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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AF95

American Recovery and Reinvestment Act: Loan Program for Systemically Important SBA Secondary Market Broker-Dealers

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule implements certain provisions of the American Recovery and Reinvestment Act of 2009 (''Recovery Act''). This interim final rule implements Section 509 of the Recovery Act which establishes the Secondary Market Lending Authority within SBA to make loans to systemically important SBA Secondary Market broker-dealers to finance the purchase of the government guaranteed portion of loans originated, underwritten and closed under the Small Business Act and the purchase of pools of guaranteed portions of such loans.

DATES: *Effective Date:* This rule is effective November 19, 2009.

Comment Date: Comments must be received on or before February 17, 2010.

ADDRESSES: You may submit comments, identified by RIN: 3245–AF95 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* James W. Hammersley, Deputy Assistant Administrator, Office of Policy and Strategic Planning, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* James W. Hammersley, Deputy Assistant Administrator, Office of Policy and Strategic Planning, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov*. If you wish to submit confidential business information (''CBI'') as defined in the User Notice at *http://www.regulations.gov*, please submit the information to James W. Hammersley, Deputy Assistant Administrator, Office of Policy and Strategic Planning, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or send an e-mail to *james.hammersley@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Deputy Assistant Administrator, Office of Policy and Strategic Planning, at *james.hammersley@sba.gov*.

SUPPLEMENTARY INFORMATION:

I. Background Information

The American Recovery and Reinvestment Act of 2009 (''Recovery Act''), Public Law 111–05, was enacted on February 17, 2009, to, among other things, promote economic recovery by preserving and creating jobs and assisting those most impacted by the severe economic conditions facing the nation. The U.S. Small Business Administration (''SBA'') is one of several agencies that will play a role in achieving these goals.

As authorized by the Recovery Act, this rule will establish the Secondary Market Lending Authority and a direct loan program for systemically important secondary market broker-dealers to assist with the financing of the guaranteed portion of loans originated, underwritten and closed under the Small Business Act. Recipients of these direct loans must use the proceeds to purchase guaranteed portions of 7(a) loans from participating lenders, Guaranteed Interest Certificates from Registered Holders and Guaranteed Pool Certificates from Registered Holders. The cost of the loan charged to systemically important secondary market broker-dealers will be the combination of the interest rate referenced in 13 CFR 120.1830(e), a fee estimate to cover the probability of default, and the ongoing fee as defined in 13 CFR 120.1830(i).

When SBA Lenders sell guaranteed portions of 7(a) loans to broker-dealers through the SBA Secondary Market Program, these transactions enable SBA Lenders to obtain funds to make additional small business loans. While this market has generally recovered to pre-recession levels, offering direct loans to systemically important broker-dealers will provide an important backstop to ensure continued liquidity for the secondary market broker-dealers, which creates a market for SBA Lenders to monetize SBA guaranteed loans and use the proceeds to make new loans to small businesses. The Recovery Act requires SBA to consult with the Board of Governors of the Federal Reserve and the Secretary of the Treasury to establish a process to designate a particular broker-dealer as systemically important. SBA has determined that in order to be designated as systemically important, a broker-dealer must be a Pool Assembler in the existing SBA Secondary Market Program as defined in subpart F, § 120.600 of Chapter 13 of the Code of Federal Regulations. Pool Assemblers that are determined to be systemically important secondary market broker-dealers must be in good standing with the SBA and also satisfy the requirements of subpart F, § 120.630 of Chapter 13 of the Code of Federal Regulations. In addition, SBA will initially use historical Pool Assembler Secondary Market activity, to determine which Pool Assemblers are vital to the continued operation of the SBA Secondary Market and therefore should be designated systemically important broker-dealers. On a quarterly basis SBA will review Pool Assembler Secondary Market activity and may designate additional broker-dealers as systemically important to the SBA Secondary Market.

To ensure that this program operates in compliance with Federal credit program policy, as promulgated by OMB Circular No. A–129, SBA is implementing a ''credit elsewhere'' test for this program. Therefore, to qualify for a direct loan under this section, a Systemically Important SBA Secondary Market Broker-Dealer (''SISMBD'') must also demonstrate that it does not have access to credit on reasonable terms

when it is applying to SBA for a loan. A SISMBD may demonstrate the lack of credit on reasonable terms by providing term sheets offered to it by potential lenders or by providing a narrative describing the steps taken by the applicant to obtain credit. This information will be reviewed by SBA as part of the credit review process for a SISMBD Loan Application. SBA will review the loan terms available to a SISMBD relative to the credit offered to similar companies in the prevailing market to determine if the terms being offered are reasonable.

II. Section by Section Analysis of New Subpart K of Part 120

Section 120.1800 sets forth the defined terms used in Subpart K. The defined terms in Subpart K include:

Administrator. The Administrator of the U.S. Small Business Administration.

Authority. The Secondary Market Lending Authority defined herein.

Certificate. The document the FTA issues representing a beneficial fractional interest in a Pool (Pool Certificate) of Section 7(a) guaranteed portions, or an undivided interest in the entire guaranteed portion of an individual 7(a) guaranteed loan (Individual Certificate).

Collateral (or Collateral for an SISMBD Loan). All Guaranteed Portions and Certificates (and proceeds thereof) that are purchased with SISMBD Loan proceeds, collateral assignments of the SBA Form 1086 (Secondary Market Participation Agreement) or SBA Form 1088 (Form of Detached Assignment for U.S. Small Business Administration Loan Pool or Guaranteed Interest Certificate) for all Guaranteed Portions and Certificates purchased with SISMBD Loan proceeds, agreement for Lender/FTA payment of amounts due under the Guaranteed Portions and Certificates, and any other asset that is pledged to secure an SISMBD Loan.

Commitment Letter. The document or documents containing the terms and conditions, including the total dollar limit, under which SBA agrees to lend money for a specific period of time to a Systemically Important SBA Secondary Market Broker-Dealer defined in Section 120.1810 and pursuant to Section 509 of the American Recovery and Reinvestment Act of 2009.

FTA. SBA's fiscal and transfer agent.

Guaranteed Portion. That portion of a SBA 7(a) loan sold in an SBA Secondary Market transaction. This guaranteed portion of a 7(a) loan once sold is certificated, carries a guarantee backed by the full faith and credit of the United States and bestows upon the Registered Holder the right to receive payments.

Individual Certificate. The instrument representing a beneficial interest in the entire guaranteed portion of an individual 7(a) loan sold in the SBA Secondary Market. It is backed by the full faith and credit of the United States.

Loan Advance Request Form. The form approved by SBA wherein an SISMBD requests a specific dollar advance under the SISMBD's loan agreement that will be used to purchase certain guaranteed portions or Certificates. This amount, when added to the balance outstanding of the SISMBD's existing SISMBD Loan, must be equal to or less than the loan amount. SBA will advance the lesser of the principal balance or the price paid for a Guaranteed Portion or a Certificate.

Loan Agreements. Collectively, any loan agreement executed between SBA and the SISMBD that contains the basic terms and conditions which control the SISMBD Loan, together with any notes, security documentation, custodial agreement, and any other ancillary documentation executed in connection therewith, including by reference, the regulations and other documents referenced in the regulations.

On-going Subsidy Fee. An annual fee collected monthly, based on the outstanding SISMBD Loan balance, pursuant to section 509(F) of the Recovery Act, to result in a cost of the direct loan of zero, as determined under the Federal Credit Reform Act of 1990, as amended. The funds generated by the fee serve as a reserve for program losses. The fee will be published in a notice by SBA prior to the commencement of the Program and from time to time thereafter. SBA will communicate the On-going Subsidy Fee to the systemically important broker-dealers.

Pool Assembler. A financial institution that is authorized by SBA to: (1) Organize and package Pools by acquiring SBA guaranteed portions of 7(a) loans from Lenders or Certificates from Registered Holders; (2) resell fractional interests in the Pools to Registered Holders; and (3) direct the FTA to issue Certificates.

Pool Certificate (or Guaranteed Pool Certificate). The instrument representing a beneficial fractional interest in a Pool of SBA guaranteed portions of 7(a) loans. Pool Certificates carry a timely payment guarantee which is backed by the full faith and credit of the United States.

Pool. The aggregate of SBA Section 7(a) guaranteed portions of loans formed into a single pool by the Pool Assembler in accordance with the SBA Secondary Market laws, regulations and Program Guide.

Premium. Any amount in excess of the principal balance of a Guaranteed Portion or of a Certificate balance.

Program. The program authorized by Section 509 of the American Recovery and Reinvestment Act of 2009.

Registered Holder. The Certificate owner listed in the FTA's records.

SBA. The United States Small Business Administration, an agency of the United States Government.

SBA Secondary Market. Consists of the sale of Certificates, representing either the entire guaranteed portion of an individual 7(a) guaranteed loan or an undivided interest in a Pool consisting of the SBA guaranteed portions of a number of 7(a) guaranteed loans. Transactions involving interests in Pools or the sale of individual guaranteed portions of loans are governed by the contracts entered into by the parties, SBA's Secondary Market Program Guide, and Subpart F of Chapter 13 of the Code of Federal Regulations.

Secondary Market Lending Authority. The office established under Section 509(c) of the American Recovery and Reinvestment Act of 2009 to provide loans to systemically important SBA Secondary Market broker-dealers to be used for the purpose of financing the inventory of the government guaranteed portion of loans, originated, underwritten and closed under the Small Business Act or pools of such loans.

SISMBD. Systemically Important Secondary Market Broker-Dealer, as defined in Section 120.1810 of Chapter 13 of the Code of Federal Regulations.

SISMBD Loan. A direct loan made by SBA to a Systemically Important SBA Secondary Market Broker-Dealer to assist with the financing of the purchase and sale of the Guaranteed Portion of loans originated, underwritten and closed under Section 7(a) of the Small Business Act. Recipients of an SISMBD Loan must use the proceeds for the sole purpose of purchasing guaranteed portions of 7(a) loans from SBA Lenders or Certificates from Registered Holders.

SISMBD Loan Application. The application, in the form approved by SBA wherein an SISMBD applies for an SISMBD Loan.

Section 120.1801 describes the Program purpose for the Secondary Market Lending Authority. The purpose of the Program is for SBA to temporarily make direct loans to broker-dealers to ensure the continued operation of the SBA Secondary Market for small business loans guaranteed by SBA during the current economic environment. Such broker-dealers are referred to in the Recovery Act as

Systemically Important SBA Secondary Market Broker-Dealers.

Section 120.1802 explains how a broker-dealer may participate in the SISMBD Loan Program. In order to obtain a loan, a broker-dealer must be a Pool Assembler in SBA's Secondary Market Program and have been designated as systemically important to the continued operation of the SBA Secondary Market Program. A Pool Assembler with an SISMBD designation must also submit a written loan application, execute the required loan documents and satisfy all other SBA requirements.

Section 120.1810 defines a systemically important SBA Secondary Market broker-dealer as a Pool Assembler that has routinely engaged in the purchase and sale of the Guaranteed Portion of 7(a) loans or pools of Guaranteed Portions originated, underwritten and closed under the Small Business Act.

Section 120.1820 describes the eligibility requirements for an SBA designation as a systemically important SBA Secondary Market broker-dealer. To be eligible a broker-dealer must be a Pool Assembler; satisfy all of the requirements of Section 120.630 of Subpart F of this Title; have not been suspended or terminated by SBA; not be currently the subject of or eligible for an SBA suspension or termination procedure; engaged in a specific dollar volume of SBA Secondary Market purchases of Guaranteed Portions from SBA Lenders and Certificates from Registered Holders, and have sold a specific percentage of the total dollar volume of sales of Pools in the SBA Secondary Market during the same timeframe. On a quarterly basis SBA will review Pool Assembler Secondary Market activity and may designate additional broker-dealers as systemically important to the SBA Secondary Market.

Section 120.1821 provides that SBA will notify each systemically important SBA Secondary Market broker-dealer in writing of its designation.

Section 120.1822 describes the initial SISMBD Loan application process. All loan requests must be submitted to SBA in writing accompanied by a statement of the loan amount that is being requested, financial statements dated within 120 days of the application including a copy of its most recent outside audit report, a balance sheet, an income and expense statement and a schedule of its secured debt obligations, applicant's IRS tax identification number, information demonstrating that credit is not available to the applicant on reasonable terms from private sources and any other information demonstrating the applicant is creditworthy and has the resources to repay the loan. SBA will review the terms available to a SISMBD relative to the credit offered to similar companies in the prevailing market to determine if the terms being offered are reasonable.

Section 120.1823 explains that prior to approving an SISMBD Loan request or advance request application, SBA will consider the creditworthiness of the applicant. Specific evidence that an applicant is not creditworthy includes but is not limited to: Insolvency as defined in the Bankruptcy Code, failure to adhere to the terms of a previous SISMBD Loan or advance request, excessive dependence on borrowed funds, violations of the SBA Secondary Market rules, regulations or procedures, the effect any affiliates of the SISMBD may have on the ultimate repayment ability of the SISMBD or any other relevant factor indicating a less than satisfactory condition or lack of repayment ability.

The presence of one or more of these characteristics will not necessarily mean that an SISMBD is not creditworthy but may cause the partial or complete denial of an SISMBD Loan application.

Section 120.1824 describes the SBA process to notify applicants that an SISMBD Loan request or a request for an advance under a revolving SISMBD Loan has been approved or denied. If a loan request is approved, the SISMBD will receive a Commitment Letter containing the loan terms and conditions. If a loan request or an advance request is denied, the SISMBD will receive a written statement from SBA including reasons for the denial.

Section 120.1825 specifies the process for reconsideration of an SISMBD Loan or advance request denial decision. An applicant may request reconsideration of a denied loan request or advance request within 30 days of receipt of a denial notice. All requests for reconsideration must be submitted to the Director of the Secondary Market Lending Authority. To prevail, the applicant must demonstrate that it has overcome all reasons for the loan request denial. If the reconsideration is denied, a second and final reconsideration may be considered by the Chief Financial Officer.

Section 120.1830 explains that SISMBD Loans will be revolving lines of credit that are collateralized by the Collateral with full recourse against the borrower. SISMBDs will obtain disbursements under the loan by requesting advances when needed to purchase Guaranteed Portions from SBA Lenders or Certificates from Registered Holders. The section also describes the basic terms and conditions of an SISMBD Loan. The Recovery Act provides there is no statutory limit to the maximum loan size for a loan to an SISMBD, subject to the discretion of the Administrator. SBA will establish a revolving line of credit loan limit when the SISMBD initially applies for a loan based on the SISMBD's purchases in the SBA Secondary Market during the immediately prior twelve month period. The total dollar limit on the revolving line of credit will be a minimum of $10,000,000 and no greater than seventy-five percent (75%) of the total dollar amount of SISMBD's purchases in the SBA Secondary Market during the twelve (12) month period of time immediately prior to the loan application, without the written permission of the Director of the Secondary Market Lending Authority. As security for repayment of an SISMBD Loan, the SISMBD must pledge to SBA all Guaranteed Portions and all Certificates that it purchases with the SISMBD Loan proceeds and grant SBA a first lien security interest in the Guaranteed Portions and the Certificates. The SISMBD will assign to SBA all borrower payments on the Guaranteed Portions that back the Certificates that are pledged as collateral for the SISMBD Loan. Interest on SISMBD Loans shall not exceed the Federal Funds target rate as established by the Federal Reserve Board of Governors plus 25 basis points. If for any reason an SISMBD is unable to make payment to SBA when due, SBA may, among other things, accelerate the maturity date of the SISMBD Loan and demand payment in full. An SISMBD Loan maturity date must be no later than February 16, 2013. The On-going Subsidy Fee for an SISMBD Loan is the amount necessary to allow this program to operate at a zero subsidy based on the rules implementing the Federal Credit Reform Act of 1990. SBA will communicate the On-going Subsidy Fee to each of the systemically important broker-dealers.

Section 120.1831 explains that there is no limit to the frequency with which an SISMBD may borrow under the Secondary Market Loan Program unless the Administrator determines that doing so would create an undue risk of loss to SBA or the United States. In order to mitigate the risk of loss, SBA has determined that an SISMBD may request an unlimited number of loans or advances up to the total dollar limit stated in the Commitment Letter. SISMBD Loans will be structured as a

revolving line of credit with a borrowing base.

Section 120.1832 states that there is no minimum or maximum loan advance amount for an SISMBD Loan. Because availability under the SISMBD Loan is capped as set forth in 120.1830, the amount of any loan advance cannot exceed the available credit under the SISMBD Loan.

Section 120.1833 explains when an SISMBD may request an increase in the loan amount. SBA will consider a request for an increase in an SISMBD Loan amount if the applicant can show the increase is essential to its continued participation in the SBA Secondary Market. Applicants must request a loan increase by submitting an application to the Director of the Secondary Market Lending Authority by January 31, 2011.

Section 120.1834 discusses the SBA fee that covers any projected Program losses as required under the Federal Credit Reform Act of 1990. This fee is required to fund a reserve to fully cover estimated Program losses, as required under section 509(F) of the Recovery Act, and consistent with the Federal Credit Reform Act of 1990, as amended. The fee is called the On-going Subsidy Fee.

Section 120.1840 discusses the allowable uses of proceeds of an SISMBD Loan. It implements the Recovery Act requirement that SISMBD Loan proceeds must be used solely to purchase the Guaranteed Portion from SBA Lenders, Individual Certificates or Pool Certificates. SBA will not advance more than the purchase price of the Guaranteed Portions or the Certificate. Thus, if the Guaranteed Portion or Certificates are purchased at a discount to the principal balance, SBA will not advance more than the purchase price. SBA will not finance the purchase of Guaranteed Portions or Certificates unless the Guaranteed Portions or Certificates carry an interest rate equal to or greater than the interest rate payable to SBA under the SISMBD Loan. SISMBD Loan proceeds shall not be used to purchase any Premium portion of a purchase price that is paid to a selling SBA Lender or Registered Holder or any other individual or entity. SISMBD Loan proceeds shall not be used to refinance existing debt of the SISMBD, finance existing inventory of the SISMBD, or for any purpose other than as set forth in this Section.

Section 120.1850 discusses how SBA will hold the collateral for an SISMBD Loan. SBA or its authorized agent will physically hold all Collateral and will obtain a first lien security interest in all Certificates pledged as collateral. Pursuant to the Recovery Act, SBA or its expressly authorized agent shall maintain all collateral for SISMBD Loans in a custodial account. Certificates held as collateral must be in paper, not book entry form.

Section 120.1860 describes the loan disbursement process. When an SISMBD requires an advance from its SISMBD Loan to fund a secondary market purchase, it will submit a written request for an advance to the FTA along with the SBA Form 1086 or 1088 for processing. The FTA will notify SBA that a particular SISMBD requests an advance of a certain amount on a specific settlement date to purchase a Guaranteed Portion, Individual Certificate, or Pool Certificate. Disbursement to the FTA is contingent upon receipt by SBA, the FTA or SBA's settlement agent or custodian of the Guaranteed Portions or Certificates being purchased and any other Collateral required by SBA and verification of the required first lien position. On the settlement date for the secondary market transaction, SBA will wire funds to the FTA. FTA will use loan proceeds and any Premium payment from SISMBD to pay the SBA Lender or Registered Holder the purchase price. SBA will not advance more than the purchase price of the loan or Certificate if the loan or Certificate is purchased at a discount to the principal balance. Upon settlement the FTA, SBA, SBA's settlement agent and the administrator of the custodial account will register the loan advance and collateral pledge on their respective books and records.

Section 120.1870 establishes that SISMBDs must utilize their own funds or other borrowed funds to cover any Premium paid for a Guaranteed Portion or a Certificate. The SISMBD must send Premium payments to the FTA on the settlement date. The FTA will forward Premium payments to the SBA Lender or Registered Holder along with the funds borrowed from SBA for the Certificate being purchased. In this program, ''Premium'' is defined as any amount in excess of the principal balance of a Guaranteed Portion or of a Pool Certificate balance.

Section 120.1880 describes the SISMBD Loan repayment mechanism. Payments on any Guaranteed Portion or Certificate that is purchased with SISMBD Loan proceeds will be assigned to SBA and used to repay the SISMBD Loan. These payments are collected by the FTA. The FTA will forward such payments to SBA. In addition, when the SISMBD forms a Pool with Certificates pledged as Collateral for an SISMBD Loan or transfers a pledged Certificate, all proceeds, including the principal and accrued interest balance of the SISMBD Loan associated with the pledged Certificates must be repaid to SBA as payment on the SISMBD Loan before SBA will release any Collateral and terminate its security interest therein. In this program, ''Premium'' is defined as any amount in excess of the principal balance of a Guaranteed Portion or of a Pool Certificate balance.

