOT

The Commission is making corresponding amendments as proposed to Form ATS–R and Form PILOT. Form ATS–R is used by ATSs to report certain information about their activities to the Commission on a quarterly basis.[35] Form ATS–R requires each ATS to report the total unit volume and total dollar volume in the previous quarter for various categories of securities, including—prior to today's amendments—investment grade and non-investment grade corporate debt securities. Consistent with the amendments to Regulation ATS described above, we are revising Form ATS–R to eliminate the separate categories for investment grade and non-investment grade corporate debt securities, and instead creating a single category for ''corporate debt securities.''

As with the changes to Regulation ATS, ''corporate debt securities'' is defined in the instructions to Form ATS–R to mean any security that: (1) Evidences a liability of the issuer of such security; (2) has a fixed maturity date that is at least one year following the date of issuance; and (3) is not an exempted security, as defined in Section 3(a)(12) of the Exchange Act. Because separate classes for investment grade and non-investment grade corporate debt securities are eliminated for purposes of the thresholds in Rule 3a1–1 and Rules 301(b)(5) and 301(b)(6) of Regulation ATS, no purpose is served by requiring ATSs to separately report their trading volumes for investment grade and non-investment grade debt securities on Form ATS–R. The figures for the separate classes will be added together and reported as a single item on the amended form. The Commission is not making any other changes to Form ATS–R.

Ordinarily, Section 19 of the Exchange Act[36] and Rule 19–4 thereunder[37] require a SRO to file with the Commission proposed rule changes on Form 19b–4 regarding any changes to any material aspect of its operations, including any trading system. Rule 19b–5 under the Exchange Act[38] sets forth a limited exception to that requirement by permitting an SRO to operate a pilot trading system without filing proposed rule changes with respect to that system if certain criteria are met. One of those criteria is that the SRO files a Form PILOT in accordance with the instructions on that form. Like Form ATS–R, Form PILOT—prior to today's amendments—required quarterly reporting of trading activity by classes of securities, including investment grade and non-investment grade corporate debt securities. For the same reasons we are amending Rule 3a1–1 and Regulation ATS, we are also revising Form PILOT to eliminate these two categories, replacing them with a single category of ''corporate debt securities.'' Corporate debt securities are defined identically in Form PILOT and Form ATS–R. The Commission believes that it is appropriate to obtain trading volumes from pilot trading systems for the combined class of corporate debt securities, and that separate reporting of the two classes is not necessary to adequately monitor the development of pilot trading systems. The Commission notes that, in over nine years since Rule 19b–5 and Form PILOT were adopted, no SRO has ever established a pilot trading system pursuant to Rule 19b–5 to trade corporate debt securities.

4. Discussion

In the Exchange Act Proposing Release, the Commission sought comment on proposed changes to certain Exchange Act rules and forms, including the changes to Rule 3a1–1, Regulation ATS, Form ATS–R and Form PILOT that the Commission is adopting today. With respect to Rule 3a1–1 under the Exchange Act and Rules 300, 301(b)(5) and 301(b)(6) of Regulation ATS, the Commission sought comment on whether, in light of the proposed combination of investment grade and non-investment grade corporate debt securities into a single class, it should adopt lower thresholds at which an ATS that trades corporate debt securities should be required to register as an exchange. The Commission also solicited comment on whether the proposed amendments to Rule 3a1–1, Regulation ATS, Form ATS–R and Form PILOT would significantly affect investors, market participants, the national market system or the public interest.

The Commission received many comments broadly arguing that the elimination of references to NRSRO ratings would not reduce undue reliance on the NRSROs and could have a potentially destabilizing effect, but these comments focused on NRSRO references in rules where the NRSRO credit rating was relied upon to determine the credit risk or liquidity of a particular security in order to achieve the rules' regulatory purpose.[39] For

[33] 15 U.S.C. 78c(a)(12).

[34] When the Commission originally adopted Regulation ATS, it set the fair access threshold at 20%. It later lowered the threshold to 5% in connection with the adoption of Regulation NMS. *See* Exchange Act Release No. 51808 (June 9, 2005) [70 FR 37496, 37550 (June 29, 2005)].

[35] Each ATS must file a Form ATS–R within 30 days of the end of each calendar quarter, and within ten days of a cessation of operations. *See* 17 CFR 242.301(b)(9).

[36] 15 U.S.C. 78s.

[37] 17 CFR 240.19b–4.

[38] 17 CFR 240.19b–5.

[39] The comment letters are available for public 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. (File No. S7–17–08), and also are available on the Commission's Internet Web site (*http://www.sec.gov/comments/s7-17-08/s71708.shtml*). The Commission received 20 comments in response to the Exchange Act Proposing Release. Many of the comments commended the Commission's efforts to reform the credit rating process, but opposed the proposals outlined in the proposed rulemakings. *See, e.g.,* Comment Letter of Charles Schwab (Sept. 5, 2008) (labeling the Commission's proposed amendments to remove NRSRO rating from its rules as premature and ultimately destabilizing) (''Schwab Comment Letter''); Comment Letter of the Securities Industry and Financial Markets Ass'n. (Sept. 4, 2008) (''SIFMA Comment Letter'') (noting that SIFMA has not found that the possibility of undue reliance on credit ratings supports the deletion of references to, and the use of, credit ratings in regulations while stating that the appropriate degree of use of credit ratings by market participants is less of a regulatory issue and more one of best practices within the marketplace). One commenter also encouraged the Commission to analyze the potential consequences of removing particular references to ratings, as opposed to a wholesale abandonment of NRSRO-ratings based criteria. *See* Comment Letter of Moody's Investor Services (Sept. 5, 2008). Another commenter encouraged the Commission to withdraw the proposals from active consideration until the Commission has coordinated with other regulatory agencies to prevent the proposals from conflicting with existing or proposed regulation of other financial services industries. *See* Comment Letter of Mortgage Bankers Ass'n. (Sept. 5, 2008). In addition, the majority of commenters specifically opposed the other proposed amendments in the Exchange Act Proposing Release. The Commission

example, one commenter suggested that credit ratings are a necessary part of an effective risk measurement, along with each participant's independent analysis of credit risk, and questioned the availability and quality of substitutes for such ratings.[40]

In contrast, the amendments to Regulation ATS and the related Exchange Act rules discussed herein simply use NRSRO ratings to categorize trading activity into market segments for purposes of these rules' reporting and other requirements. The two commenters who expressly addressed the specific changes that the Commission is adopting in this release raised no objection to the elimination of references to NRSRO ratings in Rule 3a1–1, Regulation ATS, Form ATS–R and Form PILOT.[41] One commenter, an NRSRO, was generally supportive of these proposed changes, stating that the current distinction between investment grade and non-investment grade corporate debt securities in these rules and forms was ''superfluous and can be eliminated without any untoward consequences for investors.'' [42] The other commenter was also generally supportive of the proposals, and advocated various additional rule changes that, in its view, would enhance transparency for investors in fixed income securities.[43]

Consistent with the reasons set forth in the Exchange Act Proposing Release and based on the Commission's experience since the adoption of Regulation ATS in 1998, the Commission believes that distinguishing investment grade corporate debt securities and non-investment grade corporate debt securities as separate classes of securities under Rule 3a1–1, Regulation ATS, Form ATS–R and Form PILOT is no longer necessary. In each case, as discussed, we believe that combining all corporate debt securities into a single class is appropriate. Consolidated reporting is adequate for Commission purposes and removal of NRSRO references in these rules may help marginally reduce any undue reliance on credit ratings.

With regard to Rule 3a1–1, the Commission believes that exceeding a volume threshold for a combined class of all corporate debt securities is a sufficient indication of significant trading activity that could warrant requiring an ATS to register as an exchange, and that it is not necessary to assess trading volumes in the narrower segments of investment grade and non-investment grade corporate debt securities. While the amendment to Rule 3a1–1 adopted today increases the dollar volume of trading in corporate debt securities that an ATS must execute before it is required to register as an exchange, which could potentially reduce the likelihood that an ATS would be required to register as an exchange,[44] we believe that this change is nevertheless appropriate. As noted above, the Commission believes that these NRSRO references are no longer necessary and thus there is no need to analyze ''dominance'' in separate classes of investment grade and non-investment grade corporate debt securities. We specifically asked in the Exchange Act Proposing Release whether the Commission should lower the threshold in Rule 3a1–1 for the combined class of corporate debt securities. The Commission received no comments in response to this question and no suggestion for an alternate threshold. Following the amendment adopted today, we will continue to analyze for dominance in six other classes of securities (in addition to the new single class for corporate debt securities).[45]

For the same reasons we are amending Rule 3a1–1, we believe that amending Rules 300, 301(b)(5) and 301(b)(6) of Regulation ATS is appropriate because these NRSRO references are no longer necessary to serve their regulatory purpose and such removal may help reduce any undue reliance on credit ratings. The Commission believes that a volume threshold for a combined class of all corporate debt securities is sufficient for the fair access requirement and the capacity, integrity and security requirements. The Commission believes that the purposes of Regulation ATS will be fulfilled if investment grade and non-investment grade corporate debt securities are combined into a single class. ATSs will continue to be subject to the existing fair access requirement and capacity, integrity and security requirements with respect to the other existing classes of securities set forth in Rules 301(b)(5) and 301(b)(6) of Regulation ATS.

For the reasons described above, the Commission believes that the changes to Rule 3a1–1, Regulation ATS, Form ATS–R and Form PILOT that we are adopting today to remove references to NRSRO ratings are necessary and appropriate in the public interest and consistent with the protection of investors. While the removal of the distinction between investment grade and non-investment grade corporate debt in the context of ATS reporting may marginally reduce the information immediately available to the Commission regarding corporate debt traded, the Commission believes that these specific references are not necessary.[46] Eliminating these references may help marginally reduce undue reliance on credit ratings and the removal of these requirements relating to credit ratings could marginally reduce compliance costs for ATSs. Moreover, as discussed above, the Commission does not believe that the broad concerns raised by many commenters regarding the risks inherent in removing NRSRO ratings and replacing them with a substitute in response to the Exchange Act Proposing Release are applicable to the specific changes being adopted in today's amendments. Finally, the Commission notes that the two commenters who specifically commented on these changes supported them.

B. Amendments to Rules Under the Investment Company Act

Four of the Commission's rules under the Investment Company Act (Rules 2a–7, 3a–7, 5b–3 and 10f–3) and one rule under the Investment Advisers Act of 1940 [47] (''Investment Advisers Act'') (Rule 206(3)–3T) reference credit ratings by NRSROs. These rules use the credit ratings issued by NRSROs in different

is deferring action and seeking additional comments on those other proposed amendments. *See* NRSRO Comment Re-Opening Release, *supra* note 12.

[40] *See* Schwab Comment Letter (specifically commenting on Rule 15c3–1 under the Exchange Act (the ''Net Capital Rule''), Rule 2a–7 under the Investment Company Act and Rule 206(3)–3T under the Investment Advisers Act).

[41] *See* Comment Letter of DBRS (Sept. 8, 2008) (''DBRS Comment Letter''); Comment Letter of Multiple-Markets (Sept. 5, 2008) (''Multiple-Markets Comment Letter'').

[42] *See* DBRS Comment Letter.

[43] *See* Multiple-Markets Comment Letter. The commenter also suggested reducing the volume threshold in Rule 3a1–1 for the determination of a ''substantial market'' and distinguishing market centers based on client and product types, and a corresponding reduction of the threshold in Rule 301(b)(6) for determining the applicability of capacity, integrity, and security requirements. The commenter also advocated that the Commission undertake a review of electronic trading platforms to evaluate fair access under Rule 301(b)(5). In addition, the commenter encouraged the Commission to make public the data filed on both Forms ATS and ATS–R. Although these comments go beyond the scope of the initial proposal, the Commission will consider them in connection with any future proposals in this area.

[44] *See supra* note 25.

[45] In over ten years since adopting Rule 3a1–1, the Commission has never determined to require an ATS to register as an exchange because it has become ''dominant.''

[46] The Commission retains the authority to request more specific information regarding the securities traded by ATSs. *See* 17 CFR 242.302–303.

[47] 15 U.S.C. 80b.

contexts, and for different purposes, to distinguish among various grades of debt and other rated securities.

In July 2008, we proposed to amend each rule to omit references to NRSRO ratings and, except with respect to one of the rules, substitute alternative provisions that were designed to achieve the same purpose as the ratings.[48] We received 66 comments on the proposal.[49] Six commenters generally advocated eliminating references to NRSRO ratings in Commission rules.[50] However, most commenters opposed the amendments. Many of those commenters supported the Commission's reevaluation of the use of NRSRO ratings in its rules, but suggested that the Commission continue its evaluation pending implementation of the additional requirements for NRSROs that we recently adopted under the Credit Rating Agency Reform Act.[51] Most commenters also addressed specific proposed rule amendments, which we discuss in more detail below.

Today we are amending Rules 5b–3 and 10f–3 under the Investment Company Act.[52] As discussed further below, we believe that these amendments eliminate unnecessary references to credit ratings. The amendments may marginally reduce any undue reliance on credit ratings and may advance the goal of promoting better analysis of underlying investment decisions. In addition, because the references are no longer necessary and an adequate substitute exists for the reference in Rule 10f–3, reliance on credit ratings in these contexts is no longer justified. We believe the amendments to Rule 5b–3 are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act.[53] We also believe that the amendments to Rule 10f–3 are consistent with the protection of investors.[54]

1. Refunded Securities (Rule 5b–3)

Under Rule 5b–3, a ''refunded security'' is a debt security whose principal and interest payments are to be paid by U.S. government securities that have been irrevocably placed in an escrow account and are pledged only to the payment of the debt security.[55] Section 5(b)(1) of the Investment Company Act limits the amount that a fund that holds itself out as being ''diversified'' may invest in the securities of any one issuer (other than the U.S. Government). Rule 5b–3 permits a fund that acquires a refunded security to treat it as an acquisition of the escrowed government securities for purposes of the diversification requirements of Section 5(b)(1) of the Act, if certain conditions are met.[56]

One of the conditions of Rule 5b–3 is that an independent certified public accountant (''independent accountant'') must have certified to the escrow agent that the escrowed securities will satisfy all scheduled payments of principal, interest, and applicable premiums on the refunded securities.[57] The rule requires the certification by an independent accountant (together with the other conditions) to ensure that the bankruptcy of the issuer of the pre-refunded securities would not affect payments on the securities from the escrow account.[58] This condition is not required, however, if the refunded

[48] *See* Investment Company Act Proposing Release, *supra* note 10, at Section III.

[49] The comment letters are available for public 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. (File No. S7–19–08), and also are available on the Commission's Internet Web site (*http://www.sec.gov/comments/s7-19-08/s71908.shtml*).

[50] Comment Letter of Professor Frank Partnoy (received Sept. 5, 2008) (''I am submitting comments to applaud the Commission's proposed rules, to indicate that there is strong academic support for its proposal * * *.'') (''Partnoy Comment Letter''); Comment Letter of Lawrence J. White, Professor of Economics, Stern School of Business (Sept. 5, 2008) (''White Comment Letter'') (''I endorse [the] general spirit of the SEC's proposed rules and urge the SEC to go even further and to eliminate the NRSRO category entirely.''); Comment Letter of the Government Finance Officers Ass'n. (Sept. 5, 2008) (''GFOA Comment Letter'') (''We also generally support the Commission's proposals to deemphasize the reliance on ratings throughout its Rules.''); Comment Letter of The Reserve (Sept. 5, 2008) (advocating removal of the designation of any entities as NRSROs); Comment Letter of Financial Economists Roundtable (Dec. 1, 2008) (''FER Comment Letter'') (''strongly endors[ing] eliminating from SEC regulations every prescriptive mandate that is or would be based solely on credit ratings set by NRSROs'' but acknowledging a division of opinion with regard to assessing the net benefits of ''quasi-safe-harbors (offered mainly to officers and directors of money market mutual funds) based on credit ratings''); Comment Letter of CFA Institute (Mar. 26, 2009) (''CFA Institute Comment Letter'') (''agree[ing] with the objectives * * * to eliminate, modify or substitute references to ratings assigned by an NRSRO in an effort to reduce reliance on ratings that may have inadvertently conveyed an 'official seal of approval' '' but questioning the breadth of certain proposed changes and urging retention of current regulation for certain rules).