Section 120.1881 explains how payments on the Collateral are allocated between the SISMBD borrower and repayment of the SISMBD Loan. Unless otherwise provided in the Loan Agreements for a particular SISMBD Loan, any payment on Collateral is assigned to SBA and must be used to repay the SISMBD Loan.

Section 120.1882 explains what happens if funds to make required loan payments are not generated from the Collateral. The SISMBD is responsible for all interest and principal payments on an SISMBD Loan. If SBA does not receive full and timely remittances from the Collateral or an SISMBD borrower, it may enforce its rights against the SISMBD borrower and the Collateral as set forth in the Loan Agreements, related documents, and applicable law. An SISMBD will have a 30-day grace period during which to make a supplemental payment if remittances from the Collateral are not sufficient to cover the SISMBD Loan payments when they are due. After the grace period, if the loan remains delinquent, SBA may enforce its rights to the Collateral and against the SISMBD.

Section 120.1890 establishes the maximum maturity for SISMBD Loans. The maximum maturity for all SISMBD Loans will be determined by SBA but must be no later than February 16, 2013. If the maturity of the Collateral is shorter than the maturity of the SISMBD Loan, the SISMBD Loan will be due and payable upon payment in full of the Collateral. If the SISMBD Loan has a balance on its maturity date, the SISMBD must pay the loan in full and obtain possession of the Collateral, or SBA will exercise its rights as described in 120.1830(g) and 120.1882(a).

Section 120.1891 explains what happens if an SISMBD is ineligible to receive an SISMBD Loan or an advance. If an SISMBD that has received funds from an SISMBD Loan is found to be ineligible for the loan or is found to have knowingly breached a representation, the SISMBD must repay the loan in full upon demand by SBA or SBA will exercise its rights as described in 120.1830(g).

Section 120.1892 explains what happens if an SISMBD does not use SISMBD Loan funds for a statutorily

mandated purpose. If the Administrator finds that an SISMBD has used loan proceeds for any purpose other than to finance the inventory of the government guaranteed portion of loans originated, underwritten, and closed under Section 7(a) of the Small Business Act or Pools of such loans, the Administrator shall demand immediate repayment of any outstanding loans to the SISMBD; prohibit the SISMBD, its affiliates, or any future corporate manifestation of the SISMBD from using the SBA Secondary Market Lending Authority; report to Congress the identity of any borrower found by the Administrator to have misused funds made available under the Secondary Market Loan Program; and take any other actions the Administrator, in consultation with the Attorney General of the United States, deems appropriate.

Section 120.1893 describes the SISMBD Loan recipient's responsibilities to collect, maintain and report certain information to SBA or other authorized governmental authorities upon request. SISMBD Loan recipients *will also* have reporting requirements related to section 1512 of the Recovery Act. SBA will provide additional separate guidance on the Recovery Act reporting requirements.

Section 120.1900 explains the last date on which SBA may approve an SISMBD Loan is February 16, 2011 and the date by which all outstanding SISMBD Loans must be paid in full, which is February 16, 2013. All SISMBD Loan requests must be received by the Director of the Secondary Market Lending Authority by January 31, 2011.

III. Justification for Publication as Interim Final Rule

In general, before issuing a final rule, SBA publishes the rule for public comment in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA provides an exception from the general rule where the agency finds good cause to omit public participation. 5 U.S.C. 553(c)(3)(B). The good cause requirement is satisfied when prior public participation can be shown to be impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without *first* soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. The current turmoil in the financial markets is having a negative impact on the availability of financing for small businesses. SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to help small businesses sustain and survive during this economic downturn. Advance solicitation of comments for this rulemaking would be impracticable, contrary to the public interest, and would harm those small businesses that need immediate access to capital.

In addition, the Recovery Act mandates that SBA issue emergency regulations and specifically exempts any such regulations from the notice and comment requirement of the APA.

Although this rule is being published as an interim final rule, comments are solicited from interested members of the public. These comments must be submitted on or before 90 days from the date of publication. SBA will consider these comments and the need for making any amendments as a result of these comments.

IV. Justification for Immediate Effective Date

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. In light of the current economic downturn and the sharp reduction in commercial lending, it is essential to accelerate the availability of additional financing for broker-dealers vital to the continued operation of the SBA Secondary Market by reason of their purchase and sale of the government Guaranteed Portion of loans, or pools of loans, originated, underwritten and closed under the Small Business Act. In addition, the program has a limited life, so it is important to make the program effective in a timely manner.

SBA finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date. Delaying implementation of the rule would have a serious adverse impact on the nation's small businesses.

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

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule constitutes a significant regulatory action for purposes of Executive Order 12866.

Executive Order 12988

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

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

SBA has determined that this rule imposes additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. Because the Recovery Act requires SBA to issue emergency regulations, the agency has submitted a request to the Office of Management and Budget (OMB) for review and approval of a collection of information under the OMB emergency processing procedures regulation, 5 CFR 1320.13. Respondents will be required to provide to SBA the information necessary to participate in the SBA SISMBD Loan program and enable the Agency to assess, among other things, a broker-dealer's creditworthiness and resources available to repay the loan; its inability to obtain credit on reasonable terms from private sources; recent audited financial statements; external audit reports; and schedule of outstanding debt obligations. The SISMBD Loan applicants will also be required to submit quarterly and annual reports. The quarterly report will contain information on the SISMBD's SBA Secondary Market activity, loan usage and updated financial statements. The annual reports will include audited financial statements, and address the

SISMBDs' SBA Secondary Market activities, including the number of Guaranteed Portions they have purchased from SBA lenders and Certificates they have purchased from Registered Holders, as well as those Guaranteed Portions and Certificates they have purchased using SISMBD Loan proceeds.

The title, description and number of respondents, the estimated annual cost and hour burdens imposed on the respondents as a result of this collection of information are outlined below. SBA invites comments on this information collection, particularly on: (1) Whether the proposed collection of information is necessary for the proper performance of SBA's functions, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this interim final rule to SBA Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503 and to James W. Hammersley, Deputy Assistant Administrator, Office of Policy and Strategic Planning, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Title: Systemically Important Secondary Market Broker-Dealer Data Collection.

OMB Control Number: To be determined; new collection.

Description and Estimated Number of Respondents: Respondents are SBA Loan Pool Assemblers that are determined to be systemically important. SBA estimates that there will no more than eight (8) firms affected by these rules.

(a) Application for SISMBD Loan or increase in the loan amount.

Frequency and Estimated Number of Responses: There will be a total of one application per SISMBD. In addition, it is estimated that there will a total of 4 requests for a loan increase per year. Total estimated responses, 12.

Estimated Time per Response: It is estimated each SISMBD will need approximately 20 hours to complete the application including gathering and compiling the supporting documents, for a total annual estimate of 240 hours. Total estimated annual hours, 32.

Estimated Hourly Cost to Respondents: Although actual secondary market transactions will be conducted by the broker-dealers, this information collection will likely be completed by bond trading associates. Their estimated average annual salary is $40,000.00. Their hourly rate is calculated to be about $20.00. It is estimated that it will cost about $400.00 per response, or an annual total of $4,800.

(b) Request for an advance under a SISMBD Loan.

Frequency and Estimated Number of Responses: There will be a total of four advances per SISMBD per year.

Estimated Time per Response: It is estimated each SISMBD will need approximately 1 hour to complete the request for an advance including gathering and compiling the supporting documents, for a total annual estimate of 32 hours.

Estimated Hourly Cost to Respondents: Although actual secondary market transactions will be conducted by the broker-dealers, this information collection will likely be completed by bond trading associates. Their estimated average annual salary is $40,000.00. Their hourly rate is calculated to be about $20.00. It is estimated that it will cost about $20.00 per response, or an annual total of $640.00.

(c) *Secondary Market Activity Report*

Frequency and Estimated Number of Responses: Reports are due from each SISMBD quarterly, for an annual total of 32 reports from all SISMBDs.

Estimated Time per Response: 2 hours per report, for an annual total of 64 hours.

Estimated Hourly Cost to Respondents: It is anticipated that most of this reporting would be automatically generated and submitted by bond trading associates. Their estimated average annual salary is $40,000.00. Their hourly rate is calculated to be about $20.00. It is estimated that it will cost respondents $40.00 per reporting, for an annual total of $1,280 for all SISMBDs.

(d) *Annual Report*

Frequency and Estimated Number of Responses: One report is due from each SISMBD annually.

Estimated Time per Response: 3 hours for an annual total of 24 hours.

Estimated Hourly Cost: It is assumed that the recipient's annual audited financial statements would be done regardless of this reporting requirement and that the respondent would be simply sending in a copy. It is anticipated that most of the burden hours would be used in preparing the recertification and the annual activity report. These remittances would be performed by the bond trading assistances. Their estimated average annual salary is $40,000.00. Their hourly rate is calculated to be about $20.00. It is estimated that it will cost all respondents an annual total of $480.

Total Annual Hour Burden for Collection: 360.

Total Cost Burden for Collection: $7,200.00.

Regulatory Flexibility Act

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

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

■ For the reasons stated in the preamble, SBA amends 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority for 13 CFR part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3), and 697(a) and (e); Public Law 111–5, 123 Stat. 115.

■ 2. Add a new Subpart K to read as follows:

Subpart K—Establishment of an SBA Direct Loan Program for Systemically Important Secondary Market Broker-Dealers (SISMBD Loan Program)

Sec.

120.1800 Definitions used in Subpart K.
120.1801 Program purpose.
120.1802 How does a broker-dealer participate in the SISMBD Loan Program?
120.1810 What is a Systemically Important SBA Secondary Market Broker-Dealer (SISMBD)?
120.1820 What are the basic eligibility requirements for SBA designation as a Systemically Important Secondary Market Broker-Dealer?
120.1821 What is the process to obtain designation as a Systemically Important Secondary Market Broker-Dealer?
120.1822 What is the process to apply for an SISMBD Loan.

120.1823 Creditworthiness.
120.1824 How will an SISMBD receive notice of an approval or denial of a loan or a request for an advance under an SISMBD Loan?
120.1825 May an SISMBD request reconsideration after denial?
120.1830 What are the terms and conditions of an SBA loan to an SISMBD?
120.1831 Is there a limit to the number of SISMBD Loans or advances that an SISMBD may request from SBA?
120.1832 What is the minimum and maximum SISMBD Loan advance amount?
120.1833 May an SISMBD request an increase in the loan amount?
120.1834 What fees are associated with an SISMBD Loan?
120.1840 What are the allowable uses of proceeds of an SISMBD Loan?
120.1850 Will the Collateral be held by SBA?
120.1860 How will the SISMBD Loan be disbursed?
120.1870 How does the SISMBD provide funds for the Premium?
120.1880 How will the loan be repaid?
120.1881 How are payments on the Collateral allocated between the SISMBD borrower and repayment of the SISMBD Loan?
120.1882 What happens if funds to make required loan payments are not generated from the Collateral?
120.1890 What is the maturity on an SISMBD Loan from SBA?
120.1891 What happens if an SISMBD is ineligible to receive an SISMBD Loan or an advance?
120.1892 What happens if an SISMBD does not use SISMBD Loan funds for a statutorily mandated purpose?
120.1893 Data collections and reporting.
120.1900 When does the Secondary Market Lending Authority Program end?

§ 120.1800 Definitions used in subpart K.

(a) *Administrator*. The Administrator of the U.S. Small Business Administration.

(b) *Authority*. The Secondary Market Lending Authority defined herein.

(c) *Certificate*. The document the FTA issues representing a beneficial fractional interest in a Pool (Pool Certificate), or an undivided interest in the entire guaranteed portion of an individual 7(a) guaranteed loan (Individual Certificate).

(d) *Collateral (or Collateral for a SISMBD Loan)*. All Guaranteed Portions and Certificates (and proceeds thereof) that are purchased with SISMBD Loan proceeds, collateral assignments of the SBA Form 1086 (Secondary Market Participation Agreement) or SBA Form 1088 (Form of Detached Assignment for U.S. Small Business Administration Loan Pool or Guaranteed Interest Certificate) for all Guaranteed Portions and Certificates purchased with SISMBD Loan proceeds, the agreement for Lender/FTA payment of amounts due under the Guaranteed Portions and Certificates, and any other asset that is pledged to secure an SISMBD Loan.

(e) *Commitment Letter*. The document or documents containing the terms and conditions under which SBA agrees to lend money for a specific period of time to a Systemically Important SBA Secondary Market Broker-Dealer defined in Section 120.1810 of Subpart K and pursuant to Section 509 of the American Recovery and Reinvestment Act of 2009.

(f) *FTA*. SBA's fiscal and transfer agent.

(g) *Guaranteed Portion*. That portion of an SBA 7(a) loan sold in an SBA Secondary Market transaction. This guaranteed portion of a 7(a) loan once sold is certificated, carries a guarantee backed by the full faith and credit of the United States and bestows upon the Registered Holder the right to receive payments.

(h) *Individual Certificate.* The instrument representing a beneficial interest in the Guaranteed Portion of an individual 7(a) loan sold in the SBA Secondary Market Program and carries a guarantee which is backed by the full faith and credit of the United States.

(i) *Loan Advance Request Form.* The form approved by SBA wherein an SISMBD requests a specific dollar amount that will be used to purchase certain guaranteed portions or Certificates. This amount, when added to the balance outstanding of the SISMBD's existing SISMBD Loan, must be equal to or less than the SISMBD loan amount.

(j) *Loan Agreements.* Collectively, any loan agreement executed between SBA and the SISMBD that contains the basic terms and conditions which control the SISMBD Loan, together with any notes, security documentation, custodial agreement, and any other ancillary documentation executed in connection therewith, including by reference, the regulations and other documents referenced in the regulations.

(k) *On-going Subsidy Fee.* An annual fee collected monthly, based on the outstanding SISMBD loan balance, pursuant to section 509(F) of the Recovery Act, to result in a cost of the direct loan of zero, as determined under the Federal Credit Reform Act of 1990, as amended. These funds generated by the fee serve as a reserve for program losses. The fee will be published in a notice by SBA prior to the commencement of the Program and from time to time thereafter. SBA will communicate the SBA On-going Subsidy Fee to the systemically important broker-dealers.

(l) *Pool Assembler.* A financial institution that is authorized by SBA to:

(1) Organize and package Pools by acquiring SBA guaranteed portions of 7(a) loans from Lenders or Individual Certificates from Registered Holders;

(2) Resell fractional interests in the Pools to Registered Holders; and

(3) Direct the FTA to issue Certificates.

(m) *Pool Certificate.* The instrument representing a beneficial fractional interest in a Pool of SBA guaranteed portions of 7(a) loans. Pool Certificates are backed by the SBA guaranteed portions of 7(a) loans comprising a Pool and carry a timely payment guarantee which is backed by the full faith and credit of the United States.

(n) *Pool.* The aggregate of SBA guaranteed portions of loans formed into a single pool by the Pool Assembler in accordance with the SBA Secondary Market laws, regulations and Program Guide.

(o) *Premium.* Any amount in excess of the principal balance of a Guaranteed Portion or of a Certificate balance.

(p) *Program.* The program authorized by Section 509 of the American Recovery and Reinvestment Act of 2009.

(q) *Registered Holder.* The Certificate owner listed in the FTA's records.

(r) *SBA.* The United States Small Business Administration, an agency of the United States Government.

(s) *SBA Secondary Market.* Consists of the sale of Certificates, representing either the entire guaranteed portion of an individual 7(a) guaranteed loan or an undivided interest in a Pool consisting of the SBA guaranteed portions of a number of 7(a) guaranteed loans. Transactions involving interests in Pools or the sale of individual guaranteed portions of loans are governed by the contracts entered into by the parties, SBA's Secondary Market Program Guide, and Subpart F of Chapter 13 of the Code of Federal Regulations.

(t) *Secondary Market Lending Authority.* The office established under Section 509(c) of the American Recovery and Reinvestment Act of 2009 to provide loans to systemically important SBA Secondary Market broker-dealers to be used for the purpose of financing the inventory of the government guaranteed portion of loans originated, underwritten and closed under the Small Business Act or pools of such loans.

(u) *SISMBD.* Systemically Important SBA Secondary Market Broker-Dealer, as defined in Section 120.1810 of this Subpart K of Chapter 13 of the Code of Federal Regulations.

(v) *SISMBD Loan Application.* The application, in the form approved by SBA, wherein an SISMBD applies for an SISMBD Loan.

(w) *SISMBD Loan.* A direct loan made by SBA to a Systemically Important SBA Secondary Market Broker-Dealer to assist with the financing of the purchase and sale of Guaranteed Portion of loans originated, underwritten and closed under Section 7(a) of the Small Business Act. Recipients of an SISMBD loan must use the proceeds for the sole purpose of purchasing Guaranteed Portions of 7(a) loans from SBA Lenders and Individual Certificates or Pool Certificates from Registered Holders.

(x) *On-going Subsidy Fee.* An annual fee collected monthly, based on the outstanding SISMBD loan balance, pursuant to section 509(F) of the Recovery Act, to result in a cost of the direct loan of zero, as determined under the Federal Credit Reform Act of 1990, as amended. The funds generated by this fee serve as a reserve for program losses. The fee will be published in a notice by SBA prior to the commencement of the Program and from time to time thereafter.

§ 120.1801 Program purpose.

Section 509 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) authorizes SBA to temporarily make direct loans to broker-dealers to ensure the continued operation of the SBA Secondary Market for 7(a) small business loans guaranteed by SBA. Such broker-dealers are referred to in the Recovery Act as Systemically Important SBA Secondary Market Broker-Dealers.

§ 120.1802 How does a broker-dealer participate in the SISMBD Loan Program?

A Pool Assembler must meet the eligibility requirements in § 120.1820, submit an SISMBD Loan Application to SBA that includes the information specified in § 120.1822, obtain a written loan commitment from SBA, execute, among other documents, Loan Agreements, and satisfy all other SBA requirements. The Loan Agreements provide further details on the requirements that apply to an SISMBD seeking an SISMBD Loan.

§ 120.1810 What is a Systemically Important SBA Secondary Market Broker-Dealer (SISMBD)?

A systemically important SBA Secondary Market broker-dealer as a Pool Assembler that has routinely engaged in the purchase and sale of the Guaranteed Portion of 7(a) loans or pools of Guaranteed Portions originated, underwritten and closed under the Small Business Act.

§ 120.1820 What are the basic eligibility requirements for SBA designation as a Systemically Important Secondary Market Broker-Dealer?

(a) To be eligible for an SBA designation as an SISMBD a broker-dealer must:

(1) Be a Pool Assembler as defined in Subpart F Section 120.600 of this Part 120;

(2) Satisfy all of the requirements of Section 120.630 this Part 120;

(3) Have not been suspended or terminated, and not be currently the subject of or eligible for an SBA suspension or termination procedure; and

(4) Have engaged in a specific dollar volume of SBA Secondary Market purchases of Guaranteed Portions from SBA Lenders and Certificates from Registered Holders and have sold a specific percentage of the total dollar volume of sales of Pools in the SBA Secondary Market during the same timeframe.

(b) Pool Assemblers that are unable to meet the requirements in paragrapgh (a) of this section at the commencement of the Program may qualify at a later date. On a quarterly basis SBA will review Pool Assembler Secondary Market activity and may designate additional broker-dealers as systemically important to the SBA Secondary Market.

§ 120.1821 What is the process to obtain designation as a Systemically Important Secondary Market Broker-Dealer?

(a) SBA will determine which Pool Assemblers are Systemically Important SBA Secondary Market Broker-Dealers (SISMBDs) and will notify each in writing.

(b) Once a Pool Assembler has been designated as an SISMBD, the designation will remain valid until February 16, 2011. After designation as an SISMBD, the Pool Assembler may apply for an SISMBD Loan following the procedures set forth in 120.1822 herein.

§ 120.1822 What is the process to apply for an SISMBD Loan?

(a) To apply for an SISMBD Loan, an SISMBD must submit an SISMBD Loan Application to the Director of the Secondary Market Lending Authority.

(b) The SISMBD Loan Application contains the following information:

(1) Information demonstrating the applicant is creditworthy and has the resources to repay the loan;

(2) A statement of the amount requested;

(3) Applicant's IRS tax identification number;

(4) A copy of applicant's most recent financial statements dated within 120 days of the application that was prepared by an accountant, including a copy of its most recent outside audit report, a balance sheet, an income and expense statement and a schedule of its secured debt obligations; and

(5) A narrative describing the efforts undertaken by the firm to obtain credit on reasonable terms from private sources. This narrative must include name of the institution and a contact person for each lender contacted and should also include term sheets provided by potential lenders.

§ 120.1823 Creditworthiness.

(a) Prior to approval of any SISMBD Loan Application or any advance under an SISMBD Loan, SBA shall consider the creditworthiness of the SISMBD. The SISMBD must be creditworthy in order to be approved for an SISMBD Loan or any advance under an SISMBD Loan.

(b) Specific evidence of a lack of creditworthiness includes but is not limited to: Insolvency as defined in the Bankruptcy Code, failure to adhere to the terms of a previous SISMBD Loan, excessive dependence on borrowed funds, violations of the SBA Secondary Market rules, regulations and procedures, the effect any affiliates of the SISMBD may have on the ultimate repayment ability of the SISMBD, or any other relevant factor indicating a less than satisfactory condition or lack of repayment ability. The presence of one or more of these characteristics will not necessarily mean that an SISMBD is not creditworthy but may cause the partial or complete denial of a SISMBD Loan application.

§ 120.1824 How will an SISMBD receive notice of an approval or denial of a loan or request for an advance under an SISMBD Loan?

(a) Applicants will receive notice of approval or denial of an SISMBD Loan or a request for an advance under such loan by SBA through written correspondence.

(b) If a loan request is approved, SBA will issue a Commitment Letter.

(c) Notice of a denial will include the specific reasons for the decision.

(d) SBA reserves the right to reject any request for a loan or an advance, in whole or in part, in its sole discretion.

§ 120.1825 May an SISMBD request reconsideration after denial?

(a) An applicant may request reconsideration of a denied loan request or a denied request for an advance within 30 days of receipt of a denial notice. All requests for reconsideration must be submitted to the Director of the Secondary Market Lending Authority. To prevail, the applicant must present

written information to demonstrate that it has overcome all reasons for the denial of a loan request or advance request. After 30 days from receipt of a denial notice, a new loan application or advance request, as appropriate, is required.

(b) If the application is denied a second time, a second and final request for reconsideration may be submitted to the SBA Chief Financial Officer. The request must give specific reasons why the decline action should be reversed. All requests must be received within 30 days of the decline action.

(c) The decision of the SBA Chief Financial Officer is final.

§ 120.1830 What are the terms and conditions of an SBA loan to an SISMBD?

(a) *Loan structure.* Credit extensions under the SISMBD Loan Program will be in the form of revolving lines of credit loans that are fully collateralized by Guaranteed Portions and Certificates but with full recourse against the borrower. SISMBDs will obtain funds under the SISMBD Loan by requesting advances when needed to purchase Guaranteed Portions from SBA Lenders or Certificates from Registered Holders.

(b) *Loan amount.* There is no statutory limit to the maximum loan size for a loan to a SISMBD, subject to the discretion of the Administrator. SBA has determined that the minimum loan size will be $10,000,000 and the maximum size of a SISMBD Loan at the time of loan approval will be equal to seventy-five percent (75%) of the total dollar amount of an SISMBD's purchases in the SBA Secondary Market during the twelve (12) month period of time immediately prior to SISMBD Loan Application receipt. The Director of the Secondary Market Lending Authority may approve a higher SISMBD Loan amount if he/she determines that additional lending capacity is essential to the continued participation of the SISMBD in the SBA Secondary Market in accordance with 120.1833(a).

(c) *Repayment terms.* The monthly payments of principal and interest on the Certificates that are pledged as collateral for the SISMBD Loan, any partial or full prepayments on such collateral, and any SBA Lender purchases of defaulted loans will be assigned by the SISMBD to SBA and will be paid by the Lender into a segregated account at the FTA under SBA's ownership and control and applied to the SISMBD Loan. All proceeds from the sale of any pledged Collateral as described in § 120.1880(b) in this Subpart K must be paid by the purchaser to SBA or its agent to reduce the loan balance before any collateral is released. To the extent that SBA is required to make a payment on its guaranty of a Certificate, SBA will reduce the SISMBD Loan balance by the amount of the guaranty payment.

(d) *Prepayments.* SISMBD Loans will be pre-payable in whole or in part at the option of the borrower.

(e) *Interest rate.* SISMBD Loans shall have variable interest rates not to exceed the Federal Funds target rate as established by the Federal Reserve Board of Governors plus 25 basis points. The first change may occur on the first calendar day of the month following the initial disbursement using the base rate of the Federal Funds rate established by the Federal Reserve Board of Governors in effect on the first business day of that month. After the initial interest rate change, changes may occur no more often than monthly on the first calendar day of each month.

(f) *Collateral.* All SISMBD Loans must be fully collateralized. As security for repayment of an SISMBD Loan, the SISMBD must pledge to SBA all Guaranteed Portions and Certificates (and the proceeds thereof) that it purchases with the SISMBD Loan proceeds and must grant SBA a first lien security interest in the Guaranteed Portions and Certificates (and the proceeds thereof). Additionally, the SISMBD must provide SBA with a collateral assignment, of the SBA Form 1086 (Secondary Market Participation Agreement) or SBA Form 1088 (Form of Detached Assignment for U.S. Small Business Administration Loan Pool or Guaranteed Interest Certificate) for all Guaranteed Portions and Certificates purchased with SISMBD Loan proceeds. The SISMBD must also assign to SBA the payment of amounts due under the Guaranteed Portions and Certificates. All collateral documents must be executed and recorded and the first lien position verified before SBA will disburse funds under the SISMBD Loan. Substitution of collateral during the term of the loan generally will not be allowed. The SISMBD may not grant any junior security interests in the Collateral during the term of the SISMBD Loan.

(g) *Default.* If for any reason an SISMBD is unable to make payment to SBA when due or any other event of default as described in the Loan Agreements occurs, SBA may, among other things, terminate availability under the SISMBD Loan, accelerate the SISMBD Loan, demand payment in full, and avail itself of any and all rights and remedies available under the Loan Agreements or otherwise available under the law.

(h) *Term.* The SISMBD may continue to seek advances under an approved and fully documented SISMBD Loan until January 31, 2011. An SISMBD Loan maturity date must not exceed February 16, 2013.

(i) *On-going subsidy fee.* An annual fee will be collected monthly, based on the outstanding SISMBD Loan balance, pursuant to section 509(F) of the Recovery Act, to result in a cost of the direct loan of zero, as determined under the Federal Credit Reform Act of 1990, as amended. The funds generated by the fee serve as a reserve for program losses. The fee will be published in a notice by SBA prior to the commencement of the Program and from time to time thereafter. SBA will communicate the Ongoing Subsidy Fee to the systemically important broker-dealers.

(j) *Closing and execution of loan documents.* Prior to the expiration of the Commitment Letter, SBA will schedule a closing on the SISMBD Loan. At closing, the SISMBD will be required to execute Loan Agreements, including but not limited to, a loan agreement, promissory note, security agreement, custodial agreement and other documents as required in SBA's sole discretion.

(k) *Review prior to advances.* Prior to approving an advance request under an SISMBD Loan, SBA will require the SISMBD to represent and warrant that:

(1) There has been no material adverse change in the SISMBD's financial condition, ownership structure or control persons or the overall nature of business since the approval of the SISMBD's loan application and

(2) The SISMBD is not subject to any regulatory action and is not under civil or criminal investigation. SBA may conduct a review or require the SISMBD to provide information to verify the representations and warranties.

§ 120.1831 Is there a limit to the number of SISMBD Loans or advances that an SISMBD may request from SBA?

No, there is no limit to the frequency in which an SISMBD may borrow under the Secondary Market Loan Program unless the Administrator determines that doing so would create an undue risk of loss to SBA or the United States. In order to mitigate the risk of loss, SBA has determined that an SISMBD may request an unlimited number of loans or advances as long as the balance outstanding on the SISMBD Loan does not exceed the total dollar limit stated in the Commitment Letter. SISMBD Loans will be structured as a revolving line of credit.

§ 120.1832 What is the minimum and maximum SISMBD Loan advance amount?

There is no minimum or maximum loan advance amount. Because availability under the SISMBD Loan is capped as set forth in 120.1830, the amount of any loan advance cannot exceed the available credit identified in the Commitment Letter.

§ 120.1833 May an SISMBD request an increase in the loan amount?

(a) SBA will consider a request for an increase in the maximum amount of an SISMBD Loan as identified in the Commitment Letter if the applicant can show the increase is essential to its continued participation in the SBA Secondary Market.

(b) Applicants must request a loan increase by submitting an application to the Director of the Secondary Market Lending Authority by January 31, 2011.

§ 120.1834 What fees are associated with an SISMBD Loan?

The borrower must pay to SBA an On-going Subsidy Fee which will cover SBA's subsidy costs associated with the SISMBD Loan Program.

§ 120.1840 What are the allowable uses of proceeds of an SISMBD Loan?

(a) The SISMBD must use loan proceeds solely to purchase Guaranteed Portions from SBA Lenders, Individual Certificates or Pool Certificates from Pool Assemblers or Registered Holders.

(b) SBA will not advance more than the purchase price of the Guaranteed Portions or the Certificate. Thus, if the Guaranteed Portion or Certificates are purchased at a discount to the principal balance, SBA will not advance more than the purchase price.

(c) SBA will not finance the purchase of Guaranteed Portions or Certificates unless the Guaranteed Portions or Certificates carry an interest rate equal to or greater than the interest rate payable to SBA under the SISMBD Loan.

(d) The SISMBD Loan proceeds shall not be used to purchase any Premium portion of a purchase price that is paid to a selling SBA Lender, Registered Holder, or any other individual or entity.

(e) SISMBD Loan proceeds shall not be used to refinance existing debt of the SISMBD, finance existing inventory of the SISMBD, or for any purpose other than as set forth in this Section.

§ 120.1850 Will the Collateral be held by SBA?

Yes, SBA or its expressly authorized agent will take physical possession of all Collateral. SBA or its expressly authorized agent shall maintain all Collateral for SISMBD Loans in a custodial account. Certificates held as Collateral must be in paper, not book entry form.

§ 120.1860 How will the SISMBD Loan be disbursed?

(a) Loan proceeds will be disbursed to the FTA by SBA to be applied to the purchase price for the Guaranteed Portions or Certificates being purchased by the SISMBD. Disbursement to the FTA is contingent upon receipt by SBA, the FTA or SBA's settlement agent or custodian of the Guaranteed Portions or Certificates being purchased and any other Collateral required by SBA and verification of the required first lien position. SBA will advance the principal amount or the purchase price of the Guaranteed Portion or the Certificate, whichever is less. Thus, if the loan is purchased at a discount to the principal balance, SBA will not advance more than the purchase price.

(b) Provided an SISMBD has executed all required loan documents, when an SISMBD requests an advance under its SISMBD Loan, it will submit a written Loan Advance Request Form to the FTA and SBA along with the SBA Form 1086 or 1088 for processing. The FTA will notify SBA that a particular SISMBD requests an advance of a certain amount of funds on a specific settlement date to purchase: a Guaranteed Portion which will be evidenced by an Individual Certificate, a Pool Certificate, or an existing Individual Certificate. Provided that the SISMBD has met all of the terms and conditions of the Loan Agreements, related documents, and these regulations, and is not in default under the loan documents, on the settlement date for the SBA Secondary Market transaction, SBA will wire the funds to the FTA. The FTA will use loan proceeds and any Premium payment from the SISMBD to pay the SBA Lender or Registered Holder the purchase price.

(c) The SISMBD must identify the SBA Lender or Registered Holder expected to deliver to SBA or its settlement agent the Guaranteed Portions or Certificates that are being purchased with SISMBD Loan proceeds, and upon delivery the Guaranteed Portions or Certificates will become Collateral for the SISMBD Loan.

(d) On the SBA Secondary Market transaction settlement date, the SBA Lender or Registered Holder will deliver the purchased Guaranteed Portion or Certificate to the FTA or SBA's settlement agent. The FTA or SBA's settlement agent will use loan proceeds and any Premium payment from SISMBD to pay the SBA Lender or the Registered Holder the purchase price upon delivery of all Guaranteed Portions or Certificates that collateralize the SISMBD Loan to the FTA or SBA's settlement agent and the Guaranteed Portions or Certificates will be placed in a custodial account.

(e) Upon settlement the FTA, SBA, SBA's settlement agent and the administrator of the custodial account will register the loan advance and collateral pledge on their respective books and records.

§ 120.1870 How does the SISMBD provide funds for the Premium?

If the SISMBD is paying a Premium for a Guaranteed Portion, an Individual Certificate or a Pool Certificate, it must use its own funds or other borrowed funds to cover the Premium. The SISMBD must send Premium payments to the FTA on or before the settlement date. The FTA will forward Premium payments to the selling SBA Lender or Registered Holder along with the SISMBD Loan funds. In this program, ''Premium'' is defined as any amount in excess of the principal balance of a Guaranteed Portion or of a Certificate balance.

§ 120.1880 How will the loan be repaid?

(a)The monthly payments of principal and interest, any partial or full repayments, and any Lender purchases of defaulted loans on Certificates that have been pledged as collateral to secure an SISMBD Loan will be assigned by the SISMBD and will be paid by the Lender into a segregated account at the FTA under SBA's ownership and control. The FTA will forward such payments to SBA or its loan servicing agent as directed by SBA. The payments will be used to repay the SISMBD Loan.

(b) When the SISMBD forms a Pool with Certificates pledged as Collateral for an SISMBD Loan or transfers a pledged Certificate, all proceeds, including the principal and accrued interest balance of the SISMBD Loan associated with the pledged Certificates, must be repaid to SBA as payment on the SISMBD Loan before SBA will approve the transfer, release any Collateral and terminate its security interest therein. SBA will not approve any transfers of Guaranteed Portions or Certificates at less than the par value or the original purchase price of the specific Guaranteed Portion or Certificate.

(c) To the extent that SBA is required to make a payment on its guaranty of a Certificate, SBA will reduce the SISMBD Loan balance.

(d) If the SISMBD Loan has a balance when a payment is required or when the SISMBD Loan matures, the SISMBD may make any required payment, pay the loan in full if it has matured and obtain possession of the Collateral, or SBA may exercise its rights under the Loan Agreements which may include terminating availability under the loan, accelerating the loan and demanding full repayment from the SISMBD, and selling all Collateral. The proceeds from the sale of the Collateral will be used to repay the SISMBD Loan and the SISMBD will be responsible for any remaining unpaid loan deficiency balance.

§ 120.1881 How are payments on the Collateral allocated between the SISMBD borrower and repayment of the SISMBD Loan?

Unless otherwise provided in the Loan Agreements for a particular SISMBD Loan, any payment on Collateral must be assigned to SBA and must be used to repay the SISMBD Loan.

§ 120.1882 What happens if funds to make required loan payments are not generated from the Collateral?

(a) The SISMBD is responsible for all principal and interest payments on an SISMBD Loan. If SBA does not receive full and timely remittances from the Collateral or the SISMBD borrower, SBA may enforce its rights against the SISMBD and the Collateral as set forth in the Loan Agreements, related documents and applicable law.

(b) An SISMBD will have a 30 day grace period during which to make a supplemental payment if remittances from the Collateral are not sufficient to cover the SISMBD Loan payments when they are due. After the grace period, if the loan remains delinquent, SBA may enforce its rights as set forth in paragraph (a) of this section.

§ 120.1890 What is the maturity on a SISMBD Loan from SBA?

The maximum maturity for an SISMBD Loan will be determined by SBA but must be no later than February 16, 2013. If the maturity of the Collateral is shorter than the maturity of the SISMBD Loan, the SISMBD Loan will be due and payable upon payment in full of the Collateral. If the SISMBD Loan has a balance on its maturity date, the SISMBD must pay the loan in full or SBA will exercise any or all of its rights as described in § 120.1830(g) or § 120.1882(a).

§ 120.1891 What happens if an SISMBD is ineligible to receive an SISMBD Loan or an advance?

If an SISMBD that has received funds from an SISMBD Loan or an advance is found to be ineligible for the loan or any advance under the loan or is found to have knowingly breached a representation, the SISMBD must immediately repay the loan in full upon demand by SBA or SBA will exercise its rights as described in § 120.1830(g).

§ 120.1892 What happens if an SISMBD does not use SISMBD Loan funds for a statutorily mandated purpose?

If the Administrator finds that an SISMBD has used loan proceeds for any purpose other than to finance the inventory of the government guaranteed portion of loans originated, underwritten, and closed under Section 7(a) of the Small Business Act or Pools of such loans, the Administrator shall:

(a) Demand immediate repayment of any outstanding loans to the SISMBD;

(b) Prohibit the SISMBD, its affiliates, or any future corporate manifestation of the SISMBD from using the SBA Secondary Market Lending Authority;

(c) Report to Congress the identity of any borrower found by the Administrator to have misused funds made available under the Secondary Market Loan Program; and

(d) Take any other actions the Administrator, in consultation with the Attorney General of the United States, deems appropriate.

§ 120.1893 Data collections and reporting.

(a) *Data—general.* A recipient of an SISMBD Loan shall maintain such records as may be prescribed by SBA to:

(1) Disclose the manner in which an SISMBD Loan is used;

(2) Determine:

(i) The total outstanding loan amount;

(ii) The total amount repaid on the loan;

(iii) The aggregate value of assets held as collateral for the SISMBD Loan; and

(iv) The amount of any defaults or delinquencies that occurred on the loan;

(3) Demonstrate compliance with the requirements of this part; and

(4) Evaluate the impact of the SISMBD Loan Program on its SBA Secondary Market activity.

(b) *Access to records.* An SISMBD Loan recipient must submit such financial and SBA Secondary Market activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by SBA, the SBA Office of the Inspector General, or other authorized government personnel upon request or upon a request by their duly authorized representatives to ensure compliance with the requirements of this Subpart and to evaluate the impact of the SISMBD Loan Program. SBA or other authorized government personnel and their duly authorized representatives, shall have full and free access to SISMBD offices and facilities and all books, documents, records, and financial statements relating to the use of SISMBD Loan proceeds during normal business hours and may copy such documents as they deem appropriate.

(c) *Retention of records.* A recipient of an SISMBD Loan shall comply with all SBA mandated record retention requirements.

(d) *Review.* (1) At least annually, SBA will review the SBA Secondary Market activity of an SISMBD Loan recipient.

(2) A loan recipient shall submit a report of SBA Secondary Market activity, SISMBD Loan usage and updated financial statements within 45 days after the end of each calendar quarter, or within some other period after the end of each calendar quarter as may be agreed to in the Loan Agreements with information requested by SBA.

(3) A recipient shall submit a report within 60 days after the end of each

Federal fiscal year, or by such alternative deadline as may be agreed to in the Loan Agreements or as required by the Recovery Act on: information on the number of Guaranteed Portions it purchased from SBA Lenders; information describing the manner in which SISMBD Loan proceeds were used. SBA will use such information to verify that loan proceeds were used in a manner consistent with the Loan Agreements, the Recovery Act and these regulations; certification that an SISMBD continues to meet the eligibility requirements described in Section 120.1820 of this Subpart; and its most recent audited financial statements prepared by an independent certified public accountant. Such statements shall cover the operations of the recipient's most recently completed fiscal year.

(4) SBA may make reports described in paragraph (d)(2) and (d)(3) of this section available for public inspection.

(e) *Reporting requirements.* SISMBD Loan recipients will have reporting requirements related to section 1512 of the Recovery Act. SBA will provide additional separate guidance on the Recovery Act reporting requirements.

§ 120.1900 When does the Secondary Market Lending Authority Program end?

The last date on which a loan under this program can be approved is

February 16, 2011, unless Congress extends the SISMBD Loan Program. All loan applications must be received at SBA no later than January 31, 2011. Loans must be paid in full by no later than February 16, 2013.

Karen G. Mills,

Administrator.

[FR Doc. E9–27743 Filed 11–17–09; 11:15 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 93

[Docket No.: FAA–2009–0837; Airspace Docket No. 09–AWA–2; Amendment Nos. 71–34, 93–94]

RIN 2120–AJ59

Modification of the New York, NY, Class B Airspace Area; and Establishment of the New York Class B Airspace Hudson River and East River Exclusion Special Flight Rules Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes a minor modification to the New York, NY, Class B airspace area by adjusting the floor of Class B airspace above a portion of the Hudson River to 1,300 feet above mean sea level (MSL). Additionally, this action establishes a Special Flight Rules Area (SFRA) over the Hudson River and East River to mandate certain pilot operating practices for flight within the Hudson River and East River Class B airspace Exclusions. The FAA is taking this action to enhance the safety of flight operations in the New York Class B airspace Exclusion areas.