[51] *See, e.g.,* Comment Letter of the Investment Company Institute (''ICI Comment Letter'') (Sept. 5, 2008); Comment Letter of the American Securitization Forum (Sept. 5, 2008) (''ASF Comment Letter''); Comment Letter of the Vanguard Group (Aug. 1, 2008) (''Vanguard Comment Letter''). We proposed and adopted rules under the Credit Rating Agency Reform Act in 2007. *See* Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 55231 (Feb. 2, 2007) [72 FR 6378 (Feb. 9, 2007)] (proposing release); Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 55857 (June 5, 2007) [72 FR 33564 (June 18, 2007)] (adopting release). We also have, among other things, adopted amendments to those rules this year to impose additional requirements on NRSROs to address concerns about the integrity of their rating procedures and methodologies. *See, e.g.,* Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 59342 (Feb. 2, 2009) [74 FR 6456 (Feb. 9, 2009)]. We believe, however, that the amendments eliminating the references to NRSRO ratings in certain rules would address our separate concerns discussed above. *See supra* text accompanying note 11.

[52] As discussed below and in a companion release, we are adopting amendments to Rule 5b–3 with respect to investments in refunded securities, and are deferring consideration of action on and requesting further comment on, amendments to Rule 5b–3 with respect to investments in repurchase agreements. *See* NRSRO Comment Re-Opening Release, *supra* note 12. We are also requesting further comment on the proposed amendments to Rule 3a–7 under the Investment Company Act and Rule 206(3)–3T under the Investment Advisers Act. *See id.* In June 2009, as part of our proposal on money market fund reform, we requested further comment on whether we should eliminate the use of NRSRO ratings in Rule 2a–7. *See* Money Market Fund Reform, Investment Company Act Release No. 28807 at Section II.A.a (June 30, 2009) [74 FR 32688 (July 8, 2009)] (''Money Market Fund Proposing Release''). We also sought comment on what other alternatives we could adopt to encourage more independent credit risk analysis and meet the regulatory objectives of the requirement in Rule 2a–7 regarding NRSRO ratings. We asked whether we should consider a roadmap for phasing in the eventual removal of NRSRO references from the rule. We specifically noted that we were considering an approach under which a money market fund's board would designate three (or more) NRSROs that the fund would look to for all purposes under Rule 2a–7 in monitoring whether a security held by a fund continues to be an ''eligible security'' for purposes of the rule. We are not pursuing this approach with regard to the rules we are amending today because Rules 5b–3 and 10f–3 require that certain standards be met when the fund acquires those securities, and do not require subsequent monitoring of credit ratings by various NRSROs. *See* Rule 5b–3(c)(iv); Rule 10f–3(a)(3).

[53] *See* Section 6(c) of the Investment Company Act.

[54] *See* Section 10(f) of the Investment Company Act.

[55] Rule 5b–3(c)(4).

[56] Rule 5b–3(b). Similarly under Rule 2a–7, a money market fund may treat the acquisition of a refunded security, as defined in Rule 5b–3(c)(4), as the acquisition of the escrowed government securities for purposes of Rule 2a–7's diversification requirements. Rule 2a–7(c)(4)(ii)(A), (B), 2a–7(a)(20) (definition of ''refunded security'').

[57] Rule 5b–3(c)(4)(iii).

[58] *See* Treatment of Repurchase Agreements and Refunded Securities as an Acquisition of the Underlying Securities, Investment Company Act Release No. 25058 (July 5, 2001) [66 FR 36156 (July 11, 2001)] (''Rule 5b–3 Adopting Release''), at text accompanying n. 25 (explaining that the conditions required in the definition of refunded security correspond to those in the definition of the term in Rule 2a–7); Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956 (Mar. 28, 1996)] (''Rule 2a–7 1996 Amending Release''), at Section II.D.2.

security has received a debt rating in the highest rating category from an NRSRO.[59] The Commission included this exception because in rating refunded securities, NRSROs typically require the same determination.[60]

Last year the Commission proposed to eliminate the exception to the certification requirement for securities that have received the highest credit rating from an NRSRO. Under the proposed amendment, the accountant certification condition would apply uniformly to all refunded securities, regardless of the securities' credit rating.

We are amending Rule 5b–3, as proposed, to eliminate the exception for refunded securities with certain credit ratings.[61] Under the amended rule, an independent accountant must have certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the refunded securities.[62] Thus, the same standard will apply for securities with the highest NRSRO debt rating as currently apply to those that have received lower or no ratings.

Three commenters objected to the proposed amendment, asserting that requiring funds to obtain independent accountants' certifications for refunded securities is inefficient, could increase fund expenses and could decrease liquidity if funds choose not to bid on refunded securities for which certificates are not readily available.[63] The amended rule, however, does not require that *funds* obtain such a certification. Rather, it requires that an independent accountant certify to the *escrow agent* that the escrowed securities will satisfy all scheduled payments. This requirement may be met, for example, by the fund manager confirming that a certification meeting the requirements of the rule was provided to the escrow agent.

Bond indentures or resolutions authorizing the issuance of the refunded bonds typically require that the escrow agent receive a certificate from an independent accountant that the escrowed securities will satisfy all scheduled payments on the refunded securities. Fund managers could confirm that the escrow agent has received such a certification, and this confirmation could come from any of multiple sources at little expense, such as the issuer's Web site, a municipal dealer's Web site or the escrow agent's Web site.[64] Moreover, and as explained in the Proposing Release, a fund could satisfy the certification requirement of Rule 5b–3 by determining that a third party such as an NRSRO, in the course of evaluating an offering of refunded securities, already has determined that an independent accountant provided the required certification to the escrow agent.[65]

Because we understand that accountant certifications are typically provided during the course of a refunding transaction, we believe that it will not be difficult or expensive for fund managers to confirm that the certification has been provided to the escrow agent. Thus, we do not believe that eliminating the ratings requirement exception in Rule 5b–3 is likely to result in significant additional costs to purchasers. Fund managers' ability to confirm without significant difficulty or expense that the requisite certification has been provided to the escrow agent should address concerns that the amendment could decrease the liquidity of refunded securities as a result of funds choosing not to bid on refunded securities for which certificates are unavailable.

2. Affiliated Underwritings (Rule 10f–3)

Section 10(f) of the Investment Company Act prohibits a registered fund from knowingly purchasing any security for which an underwriter having certain relationships with the fund or its investment adviser (''affiliated underwriter'') is acting as a principal underwriter[66] during the existence of an underwriting or selling syndicate for that security.[67] The prohibition was designed to prevent the ''dumping'' of unmarketable securities on affiliated funds, either by forcing the fund to purchase unmarketable securities from the underwriting affiliate itself or by forcing or encouraging the fund to purchase the securities from another member of the syndicate.[68]

The Commission adopted Rule 10f–3 in 1958 to permit a fund that is affiliated with a member of an underwriting syndicate to purchase securities from the syndicate if certain conditions are met.[69] The conditions are designed to address the risks raised by purchases that could benefit fund affiliates. For example, one condition of the rule requires that securities be purchased before the end of the first day on which any sales are made, at a price that is not more than the price paid by each other

[59] Rule 5b–3(c)(4)(iii).

[60] *See* Technical Revisions to the Rules and Forms Regulating Money Market Funds, Investment Company Act Release No. 22921 (Dec. 2, 1997) [62 FR 64968 (Dec. 9, 1997)], at Section I.B.2.c.

[61] Amended Rule 5b–3(c)(4)(iii).

[62] *Id.*

[63] *See* Calvert Comment Letter (Sept. 5, 2008); Letter of Connecticut Treasurer (Sept. 4, 2008) (''Connecticut Treasurer's Comment Letter''); Oppenheimer Comment Letter (Sept. 4, 2008).

[64] Although such information may not be readily available from all of these sources today, issuers, dealers, escrow agents or NRSROs are likely to provide such information to meet the needs of fund managers.

[65] *See* Investment Company Act Proposing Release, *supra* note 10, at text accompanying n.59. Some rating agencies require certifications that we understand meet the requirements of Rule 5b–3. *See, e.g.,* Moody's Investors Services, Ratings Methodology: Refunded Bonds (June 2007) (available at *http://www.moodys.com/moodys/cust/research/MDCdocs/29/2006700000441141.pdf?doc_id=2006700000441141&frameOfRef=municipal*) (''The initial verification reports should be prepared by an individual Certified Public Accountant (CPA), a CPA firm, a Public Accounting Firm, or by another entity with nationally recognized proficiency in providing verification reports. Importantly, the verification should be provided by an entity independent of the issuer and refunding transaction.''); Fitch Ratings, Guidelines for Rating Prerefunded Municipal Bonds (Apr. 2, 2009) available at *http://www.fitchratings.com/creditdesk reports/report_frame.cfm?rpt_id=431370;* Standard & Poor's, Criteria/Governments/U.S. Public Finance: Defeasance (June 26, 2007) available at *http://www2.standardandpoors.com/portal/site/sp/en/us/page.article/2,1,1,0,1204836565946.html#ID199.*

[66] The term ''principal underwriter'' means (in relevant part) an underwriter who, in connection with a primary distribution for securities: (1) Is in privity of contract with the issuer or an affiliated person of the issuer; (2) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (3) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution. 15 U.S.C. 80a–2(a)(29).

[67] Section 10(f) prohibits a registered fund from knowingly purchasing a security during the existence of an underwriting or selling syndicate if a principal underwriter of the security is an officer, director, member of an advisory board, investment adviser, or employee of the fund or is a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person. An affiliated person of a fund includes, among others: (1) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting securities of the fund; (2) any person five percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the fund; and (3) any person directly or indirectly controlling, controlled by, or under common control with the fund. 15 U.S.C. 80a–2(a)(3)(A), (B) and (C).

[68] *See* Report of the SEC, Investment Trusts and Investment Companies, H.R. Doc. No. 279, 76th Cong., 2d Sess., pt. 3, at 2581, 2589 (1939). The sales were also used to alleviate certain of an affiliated underwriter's financial difficulties. For example, an underwriter could benefit by rapidly turning over its securities inventory to produce working capital and to reduce the related expenses of carrying the inventory. Congress also expressed concern regarding the amount of underwriting fees earned by the sponsors and affiliated persons who placed the securities with the fund. See Hearings on S.3580 Before a Subcommittee of the Commission on Banking and Currency, 76th Cong., 3d Sess. 209, 212–23 (1940).

[69] Exemption of Acquisition of Securities During Existence of Underwriting Syndicate, Investment Company Act Release No. 2797 (Dec. 1, 1958) [23 FR 9548 (Dec. 10, 1958)]. The rule codified the conditions of orders that the Commission had granted prior to 1958 exempting certain funds from Section 10(f) to permit them to purchase specific securities.

purchaser of securities in that offering or in any concurrent offering of the securities.[70] In addition, the commission, spread or profit received or to be received by the principal underwriters must be reasonable and fair compared to the commission, spread or profit received by other such persons in connection with the underwriting of similar securities being sold during a comparable time period.[71] The rule also requires public reporting of securities purchases made in reliance on the rule. A fund must report the existence of any such purchases on Form N–SAR, and provide a written record of each transaction, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials on which the board has made a determination that the transaction complied with the procedures approved by the board.[72]

We amended Rule 10f–3 in 1979 to add municipal securities to the class of securities that funds could purchase under the rule.[73] The rule defines municipal securities that may be purchased during an underwriting in reliance on the rule (''eligible municipal securities'') to include securities that have an investment grade rating from at least one NRSRO or, if the issuer or the entity supplying the revenues or other payments from which the issue is to be paid has been in continuous operation for less than three years (*i.e.,* the security is a less seasoned security), one of the three highest ratings from an NRSRO.[74] The rating requirement was designed to prevent the purchase of less seasoned and lower quality securities, and thereby reduce the risk of unloading unmarketable securities on the fund.[75]

In July 2008, we proposed to eliminate the references to NRSRO ratings in Rule 10f–3 and substitute alternate provisions that require the assessment of liquidity and credit risk.[76] Those alternate provisions were designed to achieve the same purpose as that served by the references to credit ratings, in addressing concerns that funds might purchase less seasoned, unmarketable securities in affiliated underwritings.[77]

Most commenters on the proposed amendments did not specifically address the amendments to Rule 10f–3. As noted above, some of those commenters agreed generally with eliminating references to NRSRO ratings from Commission rules, while other commenters did not.[78] One commenter specifically supported the proposed amendments to Rule 10f–3.[79] It noted that, although the duty to make credit determinations ''may appear to require expertise beyond typical board experience, boards would be allowed to rely on information and assessments provided by other sources.''[80] Seven commenters specifically opposed the amendments to Rule 10f–3.[81] Some expressed concerns that the proposed standards would likely increase the time and costs of the board of directors' oversight and could result in a lack of consistency among funds as to what is an eligible municipal security, and a lack of transparency in the board's subjective determinations.[82]

Today we are adopting the amendments as proposed, and we address the concerns of commenters below. The amended rule eliminates the references to ratings and revises the rule's definition of ''eligible municipal security'' to mean securities that are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time.[83] In addition, the securities would have to be either: (1) Subject to no greater than moderate credit risk; or (2) if they are less seasoned securities, subject to a minimal or low amount of credit risk.[84]

The standards we are adopting require a level of liquidity and credit quality that is very similar to that of the current rule, but without the reference to NRSRO ratings.[85] These standards are designed to address the investor protection concerns that a fund and its investors might be harmed by the fund's purchase of unmarketable securities in an affiliated underwriting. A fund that purchases municipal securities that are sufficiently liquid should, by the terms of the amended rule, be able to sell the securities at or near their carrying value within a reasonably short period of time. Thus, the fund should be able to sell the securities, and thereby unwind its position and reduce its exposure, relatively quickly. Furthermore, securities that are subject to no greater than moderate credit risk or, if less seasoned, are subject to minimal or low credit risk, are similarly less likely to be unmarketable securities that have been ''dumped'' on the fund.[86] Securities that meet these quality standards are likely to be more liquid, and thus able to be sold relatively quickly by the fund.[87]

[70] *See* Rule 10f–3(c)(2) (also providing an exception from the pricing provision for rights offerings required by law in certain foreign offerings).

[71] *See* Rule 10f–3(c)(6).

[72] *See* Rule 10f–3(c)(9).

[73] Rule 10f–3(c)(1)(iii). *See* Exemption of Acquisition of Securities During the Existence of Underwriting Syndicate, Investment Company Act Release No. 10736 (June 14, 1979) [44 FR 36152 (June 20, 1979)] (''Rule 10f–3 1979 Adopting Release'').

[74] Rule 10f–3(a)(3). As noted above, an investment grade debt security is a security that has been rated in one of the four highest categories by at least one NRSRO. *See supra* text following note 22.

[75] *See* Rule 10f–3 1979 Adopting Release, *supra* note 73; Exemption of Acquisition of Securities During the Existence of Underwriting Syndicate, Investment Company Act Release No. 10592 (Feb. 13, 1979) [44 FR 10580 (Feb. 21, 1979)], at Section B.2.

[76] *See* Investment Company Act Proposing Release, *supra* note 10, at Section III.D.

[77] *See id.* at Section III.

[78] *See supra* note 50 and accompanying text; Schwab Comment Letter; Calvert Comment Letter; SIFMA Comment Letter.

[79] *See* CFA Institute Comment Letter.

[80] *Id.*

[81] *See, e.g.,* Independent Trustees of Fidelity Fixed-Income Funds Comment Letter (Oct. 3, 2008) (''Fidelity Independent Trustees Comment Letter''); SIFMA Comment Letter; Realpoint Comment Letter (Aug. 14, 2008).

[82] *See* Fidelity Independent Trustees Comment Letter; SIFMA Comment Letter. SIFMA also asserted that the proposed amendment would provide ''little added benefit while creating substantial market uncertainty.''