DATES: These amendments are effective 0901 UTC, November 19, 2009. The Director of the **Federal Register** approves the incorporation by reference of the 14 CFR part 71 amendment in this 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: For technical questions concerning this rule, contact Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

For legal questions concerning this rule, contact Lorelei Peter, Office of the Chief Counsel, AGC–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3134.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under this section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This section also provides for the FAA to prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for: (1) Navigating, protecting, and identifying aircraft; (2) protecting individuals and property on the ground; (3) using the navigable airspace efficiently; and (4) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

Background

On August 8, 2009, a midair collision occurred between a helicopter and a single-engine, fixed-wing aircraft operating in accordance with visual flight rules (VFR) over the Hudson River near Hoboken, New Jersey. The collision occurred beneath the New York Class B airspace area in an area commonly referred to as the Hudson River Class B airspace Exclusion. This accident prompted the FAA and the National Transportation Safety Board (NTSB) to examine the airspace configuration and pilot procedures that apply in the vicinity of the incident.

The Hudson River Exclusion extends along the Hudson River between the vicinity of the George Washington Bridge, on the north, and the Verrazano-Narrows Bridge on the south. The Exclusion extends from the surface of the Hudson River up to the base of the overlying New York Class B airspace area. Currently, the floor of Class B airspace along the Hudson River varies between an altitude above 1,100 feet MSL and 1,500 feet MSL. The Exclusion effectively is a ''cutout'' from the New York Class B airspace area and permits pilots to fly through the area without an air traffic control (ATC) clearance.

The East River Class B Exclusion extends between the east and west banks of the East River from Governors Island to the north tip of Roosevelt Island. The exclusion extends from the surface of the river up to the base of the overlying Class B airspace.

In light of the accident on August 11, 2009, the FAA issued Notice to Airmen (NOTAM) number 9/3952 strongly advising pilots to follow the long-standing recommended procedures for aircraft operating in the Hudson River and East River Exclusion areas. Specifically, these procedures request that aircraft operating in the area:

- Not exceed 140 knots indicated airspeed;
- Turn on anticollision, position, navigation and/or landing lights; and
- Self announce on frequency 123.075 for the East River and 123.05 for the Hudson River.

The NOTAM emphasized that the above recommendations do not relieve pilots of compliance with applicable regulations, including regulations concerning minimum safe altitudes and see-and-avoid responsibilities.

On August 14, 2009, the FAA formed a task force to review current procedures for VFR flight operations in the New York City area. A goal of the review was to identify safety enhancements to flight operations in the Hudson River area. The task force developed eight recommendations which were included in the *Review of New York Visual Flight Rules Airspace: Task Force Report,* dated August 28, 2009. A copy of the report was placed in rulemaking docket for the notice of proposed rulemaking (NPRM). Two of the eight recommendations (numbers one and five) require rulemaking action to: (1) Modify the floor of Class B airspace over a portion of the Hudson River; and (2) mandate compliance with the previously recommended procedures for flight in the Hudson River and East River Exclusion areas. Those two recommendations are the subject of this rulemaking action.

Based on its preliminary findings, the NTSB issued a number of recommendations that are similar to those developed by the FAA task force. The NTSB recommendations are also available for viewing in the rulemaking docket for the NPRM.

Summary of the NPRM

In view of the FAA task force recommendations discussed above, the FAA issued a NPRM that was published on September 16, 2009 (74 FR 47495). The NPRM proposed to amend 14 CFR

part 71 by modifying the New York Class B airspace area to set a uniform Class B airspace floor of 1,300 feet above MSL over that portion of the Hudson River that extends between the Verrazano-Narrows Bridge, on the south, and the vicinity of the Alpine Tower, on the north. This proposal would provide additional altitudes in the Hudson River Exclusion so that, depending on an aircraft's purpose of flight (transiting of the Exclusion area or local operation) different altitudes can be used. This would facilitate the segregation of operations in the Hudson River Exclusion by mission profile rather than aircraft category. Currently, there are no specified altitudes for transiting aircraft, which often places them in the same altitude structure commonly used by local operators.

The NPRM also proposed to amend 14 CFR part 93 to establish a Special Flight Rules Area (SFRA) and procedures governing flight operations conducted outside of Class B airspace and over portions of the Hudson River and the East River. The proposal provided that in order to operate within the SFRA: (1) Pilots would have to comply with the current recommended flight procedures for the Hudson River and East River Class B Exclusion areas; (2) pilots seeking to transit through the Hudson River Exclusion would have to transit the Hudson River Exclusion at or above an altitude of 1,000 feet MSL up to, but not including, the floor of the overlying New York Class B airspace area; and (3) pilots operating fixed-wing aircraft would be required to follow the current limitations on fixed-wing aircraft operations in the East River Exclusion as contained in NOTAM number 6/3495.

The FAA invited interested parties to participate in the rulemaking by submitting written comments on the proposal. The comment period closed on October 16, 2009. An analysis of the comments and the FAA's responses are in the ''Discussion of Comments'' section.

Summary of the Final Rule

This action amends 14 CFR part 71 by adjusting the floor of the New York Class B airspace area over a portion of the Hudson River. This action also amends 14 CFR part 93 by establishing a SFRA consisting of that airspace within the Hudson River and East River Class B airspace Exclusions.

The part 71 amendment establishes a new subarea, Area K, in the New York Class B airspace area, which creates a uniform Class B airspace floor of 1,300 feet MSL over the portion of the Hudson River that extends between the Verrazano-Narrow Bridge, on the south, and the vicinity of the Alpine Tower (approximately 7 NM north of the George Washington Bridge) on the north. Minor editorial changes are made to descriptions of the New York Class B airspace subareas A, B, D and E to reflect the new Area K.

The part 93 amendment establishes a SFRA for aircraft operations in the Hudson River and East River Class B airspace Exclusions of the New York Class B airspace area. This rule describes both the Hudson River and East River Class B Exclusion areas and defines the terms ''local operation'' and ''transient operation.'' The rule also specifies the general requirements that apply to all aircraft operating in the Hudson River and/or East River Class B Exclusions, as well as specific procedures that apply individually to each Exclusion.

Differences Between the Proposed Rule and the Final Rule

14 CFR Part 71—New York Class B Airspace Area

This rule includes a number of editorial changes to certain Class B airspace subarea descriptions to more accurately describe the areas. These minor changes do not differ substantially from the proposal. The NPRM proposed to establish a new Area K in the New York Class B airspace area, which would have consisted of that airspace extending upward from 1,300 feet MSL over a portion of the Hudson River. In the NPRM, the Area K description began north of LaGuardia airport at the intersection of the LGA VOR/DME 11-mile arc and the west bank of the Hudson River (near Alpine Tower). However, closer cartographic review of the proposed description determined that the 11-mile arc, as depicted on aeronautical charts, does not actually extend to intersect the west bank of the Hudson River. Therefore, the final rule inserts two latitude/longitude points between the 11-mile arc and the west bank of the Hudson River to more accurately describe the north end of Area K (near the Alpine Tower). This aligns the boundary of the north end of the Hudson River Exclusion with an existing segment of the boundary of Area E where it crosses over the Hudson River.

The NPRM also proposed to revise the description of Area D, which consists of that Class B airspace extending upward from above 1,100 feet MSL, by removing two segments that formerly existed over the Hudson River (*i.e.,* east of Newark and west of LaGuardia). The amended Area D description only applies to the one remaining part of the Class B airspace area that extends upward from above 1,100 feet MSL. This area overlies part of the East River. The description of Area D in this rule differs from the NPRM by inserting the words ''* * * extending from the LGA VOR/DME 6-mile arc to the north end of Roosevelt Island.'' This change clarifies that the boundaries of Area D, where the floor of Class B airspace extends upward from above 1,100 feet MSL, only extend along the East River between the LGA VOR/DME 6-mile arc and the north end of Roosevelt Island and not the entire length of the river.

The NPRM did not propose to revise subareas A and B. However, an editorial change is required to exclude the new Area K from the Area A and B descriptions, and that change is adopted in this rule. Additionally a reference to Area D is removed from the Area E description.

14 CFR Part 93—Special Flight Rules Area

Based on comments received, the FAA is including two new definitions in § 93.350 for ''transient operations'' and ''local operations.'' In addition, the description of the New York Class B airspace East River Exclusion is expanded and consists of the airspace below 1,500 feet MSL over that portion of the river between the LGA VOR/DME 6-mile arc and the southwest tip of Governors Island; and also the airspace from the surface up to 1,100 feet MSL from the LGA VOR/DME 6-mile arc to the north tip of Roosevelt Island. The definition of the East River Exclusion in the NPRM incorrectly described the upper altitude limit of the Exclusion as 1,100 feet MSL along the entire river.

The definition of the New York Class B airspace Hudson River Exclusion in this final rule includes a minor change that adds two latitude/longitude points to accurately describe the north end of the Exclusion. The Hudson River Exclusion lies beneath Class B airspace Area K, and this minor change ensures that the Hudson River Exclusion boundary at the north end aligns with the Area K boundary as discussed above. This change simplifies the chart depiction of the area.

This rule adopts the requirement that anticollision and position/navigation lights shall be on and that the use of landing lights is recommended for operating in the East River and/or the Hudson River Exclusion areas. The NPRM proposed ''anticollision, position/navigation, and/or landing lights,'' which was confusing and could be interpreted to allow use of landing lights only.

Based on comments submitted to the docket, the FAA has concluded that reporting aircraft color is unnecessary because it adds to frequency congestion and is not a significant factor to assist in looking for other aircraft.

Lastly, several editorial changes were made for the purposes of clarity.

Compliance Date

The rule is effective on November 19, 2009. The FAA selected this date because there are three aeronautical charts that are affected by the modification to the New York Class B Airspace area. The new edition of both the New York Sectional Chart and the New York Terminal Area Chart is effective on November 19. These two charts are published every 6 months and the next edition would be May 2010. The effective date of the airspace modifications and the aeronautical charts must be consistent. If the rule is not effective on November 19, the airspace modifications could not become effective until mid-next year.

In addition, this rule requires a new edition of the New York Helicopter Route chart. While this particular chart is not on a regular update cycle as the terminal and aeronautical charts described above, it is republished only when significant changes occur. It is critical that this chart be updated and consistent with the terminal and aeronautical charts.

The FAA acknowledges that there is a small window of time between the issuance of this rule and the effective date. As detailed earlier in this document, the FAA is promulgating this rule and amending certain air traffic procedures to enhance safety for operations over the Hudson River. The airspace modification affects a small piece of the airspace and most of the operating requirements adopted in this rule codify voluntary practices that have been in effect for a number of years. Therefore, the agency finds that there is good cause under 5 U.S.C. 553(d) to make this rule effective in less than 30 days.

The FAA is taking several additional actions to inform pilots of modified airspace over the Hudson River. An e-mail will be sent to all registered pilots advising of the final rule and available FAA training for operations in the New York Class B Airspace area. Postcards will be mailed to all pilots, for which there is no registered e-mail address. The FAA will conduct seminars and coordinate with other pilot groups to make users aware of the requirements specified in this rule.

Summary of Comments

The FAA received 92 comments. The comments received were grouped in the following general subject areas:

- Definition of ''local operation'' and ''transient operation'' in the Hudson River Class B Exclusion
- Altitude stratification in the Hudson River Class B Exclusion
- Separation of helicopter and fixed-wing traffic
- Position reports and Reporting points
- Frequency congestion
- Charting issues
- Floor of Class B airspace over the Hudson River
- Change is unnecessary
- East River Class B Exclusion procedures
- Aircraft not equipped with lights or an electrical system
- Class B airspace informal airspace meetings
- Regulatory Evaluation
- Environmental Review
- Other Issues outside the scope of the rule:

  Education and Training

  Teterboro transitions

  Altimeter setting and transponder code

  Enhanced surveillance coverage and aircraft avionics equipage

Discussion of Comments

Below is a more detailed discussion of the issues raised during the comment period.

Definition of ''Local Operation'' and ''Transient Operation'' in the Hudson River Class B Exclusion

Many commenters stated that the NPRM did not clearly define the terms ''local area, '' ''overflight'' or ''transient'' operations. Several commenters interpreted the term ''local operations'' to mean helicopters only.

The FAA agrees that a clarification of the terms ''local'' and ''transient'' operations are needed, and the definitions of the terms are added to § 93.350.

The NPRM proposed to modify the floor of the New York Class B airspace area over a portion of the Hudson River to provide more airspace in the Hudson River Exclusion so that aircraft transiting the area are at separate altitudes from aircraft conducting local operations.

The FAA concludes that segregating operations in the Hudson River Exclusion by mission profile places similar operations in the same airspace, which is operationally preferable because the dynamic parameters of these two types of operations are very different. Local operations include aircraft landing and departing from the heliports and seaplane bases located within the SFRA. In addition, certain local aircraft operations require significant changes in altitude, airspeed, and/or heading, such as electronic news gathering, police activities, emergency medical services and sightseeing operations. Transient operations typically fly straight and level. Separating transient operations from local operations will enhance safety by standardizing the types of operations pilots encounter and providing a buffer between dissimilar types of operations, i.e. aircraft flying straight and level versus aircraft climbing and descending, circling, or significantly changing airspeed.

The FAA also recognized that the airspace immediately surrounding the Statue of Liberty presents a particular challenge to all pilots as it is the most heavily trafficked sightseeing destination in the Hudson River Exclusion, and the southernmost turn-around point for all local helicopter tour routes. This is also the area where many local helicopter tour operators will receive ATC clearance to climb into the Class B airspace area for the northbound leg of their tours. Consequently, all pilots are cautioned to remain especially vigilant for other traffic in the vicinity of the Statue of Liberty.

Pilots can transit the Hudson River Exclusion/SFRA in the airspace from 1,000 feet MSL up to, but not including, 1,300 feet MSL. Pilots transiting the area shall not descend below 1,000 feet MSL. Pilots are advised not to climb or descend or make significant heading changes. However, this does not preclude pilots from taking action as needed to avoid other aircraft. It is the FAA's intention to reserve the altitudes from 1,000 feet MSL up to but not including 1,300 feet MSL for those aircraft transiting the area without having to obtain a Class B airspace clearance. However, transiting pilots must be aware that some aircraft may climb through these altitudes from below in order to enter Class B airspace after receiving a clearance from ATC. This situation is most likely to occur in the vicinity of the Statue of Liberty and the Manhattan landing facilities.

Pilots conducting local area operations should operate below 1,000 feet MSL while in the SFRA, and they must follow other pertinent regulations (*e.g.,* minimum safe altitudes, visibility and cloud clearance requirements, and see and avoid). Pilots must also be aware that, while operating in this dynamic environment below 1,000 feet

MSL, they should expect to encounter aircraft that are climbing, descending, transitioning to land, making significant heading changes or operating at very slow airspeeds. Since local helicopter tour operators fly an irregular pattern near the Statue of Liberty at approximately 500 feet, other pilots intending to circle the Statue of Liberty in the Exclusion are advised to do so at the highest practical altitude below 1,000 feet MSL.

Altitude Stratification in the Hudson River Class B Exclusion

Many commenters disagreed with the proposed altitude structure in the Hudson River Exclusion. A number of commenters contend that the change would degrade, rather than enhance, safety. Specifically, the commenters stated that the 300 foot layer from 1,000 feet MSL up to, but not including 1,300 feet MSL was insufficient for use by transiting aircraft. Some suggested that a minimum 500-foot altitude block be provided for transiting aircraft and that the 1,000-foot floor of the transit corridor should be lowered to 800 feet or 900 feet MSL. One commenter suggested that all transiting aircraft should do so in Class B airspace above the Hudson River Exclusion. Other suggestions included: separate altitudes for northbound and southbound transiting aircraft; limiting the speed in the transit corridor to 120 knots instead of 140 knots; and providing a larger cutout for the Exclusion behind the Statue of Liberty so pilots wishing to circle the Statue can do so at a higher altitude without entering Class B airspace. Other commenters requested that guidance be provided for turn arounds at the north and south ends of the Hudson River Exclusion and that fixed-wing aircraft should be required to fly south of the Verrazano Bridge before turning northbound.

The FAA believes that the altitude stratification in the Hudson River Exclusion will provide more consistent airspace for pilot navigation and transit flight than exists within the current Hudson River Exclusion configuration. Even though prior to this rule the ceiling of the Exclusion varied between 1,100 feet MSL and 1,500 feet MSL, as a practical matter, the majority of these pilots were operating in this area at 1,000 feet MSL. Therefore, within a significant portion of the Exclusion, all aircraft operations (transiting and local) were mixed within the airspace 1,100 feet MSL and below.

This rule requires aircraft that are simply transiting the area to do so between the altitudes of 1,000 feet MSL up to, but not including, 1,300 feet MSL, and this provides more options for aircraft that are transiting the Exclusion. This change also moves transiting aircraft above the altitudes that are intended for local operations within the Exclusion.

One commenter suggested that all transiting aircraft operations should occur in Class B airspace, above the Hudson River Exclusion. Transiting aircraft always have the option to request Class B clearance from ATC. Separately, one of the non-rulemaking actions the FAA is taking concurrent with this rule, is to establish a published VFR transition route within the New York Class B airspace area above the Hudson River. Similar VFR transition routes exist at other Class B airspace locations, including Los Angeles and Phoenix. This new route will be depicted on the New York Sectional and Terminal Area Charts. Use of the route requires ATC clearance, but it should provide benefits including expedited handling, enhanced safety, improved communication between the controller and pilot, increased number of aircraft under positive control, reduced cockpit workload, and reduction of transiting traffic in the Exclusion airspace.

Another commenter suggested designating separate altitudes for northbound and southbound aircraft transiting the Exclusion. The FAA considered this suggestion but determined that it would further reduce available altitudes for transiting aircraft. The Exclusion is sufficiently wide to allow for lateral separation between north and southbound aircraft.

One commenter suggested reducing the maximum speed from 140 knots to 120 knots. The 140 knot speed was selected based on its use as a recommended practice for many years in the Hudson and East River Exclusions. Given the mix of operations that will be occurring below 1,000 feet MSL, i.e. climbing, descending, significant altitude changes, 140 knots has proven to be the maximum speed that safely enables all these operations to occur in the same airspace. The FAA did not want to exclude any certain category or class of aircraft from operating in these areas. A maximum speed of 140 knots would allow access by a greater number of different classes while maintaining safety. In addition, the FAA notes that 140 knots is the maximum speed permitted within the Los Angeles Special Flight Rules Area, and it has worked well there. Based on this longstanding practice, the FAA believes that 140 knots is appropriate for use in the Exclusions.

One person asked that the Hudson River Exclusion be expanded behind the Statue of Liberty to permit pilots circling the Statue to do so at a higher altitude without entering Class B airspace. The FAA considered this suggestion, but is unable to adopt it because it would result in adverse impact on instrument flight rules (IFR) operations at Newark.

Other commenters recommended that guidance be provided for aircraft turn arounds at the north and south ends of the Hudson River Exclusion and that fixed-wing aircraft should be required to fly south of the Verrazano Bridge before turning northbound. While these suggestions are outside the scope of this final rule, the FAA is developing a training program covering operations in the New York City area. The training program will include recommended practices such as those suggested above.

Separation of Helicopter and Fixed-Wing Traffic

Several commenters interpreted the term ''local operations'' to mean that only helicopters can operate below 1,000 feet MSL in the Hudson River Exclusion, and that fixed wing aircraft operations are restricted to operate between 1,000 feet MSL up to but not including 1,300 feet MSL.

The FAA noted in its task force report that current operations within the Hudson River Class B Exclusion include a high level of helicopter activity arriving and departing from the Manhattan heliports, in addition to extensive local helicopter tour operations. Fixed-wing traffic is predominantly comprised of general aviation aircraft transiting the New York area either during the en route phase of a cross country flight or on local sightseeing flights. The FAA considered separate altitudes for different aircraft category within this airspace, but did not pursue this option. Prior to this rule, there were no specified altitudes for transient aircraft, often placing them in the same altitude structure commonly used by local operators. Segregating aircraft operations based on mission (transient or local operations) will enhance safety. FAA analysis did not support altitude stratification within the existing airspace of 1,100 feet MSL and below as it could introduce additional risk and have unintended consequences by compressing demand into fewer altitude strata.

Position Reports and Reporting Points

Over 25 comments were received objecting to the proposed requirement that pilots operating in the Hudson River Exclusion include aircraft color

when making position reports at the charted mandatory reporting points. Among the stated reasons were that the requirement contributes to frequency congestion; that it is difficult to clearly distinguish color at a distance; and that reporting aircraft color adds little value to safety. The FAA agrees with these concerns and has removed aircraft color from the position report format in § 93.352(a). In addition, the training program being developed will emphasize clear and concise position reporting procedures.

Regarding the selection of reporting points, commenters requested that they be clearly visible, identifiable, and aligned with current reporting point usage. Some commenters stated that there are too many required points and they should be standardized between the Terminal Area Chart (TAC) and Helicopter Chart. One individual suggested that a new symbol be added to the charts to identify the mandatory reporting points.

In response, the number of mandatory reporting points has been reduced to six. These points consist of locations that are already in use for the Hudson River Exclusion and will be reflected on both the New York Helicopter Route Chart and TAC. They will be clearly identified on the charts as mandatory reporting points using standard reporting point symbols already familiar to pilots.

Frequency Congestion

Many commenters identified frequency congestion on the Hudson River Exclusion Common Traffic Advisory Frequency (CTAF), 123.05, as a major concern. The number of users on 123.05, as well as heliport fixed base operators (FBO) using the frequency for dispatch information and other purposes, affect the ability to use the frequency for position reporting and aircraft-to-aircraft coordination. Commenters provided several suggestions to alleviate the congestion, including assigning a separate frequency for use by transiting aircraft; providing a separate frequency for heliport FBO use; assigning a ''corridor'' automatic terminal information service (ATIS) frequency for general information such as temporary flight restrictions; and limiting the use of the frequency to aviation purposes.

Due to limited frequency spectrum availability, designation of additional frequencies as suggested is not possible at this time. An effort currently is underway to realign Hudson and East River Exclusion frequencies to reduce congestion on 123.05. One step is the future change of the Wall Street Heliport frequency to 123.075. In addition, the training program being developed will specifically address standardization of phraseology for both pilot and FBO communications. Information will be included on the aeronautical charts to reflect recommended communications procedures.

Regarding the use of an ATIS for the Exclusions, the purpose of ATIS is to provide airport-specific information, rather than general geographic advisory information.

Further, installation of an ATIS would require equipment procurement and frequency assignment, which are beyond the scope of this rule.

One commenter requested that a discrete frequency be assigned and published on the charts for VFR aircraft wishing to contact LaGuardia tower. Contact frequencies for LaGuardia (LGA), Kennedy (JFK), Newark (EWR), and Teterboro (TEB) airport traffic control towers are already shown on the New York Terminal Area and Helicopter Route charts.

Charting Issues

Several commenters suggested that the FAA add enhancements to the New York aeronautical charts to expand the information available to pilots and to include the operating requirements on the charts.

The FAA agrees, and will publish the same mandatory VFR reporting points on both Helicopter Route and TAC Charts; add the VFR Transition Route to the Sectional and TAC charts; and provide an expanded depiction of the SFRA area on the reverse of the TAC chart. In addition, the charts will contain insets specifying the part 93 operating requirements and sample position reporting phraseology.

Floor of Class B Airspace Over the Hudson River

Some commenters suggested raising the floor of Class B over the Hudson River to 1500 feet or 1600 feet MSL to provide additional altitudes in the Hudson River Exclusion. The FAA does not agree with these suggestions. The floor of the Class B airspace can not be raised above 1300 feet MSL above the Hudson River Exclusion without significant adverse impact to IFR operations at LGA and EWR.

Change Is Unnecessary or Premature

Several commenters stated that the proposed rule changes are unnecessary or premature based on the longstanding safety record of flight operations in the Hudson River Exclusion. One commenter said that the FAA should wait for the NTSB to issue its final report on the August 8, 2009, accident before taking action.

The FAA does not agree. While acknowledging the overall safety record of operations in the Hudson River Exclusion, the FAA believes that the measures in this rule, along with the other recommendations of the FAA (that do not require rulemaking action) are appropriate to further enhance the safety of visual flight rules (VFR) flight in the Hudson-East River areas. Although the NTSB has not yet issued a final report, it has issued five recommendations based on its preliminary findings and its concern about the safety of flight in the Hudson River Class B Exclusion. The NTSB recommendations are similar to actions taken by the FAA. The FAA does not agree that it should delay further action pending the release of the NTSB's final report.

East River Class B Exclusion Operating Procedures

Two commenters opposed the proposed provision that would require ATC authorization for certain fixed-wing aircraft VFR flight operations in the East River Class B Exclusion. The commenters questioned the value to safety and the rationale for requiring ATC control in the East River Exclusion while no such requirement applies in the Hudson River Exclusion.

This rule codifies the requirements in NOTAM number 6/3495, which has been in effect since October 13, 2006, as a result of a fixed-wing aircraft accident in the East River Exclusion. The East River Exclusion differs from the Hudson River Exclusion in that, for most of its length, it is narrower and provides less maneuvering room for fixed-wing aircraft than is available in the Hudson River Exclusion. Additionally, the north end of the East River Exclusion ''dead-ends'' at the boundary of the Class B airspace surface area (west of LGA), which can place a pilot in the situation of needing either a course reversal, or obtaining ATC clearance to enter Class B airspace to proceed further. The Hudson River Exclusion also differs from the East River Exclusion by being open at both ends, providing a continuous path through the entire area. Therefore, the FAA does not believe that a similar requirement exists for the Hudson River Exclusion. For these reasons, the FAA believes that the requirement for ATC authorization and control in the East River Exclusion, as proposed, is appropriate in the interest of safety.

Aircraft Not Equipped With Lights or Electrical Systems

One commenter stated that no allowance is made for aircraft that are not equipped with external lights to fly the corridor. Another commenter said that aircraft without electrical systems should be permitted in this airspace.

It was not the FAA's intent to exclude aircraft without exterior lights or electrical systems from the Hudson River Exclusion. The final rule is clarified by specifying that aircraft equipped with functioning lights must turn on those lights. The use of landing lights is recommended.

Class B Airspace Modification Informal Airspace Meetings

One commenter pointed out that the FAA did not hold an informal airspace meeting regarding the proposed change to the New York Class B airspace area as required by FAA policy. (*See* FAA Order 7400.2, *Procedures for Handling Airspace Matters,* paragraph 2–6–3.)

It is the agency's policy to hold informal airspace meetings as one means of informing the public and gathering information regarding Class B airspace. In this rule however, only a small portion of the New York Class B airspace is being modified, the area over the Hudson River. Furthermore, this modification consists of leveling the Class B floor, which varied between above 1,100 feet MSL and 1,500 feet MSL. This rule uniformly sets the floor at 1,300 feet MSL over the same segment of the river. There were no lateral alterations to the airspace and the majority of the New York Class B airspace area is not being changed in any way by this rule. The FAA saw the need for prompt action to enhance flight safety in this area and opted not to hold an informal airspace meeting in this case. The FAA concluded that a 30 day comment period would best meet the need of gathering public input on this proposal and permit this action to move expeditiously. The comment period closed on October 16, 2009.

One commenter questioned whether the Task Force established by the FAA was an advisory committee subject to the Federal Advisory Committee Act (FACA). The FAA provided notice and a 30-day comment period so that all members of the public had opportunity to comment. The FAA believes that this process remedies any alleged FACA infractions.

The FAA did receive one request to extend the comment period, which was denied.

Other Issues

Comments were also received on issues concerning: Education and training; Teterboro departure procedures for VFR aircraft; altimeter setting and transponder procedures; and enhanced surveillance coverage and aircraft avionics equipage (Multilateration, TIS, TCAS, ADS–B). These issues are outside of the scope of this rulemaking action. However, responses are provided for information.

Education and Training

Several commenters suggested that the FAA develop an internet-based training program covering all aspects of VFR flight in the New York SFRA, similar to that produced for the Washington, DC SFRA. The FAA agrees and is developing training programs to educate pilots as well as air traffic controllers and Fixed Base Operator personnel. One commenter opposed a training program as unnecessary and burdensome since the appropriate charts will contain sufficient information. The FAA does not agree that this training is unnecessary or burdensome. Unlike the Washington, DC SFRA training program, the New York SFRA training will not be mandatory. It will supplement the information provided on the charts and include supplemental recommended practices for flight within the SFRA.

Teterboro VFR Transitions

Commenters recommended that the FAA develop a standard transition for fixed-wing VFR aircraft that depart Teterboro (TEB) and request to enter the Hudson River Class B Exclusion. The FAA agrees and is developing revised ATC procedures to provide guidance for VFR TEB departures requesting to enter the Hudson River Exclusion as well as separate guidance for VFR departures requesting Class B services.

Altimeter Setting and Transponder Procedures

Commenters submitted a number of suggestions regarding altimeter settings and transponder usage for the SFRA. One commenter requested that a radio frequency be provided for broadcasting a standard altimeter setting for the Exclusions. Another stated that the FAA should mandate the use of the Newark altimeter setting.

The FAA does not agree with these suggestions. Each of the airports bracketing the SFRA (Newark, Teterboro, LaGuardia and Kennedy) has published ATIS frequencies that broadcast altimeter settings on a continuous basis. Pilots may select the altimeter setting most appropriate for their route of flight. Guidance for setting altimeters is provided in 14 CFR 91.121.

One commenter suggested that a standard VFR transponder code be assigned to aircraft operating in the SFRA if this would be helpful to ATC. The FAA determined that a discrete transponder code for VFR flights in the Exclusions would not be useful for ATC. Since aircraft operations in the Exclusions are conducted under VFR, ATC services are not routinely provided. The FAA does not believe that a discrete code, as opposed to the standard 1200 VFR code, would provide any additional benefit.

Another commenter stated that the requirement for a transponder will disenfranchise aircraft that are not equipped with an electrical system. This rule did not propose any new transponder requirements. Regulations governing transponder use in the National Airspace System are contained in 14 CFR 91.215. In part, that regulation requires that all aircraft operated within 30 nautical miles of an airport listed in Appendix D to part 91 (*i.e.,* those airports where Class B airspace has been designated) must have an operable transponder with altitude reporting capability. The regulation contains specific procedures to accommodate aircraft not equipped with an engine-driven electrical system (see § 91.215(b)(3)).

Enhanced Surveillance Coverage and Aircraft Avionics Equipage

One commenter said the FAA should consider the longer-term installation of wide area multilateration technology for the ''corridor'' and adjacent areas to increase ATC surveillance coverage without requiring additional airborne equipment. Others said that equipment such as the Traffic Alert and Collision Avoidance System (TCAS), Traffic Information Service (TIS) and Automatic Dependent Surveillance—Broadcast (ADS–B) should be used in the Exclusion.

The FAA is exploring the use of multilateration technology to improve surveillance coverage in the SFRA area. This technology involves the placement of numerous sensors at a variety of locations to achieve improved coverage. This could permit earlier processing of conflict alerts and traffic calls for aircraft entering and leaving the Class B airspace. However, it will not replace application of ''see and avoid'' already in use in the Exclusion.

The FAA considered requiring the use of TCAS and TIS in the Exclusion. However, the following problems were identified:

• Excessive amount of TCAS/TIS alerts, (common in dense traffic areas) causing distractions, increased pilot workload detracting from the pilot's primary obligation to ''see and avoid''

• Response to resolution advisories could cause an unwanted intrusion into Class B airspace, resulting in possible conflicts.

Enhanced surveillance coverage and expanded use of systems such as TCAS and ADS–B represent longer term initiatives that are outside the scope of this rule. However, nothing in this rule precludes the future implementation of advanced technology that will enhance the safety of the NAS.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined there is no current or new requirement for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

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 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates 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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

This rule merely sets a uniform ceiling in the Hudson River Exclusion to facilitate segregation of overflights from local traffic. Pilots will self-announce at the reporting points while in the Exclusion area. Pilot training regarding this change is voluntary. We are incorporating the existing NOTAM restricting certain fixed-wing operations in the East River Exclusion Area. Pilots will be required to carry current charts, at a cost of $5.25 each. As a result, the cost is minimal. For these just discussed facts we received no comments regarding our minimal cost determination and we reduced the number of reporting points.

We did receive a comment claiming an increase in cost because of a potential increase in noise. As discussed below in the Environmental Review there is no increase in noise on communities because the rule will not increase operations, and operations are over the Hudson River, rather than over communities. Therefore, there is no increase in noise cost. The action is categorically excluded from further environmental documentation according to Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' in accordance with paragraphs 307a, 311a, 311j and 312d.

Therefore, this rule does not change the quantity of flights, nor training requirements, continues the existing safety restriction in the East River Exclusion Area, chart costs are minimal, and there is no increase in the cost of noise. In addition, these changes will improve airspace safety. FAA has, therefore, determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. We agree the rule may well affect a substantial number of small entities. However, the FAA has determined this rule will impose only minimal cost; therefore there is not a significant economic impact. We received no comments changing our minimal cost estimate and no NPRM comments disputing our small entity determination. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered unnecessary obstacles to the foreign commerce of the United States, so long as the standards have a

legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this rule to ensure it does not exclude imports that meet this objective. As a result, this final rule is not considered as creating an unnecessary obstacle to foreign commerce.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal 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 Review

The FAA has reviewed the above described action and determined that it is categorically excluded from further environmental documentation according to FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' in accordance with paragraphs 307a, 311a, 311j and 312d. Additionally, the implementation of this action will not result in any extraordinary circumstances in accordance with Order 1050.1E paragraph 304. A copy of this Declaration is posted in the docket.

Specifically, in accordance with:

1. Paragraph 307a, the FAA is implementing these measures to respond to the accident over the Hudson River on August 8, 2009, and there is no reasonably foreseeable significant long-term adverse effect from this action;

2. Paragraph 311a, the action is to modify Class B airspace;

3. Paragraph 311j, the action implements procedures to respond to accidents with no reasonably foreseeable long-term adverse effects; and,

4. Paragraph 312d, this action supports issuance of regulatory documents (issuance of a Final Rule).

Additionally, in accordance with paragraph 304, there are no extraordinary circumstances associated with this action which would preclude the use of any of the categorical exclusions listed above. This action focuses specifically on helicopters and other aircraft that operate utilizing Visual Flight Rule (VFR) conditions above the Hudson River and not over any residential areas.

Therefore it will not:

1. Have an adverse effect any National Historic Preservation Act properties;

2. Impact properties under section 4(f) of the Department of Transportation Act;

3. Impact resources under the Endangered Species Act;

4. Cause a division or disruption to an established community;

5. Cause an increase in congestion of surface transportation;

6. Have an impact on noise levels of noise-sensitive areas. Although the change in altitude is below 3,000 feet MSL, there will be no increase in noise over noise sensitive areas because the location of the change is over the Hudson River;

7. Have an impact on air quality;

8. Have an impact on water quality;

9. Affect the quality of the human environment that is likely to be highly controversial (create a substantial dispute related to the size, nature, or effect) on environmental grounds;

10. Likely to be inconsistent with any Federal, State, Tribal or Local laws; and,

11. Likely to directly or cumulatively create a significant impact on the human environment.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' and 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 amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

14 CFR Part 93

Aircraft flight, Airspace, Aviation safety, Air traffic control, Aircraft, Airmen, Airports.

The Amendments

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 and 14 CFR part 93 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, dated August 27, 2009 and effective September 15, 2009, is amended as follows:

Paragraph 3000 Class B Airspace

* * * * *

AEA NY B New York, NY [Amended]

* * * * *

Boundaries.

By removing the descriptions of Area A, Area B, Area D and Area E and substituting the following; and by adding a new Area K as follows:

Area A. That airspace extending upward from the surface to and including 7,000 feet MSL within an 8-mile radius circle of Kennedy (JFK) VORTAC; within a 4-mile radius circle centered at lat. 40°41′30″N., long. 74°09′59″W.; and within a 6-mile radius circle of LaGuardia (LGA) VOR; excluding the airspace within and below Areas B, J and K hereinafter described and excluding that airspace east of LaGuardia Airport bounded by a line beginning at the point of intersection of the LGA VOR/DME 071° radial and the 6-mile arc of the LGA VOR/DME, thence clockwise along the LGA VOR/DME 6-mile arc to the LGA 093° radial, thence westerly to the intersection of the Clearview Expressway with a line extending from the LaGuardia 093° radial 6-mile DME fix to the southern edge of Bowne Park; thence to the southern edge of Leavitts Park; thence direct to the JFK VORTAC 340° radial 9-mile DME fix; direct to the JFK VORTAC 341° radial 10-mile DME fix; thence direct to the point of beginning.

Area B. That airspace extending upward from above 500 feet MSL to and including 7,000 feet MSL within an 8-mile radius circle of JFK VORTAC south of a line beginning at the intersection of the JFK VORTAC 237° radial and the Atlantic Ocean shoreline, thence easterly along the shoreline to its intersection with the JFK VORTAC 125° radial 5-mile DME fix, thence northerly along the 5-mile DME arc to and easterly along the JFK VORTAC 94° radial to the 8-mile radius circle of JFK VORTAC; that airspace within a 6-mile radius circle of LGA VOR/DME bounded by a line beginning at the intersection of the 6-mile radius circle and the LGA VOR/DME 039° radial, thence southwesterly along the LGA VOR/DME 039° radial to and southerly along the Bronx shoreline to the north stanchion of the Throggs Neck Bridge, thence direct to the intersection of the LGA VOR/DME 071° radial and the 6-mile radius circle of LGA VOR/DME, thence counterclockwise along the 6-mile radius circle to the point of beginning; and that airspace between the 4-mile and the 6.5-mile radii of a circle centered at lat. 40°41′30″N., long. 74°09′59″W.; excluding that airspace within and below Areas C, J and K hereinafter described.

Area D. That airspace extending upward from above 1,100 feet MSL to and including 7,000 feet MSL within the area between the east and west banks of the East River extending from the LGA VOR/DME 6-mile arc to the north end of Roosevelt Island.

Area E. That airspace extending upward from 1,500 feet MSL to and including 7,000 feet MSL within the area bounded by a line beginning at the intersection of the 20-mile radius circle of JFK VORTAC and the JFK VORTAC 208° radial, thence counterclockwise along the 20-mile arc to its intersection with the Long Island shoreline, thence southwest along the Long Island shoreline to and counterclockwise along the 13-mile radius circle of JFK VORTAC to and counterclockwise along the 11-mile radius circle of LGA VOR/DME to the LGA VOR/DME 351° radial, thence direct to the LGA VOR/DME 283° radial at the LGA VOR/DME 17-mile DME fix, thence counterclockwise along a 10-mile radius circle centered at lat. 40°41′30″N., long. 74°09′59″W., to its intersection with the Colts Neck VORTAC 005° radial, thence direct to the intersection of the Colts Neck VORTAC 034° radial and the New Jersey shoreline at Sandy Hook, thence south along the New Jersey shoreline to the point of beginning; and that airspace within 2 miles each side of the Newark ILS Runway 4L localizer course, extending from the CHESA outer marker to 6 miles southwest of the outer marker, excluding that airspace within and below Areas A, B, and C previously described; and excluding the airspace within and below Areas F, J and K hereinafter described.

Area K. That airspace extending upward from 1,300 feet MSL, to and including 7,000 feet MSL, north of LaGuardia Airport, within the area beginning on the west bank of the Hudson River at lat. 40°57′45″N., long. 73°54′48″W., (near Alpine Tower) thence south along the west bank of the Hudson River to intersect the Colts Neck VOR/DME 012° radial, thence southwest along the Colts Neck 012° radial to the Hudson River shoreline, thence south along the shoreline to the Verrazano-Narrows Bridge, thence east along the Bridge to the east bank of the Hudson River, thence north along the east bank of the Hudson River to lat. 40°38′39″N., long. 74°02′03″W., thence north along a line drawn direct to the southwesternmost point of Governors Island, thence north along a line drawn direct to the southwest tip of Manhattan Island, thence north along the east bank of the Hudson River to the LGA VOR/DME 11-mile arc, north of LaGuardia Airport, thence counterclockwise along the 11-mile arc to lat. 40°57′54″N., long. 73°54′23″W., thence to the point of beginning.

* * * * *

PART 93—SPECIAL AIR TRAFFIC RULES

■ 3. 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.

■ 4. Add subpart W, consisting of §§ 93.350 through 93.353, to read as follows:

Subpart W—New York Class B Airspace Hudson River and East River Exclusion Special Flight Rules Area

Sec.

93.350 Definitions.
93.351 General requirements for operating in the East River and/or Hudson River Exclusions.
93.352 Hudson River Exclusion specific operating procedures.
93.353 East River Exclusion specific operating procedures.

Subpart W—New York Class B Airspace Hudson River and East River Exclusion Special Flight Rules Area

§ 93.350 Definitions.