[83] For a discussion of the proposed amendments to Rule 10f–3, *see* Investment Company Act Proposing Release, *supra* note 10, at Section III.D.

[84] The amended rule defines ''eligible municipal securities'' to mean '' 'municipal securities' as defined in Section 3(a)(29) of the [Exchange Act], that are sufficiently liquid such that they can be sold at or near their carrying value within a reasonably short period of time and either (i) [a]re subject to no greater than moderate credit risk; or (ii) [i]f the issuer of the municipal securities, or the entity supplying the revenues or other payments from which the issue is to be paid, has been in continuous operation for less than three years, including the operation of any predecessors, the securities are subject to a minimal or low amount of credit risk.'' Amended Rule 10f–3(a)(3).

[85] As discussed above, some commenters expressed concerns about a possible lack of consistency among funds as to what constitutes an ''eligible municipal security'' under the amended rule. *See supra* note 82 and accompanying text. Those commenters did not specify whether such lack of consistency might directly affect funds or investors, or might affect the municipal securities markets in an indirect way. We believe that funds' determinations as to whether particular securities meet the amended rule's standards of credit quality and liquidity will be sufficiently consistent for the purposes that Rule 10f–3 was adopted to promote, *i.e.,* the protection of funds and their investors from the purchase of unmarketable securities.

[86] A municipal security (or its issuer) subject to a moderate level of credit risk would present average creditworthiness relative to other municipal or tax exempt issues or issuers. Moderate credit risk also would denote current low expectations of default risk, with an adequate capacity for payment of principal and interest. Municipal securities subject to minimal or low credit risk would be less susceptible to default risk (*i.e.,* have a low risk of default) than those with moderate credit risk. These securities (or their issuers) also would demonstrate a strong capacity for principal and interest payments and present above-average creditworthiness relative to other municipal or tax exempt issues (or issuers).

[87] *See* M. David Gelfand, State and Local Government Debt Financing § 8:72 (2nd. ed. 2007)

Protection of the fund is further provided by other existing provisions in the rule that require the fund's board of directors, including a majority of disinterested directors, to (1) approve procedures under which the fund purchases securities under the rule, (2) approve any needed changes to those procedures and (3) review purchases quarterly to assure that they conformed to the fund's procedures.[88] Those provisions will continue to apply to affiliated underwritings under the amended rule,[89] and the board's responsibilities with regard to fund procedures will apply to the new standards in the rule regarding liquidity and credit quality.[90]

We believe that the standards provided in the amended rule—that an ''eligible security'' must be sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time, and either subject to no greater than moderate credit risk, or, if less seasoned, subject to a minimal or low amount of credit risk—are sufficiently clear to permit a fund board or fund investment adviser to understand the risks acceptable under the amended rule without significantly increasing the time and costs of board oversight. In addition, as we pointed out when we proposed the amendments to Rule 10f–3, the amendments may emphasize for funds the need to independently evaluate the credit risks associated with the underwritten security, and may possibly benefit funds by enabling them to acquire a wider range of securities, including unrated securities, that present attractive investment opportunities and the requisite level of credit quality, even though they do not meet the current rule's ratings requirement.[91] In exercising caution to ensure compliance with the revised standards, funds also might limit their acquisitions of municipal securities in reliance on the amended rule to securities of higher credit quality than required under the current rule.

In developing procedures under the rule, the board of directors may incorporate ratings, reports, analyses, opinions and other assessments issued by third-parties, including NRSROs, although an NRSRO rating, by itself could not substitute for the evaluation performed by the board. We would expect the board to evaluate assessments it intends to incorporate and the third-party sources that provide those assessments.[92] The board could then incorporate in its procedures those third party assessments that it determines are reliable. The ability to incorporate outside assessments may mitigate the potential increased burdens about which some commenters expressed concern.[93]

III. Paperwork Reduction Act

A. Rule and Form Amendments Under the Exchange Act

Certain provisions of the amendments to the forms contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[94] The hours and costs associated with preparing and filing the disclosure, filing the forms and schedules and retaining records required by these regulations constitute reporting and cost burdens imposed by each collection of information. 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 control number. The titles of the affected information forms are ''Form ATS–R'' (OMB Control Number 3235–0509) and ''Form PILOT'' (OMB Control Number 3235–0507). Responses to this collection are mandatory for broker-dealers that comply Regulation ATS (in the case of Form ATS–R) and for SROs that operate pilot trading systems (in the case of Form PILOT). For the reasons discussed below, we do not believe the amendments will result in a material or substantive revision to these collections of information.[95]

The amendments to Form ATS–R and Form PILOT revise the forms to require that information which had been reported as separate items (*i.e.,* investment grade debt corporate debt securities and non-investment grade corporate debt securities) now will be combined and reported as a single item (*i.e.,* corporate debt securities). In all other respects, as discussed in the Exchange Act Proposing Release, the information collected on these forms remains unchanged.[96] Accordingly, the Commission does not believe the amendments will result in a substantive or material revision to those collections of information[97] within the meaning of the PRA.[98] The Commission received no comments on the PRA analysis in the Exchange Act Proposing Release applicable to Forms ATS–R and PILOT.

B. Rule Amendments Under the Investment Company Act

Certain provisions of the amendments to Rule 10f–3 contain ''collection of information'' requirements within the meaning of the PRA.[99] The title for the collection of information is ''Rule 10f–3 under the Investment Company Act of 1940, Exemption for the Acquisition of Securities During the Existence of an Underwriting and Selling Syndicate'' (OMB Control No. 3235–0226). Responses to this collection are mandatory for funds that intend to rely on Rule 10f–3. Records of information made in connection with this requirement are required to be

(noting that municipal securities trade largely on the basis of creditworthiness).

[88] *See* Rule 10f–3(c)(10)(i)–(iii). *See also* Rule 10f–3 1979 Adopting Release, *supra* note 73 (''[T]he Commission expects that investment company directors, in establishing procedures under the rule and determining compliance with such procedures, will address the concerns embodied in section 10(f) of the Act against overreaching and the placing of otherwise unmarketable securities with an investment company.''); Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)] (''1997 Rule 10f–3 Adopting Release''), at text following n.51 (''A fund's board should be vigilant in reviewing the procedures and transactions as required by rule 10f–3 as well as in conducting any additional reviews that it determines are needed to protect the interests of investors, particularly if the fund purchases significant amounts of securities in reliance on rule 10f–3.'').

[89] Rule 10f–3(c)(10); Investment Company Act Proposing Release, *supra* note 10, at n.69 and accompanying text.

[90] *See* amended Rule 10f–3(a)(3), (c)(10)(i).

[91] *See* Investment Company Act Proposing Release, *supra* note 10, at Section VI.A.

[92] When a fund's determination with regard to a security departs from ratings provided by NRSROs (including ratings by ''unsolicited'' NRSROs), the board may choose to require in its policies and procedures that the fund document the rationale underlying the determination. *See* Realpoint Comment Letter (recommending that the Commission require that a fund document when its determinations differ from those of ''unsolicited'' NRSROs). We are not adopting such a requirement because we believe the board should make the determination regarding the extent to which it will rely on the rating of any NRSRO as an appropriate indication of credit quality or liquidity.

[93] *See supra* note 82 and accompanying text. The ability to rely on outside assessments also addresses to some extent the concerns expressed by one commenter about market uncertainties. *See* SIFMA Comment Letter. Any remaining increase in uncertainty (for funds and their shareholders) that results from the exercise of discretion by funds and their advisers in determining which municipal securities to purchase under the amended rule, is an inherent corollary of the flexibility added by the rule amendments. We also note, with regard to concerns about transparency, that investors and fund analysts will continue to have access to information about the securities that funds hold and have purchased in reliance on rule 10f–3. *See* Form N–SAR [17 CFR 274.101], Item 770 (reporting of transactions effected in reliance on rule 10f–3); Form N–CSR [17 CFR 274.128], Item 6(a) (disclosure in shareholder reports of portfolio holdings); Form N–Q [17 CFR 274.130], Item 1 (quarterly schedule of portfolio holdings).

[94] 44 U.S.C. 3501 *et seq.*

[95] 5 CFR 1320.5(g).

[96] *See* Exchange Act Proposing Release, 73 FR at 40097.

[97] 5 CFR 1320.5(g).

[98] 44 U.S.C. 3501 *et seq.*

[99] 44 U.S.C. 3501–3520.

maintained for inspection by Commission staff, but the collection will not otherwise be submitted to the Commission. There are currently no approved collections of information for Rule 5b–3, and the amendments we are adopting today would not create any new collections.

We requested comment on the collection of information requirements in the Investment Company Act Proposing Release and submitted the revisions to the collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. We received no comments that specifically addressed the collection of information requirements. 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 control number.

Rule 10f–3 permits a fund that is affiliated with a member of an underwriting syndicate to purchase securities from the syndicate if certain conditions are met. In the case of a municipal security, the security generally must have received an investment grade rating by at least one NRSRO, or if it is a less seasoned security, one of the three highest ratings by an NRSRO. The amended rule eliminates this condition and includes a substitute therefor.[100] Under the amendment an ''eligible municipal security'' means a security that is sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time, and is either: (1) Subject to no greater than moderate credit risk; or (2) if it is a less seasoned security, subject to a minimal or low amount of credit risk.

Rule 10f–3 also requires fund boards to (1) approve procedures under which the fund purchases securities in reliance on the rule, (2) approve needed changes to the procedures and (3) review purchases quarterly to ensure they were effected in compliance with the procedures.[101] Accordingly, fund boards currently review purchases of municipal securities made in reliance on Rule 10f–3, and should continue to do so under the amended rule.

In our most recent PRA submission, Commission staff estimated that each year, approximately 350 funds engage in transactions in reliance on Rule 10f–3.[102] Staff further estimated that each fund would, on average, take two hours to review and revise, as needed, written procedures for these transactions. In the Investment Company Act Proposing Release, we stated that we believed that any revisions funds would have to make to comply with the proposed amendment would be incorporated in the two hours of review.[103] Some commenters asserted that the proposed amendment would likely increase the time and costs of the board of directors' oversight.[104]

We continue to believe that the specific changes a board might make to the procedures that are designed to comply with the amendments would not be significant. As noted above, we are adopting a standard regarding liquidity and credit quality that is very similar to that of the current rule.[105] In addition, directors may incorporate securities quality assessments by third party sources that the directors determine are reliable in the procedures they approve and their review of municipal securities purchases made in reliance on Rule 10f–3, which may mitigate the potential increased burdens on fund boards.[106] Nevertheless, in consideration of the comments, we recognize that there may be an additional one-time burden for fund boards to review and approve revised procedures designed to ensure compliance with the amendment to Rule 10f–3.[107] Commission staff estimates that each fund board would incur a one-time burden of two hours for a total burden for all fund boards of 700 hours at a cost of $2.8 million.[108] Amortized over three years, this would be an annual burden of 0.67 hours per fund and 235 hours for all funds.[109]

IV. Cost-Benefit Analysis

A. Rule and Form Amendments Under the Exchange Act

The Commission is sensitive to the costs and benefits imposed by its rules. The Commission notes that no comments addressed the Commission's analysis of the costs and benefits associated with the proposed amendments to Rule 3a1–1, Regulation ATS, Form ATS–R and Form PILOT contained in the Exchange Act Proposing Release.

1. Benefits

The amendments to Rule 3a1–1, Regulation ATS, Form ATS–R and Form PILOT eliminate the separate definitions of and references to investment grade corporate debt securities and non-investment grade corporate debt securities and replace them with a single category, ''corporate debt securities.'' The Commission believes that the inclusion of requirements relating to securities credit ratings are no longer necessary to achieve the regulatory purpose of these rules, and may help marginally reduce any undue reliance on credit ratings.

For reasons discussed above, the Commission believes that it is no longer necessary to assess trading volumes in the narrower segments of investment grade and non-investment grade corporate debt securities to fulfill the purposes of those rules and forms. Broker-dealers that are subject to Regulation ATS will no longer have to purchase and keep track of credit ratings solely for the purpose of Regulation ATS. The other classes of securities and the threshold levels themselves remain unchanged. With respect to the changes to Form ATS–R and Form PILOT, we believe that combining investment grade and non-investment grade corporate debt securities into a single class for purposes of those two forms will benefit market participants by making reporting slightly more streamlined and may reduce undue reliance on references to ratings issued by credit rating agencies. At the same time, the Commission does not believe that the amendments to these rules and forms will significantly affect market participants because the total units and total dollar volume of corporate debt securities transacted will still be reported. In addition, the removal of these requirements relating to credit ratings reduces compliance costs for ATSs.

2. Costs

The amendments to Rule 3a1–1, Regulation ATS, Form ATS–R and Form PILOT eliminate the separate definitions of and references to investment grade corporate debt securities and non-investment grade debt securities and replace them with a single category, ''corporate debt securities.'' We believe

[100] *See supra* notes 83–84 and accompanying text.

[101] Rule 10f–3(c)(10).

[102] *See* Submission for OMB Review, Comment Request, Rule 10f–3 [73 FR 13263 (Mar. 12, 2008)].

[103] *See* Investment Company Act Proposing Release, *supra* note 10, at Section V.B.

[104] *See supra* note 82 and accompanying text.

[105] *See supra* text accompanying note 85.

[106] *See supra* note 93 and accompanying text. These concerns were expressed with respect to the proposed amendments generally, and commenters did not provide any estimates of the increased burden that boards might incur under the proposed amendments.

[107] We do not anticipate the revised procedures would require an increase in the current estimated time the board spends each quarter to review acquisitions of securities for compliance with Rule 10f–3.

[108] These estimates are based on the following calculations: 350 fund boards × 2 hours = 700 hours; 700 hours × $4000 = $2,800,000. The estimate for the hourly cost for a fund board is based on an average board size of 8 directors and a cost of $500 per hour for each director.

[109] This estimate is based on the following calculation: 350 fund boards × 0.67 hours = 234.5 hours.

that these changes will not impose any significant costs on market participants.

The amendments to Rule 3a1–1 and Regulation ATS will marginally reduce the likelihood of an ATS meeting the thresholds in those rules. For example, under Rule 3a1–1 as it existed prior to today's action, an ATS that had 40% of the average daily dollar trading volume in non-investment grade corporate debt securities and 0% of the average daily dollar trading volume in investment grade corporate debt securities for at least four of the preceding six calendar months could have been required to register as an exchange. Under amended Rule 3a1–1, the Commission can no longer require the ATS to register as an exchange, because its average daily dollar trading volume in corporate debt securities combined is less than 40%. A potential cost of the amendments to Rule 3a1–1 and Regulation ATS is that an ATS that exceeded one of the thresholds that existed prior to today and thus would have become subject to additional regulatory requirements (in the case of Regulation ATS) or must register as an exchange (in the case of Rule 3a1–1) will no longer exceed the threshold and will not have to meet the attendant requirements. However, the Commission believes that this possibility is remote, and that the amendments are unlikely to impose any costs on investors, market participants or the national market system generally.

We believe that any costs associated with the changes to Form ATS–R and Form PILOT will be minimal. Respondents already determine and report the total units and total trading volume for investment grade and non-investment grade corporate debt securities separately. On the revised forms, respondents will report them together as a single item for ''corporate debt securities.'' Combining the categories of investment grade and non-investment grade debt on these forms will not significantly affect the level of information available to the Commission in monitoring ATSs. We expect that any programming costs to market participants to implement the reporting changes to these forms will be minimal and involve adding two previously reported items together and reporting the combined amount.

In addition, broker-dealers that are subject to Regulation ATS will no longer be required to purchase and keep track of credit ratings solely for the purpose of Regulation ATS. If broker-dealers subject to Regulation ATS no longer purchase credit rating data from NRSROs, the amendments may marginally reduce the revenues of NRSROs that charge subscriber fees. However, we believe that the number of broker-dealers subject to Regulation ATS is small and these broker-dealers represent a very small portion of NRSRO customers. Further, these broker-dealers may subscribe to NRSRO ratings for other purposes. Therefore, we believe that any impact on the revenues of the NRSROs will likely be small.