For the purposes of this subpart only the following definitions apply:

(a) *Local operation.* Any aircraft within the Hudson River Exclusion that is conducting an operation other than as described in paragraph (b) of this section. Local operations include but are not limited to operations for sightseeing, electronic news gathering, and law enforcement.

(b) *Transient operation.* Aircraft transiting the entire length of the Hudson River Class B Exclusion, as defined in paragraph (d) of this section, from one end to the other.

(c) *New York Class B airspace East River Exclusion* is that airspace below 1,500 feet MSL between the east and west banks of, and overlying, the East River beginning at lat. 40°38′39″N., long. 74°02′03″W., thence north along a line drawn direct to the southwestern tip of Governors Island, thence north along a line direct to the southwest tip of Manhattan Island, thence north along the west bank of the East River to the LGA VOR/DME 6-mile arc, thence counterclockwise along the 6-mile arc to the east bank of the East River, thence south along the east bank of the East River to the point of beginning at lat. 40°38′39″N., long 74°02′03″W.; and that airspace 1,100 feet MSL and below between the east and west banks of, and overlying the East River, from the LGA VOR/DME 6-mile arc to the north tip of Roosevelt Island.

(d) *New York Class B airspace Hudson River Exclusion* is that area

from the surface up to but not including the overlying floor of the New York Class B airspace area, between the east and west banks of, and overlying, the Hudson River within the area beginning north of LaGuardia Airport on the west bank of the Hudson River at lat. 40°57′45″N., long. 73°54′48″W. (near Alpine Tower), thence south along the west bank of the Hudson River to intersect the Colts Neck VOR/DME 012° radial, thence southwest along the Colts Neck 012° radial to the Hudson River shoreline, thence south along the shoreline to the Verrazano-Narrows Bridge, thence east along the Bridge to the east bank of the Hudson River, thence north along the east bank of the Hudson River to lat. 40°38′39″N., long. 74°02′03″W., thence north along a line drawn direct to the southwesternmost point of Governors Island, thence north along a line drawn direct to the southwest tip of Manhattan Island, thence north along the east bank of the Hudson River to the LGA VOR/DME 11-mile arc, north of LaGuardia Airport, thence counterclockwise along the 11-mile arc to lat. 40°57′54″N., long. 73°54′23″W., thence to the point of beginning.

§ 93.351 General requirements for operating in the East River and/or Hudson River Exclusions.

Pilots must adhere to the following requirements:

(a) Maintain an indicated airspeed not to exceed 140 knots.

(b) Anti-collision lights and aircraft position/navigation lights shall be on, if equipped. Use of landing lights is recommended.

(c) Self announce position on the appropriate radio frequency for the East River or Hudson River as depicted on the New York VFR Terminal Area Chart (TAC) and/or New York Helicopter Route Chart.

(d) Have a current New York TAC chart and/or New York Helicopter Route Chart in the aircraft and be familiar with the information contained therein.

§ 93.352 Hudson River Exclusion specific operating procedures.

In addition to the requirements in § 93.351, the following procedures apply:

(a) Pilots must self announce, at the charted mandatory reporting points, the following information: aircraft type, current position, direction of flight, and altitude.

(b) Pilots must fly along the west shoreline of the Hudson River when southbound, and along the east shoreline of the Hudson River when northbound; while remaining within the boundaries of the Hudson River Exclusion as defined in § 93.350(d).

(c) Aircraft transiting the area within the Hudson River Exclusion in accordance with § 93.350(b) must transit the Hudson River Exclusion at or above an altitude of 1,000 feet MSL up to, but not including, the floor of the overlying Class B airspace.

§ 93.353 East River Exclusion specific operating procedures.

No person may operate an airplane in the East River Exclusion extending from the southwestern tip of Governors Island to the north tip of Roosevelt Island except:

(a) Seaplanes landing on or taking off from the river; or

(b) Airplanes authorized by ATC. Pilots must contact LaGuardia Airport Traffic Control Tower prior to Governors Island for authorization.

Issued in Washington, DC, on November 10, 2009.

J. Randolph Babbitt,

Administrator.

[FR Doc. E9–27539 Filed 11–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2009–N–0665]

New Animal Drugs for Use in Animal Feeds; Melengestrol; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co., a Division of Pfizer, Inc. The supplemental NADA provides for use of the same increased dose levels approved for single-ingredient Type C medicated feeds for heifers fed in confinement for slaughter containing melengestrol acetate or monensin in two-way, combination drug Type C medicated feeds containing melengestrol acetate and monensin.

DATES: This rule is effective November 19, 2009.

FOR FURTHER INFORMATION CONTACT: Suzanne J. Sechen, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8105, e-mail: *suzanne.sechen@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to NADA 125–476 for use of MGA (melengestrol acetate) and RUMENSIN (monensin, USP) single-ingredient Type A medicated articles to make two-way, combination drug Type C medicated feeds for heifers fed in confinement for slaughter. The supplemental NADA provides for use of the same increased dose levels approved for single ingredient Type C medicated feeds containing melengestrol acetate or monensin in the two-way, combination drug Type C medicated feeds. The supplemental application is approved as of October 1, 2009, and the regulations are amended in 21 CFR 558.342 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 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.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.342, add paragraph (e)(1)(x) to read as follows:

§ 558.342 Melengestrol.

* * * * *

(e) * * *

(1) * * *

Melengestrol acetate in mg/head/day	Combination in mg/head/day	Indications for use	Limitations	Sponsor
* *	*	*	* *	*
(x) 0.25 to 0.5	Monensin 50 to 480.	Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section; and for the prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*.	Add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 1.0 mg melengestrol acetate/lb to a feed containing 10 to 40 g of monensin per ton to provide 0.25 to 0.5 mg melengestrol acetate/head/day and 0.14 to 0.42 mg monensin/lb body weight, depending on severity of coccidiosis challenge, up to 480 mg monensin/head/day. Monensin provided by No. 000986 in § 510.600(c) of this chapter.	000009

* * * * *

Dated: November 9, 2009.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E9–27744 Filed 11–18–09; 8:45 am]

BILLING CODE 4160–01–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2267; MB Docket No. 09–98; RM–11536]

Radio Broadcasting Services, Leupp, Arizona

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Chochise Broadcasting LLC, substitutes Channel 293C2 for vacant FM Channel 255C2 at Leupp, Arizona. Channel 293C2 can be allotted at Leupp, Arizona. Channel 293C2 can be allotted at Leupp, Arizona, in compliance with the Commission's minimum distance separation requirements without site restriction at the following reference coordinates: 35–17–02 North Latitude and 110–57–52 West Longitude.

DATES: December 21, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 09–98, adopted October 21, 2009, and released October 23, 2009. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. 20554.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, http://www.bcpiweb.com.

This document does not contain any 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). 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).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated 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.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of Allotments under Arizona, is amended by removing Channel 255C2 and by adding Channel 293C2 at Leupp.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–27691 Filed 11–18–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2280; MB Docket No. 08–3; RM–11407]

Radio Broadcasting Services, Wheatland, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The staff grants a rulemaking petition filed by Appaoloosa Broadcasting, Company, Inc., the licensee of Station KIMX(FM), Channel 244C2, Laramie, Wyoming, by substituting FM Channel 286A for vacant Channel 247A at Wheatland, Wyoming. The reference coordinates for Channel 286A at Wheatland are 42–04–28 NL and 104–56–51 WL.

DATES: Effective December 7, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 08–3,

adopted October 21, 2009, and released October 23, 2009. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The Notice of Proposed Rule Making in this proceeding stated that Appaloosa Broadcasting Company's rulemaking petition was filed as part of a hybrid application and rulemaking proposal involving its concurrently filed minor change application (File No. BPH–20070822AAL). See 73 FR 4513, published January 25, 2008. In this application, Appaloosa proposes the substitution of Channel 245A for Channel 244C2 at Laramie, the reallotment of Channel 245A to Nunn, Colorado, and the associated modification of its license for Station KIMX(FM). The modification of Laramie license is contingent upon the channel substitution at Wheatland. The Report and Order notes that Appaloosa's application is being granted simultaneously with the release of the Report and Order.

Channel 247A at Wheatland was allotted in MB Docket No. 05–98. See 71 FR 4527, published January 27, 2006. This vacant FM channel was inadvertently removed from the FM Table of Allotments in MB Docket 05–210. See 71 FR 76208, published December 20, 2006. As stated above, we are substituting Channel 286A for vacant Channel 247A at Wheatland, Wyoming, to accommodate the Station KIMX(FM) hybrid application.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, http://www.bcpiweb.com.

This document does not contain any 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). The Commission will send a copy of the Report and Order in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 44 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73 – RADIO BROADCAST SERVICES

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

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

Section 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Wheatland, Channel 286A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–27700 Filed 11–18–09; 8:45 am]

BILLING CODE 6712–01–S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 209, and 252

RIN 0750–AG07

Defense Federal Acquisition Regulation Supplement; Senior DoD Officials Seeking Employment With Defense Contractors (DFARS Case 2008–D007)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 847 of the National Defense Authorization Act for Fiscal Year 2008. Section 847 addresses requirements for senior DoD officials to obtain a post-employment ethics opinion before accepting compensation from a DoD contractor within two years after leaving DoD service.

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

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2008–D007.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 74 FR 2408 on January 15, 2009, to implement section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 847 requires that a DoD official, who has participated personally and substantially in a DoD acquisition exceeding $10 million or who has held a key acquisition position, must request a written opinion from a DoD ethics counselor before accepting compensation from a DoD contractor within two years after leaving DoD service. In addition, section 847 prohibits a DoD contractor from providing compensation to such a DoD official without first determining that the official has received or appropriately requested a post-employment ethics opinion.

One source submitted comments on the interim rule. That source supported the rule and its objectives, but recommended that the central database/repository for retention of written ethics opinions, required by section 847(b), be made publicly available. DoD has not adopted this recommendation, as section 847 does not authorize access to the database by the general public.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the requirement to verify that a prospective employee has received or requested the appropriate DoD ethics opinion should involve minimal effort on the part of a contractor.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 203, 209, and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 203, 209, and 252, which was published at 74 FR 2408

on January 15, 2009, is adopted as a final rule without change.

[FR Doc. E9–27849 Filed 11–18–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203 and 252

RIN 0750–AG09

Defense Federal Acquisition Regulation Supplement; Whistleblower Protections for Contractor Employees (DFARS Case 2008–D012)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 846 of the National Defense Authorization Act for Fiscal Year 2008 and section 842 of the National Defense Authorization Act for Fiscal Year 2009. These laws address protections for contractor employees who disclose information to Government officials with regard to waste or mismanagement, danger to public health or safety, or violation of law related to a DoD contract.

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

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2008–D012.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 74 FR 2410 on January 15, 2009, to implement section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) and Section 842 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). These laws address whistleblower rights and protections for DoD contractor employees.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule contains a requirement for contractors to inform employees in writing of their whistleblower rights and protections, compliance with this requirement is not expected to have a significant cost or administrative impact on contractors.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 203 and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 203 and 252, which was published at 74 FR 2410 on January 15, 2009, is adopted as a final rule without change.

[FR Doc. E9–27847 Filed 11–18–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 205

Defense Federal Acquisition Regulation Supplement (DFARS); Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making a technical amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to correct a cross-reference within the DFARS text.

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

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS text at 205.301, by correcting the cross-reference in paragraph (a)(s–70)(i)(B) to the exception for acquisitions of chemical warfare protective clothing from the restrictions on food, clothing, fabrics, and hand or measuring tools at 225.7002.

List of Subjects in 48 CFR Part 205

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 205 is amended as follows:

PART 205—PUBLICIZING CONTRACT ACTIONS

■ 1. The authority citation for 48 CFR part 205 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

■ 2. In section 205.301, paragraph (a)(i)(B) is revised to read as follows:

205.301 General.

(a) * * *

(i) * * *

(B) The acquisition is for chemical warfare protective clothing, and the contracting officer has determined that an exception to domestic source requirements applies because the acquisition furthers an agreement with a qualifying country, in accordance with 225.7002–2(n).

* * * * *

[FR Doc. E9–27850 Filed 11–18–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 208

RIN 0750–AG03

Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchases From Federal Prison Industries (DFARS Case 2008–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule

amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 827 of the National Defense Authorization Act for Fiscal Year 2008. Section 827 requires the use of competitive procedures in the acquisition of items for which Federal Prison Industries has a significant market share.

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

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra Freeman, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–8383; facsimile 703–602–7887. Please cite DFARS Case 2008–D015.

SUPPLEMENTARY INFORMATION:

A. Background

Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) amended 10 U.S.C. 2410n to require the use of competitive procedures in the acquisition of items for which Federal Prison Industries (FPI) has a significant market share. Section 827 provides that FPI shall be treated as having a significant share of the market for a product if DoD, in consultation with the Office of Federal Procurement Policy, determines that the FPI share of the DoD market for the category of products including that product is greater than five percent.

DoD published an interim rule at 73 FR 46816 on August 12, 2008, to implement section 827 of Public Law 110–181. Five sources submitted comments on the interim rule. The respondents expressed general support for section 827 as a means of increasing competition and ensuring the best value for the Government. A discussion of other comments received from the respondents is provided below.

1. *Comment:* Although section 827 of Public Law 110–181 is limited to products, DoD acquisition personnel should take the spirit of the statute into account when procuring services.

DoD Response: In accordance with FAR 8.605(g), FPI is not a mandatory source for services. Therefore, application of this DFARS rule to the acquisition of services is unnecessary.

2. *Comment:* The 5 percent threshold should be applied to individual items, rather than to entire Federal supply classes. FPI will be supplying more than 50 percent of DoD's requirements for ballistic helmets, even though it only supplies 3.8 percent of the overall Federal supply class (FSC 4870—Armor, Personal) to which this item belongs. A mechanism should be available to group products of a similar type and characteristics into smaller sub-classes in order to comply with the statutory intent.

DoD Response: Section 827 specifically provides for application of its requirements to categories of products, rather than individual items. As a practical matter, it would be difficult, if not impossible, to determine up-to-date market share percentages at the individual item level. Given the number of items acquired by the Federal Government, Federal supply classes are the most practical groupings of items; sub-classes would be too numerous for practical applicability. In accordance with FAR 8.604 and 8.605, waiver and exception mechanisms exist to permit acquisition of FPI Schedule items from other sources if necessary.

3. *Comment:* DoD has not required FPI to compete on a level playing field for those procurements where private industry is now allowed to participate. Ordinarily, when U.S. Government agencies compete with private sector entities for the provision of goods or services to other Government agencies, such competitions are governed by OMB Circular A–76. Among other things, OMB Circular A–76 requires that, when considering the cost to the Government of an agency's submittal, the purchasing agency must consider both the price charged and the amount of any subsidy provided by the Government to the agency bidding for such work. Now that FPI is being required to compete for the supply of certain products, the provisions of OMB Circular A–76 should apply to such competitions and, although private industry now has the right to compete against FPI in certain areas, it will be at a significant disadvantage unless and until the Government's subsidies to FPI are considered when evaluating its pricing.

DoD Response: This comment pertains to acquisitions that employ comparability determinations, rather than to those where competitive procedures are used because of FPI's significant market share. Therefore, the comment is outside the scope of this DFARS case. However, a recent Government Accountability Office (GAO) decision (B–400328) addressed this issue as follows:

> ''We find no statute or regulation * * * that specifically requires an agency to conduct an A–76 study and competition, or otherwise adjust its evaluation to account for any FPI competitive advantages simply because FPI is a potential or actual competitor. For example, neither 18 U.S.C. 4124 nor 10 U.S.C. 4210n refers to A–76, and FAR § 7.302(b)(2) does not establish a separate requirement that agencies must meet when FPI is a potential or actual competitor. Likewise, we are aware of no requirement that an agency otherwise notify offerors of FPI's participation in a procurement or to equalize FPI's alleged competitive advantages. Further, while FPI transactions constitute intragovernmental transfers (18 U.S.C. 4124(c)), and not contracts, there was no solicitation, statutory, or regulatory provision that required the agency to specifically evaluate the impact of this difference.''

4. *Comment:* DoD should conduct yearly or semi-yearly market studies to determine FPI's current market share for a product.

DoD Response: As permitted by section 827(b)(2) of Public Law 110–181, DoD will modify the list of products for which FPI has a significant market share when new data indicate the need for modification. The latest update was made on June 3, 2009, and is available at *http://www.acq.osd.mil/dpap/cpic/cp/specific_policy_areas.html#federal_prison*. DoD does not consider it necessary to establish a specific schedule for updating the list.

5. *Comment:* Textiles and clothing should be added to the list of items for which FPI has a significant market share, based on sales information in FPI's 2007 Annual Report.

DoD Response: Textiles and clothing fall within the 8000 series of Federal supply classes. The initial list, published on March 28, 2008, was based on DoD contract data for fiscal year 2006, which indicated that FPI's market share during that fiscal year did not exceed 5 percent for any of the Federal supply classes in the 8000 series. The current list, published on June 3, 2009, is based on fiscal year 2008 contract data and contains three federal supply classes within the 8000 series: 8405, Men's Outerwear; 8415, Special Purpose Clothing; and 8420, Men's Underwear and Nightwear.

6. *Comment:* The web site referenced in the rule at 208.602–70(b) does not take you directly to the list of Federal supply classes for which FPI has a significant market share. Recommend referencing a site that provides a better link to the list.

DoD Response: The web site referenced at 208.602–70(b) now provides direct access to the list.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact

specified herein. The analysis is summarized as follows:

The objective of the rule is to provide for competition in the acquisition of items for which FPI has a significant market share. The legal basis for the rule is 10 U.S.C. 2410n, as amended by section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). The rule is expected to benefit small business concerns that offer items for which FPI has a significant market share, by permitting those concerns to compete for additional DoD contract awards. The rule also could adversely impact small business concerns that provide supplies and services to FPI relative to the affected items. There are no practical alternatives that would accomplish the objectives of section 827 of Public Law 110–181.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 208

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR part 208, which was published at 73 FR 46816 on August 12, 2008, is adopted as a final rule without change.

[FR Doc. E9–27848 Filed 11–18–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 212

RIN 0750–AG17

Defense Federal Acquisition Regulation Supplement; Pilot Program for Transition to Follow-On Contracting After Use of Other Transaction Authority (DFARS Case 2008–D030)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 824 of the National Defense Authorization Act for Fiscal Year 2009. Section 824 amended the DoD pilot program for transition to follow-on contracting after use of other transaction authority, to establish a new program expiration date and to include items developed under research projects within the scope of the program.

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

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra Freeman, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–8383; facsimile 703–602–7887. Please cite DFARS Case 2008–D030.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 74 FR 2415 on January 15, 2009, to implement section 824 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). The rule amended the DoD pilot program for transition to follow-on contracting after use of other transaction authority, to establish a new program expiration date and to add items developed under research projects to the types of items to which the program applies. The pilot program provides that certain items that do not otherwise meet the definition of ''commercial item'' may be treated as commercial items in the award of contracts and subcontracts that follow an other transaction agreement.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule is expected to ease the transition of nontraditional defense contractors from the use of other transaction agreements to standard contracts, the economic impact is not expected to be substantial.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 212

Government procurement.

Amy G. Williams,

Editor, Defense Acquisitions Regulations System.

■ Accordingly, the interim rule amending 48 CFR part 212, which was published at 74 FR 2415 on January 15, 2009, is adopted as a final rule without change.

[FR Doc. E9–27843 Filed 11–18–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225, 236, and 252

RIN 0750–AG16

Defense Federal Acquisition Regulation Supplement; Steel for Military Construction Projects (DFARS Case 2008–D038)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 108 of the Military Construction and Veterans Affairs Appropriations Act, 2009. Section 108 requires that American steel producers, fabricators, and manufacturers be given the opportunity to compete for contracts and subcontracts for the acquisition of steel for use in military construction projects or activities.