Also, combining the categories of investment grade and non-investment grade debt on these forms also will marginally reduce the level of information available to the Commission in monitoring ATSs. This may marginally reduce the ability of the Commission to stay abreast of changes to the trading of corporate debt securities. However, the Commission believes that the elimination of this detailed information will not significantly affect monitoring of ATSs because the Commission will still be able to monitor the volume of corporate debt traded by an ATS.

B. Rule Amendments Under the Investment Company Act

As discussed above, the rule amendments we are adopting today eliminate certain references to NRSRO ratings in Rules 5b–3 and 10f–3. The amendments to Rule 5b–3 remove an exception based on credit ratings. The amendments to Rule 10f–3 substitute references to alternative credit quality and liquidity criteria that are similar to that of the current rule. We prepared a cost-benefit analysis in the Investment Company Act Proposing Release, and received comments relating to that analysis.

1. Benefits

The amendments to Rules 5b–3 and 10f–3 are part of our larger initiative to eliminate references to NRSRO ratings from Commission rules where possible. This initiative is designed to address the concern that the inclusion in the Commission's rules and forms of requirements relating to security ratings could create the appearance that the Commission had, in effect, given its ''official seal of approval'' on ratings, which could adversely affect the quality of due diligence and investment analysis performed and lead to undue reliance on ratings. We noted that the proposed amendments to eliminate ratings as a whole might result in increased market efficiency by affording funds access to securities that do not meet the rating requirements in the current rules, but that would satisfy the credit risk and liquidity standards in the proposed amendments.[110] It is difficult to estimate specifically the benefits of the amendments to Rules 5b–3 and 10f–3 in isolation. We believe that the amendments to these rules remove unnecessary references to credit ratings, which may reduce undue reliance on credit ratings. Because these references are no longer necessary, and an appropriate substitute exists for the reference in Rule 10f–3, reliance in these contexts is no longer justified. In addition, the amendment to Rule 10f–3 could emphasize the importance to funds that acquire municipal securities in an affiliated underwriting of making an independent evaluation of the credit risks associated with the underwritten security. Finally, by moving away from a required reliance on credit ratings in our rules, funds may possibly benefit by acquiring a wider range of securities that present attractive investment opportunities and the requisite level of credit quality, even though they do not meet the current rule's ratings requirement.

2. Costs

We anticipate that funds and investment advisers may incur certain costs as a result of the amendments we are adopting today. These costs will principally relate to the replacement of the NRSRO ratings standard with the new credit quality and liquidity criteria. Commenters asserted that elimination of a bright-line standard could create additional costs and uncertainty in the application of, compliance with, and enforcement of the rule.[111] They also asserted that the subjective judgment-based standard in the proposed amendments might cause funds to acquire securities that do not meet the particular ratings requirement and that could result in the concerns that the rating requirements were designed to address (*e.g.,* poor liquidity or credit quality). We understand these concerns. However, we believe that the alternative credit quality and liquidity criteria we are substituting for NRSRO ratings will achieve the same purpose the ratings were designed to meet, and that they are sufficiently clear to permit a fund board and adviser to understand the risks acceptable under the rules. In determining a security's credit quality and liquidity, fund boards and advisers will, of course, be free to incorporate ratings, reports and analyses issued by, third parties, including NRSROs. We

[110] *See* Investment Company Act Proposing Release, *supra* note 10, at Section VII.

[111] *See, e.g.,* Oppenheimer Comment Letter (''a subjective standard is difficult to apply, difficult to test for compliance, and causes uncertainty regarding enforcement'').

believe that most fund advisers, in the ordinary course of managing portfolios, already evaluate third party opinions, including those of ratings agencies, that provide assessments of the credit quality and liquidity of debt instruments. We also believe that the boards and advisers of funds that rely on Rule 10f–3 are likely to look to those third parties in which they have confidence when incorporating third party assessments in making their determinations. For these reasons, we do not anticipate that the amendments will result in significant costs or compromise investor protection.

We are making changes today to two rules under the Investment Company Act, which are limited in scope. As noted above, we believe that the standards in the Rule 10f–3 amendments are similar to the NRSRO ratings they replace. Thus, we believe it is unlikely that the amendments will result in unintended adverse consequences or involve conflicts with other regulations, as some commenters have suggested.[112] Those comments appeared to address the consequences of eliminating references to other rules, such as Rule 2a–7 or the entire group of rules we proposed to amend, the consequences of which could be more substantial.

Rule 5b–3. The amendments we are adopting today eliminate references to NRSRO ratings in the definition of ''refunded security'' in Rule 5b–3. We anticipate that our elimination of references to NRSRO ratings in the definition of ''refunded security'' in Rule 5b–3 is unlikely to result in significant additional costs for funds that rely on the rule.[113] Under the amendment, in order to meet the definition of a ''refunded security'' for purposes of the rule, an independent accountant must have certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the refunded securities.[114] This standard will apply to all securities regardless of their rating.

Without providing specific estimates, some commenters stated this amendment could create higher costs for funds and adversely affect the liquidity of refunded securities by requiring them to obtain an independent accountant's certification.[115] The amended rule, however, does not require funds to obtain accountants' certificates, but requires the escrow agent to have received an accountant's certification. Commenters also indicated that it may not always be clear whether the escrow agent for a refunded security has received the necessary certification, thus requiring funds to incur costs related to determining the certification status of each refunded security.[116] As noted above, we understand that an independent accountant typically provides the escrow agent a certification during the course of a refunding transaction.[117] We believe that fund managers could consult any of multiple sources at little expense to confirm the escrow agent's receipt of this certification, including, for example, the issuer's Web site, a municipal dealer's Web site or the escrow agent's Web site.[118] In addition, funds may be able to satisfy the certification requirement of Rule 5b–3 by confirming that an NRSRO determined that an independent accountant has provided the required certification to the escrow agent.[119] For these reasons, we believe that eliminating the ratings requirement exception in Rule 5b–3 is unlikely to result in additional costs to purchasers. Based on our belief that the amendment to Rule 5b–3 would not result in additional costs or pose compliance difficulties for fund managers, we do not share commenters' concerns that the rule amendment could decrease the liquidity of refunded securities.

Rule 10f–3. In the Investment Company Act Proposing Release, we stated that our belief that the proposed amendment to Rule 10f–3 would not impose costs on funds that rely on Rule 10f–3 to purchase municipal securities.[120] Some commenters asserted that the proposed amendments might increase the costs and time devoted to board oversight of these transactions and could result in a lack of consistency among funds as to what is an eligible municipal security, and a lack of transparency in the board's subjective determinations.[121] Rule 10f–3 requires the fund's board to determine that the fund has procedures reasonably designed to ensure that purchases are made in compliance with the rule and to determine each quarter that purchases made have been effected in compliance with the procedures.[122] As noted above in our PRA analysis, we currently estimate that boards spend, on average, two hours each year revising procedures designed to ensure compliance with the rule and reviewing transactions to determine whether they have been effected in compliance with the procedures.[123] We anticipate that the specific changes a board might make to the procedures that are designed to comply with the amendments would not be significant because, as noted above, we are adopting a level of credit quality and liquidity that is very similar to that of the current rule. In addition, directors may use securities quality assessments by outside sources that they determine are reliable in the procedures they approve and their review of municipal securities purchases made in reliance on Rule 10f–3. We anticipate this ability to use assessments of third parties may mitigate the potential increased oversight burdens on fund boards.[124] After consideration of the comments, however, we recognize that fund boards may incur one-time costs to approve revised policies and procedures as a result of the amendment to Rule 10f–3. Staff estimates that a board may take two hours to review and approve revised procedures designed to ensure that transactions entered into in reliance on the rule comply with the amendment to Rule 10f–3. Staff further estimates that approximately 350 funds engage in transactions in reliance on Rule 10f–3. Staff estimates that boards of these funds would incur one-time costs of $8000 to review and approve revised procedures for a total cost to all funds of $2.8 million.[125]

We do not believe that the amendments would significantly change the amount of time the board would spend to review transactions each quarter. We believe that a fund adviser, rather than the board, determines whether a security meets the definition of an eligible municipal security for purposes of Rule 10f–3. We also believe that the standards in the amended definition are sufficiently clear to allow a fund adviser to understand the risks and level of liquidity acceptable under

[112] *See, e.g.,* SIFMA Comment Letter; Comment Letter of Institutional Money Market Funds Ass'n (Sept. 5, 2008).

[113] *See supra* Section II.A.2.

[114] Amended Rule 5b–3(c)(4).

[115] *See, e.g.,* Calvert Comment Letter.

[116] *See, e.g.,* Connecticut Treasurer's Comment Letter.

[117] *See supra* text preceding note 64.

[118] *See supra* note 64 and accompanying text.

[119] *See supra* note 65 and accompanying text.

[120] *See* Investment Company Act Proposing Release, *supra* note 10, at text preceding n.107.

[121] *See, e.g.,* Fidelity Independent Trustees Comment Letter (''The proposed standards, given their emphasis on judgment, would likely increase the time and costs devoted to that oversight.'').

[122] Rule 10f–3(c)(10)(i), (iii).

[123] *See supra* text following note 102.

[124] *See supra* text accompanying note 106. These commenters did not provide any estimates of the increased burden that boards might incur under the proposed amendments.

[125] This is based on the following calculation: 350 funds × 2 hours × $4,000 per hour of board time = $2,800,000.

the rule.[126] Fund advisers may use securities quality assessments by third parties, including NRSROs, that the board or adviser determines are reliable in its review of municipal securities purchases made in reliance on Rule 10f–3, which may offset concerns about additional costs that may result from the amendment. We do not believe that the proposed amendments would result in increased costs for advisers in determining whether securities are ''eligible municipal securities'' under the amended rule. When the board performs its quarterly review of transactions, we believe that the board would focus on reviewing whether the purchase was effected in compliance with the procedures the board has established.[127] For these reasons, we continue to believe that the standards we are substituting with respect to eligible municipal securities will not require significantly greater consideration of these transactions on the part of the board than we have previously estimated.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

A. Rule and Form Amendments Under the Exchange Act

Section 3(f) of the Exchange Act[128] requires the Commission, whenever it engages in rulemaking and is required to consider or to determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition and capital formation. In addition, Section 23(a)(2) of the Exchange Act[129] requires the Commission, when promulgating rules under the Exchange Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission notes that no commenters addressed the effect that the proposed changes to Rule 3a1–1, Regulation ATS, Form ATS–R and Form PILOT would have on efficiency, competition and capital formation.

We believe that the amendments to Rule 3a1–1 under the Exchange Act and Rules 300 and 301 of Regulation ATS will not create any adverse impact on efficiency, competition or capital formation. The Commission believes that the inclusion of requirements relating to credit ratings are no longer necessary to achieve the regulatory purpose of these rules, and may help marginally reduce any undue reliance on credit ratings. Broker-dealers that are subject to Regulation ATS will no longer be required to purchase and keep track of credit ratings solely for the purpose of Regulation ATS. This reduces the cost to comply with Regulation ATS. However, we believe that any impact on the revenues of the NRSROs will be inconsequential. Therefore, these changes should not impose any additional burdens on competition.

The Commission believes that combining investment grade and non-investment grade corporate debt securities into a single class of securities for purposes of the thresholds in those rules is unlikely to affect whether an ATS crosses one of those thresholds. Moreover, the other classes of securities for which the thresholds are applied—and the levels of the thresholds themselves—remain unchanged. Therefore, these changes should not affect the development of ATSs or capital formation.

The amendments being adopted today also will increase the effective thresholds for Rule 3a1–1(a) under the Exchange Act and Rules 301(b)(5) and 301(b)(6) of Regulation ATS for systems that trade corporate debt securities. The Commission believes that these changes will not impact whether any ATS crosses one of these thresholds. However, as outlined above,[130] the changes could have the effect of reducing the regulatory requirements for some ATSs at some time in the future by potentially reducing the likelihood that an ATS would be required to register as an exchange. The Commission believes that the efficiency gains from combining the two categories of investment-grade and non-investment grade corporate debt into the single category of corporate debt justifies these risks.

The changes to Form ATS–R and Form PILOT will simplify reporting for ATSs and SROs that operate pilot trading systems. Form ATS–R and Form PILOT respondents are already required to determine and report the volumes of corporate debt securities. A single reporting item for ''corporate debt securities'' will replace the existing separate entries for ''investment grade corporate debt securities'' and ''non-investment grade corporate debt securities.'' Since respondents will no longer have to keep track of ratings, the calculation of these items does not force the respondent to purchase credit ratings solely for the purpose of Form ATS–R or Form PILOT.

For the reasons discussed above, we believe that the changes to Form ATS–R and Form PILOT are unlikely to have any significant impact on efficiency, competition or capital formation.

B. Rule Amendments Under the Investment Company Act

Investment Company Act Section 2(c) requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.[131]

In the Investment Company Act Proposing Release, we indicated our belief that that the amendments to Rules 5b–3 and 10f–3 would not significantly affect competition or have an adverse affect on capital formation. We noted that the proposed amendments to eliminate ratings as a whole might have some negative effect on efficiency by eliminating an objective standard in credit quality determinations, or might result in increased market efficiency by affording funds access to securities that do not meet the rating requirements in the current rules, but that they would satisfy the credit risk and liquidity standards in the proposed amendments.[132] We also stated that we did not believe that the amendments to Rules 5b–3 and 10f–3 would result in significant costs to investment companies, advisers or investors. We did not receive any comments that specifically addressed the effect of the proposed amendments to Rules 5b–3 and 10f–3 on efficiency, competition and capital formation.

As discussed above, the amendments we are adopting today to Rules 5b–3 and 10f–3 are part of a larger initiative to eliminate certain references to NRSRO ratings from Commission rules. The amendments to Rule 5b–3 remove an

[126] As discussed above, we believe that funds' determinations as to whether particular securities meet the amended rule's standards of credit quality and liquidity will be sufficiently consistent for the purposes that Rule 10f–3 was adopted to promote, *i.e.,* the protection of funds and their investors from the purchase of unmarketable securities. *See supra* note 85. With regard to concerns about transparency, we note that investors and fund analysts will continue to have access to information about the securities that funds hold and have purchased in reliance on Rule 10f–3. *See supra* note 93.

[127] *See* 1997 Rule 10f–3 Adopting Release, *supra* note 88, at text following n.51.

[128] 15 U.S.C. 78c(f).

[129] 15 U.S.C. 78w(a)(2).

[130] *See supra* Section II.A.4.

[131] 15 U.S.C. 80a–2(c).

[132] *See* Investment Company Act Proposing Release, *supra* note 10, at Section VII.

exception based on credit ratings, and do not require an analysis of liquidity or credit quality. In the amendment to Rule 10f–3, we have substituted standards that require a level of credit quality and liquidity that is similar to the standards in the current rule, but without references to NRSRO ratings. These standards are designed to achieve the same purpose as ratings references were designed to meet, with minimal costs and consistent with the protection of investors. We believe that the amendments eliminate unwarranted references to credit ratings, which may reduce undue reliance on credit ratings and advance the goal of promoting better analysis of underlying investment decisions. Because these references are no longer necessary and an adequate substitute exists for the reference in Rule 10f–3, reliance on credit ratings in these contexts is no longer justified. With respect to the standards in amended Rule 10f–3, in developing procedures under the rule, boards may incorporate ratings reports, analyses and other assessments issued by third parties, including NRSROs, although an NRSRO rating, by itself, could not substitute for the evaluation required to be performed under the amendments to the rules. For these reasons, we continue to believe that the amendments to Rules 5b–3 and 10f–3 are unlikely to result in any significant impact on competition or capital formation. We also believe that the amendment to Rule 10f–3 which is limited in scope, is unlikely to have a significant effect on efficiency by eliminating an objective standard in credit quality determinations, or to result in significant market efficiency by affording funds access to securities that do not meet the rating requirement in the current rule but that would satisfy the revised standards. Similarly, because we believe that fund managers will not have significant difficulty or incur significant expense to confirm that an escrow agent has received the requisite certification from an independent accountant, we do not believe that the amendment to Rule 5b–3 eliminating the exception to this requirement for highly rated securities is likely to have a significant effect on efficiency.

VI. Final Regulatory Flexibility Certification and Analysis

A. Rule and Form Amendments Under the Exchange Act

Section 3(a) of the Regulatory Flexibility Act of 1980 [133] (''RFA'') requires the Commission to undertake an initial regulatory flexibility analysis of proposed rule amendments on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[134] The Commission notes that no comments addressed the effect that the proposed changes to Rule 3a1–1, Regulation ATS, Form ATS–R and Form PILOT would have on small entities.

For purposes of Commission rulemaking in connection with the RFA, small entities include broker-dealers with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[135] or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[136]

An ATS that complies with Regulation ATS must, among other things, register as a broker-dealer.[137] Thus, the Commission's definition of small entity as it relates to broker-dealers also will apply to ATSs. An ATS that approaches the volume thresholds for investment grade or non-investment grade corporate debt securities in Rule 3a1–1 or Regulation ATS would be very large and thus unlikely to be a small entity or small organization. With respect to the proposed changes to Form ATS–R, even if an ATS is a ''small entity'' or ''small organization'' for purposes of the RFA, the only change being proposed to the form is to eliminate the distinction between investment grade and non-investment grade corporate debt securities and to require reporting for the combined class of corporate debt securities. We believe this will impose only negligible costs on ATSs, even if they were small entities or small organizations.

Similarly, SROs are the only respondents to Form PILOT and are not ''small entities'' for purposes of the RFA. Accordingly, no small entities would be affected by the proposed amendments to Form PILOT.

Under Section 605(b) of the RFA,[138] we certified that, when adopted, the rule amendments would not have a significant economic impact on a substantial number of small entities. We included this certification in Part VIII of the Exchange Act Proposing Release. While we encouraged written comments regarding this certification, no commenters responded to this request as it pertains to the action taken in this release.

B. Rule Amendments Under the Investment Company Act

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with 5 U.S.C. 604. We published in the Investment Company Act Proposing Release an Initial Regulatory Flexibility Analysis (''IRFA''), which we prepared in accordance with the RFA. It relates to amendments to Rules 5b–3 and 10f–3 under the Investment Company Act. The amendments remove references to, and the required use of, NRSRO ratings from these rules.

1. Need for and Objectives of the Rule Amendments

The rule amendments are designed to address the concern that the inclusion in the Commission's rules and forms of requirements relating to security ratings could create the appearance that the Commission had, in effect, given its ''official seal of approval'' on ratings, which could adversely affect the quality of due diligence and investment analysis and lead to undue reliance on ratings.

2. Significant Issues Raised by Public Comment

When the Commission proposed amendments to Rules 5b–3 and 10f–3, we requested comment on the proposal and the accompanying IRFA. In particular, we sought comments regarding:

- The number of small entities that might be affected by the amendments;
- The existence or nature of the potential impact of the amendments on small entities; and
- How to quantify the impact of the amendments, including any empirical data supporting the extent of the impact.

We received no comments that addressed the proposed amendments' impact on small entities.

3. Small Entities Subject to the Rule Amendments

The amendments to Rules 5b–3 and 10f–3 will affect funds, including

[133] 5 U.S.C. 603(a).

[134] 5 U.S.C. 605(b).

[135] 17 CFR 240.17a–5(d).

[136] *See* 17 CFR 240.0–10(c).

[137] *See* 17 CFR 242.301(b)(1).

[138] 5 U.S.C. 605(b).

entities that are considered to be small businesses or small organizations (collectively, ''small entities'') for purposes of the RFA. Under the Investment Company Act, for purposes of the RFA, a fund is considered a small entity if it, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[139] Based on Commission filings, we estimate that 122 investment companies may be considered small entities. The Commission staff estimates that all of these investment companies may potentially rely on Rules 5b–3 and 10f–3.

4. Reporting, Recordkeeping and Other Compliance Requirements

The amendments to Rule 5b–3 eliminate the exception for certification requirements in conditions relating to the treatment of refunded securities, by removing the exception for rated debt in the definition of ''refunded security.'' [140] Under the amended rule, in order to meet the definition of ''refunded security,'' an independent accountant must have certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on any refunded securities.[141] The amendment eliminates the current exception that does not require the certification if the refunded security is rated in the highest category by an NRSRO.

The amendments to Rule 10f–3 eliminate references to NRSRO ratings in the rule's definition of ''eligible municipal security'' and substitute alternative provisions that require securities to be sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time. In addition, the securities must be either:

- Subject to no greater than moderate credit risk; or
- If they are less seasoned securities, subject to a minimal or low amount of credit risk.[142]

Small entities registered with the Commission as investment companies seeking to rely on each of the rules will be subject to the same requirements as larger entities. As discussed in the IRFA and in this FRFA, in developing the amendments to Rules 5b–3 and 10f–3, we considered the extent to which the amendments will have a significant impact on a substantial number of small entities.

5. Commission Action To Minimize Effect on Small Entities

The RFA directs us to consider significant alternatives that may accomplish our stated objective, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered several alternatives, including the following:

(a) *Different reporting or compliance standards or timetables.* We believe that the credit quality and liquidity considerations required by the amendments to Rule 10f–3 should apply to all funds relying on the rules, including small entities. We believe that special compliance requirements or timetables for small entities are unnecessary because the substituted standards require a level of credit quality and liquidity that is similar to the standards in the current rule, but without reference to NRSRO ratings. Thus, these standards are designed to achieve the same purpose that the ratings were designed to achieve without resulting in significant costs for funds, including small entities. In addition, funds that rely on Rule 10f–3 may continue to use or rely on NRSRO ratings in making determinations under the amended rule. Moreover, different or special compliance requirements for small entities consistent with the Commission's goal of removing references to NRSRO ratings in the rule may create a risk that those entities could purchase securities with insufficient liquidity and credit quality, to the detriment of the fund and its investors. As discussed above, we do not believe that the requirement that the escrow agent for all refunded securities (not just those that are not top-rated) have received an independent accountant's certification would result in significant cost burdens for funds. We believe that fund managers may be able to obtain this information from multiple sources at little expense, including, for example, the issuer's Web site, a municipal dealer's Web site or the escrow agent's Web site.[143] In addition, funds can satisfy the certification requirement of Rule 5b–3 by determining that an NRSRO required an independent accountant to make the same determination.[144] Because we understand that these certifications are typically provided during the course of refunding transactions, we believe that it will not be difficult or expensive for fund managers to confirm that the certification has been provided to the escrow agent.

(b) *Clarification, consolidation or simplification of reporting and compliance requirements.* Where we have substituted alternative credit quality and liquidity criteria for ratings references in the amended rules, we have endeavored to make the criteria as clear and straightforward as possible. We believe that the standards provided by the amended rule are sufficiently clear to permit a fund (or a fund adviser conducting the analysis on behalf of the fund board) to understand the risks acceptable under the rule. The amended rules are designed to minimize the regulatory burden, consistent with the Commission's objectives, on all entities eligible to rely on the respective rules, including small entities.

(c) *Performance rather than design standards.* Rules 5b–3 and 10f–3, as amended, do not dictate any particular design standards that must be employed to meet the objectives of the rules. In fact, the amendments to the rules substitute a performance standard for references to NRSRO ratings.

(d) *Exempting small entities.* Continuing to require small entities to rely exclusively on NRSRO ratings for the credit quality and liquidity determinations required by the amendments to Rule 10f–3 would not be consistent with the goals underlying our amendments. Moreover, fund boards may incorporate ratings reports, analyses and other assessments issued by third parties, including NRSROs, in making their determinations, although an NRSRO rating, by itself, could not substitute for the evaluation required to be performed under the amendments.

VII. Statutory Authority

The Commission is adopting amendments to Rule 3a1–1, Rules 300 and 301 of Regulation ATS and Forms ATS–R and PILOT under the Exchange Act under the authority set forth in Sections 3, 11A(c), 15, 17, 23(a) and 36(a)(1) of the Exchange Act [15 U.S.C. 78c, 78k–1(c), 78*o,* 78q, 78w(a) and 78mm(a)(1)]. The Commission is adopting amendments to Rule 5b–3 under the Investment Company Act under the authority set forth in Sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c) and 80a–37(a)]. The Commission is adopting amendments to Rule 10f–3 under the Investment Company Act under the authority set forth in Sections 10(f), 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a) and 80a–37(a)].

[139] 17 CFR 270.0–10.

[140] *See supra* Section II.A.1.

[141] Amended Rule 5b–3(c)(4)(iii).

[142] Amended Rule 10f–3(a)(3).

[143] *See supra* note 64 and accompanying text.

[144] *See supra* note 65 and accompanying text.

List of Subjects

17 CFR Parts 240, 242 and 249

Broker, Reporting and recordkeeping requirements, Securities.

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

■ For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11 and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 240.3a1–1 by revising paragraphs (b)(3)(v), (b)(3)(vi) and (b)(3)(vii) and by removing (b)(3)(viii) to read as follows:

§ 240.3a1–1 Exemption from the definition of ''Exchange'' under Section 3(a)(1) of the Act.

* * * * *

(b) * * *

(3) * * *

(v) Corporate debt securities, which shall mean any securities that:

(A) Evidence a liability of the issuer of such securities;

(B) Have a fixed maturity date that is at least one year following the date of issuance; and

(C) Are not exempted securities, as defined in section 3(a)(12) of the Act, (15 U.S.C. 78c(a)(12));

(vi) Foreign corporate debt securities, which shall mean any securities that:

(A) Evidence a liability of the issuer of such debt securities;

(B) Are issued by a corporation or other organization incorporated or organized under the laws of any foreign country; and

(C) Have a fixed maturity date that is at least one year following the date of issuance; and

(vii) Foreign sovereign debt securities, which shall mean any securities that:

(A) Evidence a liability of the issuer of such debt securities;

(B) Are issued or guaranteed by the government of a foreign country, any political subdivision of a foreign country or any supranational entity; and

(C) Do not have a maturity date of a year or less following the date of issuance.

PART 242—REGULATIONS M, SHO, ATS, AC AND NMS AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 3. The authority citation for Part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–l(c), 78*l,* 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29 and 80a–37.

■ 4. Section 242.300 is amended by revising paragraph (i), removing paragraph (j) and redesignating paragraph (k) as paragraph (j).

The revision reads as follows:

§ 242.300 Definitions.

* * * * *

(i) *Corporate debt security* shall mean any security that:

(1) Evidences a liability of the issuer of such security;

(2) Has a fixed maturity date that is at least one year following the date of issuance; and

(3) Is not an exempted security, as defined in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)).

* * * * *

5. Section 242.301 is amended by:

a. Adding the word ''or'' to the end of paragraph (b)(5)(i)(C);

b. Revising paragraph (b)(5)(i)(D);

c. Removing paragraph (b)(5)(i)(E);

d. Adding the word ''or'' to the end of paragraph (b)(6)(i)(C);

e. Revising paragraph (b)(6)(i)(D); and

f. Removing paragraph (b)(6)(i)(E).

The revisions read as follows:

§ 242.301 Requirements for alternative trading systems.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(D) With respect to corporate debt securities, 5 percent or more of the average daily volume traded in the United States.

* * * * *

(6) * * *

(i) * * *

(D) With respect to corporate debt securities, 20 percent or more of the average daily volume traded in the United States.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 6. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 7. Form ATS–R (referenced in § 249.638) is amended by:

■ a. In the instructions to the form, Section B, revising the second term, ''Investment Grade Corporate Debt Securities,'' and removing the third term, ''Non-Investment Grade Corporate Debt Securities''; and

■ b. In Section 4 of the form, revising Line L, to read ''Corporate debt securities,'' removing Line M and redesignating Lines N and O as Lines M and N.

The revision reads as follows:

Note: The text of Form ATS–R does not and this amendment will not appear in the Code of Federal Regulations.

Form ATS–R, Quarterly Report of Alternative Trading System Activities

Form ATS–R Instructions

B. * * *

* * * * *

CORPORATE DEBT SECURITIES—Shall mean any securities that (1) evidence a liability of the issuer of such securities; (2) have a fixed maturity date that is at least one year following the date of issuance; and (3) are not exempted securities, as defined in Section 3(a)(12) of the Exchange Act, (15 U.S.C. 78c(a)(12)).

* * * * *

■ 8. Form PILOT (referenced in § 249.821) is amended by:

■ a. In the instructions to the form, Section B, revising the second term, ''Investment Grade Corporate Debt Securities,'' and removing the third term, ''Non-Investment Grade Corporate Debt Securities''; and

■ b. In Section 9 of the form, revising Line J, to read ''Corporate debt securities,'' removing Line K and redesignating Lines L, M, N and O as Lines K, L, M and N.

The revision reads as follows:

Note: The text of Form PILOT does not and this amendment will not appear in the Code of Federal Regulations.

Form PILOT, Initial Operation Report, Amendment to Initial Operation Report and Quarterly Report for Pilot Trading Systems Operated by Self-Regulatory Organizations

Form PILOT Instructions

B. * * *

* * * * *

CORPORATE DEBT SECURITIES—Shall mean any securities that (1) evidence a liability of the issuer of such securities; (2) have a fixed maturity date that is at least one year following the date of issuance; and (3) are not exempted securities, as defined in Section 3(a)(12) of the Exchange Act, (15 U.S.C. 78c(a)(12)).

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 9. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37 and 80a–39, unless otherwise noted.

* * * * *

■ 10. Section 270.5b–3 is amended by revising paragraph (c)(4)(iii) to read as follows:

§ 270.5b–3 Acquisition of repurchase agreement or refunded security treated as acquisition of underlying securities.

* * * * *

(c) * * *

(4) * * *

(iii) At the time the deposited securities are placed in the escrow account, or at the time a substitution of the deposited securities is made, an independent certified public accountant has certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the Refunded Securities.

* * * * *

■ 11. Section 270.10f–3 is amended by:

■ a. Revising paragraph (a)(3);

■ b. Removing paragraph (a)(5); and

■ c. Redesignating paragraphs (a)(6), (a)(7) and (a)(8) as paragraphs (a)(5), (a)(6) and (a)(7).

The revision reads as follows:

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

(a) * * *

(3) *Eligible Municipal Securities* means ''municipal securities,'' as defined in section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)), that are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time and either:

(i) Are subject to no greater than moderate credit risk; or

(ii) If the issuer of the municipal securities, or the entity supplying the revenues or other payments from which the issue is to be paid, has been in continuous operation for less than three years, including the operation of any predecessors, the securities are subject to a minimal or low amount of credit risk.

* * * * *

By the Commission.

Dated October 5, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–24364 Filed 10–8–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239, 240, 242, 249, 270 and 275

[Release Nos. 33–9069; 34–60790; IA–2932; IC–28940; File Nos. S7–17–08, S7–18–08, S7–19–08]

RIN 3235–AK17, 3235–AK18, 3235–AK19

References to Ratings of Nationally Recognized Statistical Rating Organizations

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Proposed rule; re-opening of comment period; request for additional comments.

SUMMARY: The Securities and Exchange Commission is re-opening the comment period on certain of the proposed rule amendments to remove references to ratings of Nationally Recognized Statistical Rating Organizations proposed in Release Nos. 33–8940 [73 FR 40106 (July 11, 2008)], 34–58070 [73 FR 40088 (July 11, 2008)], and IC–28327 [73 FR 40124 (July 11, 2008)] ''Proposing Releases''). Today, in a companion release, the Commission is taking action on some of the amendments in the Proposing Releases. In view of the continuing public interest in the Proposing Releases and the Commission's desire to receive additional comment, we believe that it is appropriate to re-open the comment period before we take further action on certain proposals made in the Proposing Releases.