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

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2008–D038.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 74 FR 2417 on January 15, 2009, to implement section 108 of the Military Construction and Veterans Affairs

Appropriations Act, 2009 (Pub. L. 110–329, Division E). Section 108 prohibits the use of funds appropriated in Title I of that Act for the procurement of steel for any military construction project or activity for which American steel producers, fabricators, or manufacturers have been denied the opportunity to compete.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This rule implements section 108 of the Military Construction and Veterans Affairs Appropriations Act, 2009. The objective of the rule is to ensure that American steel producers, fabricators, and manufacturers are given the opportunity to compete for contracts and subcontracts for the acquisition of steel for use in military construction projects and activities. Existing Buy American Act and Balance of Payments Program requirements, implemented in FAR Subpart 25.2 and DFARS Subpart 225.75 respectively, already provide for DoD acquisition of domestic construction materials, including steel. However, this DFARS rule will prohibit use of the exceptions to Buy American Act/Balance of Program requirements otherwise permitted by FAR/DFARS, with regard to the acquisition of steel, unless American steel producers, fabricators, and manufacturers are first provided the opportunity to compete. The rule is expected to benefit American steel producers, fabricators, and manufacturers by ensuring they are provided an opportunity to compete for contracts and subcontracts for the acquisition of steel for use in military construction projects and activities. DoD received no comments on the initial regulatory flexibility analysis or on any other aspect of the interim rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225, 236, and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 225, 236, and 252, which was published at 74 FR 2417 on January 15, 2009, is adopted as a final rule without change.

[FR Doc. E9–27845 Filed 11–18–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080521698–9067–02]

RIN 0648–XS87

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Gear Restriction for the U.S./Canada Management Area

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

ACTION: Temporary rule; gear restriction.

SUMMARY: This action modifies the gear requirements for the U.S./Canada Management Area to prohibit all limited access Northeast (NE) multispecies vessels fishing on a NE multispecies day-at-sea (DAS) with trawl gear in the Western U.S./Canada Area south of 41°40′ N. lat. from using trawl nets, except if using a properly configured haddock separator trawl or Ruhle trawl. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP), and is intended to avoid exceeding the total allowable catch (TAC) for Georges Bank (GB) yellowtail flounder while continuing to allow access to stocks of Eastern GB cod and Eastern GB haddock during the 2009 fishing year (FY). This action is being taken to optimize the harvest of transboundary stocks of GB yellowtail flounder, haddock, and cod under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective November 20, 2009, through April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–6341, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the gear requirements for the U.S./Canada Management Area under the 2009 interim final rule (74 FR 17030, April 13, 2009) are found at § 648.85(a)(3)(ix). The GB yellowtail flounder TAC for FY 2009 (May 1, 2009 - April 30, 2010) was specified at 1,617 mt by the 2009 interim final rule. Once the available TAC for GB yellowtail flounder is projected to be caught, the Administrator, Northeast Region, NMFS (Regional Administrator) is required to close the Eastern U.S./Canada Area to all NE multispecies DAS vessels and prohibit retention of yellowtail flounder in the Western U.S./Canada Area for the remainder of the fishing year, pursuant to § 648.85(a)(3)(iv)(E).

The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to modify certain regulations governing the harvesting of fish from the U.S./Canada Management Area, including gear requirements, to prevent over-harvesting or under-harvesting the TAC allocations specified for Eastern GB cod, Eastern GB haddock, or GB yellowtail flounder in the U.S./Canada Management Area. Based upon Vessel Monitoring System (VMS) reports and other available information, the catch of GB yellowtail flounder was at 78 percent of the FY 2009 TAC as of November 4, 2009, and was projected to be fully harvested in early January 2010, resulting in the premature closure of the Eastern U.S./Canada Area and the potential under-harvest of the available TACs for Eastern GB cod and haddock during FY 2009. Recent at-sea observer reports indicate that very high discard rates of GB yellowtail flounder have occurred on some vessels directing on other flatfish. These reports indicate that the high catch rates of yellowtail flounder are being caught primarily south of 41 40′ N. lat. Requiring trawl vessels that fish any part of a trip in the Western U.S./Canada Area south of 41 40’ N. lat. to use either a haddock separator trawl or a Ruhle trawl would reduce the catch rate of yellowtail flounder, reduce discards, and result in the achievement of the TAC, without exceeding it. Based on this information, the Regional Administrator is prohibiting the use of trawl gear, except for the haddock separator trawl and the Ruhle trawl, as specified at § 648.85(a)(3)(ix) and (b)(10)(iv)(J)(3), respectively, by any limited access NE multispecies vessel which harvests, possesses or lands fish from, or deploys its net during any part

of a trip in, the Western U.S./Canada Area south of 41° 40′ N. lat. under a NE multispecies DAS, to reduce catches and discards of GB yellowtail flounder, effective November 20, 2009, through April 30, 2010, or until modified by a subsequent action. For any such vessels, other gear may be on board the vessel but must be stowed according to the regulations at § 648.23(b) for the entire trip. For any limited access NE multispecies vessel possessing, harvesting, or landing fish exclusively from the area north of 41° 40′ N. lat., all trawl gear, except the haddock separator trawl or Ruhle trawl, must be stowed while transiting the Western U.S./Canada Area south of this line. If sufficient GB yellowtail flounder TAC remains available, the Regional Administrator may lift this gear restriction before the end of FY 2009 to allow additional opportunity to achieve the FY 2009 TACs for the transboundary stocks of GB yellowtail flounder, GB cod, and GB haddock.

A previous temporary rule published on September 15, 2009 (74 FR 47118), restricted the use of trawl gear in the Eastern U.S./Canada Area to either the haddock separator trawl or the Ruhle trawl. Trawl vessels may continue to fish in either the Eastern or Western U.S./Canada Areas using either a haddock separator trawl or a Ruhle trawl. This action does not affect vessels fishing in the U.S./Canada Management Area with either hook gear or gillnet gear, as these gears do not catch a significant amount of yellowtail flounder. Because observer reports indicate that catches of yellowtail flounder are lower north of 41° 40′ N. lat., other trawl gear will continue to be allowed on trips fishing in the Western U.S./Canada Area exclusively north of this line in order to allow vessels to harvest other species of flatfish.

The regulations at § 648.85(a)(3)(iv)(D) specify that, if the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg)(whole weight) each (i.e., no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. The regulations under § 648.85(a)(3)(iv)(D) grant the Regional Administrator the authority to modify gear requirements to prevent over-harvesting or under-harvesting the TAC allocation. Because of the time necessary to provide for prior notice and opportunity for public comment, NMFS would be prevented from taking immediate action to slow the catch rate of GB yellowtail flounder in the U.S./Canada Management Area. Such a delay would allow the high catch rate of GB yellowtail flounder to continue and would result in excessive discards of GB yellowtail flounder, the premature closure of the Eastern U.S./Canada Area for the remainder of the fishing year, and the potential under-harvest of the available TACs specified for Eastern GB cod and haddock. Excessive discards of GB yellowtail flounder caused by a delayed implementation of this action could potentially increase mortality on this overfished stock and undermine the conservation objectives of Amendment 13 to the FMP, and the Magnuson-Stevens Act. If implementation of this action is delayed, the NE multispecies fishery could be prevented from fully harvesting the TACs for Eastern GB cod and haddock during FY 2009. Under-harvesting these TACs would result in increased economic impacts to the industry, and social impacts beyond those analyzed in Amendment 13, as the full potential revenue from the available Eastern GB cod and haddock would not be realized.

The rate of harvest of the Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder TACs in the U.S./Canada Management Area are updated weekly on the internet at *http://www.nero.noaa.gov*. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action to provide additional opportunities to the NE multispecies industry to fully harvest the TAC for any species during FY 2009. Further, the Regional Administrator's authority to modify gear requirements in the U.S./Canada Management Area to help ensure that the shared U.S./Canada stocks of fish are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 13 to the FMP and Framework Adjustment 42 to the FMP. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: November 16, 2009.

Emily H. Menashes,

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

[FR Doc. E9–27821 Filed 11–16–09; 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-XS96

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processors Using Hook-and-Line Gear 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; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processors using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2009 Pacific cod total allowable catch (TAC) allocated to catcher processors using hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 16, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI 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.

The 2009 Pacific cod TAC allocated as a directed fishing allowance to catcher processors using hook-and-line gear in the BSAI is 83,575 metric tons (mt) as

established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) and two reallocations (74 FR 48170, September 22, 2009 and 74 FR 57262, November 5, 2009).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the 2009 Pacific cod directed fishing allowance allocated to catcher processors using hook-and-line gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processors using hook-and-line gear in the BSAI.

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 directed fishing for Pacific cod by catcher processors using hook-and-line gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 12, 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 section 679.20 and is exempt from review under Executive Order 12866.

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

Dated: November 16, 2009.

Emily H. Menashes,

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

[FR Doc. E9–27823 Filed 11–16–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
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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 42

[Doc. No. AMS–FV–08–0027; FV–05–332]

United States Standards for Condition of Food Containers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the regulations governing the United States (U.S.) Standards for Condition of Food Containers. AMS regularly reviews standards to determine if they meet current industry practices. Based on our most recent review, we believe that the U.S. Standards for Condition of Food Containers needs to be revised. The revisions are necessary in order to provide standards that reflect current industry practices. Revisions to the U.S. Standards for Condition of Food Containers include simplifying Tables I, I–A, II, II–A, III, III–A, and III–B for sampling plans for normal, tightened, and reduced condition of container inspection to reflect the type of sampling plan used (single or double). It also includes updating the Acceptable Quality Levels (AQLs), Tables IV—Metal Containers, V—Glass Containers, VI—Rigid and Semirigid Containers, VII—Flexible Containers (Plastic, Cello, Paper, Textile, *etc.*), and X—Defects of Label, Marking, or Code (currently Table VIII) to incorporate new defects and updating current defects to include defects that would correspond to new packaging technologies such as aseptic packaging, metal cans with easy open lids, and plastic rings that hold several containers together. This revision also proposes adding new defect tables entitled Table VIII—Unitizing (Plastic or other type of casing/unitizing) and Table IX—Interior Can Defects. Finally, removing the Operating Characteristic (OC) curves for on-line sampling and inspection. Other minor non-substantive changes are also proposed.

DATES: Comments must be received on or before January 19, 2010.

ADDRESSES: Interested persons are invited to submit written comments or comments on the Internet. Comments must be sent to Lynne Yedinak, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0247, Washington, DC 20250–0247; Telephone: (202) 720–9939; FAX: (202) 690–1527; or Internet: *http://www.regulations.gov*. The current U.S. Standards for Condition of Food Containers is available through the address cited below or by accessing the Internet at: *http://www.access.gpo.gov/nara/cfr/waisidx_00/7cfr42_00.html*. All comments received will be posed without change, including any personal information provided. All comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Lynne Yedinak at the above address, Telephone: (202) 720–9939, Fax: (202) 690–1527, or e-mail *FQAStaff@ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 Regulatory Flexibility Act

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), 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 action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 26,361 establishments identified in the 1997 Economic Census as belonging to the North American Industry Classification System under the classification of ''food manufacturing'' and any number of these establishments could request their product containers be inspected under the provisions of the U.S. Standards for Condition of Food Containers for a number of AMS Program areas. The vast majority of these establishments would qualify as small businesses under the definition provided by the Small Business Administration.

We have examined the economic implications of this proposed rule on small entities. Under the proposed rule, utilization of the U.S. Standards for Condition of Food Containers is voluntary. Small entities would only incur direct costs when purchasers, of their packaged food products, stipulate in their procurement documents that the food containers should conform to the requirements of the U.S. Standards for Condition of Food Containers. Since the standards were previously amended in May 1983, innovations in packaging technologies have provided an increasingly wide variety of acceptable new food containers. These new food containers are not represented by the current standards. According, we believe that this impact will be minimal because the revisions are necessary in order to provide standards that reflect current industry practices. Finally, the changes concerning removal of OC curves and other non-substantive changes will have no adverse impact on small or large entities.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large establishments. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with the Standards.

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.

Executive Order 12988

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

The U.S. Standards for Condition of Food Containers (Standards) currently provides sampling procedures and

acceptance criteria for the inspection of stationary lots of filled food containers, which includes skip lot sampling and inspection procedures. It also provides on-line sampling and inspection procedures food containers during production.

Stationary lot sampling is the process of randomly selecting sample units from a lot whose production has been completed. This type of lot is usually stored in a warehouse or in some other storage facility and is offered for inspection.

Skip lot sampling is a special procedure for inspecting stationary lots in which only a fraction of the submitted lots are inspected. Skip lot inspection can only be instituted when a certain number of lots of essentially the same quality have been consecutively accepted. To be acceptable under the examination criteria in the standards, lots may contain only a limited number of defects classified as minor, major, and critical. Acceptance criteria are based on sampling plans for different lot sizes and levels of inspection such as normal, reduced, or tightened. Defect tables classify the severity of the defect.

On-line sampling and inspection is a procedure in which subgroups of sample units or individual containers are selected randomly from pre-designated portions of production. The acceptability of these portions of production is determined by inspecting, at the time of sampling, the subgroups which represent these portions. For this type of sampling, only portions of a lot, rather than a whole lot, may be rejected. This helps to quickly pinpoint trouble spots in a production cycle, enabling the producer to make timely corrections, thus reducing the monetary value and total amount of product destroyed as a result of packaging problems.

These standards were developed for the use of Government agencies when requested to certify that filled primary containers or shipping cases, or both, be certified for condition. The standards are permissive, and they may be used in their entirety, or in part, by private parties as well.

AMS proposes to revise the Standards to include: (1) separating Tables I, I–A, II, II–A, III, III–A, and III–B of sampling plans for normal, tightened, and reduced inspection by the type of sampling plan used (single or double), as well as updating the Acceptable Quality Levels (AQLs); (2) updating Tables IV—Metal Containers, V—Glass Containers, VI—Rigid and Semirigid Containers, VII—Flexible Containers (Plastic, Cello, Paper, Textile, *etc.*), and X—Defects of Label, Marking, or Code (currently Table VIII) to incorporate new defects and revising current defects to reflect the new packaging technologies such as aseptic packaging, metal cans with easy open lids, and plastic rings that hold several containers together; (3) adding new defect tables, Table VIII—Unitizing (Plastic or other type of casing/unitizing) and Table IX—Interior Can Defects; (4) removing the Operating Characteristic (OC) curves; and (5) other minor non-substantive changes to clarify and to determine non-substantive changes.

These revisions to existing tables, addition of new tables, removal of OC curves, and updating language in the container standards would enable the standards to be applicable to most types of food containers and align the standards to reflect current industry practices.

OC Curves found in §§ 42.140, 42.141, 42.142, and 42.143 from Subpart E—Miscellaneous, are proposed to be completely removed. While these curves show the ability of the various sampling plans to distinguish between good and bad lots, it is our experience that the inclusion of these curves are not critical to use of the standards. Furthermore, they are readily available in literature, on the Internet and Standards for sampling plans are also currently available in 7 CFR Part 43.

A sixty-day comment period is provided for all interested persons to comment on this proposal. All written comment received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 42

Food packaging, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 42 is proposed to be amended as follows:

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. § 42.102 is amended by:

a. Removing the terms *Operating Characteristic Curve (OC Curve)* and *Probability of acceptance,* which includes *(a) For stationary lot sampling* and *(b) For On-line Sampling;* and

b. Revising the terms *Administrator, Lot* or *inspection lot, Sample size (n),* and *Stationary lot sampling* to read as follows:

§ 42.102 Definitions, general.

* * * * *

Administrator. The Administrator of the Agricultural Marketing Service (AMS) of the Department or any other officer or employee of the Agency who is delegated, or who may be delegated the authority to act in his stead.

* * * * *

Lot or inspection lot. A collection of filled food containers of the same size, type, and style. The term shall mean ''inspection lot,'' *i.e.,* a collection of units of product from which a sample is to be drawn and inspected to determine conformance with the applicable acceptance criteria. An inspection lot may differ from a collection of units designated as a lot for other purposes (*e.g.,* production lot, shipping lot, *etc.*).

* * * * *

Sample size (n). The number of sample units included in the sample.

* * * * *

Stationary lot sampling. The process of randomly selecting sample units from a lot whose production has been completed. This type of lot is usually stored in a warehouse or in some other storage facility and is offered in its entirety for inspection.

* * * * *

§ 42.106 [Amended]

3. In § 42.106, paragraph (a)(1) the word ''atributed'' is revised to read ''attributed''.

4. Revise § 42.109 to read as follows:

§ 42.109 Sampling plans for normal condition of container inspection, Tables I and I–A.

TABLE I—SINGLE SAMPLING PLANS FOR NORMAL CONDITION OF CONTAINER INSPECTION

Code	Lot size ranges—number of containers in lot	Type of plan	Acceptable quality levels												
				Origin Inspection						Other than origin inspection					
			Sample Size	0.25		1.5		6.5		0.25		2.5		10.0	
				Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CA	6,000 or less	Single	84	0	1	3	4	9	10	0	1	4	5	13	14
CB	6,001–12,000 ...	Single	168	1	2	5	6	16	17	1	2	7	8	23	24
CC	12,001–36,000	Single	315	2	3	8	9	28	29	2	3	13	14	41	42
CD	Over 36,000	Single	500	3	4	12	13	42	43	3	4	18	19	62	63
CE	.....	Single	800	4	5	18	19	64	65	4	5	27	28	95	96

Ac = Acceptance number.
Re = Rejection number.

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5. Revise § 42.110 to read as follows:

§ 42.110 Sampling plans for tightened condition of container inspection; Tables II and II–A.

Table I-A--Double Sampling Plans for Normal Condition of Container Inspection

Code	Lot size ranges -- Number of containers in lot	Type of Plan	Sample Size		Acceptable quality levels											
					Origin Inspection						Other Than Origin Inspection					
					0.25		1.5		6.5		0.25		2.5		10.0	
					Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CA	6,000 or less----------	Double------	1st--------	36	(*)	(*)	0	4	2	7	(*)	(*)	0	4	3	9
			2d---------	60												
			Total-----	96	(*)	(*)	3	4	10	11	(*)	(*)	4	5	15	16
CB	6,001-12,000---------	Double------	1st--------	120	0	2	2	6	10	14	0	2	3	7	14	19
			2d---------	60												
			Total-----	180	1	2	5	6	17	18	1	2	8	9	25	26
CC	12,001-36,000--------	Double------	1st--------	168	0	3	2	7	12	18	0	3	5	10	19	26
			2d---------	180												
			Total-----	348	2	3	9	10	31	32	2	3	14	15	45	46
CD	Over 36,000----------	Double------	1st--------	228	0	3	3	9	15	24	0	3	5	11	23	34
			2d---------	288												
			Total-----	516	3	4	12	13	43	44	3	4	20	29	64	65

(*) = Reject on one or more defects

TABLE II—SINGLE SAMPLING PLANS FOR TIGHTENED CONDITION OF CONTAINER INSPECTION

Code	Lot size ranges—number of containers in lot	Type of plan	Acceptable quality levels												
				Origin inspection						Other than origin inspection					
			Sample size	0.25		1.5		6.5		0.25		2.5		10.0	
				Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CB	6,000 or less	Single	168	0	1	4	5	11	12	0	1	5	6	16	17
CC	6,001–12,000 ...	Single	315	1	2	6	7	19	20	1	2	8	9	28	29
CD	12,001–36,000	Single	500	2	3	9	10	28	29	2	3	12	13	42	43
CE	Over 36,000	Single	800	3	4	13	14	42	43	3	4	18	19	64	65
CF	.....	Single	1,250	4	5	19	20	63	64	4	5	26	27	96	97

6. Revise § 42.111 to read as follow:

§ 42.111 Sampling plans for reduced condition of container inspection, Tables III and III–A; and limit number for reduced inspection, Table III–B.