DATES: Comments should be received on or before December 8, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–17–08, S7–18–08, and/or S7–19–08 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–17–08, S7–18–08, and/or S7–19–08. The file number(s) should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, Thomas K. McGowan, Deputy Associate Director, Randall W. Roy, Assistant Director, Joseph I. Levinson, Special Counsel (Net Capital Requirements and Customer Protection) at (202) 551–5510; Paula Jenson, Deputy Chief Counsel, Ignacio Sandoval, Special Counsel (Confirmation of Transactions) at (202) 551–5550; Josephine J. Tao, Assistant Director, Elizabeth A. Sandoe, Branch Chief, and Bradley Gude, Special Counsel (Regulation M) at (202) 551–5720; Marlon Quintanilla Paz, Senior Counsel to the Director at (202) 551–5756, in the Division of Trading and Markets; Hunter Jones, Assistant Director, Penelope W. Saltzman, Assistant Director, or Daniel K. Chang, Attorney at (202) 551–6792, in the Division of Investment Management; or Katherine Hsu, Special Counsel (Asset-Backed Securities), Blair Petrillo, Special Counsel at (202) 551–3430, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 1, 2008, the Commission proposed to eliminate references to ratings issued by nationally recognized statistical rating organizations (''NRSROs'') in certain rules and forms under the Securities Exchange Act of 1934 (''Exchange Act''), the Investment Company Act of 1940 (''Investment Company Act''), the Investment Advisers Act of 1940 (''Investment Advisers Act''), and the Securities Act of 1933 (''Securities Act'').[1] The Commission proposed these amendments, among other reasons, to address the risk that the reference to and use of NRSRO ratings in Commission rules could be interpreted by investors as an endorsement of the quality of the credit ratings issued by NRSROs, and may encourage investors to place undue reliance on NRSRO ratings.[2] The comment period for the Proposing Releases ended on September 5, 2008. Today, in a companion release, the Commission is adopting proposed amendments to remove references to ratings issued by NRSROs in certain rules.[3] Given regulatory developments,[4] comments received on the proposals, and the continuing public interest in the Proposing Releases, particularly in light of recent economic events, the Commission is requesting additional public comment on certain proposed rule changes relating to the use of references to ratings issued by NRSROs, as detailed below.

II. References to Ratings of NRSROs in Exchange Act Rules

As discussed below, the Commission is deferring consideration of action and soliciting comment on certain of its proposals relating to the use of NRSRO credit ratings in the rules and forms proposed in the Exchange Act Proposing Release.[5] The Commission is seeking

[1] *See References to Ratings of Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 58070 (July 1, 2008) [73 FR 40088 (July 11, 2008)] (proposing amendments to rules and forms under the Securities Exchange Act) (''Exchange Act Proposing Release''); *References to Ratings of Nationally Recognized Statistical Ratings Organizations,* Investment Company Act Release No. 28327 (July 1, 2008) [73 FR 40124 (July 11, 2008)] (proposing amendments to rules under the Investment Company Act and the Investment Advisers Act) (''Investment Company Act Proposing Release''); *Security Ratings,* Securities Act Release No. 8940 (July 1, 2008) [73 FR 40106 (July 11, 2008)] (proposing amendments to rules and forms under the Securities Act and the Securities Exchange Act) (''Securities Act Proposing Release'').

[2] *See* Exchange Act Proposing Release, *supra* note 1, at Section I; Investment Company Act Proposing Release, *supra* note 1, at Section I; and Securities Act Proposing Release, *supra* note 1.

[3] *See References to Ratings of Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 34–60789 (October 5, 2009) (''NRSRO References Adopting Release'').

[4] *See, e.g., Money Market Fund Reform,* Investment Company Act Release No. 28807 (June 30, 2009) [74 FR 32688 (July 8, 2009)] (''Money Market Fund Proposing Release'') (proposing amendments designed to improve the regulatory framework governing money market funds and requesting comment on, among other things, whether the Commission should eliminate Rule 2a–7's use of ratings by NRSROs, or whether the Commission should adopt other alternatives to encourage more independent credit risk analysis, including whether the Commission should reformulate the rule's use of ratings by requiring the fund's directors to designate specific NRSROs that the board of directors determines issue credit ratings that are sufficiently reliable.).

[5] For a detailed discussion of each of these proposals, *see* Exchange Act Proposing Release, *supra* note 1.

additional comment on specific issues as well as general comments on the proposals.

A. Regulation M

Regulation M is intended to preclude manipulative conduct by persons with an interest in the outcome of an offering. It governs the activities of underwriters, issuers, selling security holders, and others in connection with offerings of securities. In particular, Rules 101 and 102 of Regulation M prohibit, in connection with a distribution of securities, issuers, selling shareholders, distribution participants, or any affiliated persons of such persons from directly or indirectly bidding for, purchasing, or attempting to induce a person to bid for or purchase a covered security during certain defined periods. Certain securities are excepted from Rules 101 and 102, including investment grade non-convertible debt securities, investment grade non-convertible preferred securities, and investment grade asset-backed securities.

In the Exchange Act Proposing Release, the Commission proposed to change the exceptions in Rules 101(c)(2) and 102(d)(2) of Regulation M for investment-grade non-convertible debt securities, investment grade non-convertible preferred securities, and investment grade asset-backed securities (''Regulation M Proposals'').[6] The Regulation M Proposals would have removed references to NRSRO ratings from the determination of whether such securities would be eligible for the exceptions, and instead would have excepted non-convertible debt securities and non-convertible preferred securities based on the ''well-known seasoned issuer'' (''WKSI'') concept of Securities Act Rule 405.[7] The Regulation M Proposals would have also excepted asset-backed securities that are registered on Form S–3.[8]

Commenters that specifically addressed the Regulation M Proposals expressed uniform opposition.[9] Many of these commenters stated their view that the proposal would fail to address the issue of investors' undue reliance on NRSRO ratings.[10] Commenters that specifically addressed the Regulation M Proposal also stated that, because the Regulation M Proposals would have altered the scope of the exception for investment-grade non-convertible debt securities, investment-grade non-convertible preferred securities, and asset-backed securities, the Regulation M Proposals would have placed new burdens on issuers and underwriters by imposing the restrictions of Regulation M on currently excepted investment-grade securities.[11] Additionally, commenters that specifically addressed the Regulation M Proposal expressed the view that certain issuers of high yield securities that are currently subject to Regulation M, but are arguably more vulnerable to manipulation than securities currently excepted from Regulation M, would have been excepted from Rules 101 and 102 of Regulation M by the Regulation M Proposals.[12] These commenters suggested retaining the NRSRO references in Regulation M and did not generally suggest alternatives to the Regulation M Proposals that would achieve our goals while addressing these concerns.[13]

The Commission is deferring consideration of action on the Regulation M Proposals. In light of the uniform opposition in the comment letters and the Commission's remaining concern regarding the undue influence of NRSRO ratings, the Commission is seeking additional comment. The Commission is continuing to consider its proposed amendments as well as other changes to Rules 101(c)(2) and 102(d)(2) of Regulation M to address concerns with regard to references to NRSRO ratings, and it continues to invite comments suggesting alternative proposals to achieve the Commission's goals, as well as comments on the Regulation M Proposals generally.[14] In assessing the Commission's proposals and alternatives to these proposals, the Commission would consider a number of factors, including:[15]

- Is the alternative comparable in scope to the existing exceptions? Does the alternative except roughly the same type and quantity of securities as the current exceptions for non-convertible debt, non-convertible preferred, and asset-backed securities?
- Does the alternative capture securities that are traded on basis of their yields, are largely fungible and less likely to be subject to manipulation? Are there factors in addition to yield and fungible nature that effect the trading of nonconvertible and asset backed securities?
- What effect(s) of the alternative, if any, would you anticipate in the investment-grade debt market and high-yield debt market?
- To the extent the alternative excepts non-convertible debt, non-convertible preferred, and asset-backed securities that are not currently excepted, how are those newly excepted securities less likely to be subject to manipulation?
- Will the alternative remove the exception for certain non-convertible debt, non-convertible preferred, and asset-backed securities that fall within the current exceptions?
- Does the alternative provide an equally bright-line demarcation that is not unduly reliant on NRSRO ratings?
- Is the alternative easy for all persons subject to Rules 101 and 102 of Regulation M to determine (*i.e.,* can it be determined by publicly available sources of information)?

Please provide empirical data, when possible, and cite to economic studies to support alternative approaches. Please suggest additional factors that you believe should be considered in assessing alternatives. Please discuss whether and to what extent investors rely upon the current Rule 101 and 102

[6] *See* Exchange Act Proposing Release, *supra* note 1.

[7] *Id.*

[8] *Id.*

[9] We received five comment letters that specifically addressed the Regulation M proposals and each opposed the proposals. Letter from Keith F. Higgins, Chair, Committee on Federal Regulation of Securities, American Bar Association (''ABA''), to Florence E. Harmon, Acting Secretary, dated October 10, 2008 (''ABA Letter 1''); Letter from Robert Dobilas, CEO and President, Realpoint LLC, to Secretary, dated September 8, 2008; Letter from Jeremy Reifsnyder and Richard Johns, Co-chairs, ASF Credit Rating Agency Task Force, to Florence E. Harmon, Acting Secretary, dated September 5, 2008 (''ASF Letter''); Letter from Deborah A. Cunningham and Boyce I. Greer, Co-chairs, SIFMA Credit Rating Agency Task Force, to Florence E. Harmon, Acting Secretary, dated September 4, 2008 (''SIFMA Letter''); and Letter from Mayer Brown LLP, to Florence E. Harmon, Acting Secretary, dated September 4, 2008 (''Mayer Brown Letter''). There were comment letters supportive of the Commission's effort to minimize undue reliance on NRSRO ratings by market participants, however, these commenters did not discuss Regulation M. *See, e.g.,* Letter from Suzanne C. Hutchinson, Executive Vice President, Mortgage Insurance Companies of America, to Florence E. Harmon, Acting Secretary, dated September 5, 2008.

[10] *See, e.g.,* SIFMA Letter (''Regulation M is primarily directed at the actions of the issuers of securities and the investment banks who underwrite them; in contrast, the investors that the Commission is concerned with are not users of Regulation M'').

[11] ABA Letter 1, SIFMA Letter.

[12] ABA Letter 1, SIFMA Letter.

[13] The ABA did, however, suggest that should the Commission insist on using the WKSI standard for investment-grade non-convertible debt and investment-grade non-convertible preferred securities, it do so only as an alternative to the current exceptions at Rules 101(c)(2) and 102(d)(2). ABA Letter 1. However, the ABA expressed its ''strong[] belie[f] that the Commission should retain the current exceptions.'' *Id.*

[14] The Commission specifically invited commenters to suggest alternatives to the Regulation M Proposals in the Proposing Release, *see* Exchange Act Proposing Release, *supra* note 1, at 40096, but none were received at that time.

[15] While the Commission asked similar questions in the Exchange Act Proposing Release relating to the specific Regulation M Proposals, the Commission will consider these factors in connection with any alternative proposal suggested by commenters.

exceptions for investment-grade non-convertible and asset-backed securities when making a decision to invest in such securities. Please also discuss whether, given that Rules 101 and 102 of Regulation M are directed at distribution participants, issuers and selling security holders, Rules 101 and 102 of Regulation M pose any danger of undue reliance on NRSRO ratings by investors.

B. Rule 10b–10

Exchange Act Rule 10b–10,[16] the Commission's transaction confirmation rule for broker-dealers, generally requires broker-dealers that effect transactions for customers in securities, other than U.S. savings bonds or municipal securities,[17] to provide those customers with written notification, at or before completion of a securities transaction, disclosing certain information about the terms of the transaction. Specifically, Rule 10b–10 requires the disclosure of the date, time, identity, and number of securities bought or sold; the capacity in which the broker-dealer acted (*e.g.,* as agent or principal); yields on debt securities; and under specified circumstances, the amount of compensation the broker-dealer will receive from the customer and any other parties. In doing so, the rule serves a basic investor protection function by conveying information that: (1) Allows customers to verify the terms of their transactions; (2) alerts customers to potential conflicts of interest; (3) acts as a safeguard against fraud; and (4) allows customers a means of evaluating the costs of their transactions and the quality of the broker-dealer's execution and order-handling.

Paragraph (a)(8) of Rule 10b–10, which the Commission adopted in 1994, requires a broker-dealer to inform the customer in the transaction confirmation if a debt security, other than a government security, is unrated by an NRSRO.[18] While paragraph (a)(8) was intended to alert customers to the potential need to obtain more information about a security from a broker-dealer, it was not intended to suggest that an unrated security is inherently riskier than a rated security.[19] The Commission proposed to delete paragraph (a)(8) of the Rule in light of present concerns regarding undue reliance on NRSRO ratings and confusion about the significance of those ratings.[20] The Commission also stated that, in the absence of this requirement, broker-dealers could voluntarily include this information in confirmations they send to customers.[21]

Four commenters expressed views regarding the proposed deletion of paragraph (a)(8) from Rule 10b–10.[22] One commenter maintained that deleting the requirement could be confusing and misleading to customers, who might presume that the security was rated because the non-rated status would no longer appear on the confirmation.[23] This commenter also noted that customers could be confused by a lack of uniformity in confirmations, if some broker-dealers chose to continue including the non-rated status on confirmations while others did not.[24] Another commenter stated that investors benefit from, and broker-dealers are not materially burdened by, the disclosure requirement in paragraph (a)(8).[25] One commenter expressed the view that deleting paragraph (a)(8) would be appropriate, and noted that a proposed FINRA rule would, among other things, require brokers-dealers to provide investors with the lowest credit rating on a security.[26] Finally, one commenter suggested that if paragraph (a)(8) were deleted, it could be replaced with the use of a credit spread as a credit risk measure.[27]

After considering the comments, the Commission has determined to seek further comment on this proposal before considering action. The Commission is continuing to consider the relative benefits of retaining this information in the transaction confirmation against the benefits of removing the reference to whether a security is unrated. The Commission notes in this regard that the current requirement to disclose when a debt security is unrated by an NRSRO provides investors with an item of factual information that is conveyed together with additional factual information about the terms of the trade. Moreover, we are still evaluating the impact that eliminating this disclosure requirement would have against the possibility of permitting broker-dealers to continue providing, on a voluntary basis, information on the confirmation that a debt security is not rated. In addition, we are concerned that customers may potentially be confused by the lack of a disclosure that they may be accustomed to receiving.

At the same time, the Commission remains concerned that customers may place undue reliance on NRSRO ratings and that there may continue to be confusion about the significance of those ratings. Therefore, the Commission will continue to consider whether to delete paragraph (a)(8) of Rule 10b–10, particularly in light of comments received to date, and invites further comment on the proposed deletion of Rule 10b–10(a)(8), including comments that suggest alternative proposals to achieve the Commission's stated goals. In continuing to assess these issues, the Commission requests comments on the following:

- Would the investor protection function of Rule 10b–10 be, in any way, undercut by deleting paragraph (a)(8) from the Rule? Are there any other alternatives for providing customers with this information?
- What types of securities would typically be unrated by an NRSRO? What types of issuers would typically not have their securities rated by an NRSRO?
- Could the disclosure that a security is unrated be removed from the confirmation without creating customer confusion? If so, given the historical use and investor expectations related to this disclosure, could it be removed without implying that a security is in fact rated?

[16] 17 CFR 240.10b–10.

[17] Municipal securities are covered by Municipal Securities Rulemaking Board rule G–15, which applies to all municipal securities brokers and dealers.

[18] *See* Exchange Act Release No. 34962 (November 10, 1994) [59 FR 59612 (November 17, 1994)] (File No. S7–6–94) (''1994 Adopting Release'').

[19] *Id.* The Commission stated in the 1994 Adopting Release that ''[i]n most cases, this disclosure should verify information that was disclosed to the investor prior to the transaction. If a customer was not previously informed of the security's unrated status, the confirmation disclosure may prompt a dialogue between the customer and the broker-dealer.''

[20] Exchange Act Proposing Release, *supra* note 1, 73 FR at 40092.

[21] *Id.*

[22] *See* Realpoint Letter; SIFMA Letter; Letter from Cate Long, Multiple-Markets to Secretary, Securities and Exchange Commission, dated September 5, 2008 (''Multiple-Markets Letter''); Tom McNerney, Managing Director, Data and Analytics and Marcus Schuler, Managing Director, Regulatory Affairs, Markit to Securities and Exchange Commission, dated September 5, 2008 (''Markit Letter'').

[23] *See* SIFMA Letter.

[24] *Id.*

[25] *See* Realpoint Letter. This commenter also urged the Commission to ''at a minimum, retain the existing requirement * * * [and] strongly consider requiring that the confirmation disclose whether the security is rated by an NRSRO who was not and is not being compensated'' directly or indirectly by the issuer. *Id.*

[26] *See* Multiple-Markets Letter. This commenter stated that a proposed FINRA rule ''serves to protect investors but could be enhanced by the addition of an alternative method of showing credit quality'' by requiring broker-dealers to ''provide the investor with the 'average' rating across NRSROs.'' *Id.* The Commission is considering the FINRA proposed rule change separately. *See* Exchange Act Release No. 56661 (October 15, 2007) [72 FR 59321 (October 19, 2007)] (File No. SR–NASD–2005–100).

[27] *See* Markit Letter. ''The usage of credit spreads for this purpose would be much more accurate, and would be capable of revealing that many unrated securities are actually less risky than rated ones.'' *Id.*

Would the suggested approach vary if certain broker-dealers continued to voluntarily disclose that securities were unrated? Should broker-dealers be required to alert customers that the unrated status of a security is no longer being disclosed? If so, for how long?

• The preliminary note to Rule 10b–10 provides: ''This section requires broker-dealers to disclose specified information in writing to customers at or before completion of a transaction. The requirements under this section that particular information be disclosed is not determinative of a broker-dealer's obligation under the general antifraud provisions of the federal securities laws to disclose additional information to a customer at the time of the customer's investment decision.'' If paragraph (a)(8) were deleted, would the preliminary note to Rule 10b–10 affect a broker-dealer's decision to nonetheless continue to voluntarily disclose whether a security is unrated?

• One approach for addressing possible customer confusion if some broker-dealers continue to disclose that a security is unrated, while others do not, could be to prohibit broker-dealers from making this disclosure on the confirmation. Such an approach, however, could be viewed as inconsistent with broker-dealers' obligations under the general antifraud provisions of the federal securities laws, as highlighted in the preliminary note to Rule 10b–10, to disclose material information to their customers. We invite comment on this approach, and particularly on how a broker-dealer, if it considered the fact that a security was unrated to be material, could disclose this information to customers other than on the confirmation.

• If paragraph (a)(8) were deleted, is there a disclosure that should be required in the confirmation on a transitional or permanent basis that would help prevent customer confusion? For example, should the Commission require broker-dealers, either permanently or temporarily for a transition period, to disclose that broker-dealers are no longer required to include on the confirmation the fact that a security is unrated? Should such a disclosure be made on the confirmation, the account statement, or in a separate document accompanying the confirmation or account statement? What are the costs associated with providing this disclosure on the confirmation, the account statement or in a separate document?

• If the requirement to disclose that a security is unrated were deleted from Rule 10b–10, would broker-dealers nevertheless feel compelled to include the disclosure in order to satisfy their suitability or other sales practice obligations?

• Should the requirement to disclose that a security is unrated be replaced by a requirement to provide a general statement regarding the importance of considering an issuer's creditworthiness?

• If the requirement to disclose that a security is unrated were deleted from the rule, are there alternative external or objective measures of credit risk that could be substituted for ratings by an NRSRO? Is it practicable to replace it with a requirement to disclose specific information regarding an issuer's creditworthiness? If so, what specific information should the Commission consider including?

• Are credit spreads [28] a viable method of addressing an issuer's creditworthiness? For example, is there a consistent, reliable, and generally agreed upon method for determining credit spread? How could information about credit spread be presented so that it could be readily understood by customers, particularly retail customers?

C. Net Capital Rule

The Commission proposed to remove, with limited exceptions, all references to NRSROs from the net capital rule for broker-dealers, Rule 15c3–1 under the Exchange Act (''Net Capital Rule'').[29] Under the Net Capital Rule, broker-dealers are required to maintain, at all times, a minimum amount of net capital, generally defined as a broker-dealer's net worth (assets minus liabilities), plus certain subordinated liabilities, less certain assets that are not readily convertible into cash (*e.g.,* fixed assets), and less a percentage of certain other liquid assets (*e.g.,* securities). When calculating net capital, broker-dealers are permitted to take a lower capital charge, called a ''haircut,'' for certain types of securities that are rated investment grade by an NRSRO.

As the Commission stated in proposing to remove references to NRSROs from the Net Capital Rule, broker-dealers are sophisticated market participants regulated by at least one self-regulatory organization. Accordingly, the Commission expressed its preliminary belief that broker-dealers would be able to assess the creditworthiness of the securities they own without undue hardship.[30] In lieu of the references to NRSROs in the Net Capital Rule, the Commission proposed substituting two subjective standards for credit risk and liquidity risk. For the purposes of determining haircuts on commercial paper, the Commission proposed to replace the current NRSRO ratings-based criterion with a requirement that the instrument be subject to a minimal amount of credit risk and have sufficient liquidity such that it can be sold at or near its carrying value almost immediately.[31] For the purposes of determining haircuts on nonconvertible debt securities as well as on preferred stock, the Commission proposed to replace the current NRSRO ratings-based criterion with a requirement that the instrument be subject to no greater than moderate credit risk and have sufficient liquidity such that it can be sold at or near its carrying value within a reasonably short period of time.[32] The proposed standards were intended to advance the purpose the NRSRO ratings-based standards were designed to advance, which is to enable broker-dealers to make net capital computations that reflect the market risk inherent in the positioning of those particular types of securities. Notwithstanding the Commission's belief that broker-dealers have the financial sophistication and resources to make these determinations,[33] the Commission stated that it would be appropriate, as one means of complying with the proposed amendments, for broker-dealers that wished to continue to rely on credit ratings of NRSROs to do so.[34]

The majority of the commenters to the Commission's proposal to remove references to NRSROs from the Net Capital Rule were opposed to the change.[35] Generally, commenters stated

[28] ''Credit spread'' has been defined to mean the ''differences in yield resulting from different levels of credit risk.'' *See* Oxford Dictionary of Finance and Banking 100 (3rd ed. 2005). *See also* Barron's Dictionary of Finance and Investment Terms 152 (6th ed. 2003) (defining ''credit spread'' as the ''difference in value of two options, when the value of the one sold exceeds the value of the one bought. The opposite of a debt spread.'').

[29] 17 CFR 240.15c3–1; *see* Exchange Act Proposing Release, *supra* note 1, 73 FR at 40092.

[30] *See* Exchange Act Proposing Release, *supra* note 1, 73 FR at 40092.

[31] *Id.*

[32] *Id.*

[33] *See* Exchange Act Proposing Release, *supra* note 1, 73 FR at 40093.

[34] *See* Exchange Act Proposing Release, *supra* note 1, 73 FR at 40092.

[35] *See, e.g.,* SIFMA Letter; Markit Letter; Letter from Jeffrey T. Brown, Senior Vice President, Charles Schwab Co., Inc., Washington, District of Columbia to Florence E. Harmon, Acting Secretary, Commission dated September 5, 2008 (''Schwab Letter''); Letter from Kent Wideman, Group Managing Director, Policy and Rating Committee, DBRS and Mary Keogh, Managing Director, Policy and Regulatory Affairs, DBRS dated September 8, 2008; Letter from Robert Dobilas, CEO and President, Realpoint LLC dated Sept. 8, 2008; Gregory W. Smith, General Counsel, Colorado Public Employees' Retirement Association to Nancy

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that they preferred the existing rule because it is a bright line objective test that is relatively inexpensive to utilize.[36] Commenters asserted that the new subjective standards that rely on the discretion of an interested decision-maker (*i.e.,* the broker-dealer itself) would increase uncertainty, decrease transparency, and decrease market confidence in the financial strength of broker-dealers.[37] Commenters expressed their belief that the direct conflict of interest that would exist for broker-dealers to overestimate the creditworthiness of a security to minimize the amount of required net capital would lead broker-dealers to maintain too little net capital and would have the effect of increasing systemic risk.[38] Commenters also stated that the proposed changes would require increased oversight by Commission staff to enforce the use of internal processes in capital charge calculations.[39] In this regard, commenters noted that Commission staff would need to review procedures at each broker-dealer, and each review would need to include the algorithms of broker-dealer internal processes, requiring intensive scrutiny at both large and small broker-dealers.[40] Further, commenters argued that not all broker-dealers are ''sophisticated'' and have sufficient resources or expertise to develop their own internal processes for rating securities.[41] A minority of commenters supported the proposal to remove references to NRSROs from the net capital rule.[42] One commenter argued that NRSROs have too much influence on the ''quality assessments of securities that the SEC's regulated financial institutions have been required to make.'' [43]

After considering these comments, the Commission has determined to solicit further comment before considering action on the proposed rule amendments to remove references to NRSROs from the Net Capital Rule. In evaluating whether to take action in the future, the Commission would consider, among other things, whether the haircut for the position would be appropriate given the risks inherent in the position. The relevant risks would include the price volatility, creditworthiness, and liquidity of the position. Additionally, in evaluating whether to adopt any amendments, the Commission would consider, among other things, the costs of an objective approach versus a subjective test; whether any alternative objective approaches exist; whether the proposed rule would create conflicts of interest that may result in undesirable consequences, such as increasing systemic risk; and whether broker-dealers have sufficient resources and expertise to implement the proposed rule.

The Commission generally requests comments on whether it should retain the NRSRO reference in the Net Capital Rule, as well as all aspects of the proposed rule and reiterates its request for comment in the Exchange Act Proposing Release. Further, the Commission seeks comments on the factors it would consider in determining whether to amend the requirements for determining haircuts for proprietary securities positions. The Commission also requests comments on the following specific questions:

- Are there factors other than creditworthiness and liquidity that should be required to be considered in determining the appropriate haircut for a proprietary securities position?
- What would be the cost to broker-dealers to develop, document, and enforce internal procedures to evaluating the creditworthiness and liquidity of proprietary securities positions?
- Do certain broker-dealers lack sufficient resources or expertise to independently assess the creditworthiness of securities?
- How could the concern that a broker-dealer would have an incentive to downplay the credit risk associated with a particular security to minimize capital charges be addressed? Would reviews of internal procedures by examiners be sufficient to address this concern? Are there other methods, such as reviews by internal or external auditors, that could effectively address this concern? Do other objective measures of credit risk exist, and could they be used in place of NRSRO ratings to address this concern?
- If the Commission decides to adopt the proposal to replace the current NRSRO ratings-based criterion with a requirement that the instrument be subject to a minimal amount of credit risk and have sufficient liquidity, and permits broker-dealers to continue to rely on credit ratings of NRSROs as one mean of complying with the proposed amendments, should the Commission nevertheless require that the standard that results in a higher determination of credit risk be used for each individual instrument?
- If the Commission replaces the current NRSRO ratings-based criterion with a requirement that the instrument be subject to a minimal amount of credit risk and have sufficient liquidity such that it can be sold at or near its carrying value within a reasonably short period of time, should the Commission also require that broker-dealers consult credit ratings of NRSROs for that instrument, comparing which method requires the higher capital charge, and require that the broker-dealer take the higher capital charge?
- Conversely, if broker-dealers continue to rely on credit ratings of NRSROs, either because the Commission does not remove the reference to NRSROs from the Net Capital Rule or as one means of complying with the proposed amendments, should the Commission require an analysis of the debt instrument that is independent of the NRSRO credit rating (*e.g.,* an internal risk assessment or one performed by a third-party vendor) to support the use of the credit rating of NRSROs, and if the analysis does not support the credit rating, require that the broker-dealer take the higher capital charge?

III. References to Ratings of NRSROs in Securities Act Rules

In the Securities Act Proposing release, the Commission proposed changes to certain eligibility criteria for issuers to conduct primary offerings ''off the shelf'' under Securities Act Rule 415 [44] and Forms S–3 and F–3 [45] and changes to other rules that refer to that eligibility.[46] In addition, the Commission proposed changes to Rule 436(g) under the Securities Act.[47] Today, in a companion release, the Commission is proposing amendments to our rules to require disclosure of information regarding credit ratings used by registrants in connection with a registered offering of securities so that investors will better understand the credit rating and its limitations and, in another companion release, the

M. Morris, Secretary, Commission dated September 5, 2008.

[36] *See, e.g.,* SIFMA Letter.

[37] Letter from Keith F. Higgins, Chair, Committee on Federal Regulation of Securities, and Vicki O. Tucker, Chair, Committee on Securitization and Structured Finance, Business Law Section, American Bar Association to Florence E. Harmon, Acting Secretary, Commission dated September 12, 2008 (''ABA Letter 2''); SIFMA letter.

[38] ABA Letter 2.

[39] Schwab Letter.

[40] Schwab Letter.

[41] ABA Letter 2; Schwab Letter.

[42] *See* Letter from Suzanne C. Hutchinson, Executive Vice President, Mortgage Insurance Companies of America; Letter from Lawrence J. White, Professor of Economics, Stern School of Business, New York University, New York, New York to Commission dated September 5, 2008 (''White Letter'').

[43] White Letter.

[44] 17 CFR 230.415.

[45] 17 CFR 239.13 and 17 CFR 239.33.

[46] For a more detailed discussion of each of these proposals, *see* Securities Act Proposing Release, *supra* note 1.

[47] 17 CFR 230.436(g).

Commission is soliciting comment on whether it should propose rescinding Rule 436(g) under the Securities Act.[48] The Commission is deferring consideration of action at this time on the other proposals in the Securities Act Proposing Release. However, in view of the continuing public interest in the Proposing Releases and the Commission's desire to receive additional comment, the Commission is re-opening the comment period for the Securities Act Proposing Release. As the Commission continues to evaluate and consider the proposed rule revisions outlined in this section, the Commission will review whether there are appropriate alternatives to references to credit ratings by NRSROs in those rules and forms.

Under existing requirements, an issuer's ability to conduct shelf offerings of non-convertible debt or asset-backed securities (ABS) may depend on, among other things, the securities' credit ratings. In particular, a primary offering of non-convertible debt securities is eligible for registration on Form S–3 or Form F–3, regardless of the issuer's public float or reporting history, if the securities are investment grade rated.[49] Securities registered on Form S–3 or Form F–3 may be offered on a delayed, or ''shelf,'' basis.[50] An offering of asset-backed securities is eligible for shelf registration on Form S–3 or Form F–3 if the securities are investment grade rated and the offering meets certain other conditions.[51] In addition, a subset of asset-backed securities, ''mortgage-related securities,'' that, among other things, are rated in one of the two highest rating categories by an NRSRO,[52] may be offered on a delayed basis, regardless of the form on which the offering is registered.[53]

In the Securities Act Proposing Release, the Commission proposed to replace the shelf eligibility requirements that rely on investment grade ratings with alternate requirements.[54] For the registration of a non-convertible debt offering on Form S–3 or Form F–3, the Commission proposed to require that, instead of having investment grade rated securities, a registrant must have issued $1 billion of non-convertible securities in registered primary offerings over the prior three years. For shelf eligibility of ABS offerings, including offerings of mortgage related securities, the Commission proposed to replace the investment grade ratings requirement with requirements that initial and subsequent resales of ABS offerings be made in minimum denominations of $250,000 and that initial sales of the securities be made only to ''qualified institutional buyers,'' as that term is defined in Securities Act Rule 144A.[55] We also proposed revisions to related rules and form requirements. We received letters from 35 commenters on these proposals. Most commenters opposed the proposed amendments that would replace the investment grade ratings component of the shelf eligibility requirements.[56]

At this time, the Commission is deferring consideration of action on the proposals to amend the investment grade ratings component of the Form S–3 or Form F–3 eligibility requirements and, as noted above, we are soliciting further comment on the proposals. With respect to the ABS shelf eligibility requirements, the staff of the Division of Corporation Finance is currently engaged in a broad review of the Commission's regulation of asset-backed securities including disclosure, offering process, and reporting of asset-backed issuers. In connection with that review, the staff is evaluating alternatives to the investment grade rating requirements, including alternatives other than the type of purchaser or the denomination of the security. The Commission believes that any proposal for an alternative to investment grade ratings for the purpose of ABS shelf eligibility will be better considered together with other possible proposals to the regulations governing the offer and sale of asset-backed securities.

IV. References to Ratings of NRSROs in Investment Company Act and Investment Advisers Act Rules

In the Investment Company Act Proposing Release, the Commission proposed to amend four of the Commission's rules under the Investment Company Act[57] (Rules 2a–7, 3a–7, 5b–3, and 10f–3) and one rule under the Investment Advisers Act[58] (Rule 206(3)–3T) that refer to credit ratings by NRSROs.[59] These rules use the credit ratings issued by NRSROs in different contexts, and for different purposes, to distinguish among various grades of debt and other rated securities.

The Commission proposed to amend each rule to omit references to NRSRO ratings and, except with respect to one of the rules, substitute alternative provisions that were designed to achieve the same purpose as the ratings.[60] The Commission received 66

[48] *See* the releases considered by the Commission on September 17, 2009 regarding proposed amendments to require disclosure of information about credit ratings used by registrants in connection with registered offerings, and soliciting comment on whether the Commission should propose to rescind Rule 436(g) under the Securities Act.

[49] *See* General Instruction I.B.2 of Form S–3 and General Instruction I.B.2 of Form F–3.

[50] *See* 17 CFR 230.415(a)(1)(x).

[51] *See* General Instruction I.B.5. of Form S–3.

[52] The term ''mortgage related securities'' is defined by Section 3(a)(41) of the Exchange Act [15 U.S.C. 78c(a)(41)].

[53] *See* 17 CFR 230.415(a)(1)(vii).

[54] *See* Securities Act Proposing Release, *supra* note 1.

[55] 17 CFR 230.144A.

[56] *See* ABA Letter 1; ABA Letter 2; SIFMA Letter; Letter from Thomas G. Berkmeyer, Associate General Counsel, American Electric Power Service Corporation to Secretary, Commission dated September 4, 2008; ASF Letter; Letter from Shirley Baum, Senior Attorney, Pinnacle West Capital Corporation to Secretary, Commission dated September 5, 2008; Letter from Walter E. Skrowronski, President, Boeing Capital Corporation to Secretary, Commission dated September 26, 2008; Schwab Letter; Letter from Constance Curnow to Christopher Cox, Chairman, Commission dated August 28, 2008; Letter from Davis Polk & Wardwell to Florence E. Harmon, Acting Secretary, Commission dated September 4, 2008; Letter from Debevoise & Plimpton LLP to Florence E. Harmon, Acting Secretary, Commission dated September 3, 2008 (''Debevoise Letter''); Letter from Dewey & LeBoeuf LLP to Florence Harmon, Acting Secretary, Commission dated September 5, 2008; Letter from James P. Carney, Vice President and Assistant Treasurer, Dominion Resources, Inc. to Florence E. Harmon, Acting Secretary, Commission dated September 5, 2008; Letter from David K. Owens, Executive Vice President, Business Operations Group, Edison Electric Institute to Commission dated September 5, 2008; Letter from Joseph J. Novak, General Counsel, Incapital, LLC to Florence E. Harmon, Acting Secretary, Commission dated September 5, 2008; Letter from Richard A. Lococo, Senior Vice President & Deputy General Counsel, Manulife Financial Corporation to Commission dated September 5, 2008; Mayer Brown Letter; Letter from John A. Courson, Chief Operating Officer, Mortgage Bankers Association to Jill M. Peterson, Assistant Secretary, Commission dated September 5, 2008; Letter from Michael W. Rico, Assistant Treasurer, PNM Resources, Inc. to Office of the Secretary, Commission dated September 5, 2008; Letter from W. Paul Bowers, Executive Vice President and Chief Financial Officer, Southern Company to Florence Harmon, Acting Secretary, Commission dated September 5, 2008; Letter from Vincent L. Ammann, Jr., Vice President and Chief Financial Officer, WGL Holdings, Inc. and Washington Gas Light Company to Florence Harmon, Acting Secretary, Commission dated September 10, 2008; Letter from James C. Fleming, Wisconsin Energy Corporation to Secretary, Commission, dated September 5, 2008.

[57] 15 U.S.C. 80a. Unless otherwise noted, all references to rules under the Investment Company Act will be to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270].

[58] 15 U.S.C. 80b. Unless otherwise noted, all references to rules under the Investment Advisers Act will be to Title 17, Part 275 of the Code of Federal Regulations [17 CFR 275].

[59] Investment Company Act Proposing Release, *supra* note 1.

[60] *See* Investment Company Act Proposing Release, *supra* note 1, at Section III. As discussed in the Investment Company Act Proposing Release, we did not propose an alternative provision for one of the NRSRO references in Rule 3a–7, which excludes structured finance vehicles from the definition of ''investment company'' subject to certain conditions. We did not provide an alternative for the requirement that structured financings offered to the general public have an investment grade rating because we believed that

Continued

comment letters on the proposal, most of which opposed the proposals.[61] Commenters expressed a variety of concerns regarding the proposed amendments. For example, some commenters expressed concern that the proposed amendments would replace an objective standard of an NRSRO rating with a riskier, subjective determination by the board of directors, which would be difficult to apply and would increase the burden on the fund's board.[62] Several commenters also asserted it was premature for the Commission to consider eliminating NRSRO ratings from Commission rules given the Commission's ongoing initiatives to address issues such as improving the accuracy of NRSRO ratings and eliminating NRSRO conflicts of interest.[63]

In a companion release the Commission is issuing today, the Commission is adopting certain of the proposed amendments to Rules 5b–3 and 10f–3 under the Investment Company Act.[64] The Commission is deferring consideration of action on the remaining proposed amendments to Rules 2a–7, 3a–7, and 5b–3 under the Investment Company Act and Rule 206(3)–3T under the Investment Advisers Act in light of the comments received on the proposed amendments and further actions the Commission is considering in separate rulemakings.

Rule 2a–7 under the Investment Company Act governs the operation of money market funds, which rely on the rule to use different valuation and pricing methods than other investment companies (''funds'') are permitted to use, to help maintain a stable share price. The rule contains conditions that restrict money market funds' portfolio investments to securities that have received certain minimum credit ratings from NRSROs or comparable unrated securities.[65] This past June, the Commission proposed amendments to Rule 2a–7 and related rules designed to improve the regulatory framework governing money market funds.[66] In that release, the Commission requested further comment on whether we should eliminate the use of NRSRO ratings in Rule 2a–7, including whether we should consider establishing a roadmap for phasing in the eventual removal of NRSRO references from the rule. We also asked whether we should adopt other alternatives to encourage more independent credit risk analysis, including whether we should reformulate the rule's use of ratings by requiring a money market fund's directors to designate specific NRSROs that the board determines issue ratings that are sufficiently reliable.[67]

Rule 3a–7 under the Investment Company Act excludes structured finance vehicles from the Act's definition of ''investment company'' subject to certain conditions.[68] The conditions include the requirement that structured financings offered to the general public be rated by at least one NRSRO in one of the four highest ratings categories, with certain exceptions.[69] As discussed above, Commission staff is developing proposals regarding the offer and sale of asset-backed securities, which may affect the exemptive relief provided by Rule 3a–7.[70] In considering those changes, the Commission may revisit the use of NRSRO ratings in the offer and sale of asset-backed securities.

Rule 5b–3 under the Investment Company Act permits a fund, subject to certain conditions, to treat a repurchase agreement as an acquisition of the securities collateralizing the repurchase agreement in determining whether the fund is in compliance with two provisions of the Act that may affect a fund's ability to invest in repurchase agreements.[71] The rule permits a fund to treat a repurchase agreement as an investment in the underlying collateral if the agreement is ''collateralized fully,'' and some types of collateral must have received certain credit ratings in order to meet this standard.[72] This reference to credit ratings is used to determine credit risk and liquidity of collateral securities that the fund may look to in meeting the diversification requirements of the Investment Company Act.[73] Fourteen commenters opposed the proposed amendment to eliminate NRSRO ratings references from this definition because, among other reasons, it would replace an objective standard with a subjective standard that would be difficult to apply.

Rule 5b–3 includes a second reference to NRSRO ratings, in the definition of ''refunded security.''[74] The rule allows a fund for purposes of the Investment Company Act's diversification requirements to treat the acquisition of a refunded security as the acquisition of U.S. government securities that are pledged to make payments to investors if, among other conditions, an independent certified public accountant has certified to the escrow agent that the government securities will satisfy all scheduled payments on the refunded security.[75] Three commenters opposed

these offerings generally were not made to retail investors. *See id.* 73 FR at nn. 41–42 and accompanying and following text.

[61] *See, e.g.,* Letter from Ronald W. Forbes and Rodney D. Johnson, Independent Directors of the Blackrock money market funds to Florence Harmon, Acting Secretary, dated September 10, 2008; Letter from Robert G. Zack, Executive Vice President and General Counsel, OppenheimerFunds, Inc. to Florence Harmon, Acting Secretary, dated September 4, 2008. The comment letters are available for public 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 am and 3 pm (File No. S7–19–08), and also are available on the Commission's Internet Web site (*http://www.sec.gov/comments/s7-19-08/s71908.shtml*).

[62] *See, e.g.,* Letter from David Oestreicher, Chief Legal Counsel, T. Rowe Price Associates, Inc. to Florence Harmon, Acting Secretary, dated September 5, 2008.

[63] *See, e.g.,* ABA Letter 2; SIFMA Letter. A few commenters also stated that removing the references may lead to a significant risk of unintended adverse consequences to capital markets, regulatory community and other industries that have regulatory requirements involving NRSRO ratings and may not address concerns about undue investor reliance on NRSRO ratings. *See, e.g.,* SIFMA Letter; Debevoise Letter; Letter from Nathan Douglas, Secretariat, Institutional Money Market Funds Association to Florence Harmon, Acting Secretary, dated September 5, 2008).

[64] *See* NRSRO References Adopting Release, *supra* note 3.

[65] For example, Rule 2a–7 limits a money market fund's portfolio investments to securities that have received credit ratings from at least one NRSRO in one of the two highest short-term rating categories or, if unrated, be of comparable quality. Rule 2a–7(a)(10) (definition of ''Eligible Security'').

[66] *See* Money Market Fund Reform, Investment Company Act Release No. 28807 (June 30, 2009) [74 FR 32688 (July 8, 2009)].

[67] *See id.* at Section II.A.2.a.

[68] Structured financings meet the definition of investment company under Section 3(a) of the Act because they issue securities and invest in, own, hold, or trade securities. Almost none of the structured financings, however, are able to operate under the Act's requirements. *See* Exclusion from the Definition of Investment Company for Structured Financings, Investment Company Act Release No. 19105 (Nov. 19, 1992) [57 FR 56248 (Nov. 27, 1992)].

[69] Rule 3a–7(a)(2).

[70] *See supra* Section III.

[71] Section 5(b)(1) of the Act limits the amount that a fund that holds itself out as being a diversified investment company may invest in the securities of any one issuer (other than the U.S. Government). Section 12(d)(3) of the Investment Company Act generally prohibits a fund from acquiring an interest in a broker, dealer, or underwriter. Because a repurchase agreement may be considered to be the acquisition of an interest in the counterparty, Section 12(d)(3) may limit a fund's ability to enter into repurchase agreements with many of the firms that act as repurchase agreement counterparties.

[72] *See* Rule 5b–3(c)(1)(iv).

[73] *See* Rule 5b–3(c)(1)(iv)(C)–(D).

[74] A ''refunded security'' is a debt security whose principal and interest are to be paid by U.S. government securities that have been irrevocably placed in an escrow account and pledged only to payment of the principal and interest on the debt security. See Rule 5b–3(c)(4).

[75] *See* Rule 5b–3(c)(4)(iii) (requiring at the time the deposited securities are placed in the escrow account that an independent accountant has certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest, and applicable premiums in the refunded securities).

eliminating this NRSRO reference on the grounds it could increase fund expenses and decrease liquidity if funds chose not to bid on refunded securities for which certifications are not available. As discussed in the NRSRO References Adopting Release, because we understand that bond indentures or resolutions authorizing the issuance of the refunded bonds typically require that the escrow agent receive the requisite certification, we do not share these commenters' concerns and are amending Rule 5b–3 to eliminate this reference to NRSRO ratings.[76]

Finally, Rule 206(3)–3T under the Investment Advisers Act establishes a temporary alternative means for investment advisers who are registered with the Commission as broker-dealers to meet the requirements of Section 206(3) of the Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients.[77] The rule contains a condition that excludes securities from coverage under the rule if the adviser or its close affiliate is the issuer or an underwriter of the security, unless it is an underwriter of non-convertible debt securities rated in one of the four highest rating categories of at least two NRSROs.[78] The Commission intends to consider taking separate, broader, action on Rule 206(3)–3T, which is set to expire at the end of this year.[79]

As previously mentioned, the Commission is deferring consideration of action on the proposals to remove NRSRO references from the rules described above under the Investment Company Act and Investment Advisers Act. Our broader consideration of each of these rules will afford us the opportunity to re-evaluate credit rating references in those rules.

The Commission generally requests further comment on the proposed amendments described above to Rules 3a–7 and 5b–3 under the Investment Company Act and Rule 206(3)–3T under the Investment Advisers Act. We also request specific comment on whether the rules should require, in place of existing references to credit ratings, alternate standards that would use (i) credit ratings as a minimum standard, and (ii) additional criteria that must be met with regard to evaluating the securities, such as determinations of credit quality, liquidity, or appropriateness of the security as an investment for the particular purchaser. This approach, if applied to Rules 3a–7 and 5b–3 under the Investment Company Act and Rule 206(3)–3T under the Investment Advisers Act, would be designed to help reduce undue reliance on ratings by requiring an additional evaluation of credit quality, while retaining the external or objective measure of the NRSRO rating. Under Rule 2a–7 in its current form, for example, a determination that a security is an ''eligible security'' as a result of its NRSRO ratings is a necessary but not sufficient finding in order for a money market fund to acquire the security. The rule also currently requires a determination that the security presents minimal credit risks, and specifically requires that the determination ''be based on factors pertaining to credit quality in addition to any ratings assigned to such securities by an NRSRO.''[80] Although the Commission, as noted above, is continuing to consider whether to remove references to credit ratings from Rule 2a–7 altogether, we request comment on whether we should consider the two-step approach of existing Rule 2a–7 for the other rules (*i.e.,* Rules 3a–7, 5b–3, and 206(3)–3T) that contain references to NRSRO credit ratings. Alternatively, are there other objective measures of credit risk, and should they be used in place of NRSRO ratings to address the concerns addressed by the rules?

V. Request for Comment

The Commission generally requests comment on the Proposing Releases as indicated above, including whether the Commission should remove references to credit ratings by NRSROs in Commission rules and the appropriate factors to consider in making this determination. The Commission asks that commenters provide specific reasons and information to support alternative recommendations. Please provide empirical data, when possible, and cite to economic studies, if any, to support alternative approaches.

By the Commission.

Dated: October 5, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–24365 Filed 10–8–09; 8:45 am]

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[76] *See* NRSRO References Adopting Release, *supra* note 3, at Section II.B.1.

[77] Rule 206(3)–3T [17 CFR 275.206(3)–3T]. *See also* Temporary Rule Regarding Principal Trades with Certain Advisory Clients, Investment Advisers Act Release No. 2653 (September 24, 2007) [72 FR 55022 (September 28, 2007)] (''Principal Trade Rule Release''). Section 206(3) of the Investment Advisers Act makes it unlawful for any investment adviser, directly or indirectly ''acting as principal for his own account, knowingly to sell any security to or purchase any security from a client * * * without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.'' 15 U.S.C. 80b–6(3).

[78] Rule 206(3)–3T(c).

[79] *See* Principal Trade Rule Release, *supra* note 77.

[80] Rule 2a–7(c)(3)(i).

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