Table II-A—Double Sampling Plans for Tightened Condition of Container Inspection

Code	Lot size ranges -- Number of containers in lot	Type of Plan	Sample Size		Acceptable quality levels											
					Origin Inspection						Other Than Origin Inspection					
					0.25		1.5		6.5		0.25		2.5		10.0	
					Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CB	6,000 or less--------	Double---	1st--------	120	(*)	(*)	2	5	6	10	(*)	(*)	2	6	10	14
			2d--------	60												
			Total-----	180	(*)	(*)	4	5	12	13	(*)	(*)	5	6	17	18
CC	6,001-12,000-------	Double---	1st--------	168	0	2	1	5	7	13	0	2	2	7	12	18
			2d--------	180												
			Total-----	348	1	2	7	8	21	22	1	2	9	10	31	32
CD	12,001-36,000-----	Double---	1st--------	228	0	3	2	7	8	17	0	3	3	9	15	24
			2d--------	288												
			Total-----	516	2	3	9	10	29	30	2	3	12	13	43	44
CE	Over 36,000--------	Double---	1st--------	456	0	4	5	10	21	28	0	3	8	13	32	41
			2d--------	408												
			Total-----	864	3	4	14	15	44	45	3	4	19	20	69	70

(*) = Reject on one or more defects

TABLE III—SINGLE SAMPLING PLANS FOR REDUCED CONDITION OF CONTAINER INSPECTION

Code	Lot size ranges—number of containers in lot	Type of plan	Acceptable quality levels												
				Origin inspection						Other than origin inspection					
			Sample size	0.25		1.5		6.5		0.25		2.5		10.0	
				Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CAA	6,000 or less	Single	29	1	2	1	2	4	5	1	2	2	3	5	6
CA	6,001–36,000 ...	Single	84	1	2	3	4	9	10	1	2	4	5	13	14
CB	Over 36,000	Single	168	1	2	5	6	16	17	1	2	7	8	23	24
CC	.....	Single	315	2	3	8	9	28	29	2	3	13	14	41	42

Table III-A--Double Sampling Plans for Reduced Condition of Container Inspection

Code	Lot size ranges -- Number of containers in lot	Type of Plan	Sample Size		Acceptable quality levels											
					Origin Inspection						Other Than Origin Inspection					
					0.25		1.5		6.5		0.25		2.5		10.0	
					Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CAA	6,000 or less-------	Double------	1st---------	18	0	2	0	2	1	4	0	2	0	3	2	5
			2d---------	18												
			Total------	36	1	2	1	2	5	6	1	2	2	3	6	7
CA	6,001-36,000------	Double------	1st---------	36	0	2	0	4	2	7	0	2	0	4	3	9
			2d---------	60												
			Total------	96	1	2	3	4	10	11	1	2	4	5	15	16
CB	Over 36,000-------	Double------	1st---------	120	0	2	2	6	10	14	0	3	3	7	14	19
			2d---------	60												
			Total------	180	1	2	5	6	17	18	2	3	8	9	25	26

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TABLE III–B—LIMIT NUMBERS FOR REDUCED INSPECTION

Number of sample units from last 10 lots inspected within 6 months	Acceptable quality level				
	0.25	1.5	2.5	6.5	10.0
320–499	*	1	4	14	24
500–799	*	3	7	25	40
800–1,249	0	7	14	42	68
1,250–1,999	0	13	24	69	110
2,000–3,149	2	22	40	115	181
3,150–4,999	4	38	67	186	293
5,000–7,999	7	63	110	302	472
8,000–12,499	14	105	181	491	765
12,500–19,999	24	169	290	777	1207

* Denotes that the number of sample units from the last 10 inspection lots is not sufficient for reduced inspection for this AQL. In this instance more than 10 inspection lots may be used for the calculations if the inspection lots used are the most recent ones in sequence within the last 6 months, they have all been on normal inspection, and none has been rejected on original inspection.

7. Revise § 42.112 to read as follows:

§ 42.112 Defects of containers: Tables IV, V, VI, VII, VIII, and IX.

TABLE IV—METAL CONTAINERS

Defects	Categories		
	Critical	Major	Minor
Type or size of container or component parts not as specified	None permitted.		
Closure incomplete, not located correctly or not sealed, crimped, or fitted properly	1		
Dirty, stained or smeared container			201
Key opening metal containers (when required):			
(a) Key missing		101	
(b) Key does not fit tab		102	
(c) Tab of opening band insufficient to provide accessibility to key		103	
(d) Improper scoring (band would not be removed in one continuous strip)		104	
Metal pop-top:			
(a) Missing or broken pull tab		105	
(b) Missing or incomplete score line		106	
Flexible pop-top:			
(a) Poor seal (wrinkle, entrapped matter, *etc.*)		107	
(b) Short pull tab			202
(c) Missing pull tab		108	
(d) Torn pull tab			203
Open top with plastic overcap (when required):			
(a) Plastic overcap missing		109	
(b) Plastic overcap warped (making opening or reapplication difficult)		110	
Outside tinplate or coating (when required):			
(a) Missing or incomplete			204
(b) Blistered, flaked, sagged, or wrinkled			205
(c) Scratched or scored			206
(d) Fine cracks			207
Rust (rust stain confined to the top or bottom double seam or rust that can be removed with a soft cloth is not scored a defect):			
(a) Rust stain			208
(b) Pitted rust		111	
Wet cans (excluding refrigerated containers)			209
Dent:			
(a) Materially affecting appearance but not usability			210
(b) Materially affecting usability		112	
Buckle:			
(a) Not involving end seam			211
(b) Extending into the end seam		113	
Collapsed container		114	
Paneled side materially affecting appearance but not usability			212
Solder missing when required		115	
Cable cut exposing seam		116	
Improper side seam		117	
Swell, springer, or flipper (not applicable to gas or pressure packed product nor frozen products)	2		
Leaker or blown container	3		
Frozen products only:			
(a) Bulging ends 3/16″ to 1/4″ beyond lip			213
(b) Bulging ends more than 1/4″ beyond lip		118	
Metal drums: leaking filling seal (bung) swell		119	

TABLE IV—METAL CONTAINERS—Continued

Defects	Categories		
	Critical	Major	Minor
Composite can (fiberboard body with metal lids):			
(a) Torn:			
(1) Materially affecting appearance but not usability			214
(2) Materially affecting usability		120	
(b) Crushed:			
(1) Materially affecting appearance but not usability			215
(2) Materially affecting usability		121	

TABLE V—GLASS CONTAINERS

Defects	Categories		
	Critical	Major	Minor
Type or size of container or component parts not as specified	None permitted.		
Closure not sealed, crimped, or fitted properly	1		
Dirty, stained, or smeared container			201
Chip in glass			202
Stone (unmelted material) in glass			203
Pits in surface of glass			204
Sagging surface			205
Bead (bubble within glass):			
(a) ⅛″ to 1/16″ in diameter			206
(b) Exceeding ⅛″ in diameter		101	
Checked		102	
Thin spot in glass		103	
Blister (structural defect)		104	
Bird swing (glass appendage inside container)	2		
Broken or leaking container	3		
Cap (nonheat processed):			
(a) Cross-threaded			207
(b) Loose but not leaking			208
(c) Pitted rust		105	
Cap (heat processed):			
(a) Cross-threaded or loose	4		
(b) Pitted rust		106	
Sealing tape or cello band (when required):			
(a) Improperly placed			209
(b) Not covering juncture of cap and glass		107	
(c) Ends overlap by less than ½"		108	
(d) Loose or deteriorating		109	
Missing or torn outer safety seal		110	
Inner safety seal—missing, torn, poor seal		111	

TABLE VI—RIGID AND SEMIRIGID CONTAINERS—CORRUGATED OR SOLID FIBERBOARD, CHIPBOARD, WOOD, ETC.

[Excluding glass and metal]

Defects	Categories		
	Critical	Major	Minor
Type or size of container or component parts not as specified	None permitted.		
Component part missing		101	
Closure not sealed, crimped, or fitted properly:			
(a) Primary container	1		
(b) Other than primary container			201
Dirty, stained, or smeared container			202
Wet or damp (excluding ice packs):			
(a) Materially affecting appearance but not usability			203
(b) Materially affecting usability		102	
Moldy area	2		
Crushed or torn area:			
(a) Materially affecting appearance but not usability			204
(b) Materially affecting usability		103	
Separation of lamination (corrugated fiberboard):			
(a) Materially affecting appearance but not usability			205
(b) Materially affecting usability		104	

TABLE VI—RIGID AND SEMIRIGID CONTAINERS—CORRUGATED OR SOLID FIBERBOARD, CHIPBOARD, WOOD, ETC.—Continued

[Excluding glass and metal]

Defects	Categories		
	Critical	Major	Minor
Product sifting or leaking		105	
Nails or staples (when required):			
(a) Not as required, insufficient number or improperly positioned			206
(b) Nails or staples protruding		106	
Glue or adhesive (when required); not holding properly not covering area specified, or not covering sufficient area to hold properly:			
(a) Primary container		107	
(b) Other than primary container			207
Flap:			
(a) Projects beyond edge of container more than ¼-inch			208
(b) Does not meet properly, allowing space of more than ¼-inch			209
Sealing tape or strapping (when required):			
(a) Missing		108	
(b) Improperly placed or applied			210

TABLE VII—FLEXIBLE CONTAINERS (PLASTIC, CELLO, PAPER, TEXTILE, ETC.)

Defects	Categories		
	Critical	Major	Minor
Type or size of container or component parts not as specified	None permitted.		
Closure not sealed, crimped, stitched, or fitted properly:			
(a) Primary container	1		
(b) Other than primary container			201
Dirty, stained, or smeared container			202
Unmelted gels in plastic			203
Torn or cut container or Abrasion (non-leaker):			
(a) Materially affecting appearance but not usability			204
(b) Materially affecting usability		101	
Moldy area	2		
Individual packages sticking together or to shipping case (tear when separated)		102	
Not fully covering product		103	
Wet or damp (excluding ice packs):			
(a) Materially affecting appearance but not usability			205
(b) Materially affecting usability		104	
Over wrap (when required):			
(a) Missing		105	
(b) Loose, not sealed or closed			206
(c) Improperly applied			207
Sealing tape, strapping or adhesives (when required):			
(a) Missing		106	
(b) Improperly placed, applied, torn, or wrinkled			208
Tape over bottom and top closures (when required):			
(a) Not covering stitching		107	
(b) Torn (exposing stitching)		108	
(c) Wrinkled (exposing stitching)		109	
(d) Not adhering to bag:			
1. Exposing stitching		110	
2. Not exposing stitching			209
(e) Improper placement			210
Product sifting or leaking			
(a) Non-heat processed		111	
(b) Heat processed	3		
Fold or wrinkle in seal area (thermo stabilized pouches)			
(a) Extends through all plies across seal area or reduces seal to less than 1/16-inch	4		
(b) Does not extend through all plies and effective seal to is 1/16-inch or greater			211
Incomplete seal (thermo stabilized pouches)	5		
Non-bonding seal (thermo stabilized pouches)	6		
Laminate separation	7		
Flex cracks (cracks in foil layer only)			212
Swollen container	8		
Blister (in seal)			
(a) Intact seal reduced to less than 1/16-inch	9		
(b) Intact seal 1/16-inch or greater			213

TABLE VII—FLEXIBLE CONTAINERS (PLASTIC, CELLO, PAPER, TEXTILE, ETC.)—Continued

Defects	Categories		
	Critical	Major	Minor
Compressed seal (overheated to bubble or expose inner layer) reducing intact seal to less than 1/16-inch	10		
Stringy seal (excessive plastic threads showing at edge of seal area)			214
Contaminated seal (entrapped matter) reducing intact seal to less than 1/16-inch	11		
Seal creep (product in pouch "creeping" into seal).			
(a) Intact seal reduced to less than 1/16-inch	12		
(b) Intact seal 1/16-inch or greater			215
Misaligned or crooked seal reducing intact seal to less than 1/16-inch	13		
Seal formed greater than 1-inch from edge of pouch (unclosed edge flaps)			216
Waffling (embossing on surface from retort racks)			217
Poor or missing tear notch			218
Missing "zip lock" (re-sealable containers)			219
Loss of vacuum (vac pack)		112	
Pre-formed containers:			
(a) Dented or crushed area			220
(b) Deformed container			221
Missing resealable cap		113	
Inner or outer safety seal—missing, torn, poor seal	14		
Air bubble in plastic		114	
Flexible pop-top:			
(a) Poor seal (wrinkle, entrapped matter, *etc.*):			
(1) Intact seal reduced to less than 1/16-inch	15		
(2) Intact seal 1/16-inch or greater			222
(b) Short pull tab (materially affecting usability)			223
(c) Missing pull tab		115	
(d) Torn pull tab (materially affecting usability)			224
Missing component (straw, *etc.*)			225
Two part container (poly lined box or bag in box):			
(a) Outer case torn			226
(b) Poly liner:			
1. Missing	16		
2. Improper closure		116	

TABLE VIII—UNITIZING (PLASTIC OR OTHER TYPE OF CASING/UNITIZING)

Defects	Categories	
	Major	Minor
Not specified method	101	
Missing tray (when required)	102	
Missing shrink wrap (when required)	103	
Loose or improperly applied wrap		201
Torn or mutilated		202
Off-center wrap (does not overlap both ends)		203

TABLE IX—INTERIOR CAN DEFECTS

Defects	Categories	
	Major	Minor
De-tinning	101	201
Black spots		202
Enamel missing (when required)	102	
Enamel breakdown	103	203
Enamel cracked	104	204

8. Section 42.113 is revised to read as follows:

§ 42.113 Defects of label, marking, or code: Table X.

TABLE X—LABEL, MARKING, OR CODE

Defects	Categories	
	Major	Minor
Not specified method	101	
Missing (when required)	102	
Loose or improperly applied		201
Torn or mutilated		202
Torn or scratched, obliterating any markings on the label	103	
Text illegible or incomplete		203
Incorrect	104	
In wrong location		204

Subpart E—[Removed]

9. In part 42, Subpart E—Miscellaneous, consisting of §§ 42.140, 42.141, 42.142, and 42.143, is removed.

Dated: November 9, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–27430 Filed 11–18–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

8 CFR Parts 103 and 235

[USCBP–2008–0097]

RIN 1651–AA73

Establishment of Global Entry Program

AGENCY: U.S. Customs and Border Protection; DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended, U.S. Customs and Border Protection (CBP) proposes to establish an international trusted traveler program, called Global Entry. This voluntary program would allow CBP to expedite clearance of pre-approved, low-risk air travelers into the United States. CBP has been operating the Global Entry program as a pilot at several airports since June 6, 2008. Based on the successful operation of the pilot, CBP now proposes to establish Global Entry as a permanent voluntary regulatory program.

DATES: Comments must be received on or before January 19, 2010.

ADDRESSES: You may submit comments, identified by docket number USCBP–2008–0097, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Border Security Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20001–4501.

Instructions: All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP–2008–0097. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Fiorella Michelucci, Office of Field Operations, 202–344–1220 or Daniel Tanciar, Office of Field Operations, 202–344–2818.

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background and Purpose

Section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), 118 Stat. 3638, as amended by section 565 of the Consolidated Appropriations Act, 2008, 121 Stat. 1844, codified at 8 U.S.C. 1365b, requires the Secretary of Homeland Security (Secretary) to create a program to expedite the screening and processing of pre-approved, low-risk air travelers into the United States. Under the IRTPA, the Secretary shall ensure that the international trusted traveler program includes as many participants as practicable by establishing a reasonable cost of enrollment, making program enrollment convenient and easily accessible, and providing applicants with clear and consistent eligibility guidelines.

See 8 U.S.C. 1365b(k)(3). The program shall also incorporate available technologies, such as biometrics and e-passports, and security threat assessments.

Section 7208(k) of the IRTPA requires DHS to initiate a rulemaking action to establish the criteria to participate in the program and to set the appropriate fee for such participation. This rule meets that requirement by proposing, among other things, the criteria for participation in this voluntary program and the fee necessary to cover the costs of the program.

A. Existing Trusted Traveler Programs

CBP currently operates several regulatory and non-regulatory international trusted traveler programs. These programs provide expedited travel for pre-screened populations and operate under the Port Passenger Accelerated Service System (PORTPASS), a legacy system of the former Immigration and Naturalization Service, described in 8 CFR 235.7. CBP currently operates three PORTPASS

programs: the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which allows expedited entry at specified land border ports; the Free and Secure Trade program (FAST), which, among other things, provides expedited border processing for known, low-risk commercial drivers [1]; and the I–68 program, which allows expedited entry process for boaters entering the United States from Canada for recreational purposes. Although considered a PORTPASS program, the I–68 program is described separately in 8 CFR 235.1(g). CBP also operates NEXUS, a trusted traveler program limited to travel between the U.S. and Canada. NEXUS is authorized by 8 U.S.C. 1753. Additional details regarding all of these programs can be found at *http://www.cbp.gov*.

B. Global Entry Pilot

In addition to the permanent traveler programs described above, CBP is currently conducting a pilot program called Global Entry. The pilot began at three airports on June 6, 2008. *See* 73 FR 19861 and 73 FR 30416. On August 13, 2008, CBP announced the expansion of the pilot to four additional airports (for a total of seven airports) and to additional terminals at one of the original three airports. *See* 73 FR 47204. The pilot was expanded to thirteen additional airports (for a total of twenty airports) on August 10, 2009. *See* 74 FR 152. The Global Entry pilot utilizes fingerprint biometrics technology to verify registered program participants and automated kiosks to provide participants expedited entry into the United States at any of the pilot's airport locations. Applicants apply online through the Global On-line Enrollment System (GOES) at *http://www.globalentry.gov*. Applicants pay a non-refundable fee of $100 when applying to the program. All applicants undergo a background check, including an interview by a CBP officer, before being enrolled in the pilot program.

The pilot program is generally limited to U.S. citizens, U.S. nationals, and U.S. lawful permanent residents.[2] On April 23, 2009, however, CBP published a notice in the **Federal Register** announcing that it had expanded eligibility for participation in the Global Entry pilot to include citizens of the Netherlands who participate in Privium, an expedited travel program in the Netherlands, provided they otherwise satisfy the requirements for participation in the Global Entry pilot program. *See* 74 FR 18586.

Only individuals 14 years of age or older may apply to enroll in Global Entry. Individuals may not qualify if they:

- Are inadmissible to the United States under applicable immigration laws;
- Provide false or incomplete information on their application;
- Have been convicted of a criminal offense in any country;
- Have been found in violation of customs or immigration laws; or
- Fail to meet other Global Entry requirements.

An individual who is not accepted into the Global Entry pilot program has three avenues for inquiry: (1) DHS Travelers Redress Inquiry Program (DHS TRIP); (2) directly through the enrollment center; and (3) the CBP Trusted Traveler Ombudsman.

For more information about specific details of the pilot program, please refer to the initial notice published on April 11, 2008, in the **Federal Register** at 73 FR 19861. Additional details also may be found on the Web site: *http://www.globalentry.gov.*

The Global Entry pilot is operating successfully. The automated kiosks are working smoothly with no current major technical issues or problems. From June 2008 through March 2009, over 8,000 applications were filed and 7,923 participants were enrolled. CBP is approving applications for participation more quickly than was expected. The average approval time for each application has been less than one week—better than the initial estimates of ten to fourteen days. Public reaction has been positive, and CBP has received comments during the pilot lauding the program.[3]

DHS has conducted a statistical analysis based on data for 1,575 flights with at least one Global Entry passenger onboard from November 19, 2008 to January 9, 2009. That analysis indicates that participation in Global Entry may reduce a passenger's wait time by up to seventy percent—or an estimated seven minutes on average. This analysis further demonstrates that participation in Global Entry reduces the variability of wait times, with less than one percent of Global Entry passengers waiting longer than twenty minutes and approximately ten percent of all U.S. citizens and lawful permanent residents waiting longer than twenty minutes. We found that Global Entry participation varies by airports, airlines and region from where the flight originates.

III. Establishing a Permanent Global Entry Program

CBP has determined, based on the success of the Global Entry pilot program, that the pilot should be established as a permanent program and that it should be expanded to include additional airport locations. Accordingly, pursuant to section 7208(k) of the IRTPA, CBP is proposing to amend its regulations to establish Global Entry as a permanent international trusted traveler program. As proposed under this rule, the permanent Global Entry program will operate in a similar manner as the Global Entry pilot program. CBP anticipates that the existing Global Entry pilot will continue to operate until this proposal is adopted as a final rule. In the interim, CBP will continue to evaluate the pilot and will take into consideration the results of this evaluation, including all comments received by CBP in response to the **Federal Register** notices regarding the pilot, when formulating the details of the permanent Global Entry program in any final rulemaking.

Current participants in the pilot program automatically will be enrolled in the Global Entry program for five years from the date of enrollment in the pilot program. Participation in Global Entry would continue to be voluntary.

This permanent Global Entry program, like the Global Entry pilot program, will facilitate the movement of low-risk, frequent air travelers arriving from outside the United States. The Global Entry program will provide an expedited inspection and examination process for pre-approved, pre-screened travelers by allowing them to proceed directly to automated Global Entry kiosks upon their arrival in the United States. This permanent Global Entry program, along with the other trusted traveler programs that CBP operates, is consistent with CBP's strategic goal of

[1] FAST was established in 2002 under bilateral agreements between the United States and Canada (northern border) and the United States and Mexico (southern border).

[2] A U.S. citizen means a person who acquired U.S. citizenship at birth or upon naturalization as provided by law and who has not subsequently lost such citizenship. A U.S. national is (A) a citizen of the United States or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. 8 U.S.C. 1101 (a)(21). A U.S. lawful permanent resident is a person who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion, deportation or removal. 8 CFR 1.1(p); 8 U.S.C. 1101(a)(20).

[3] For example, the Executive Director of the U.S. Chamber of Commerce commented ''[T]he Chamber commends U.S. Customs and Border Protection for announcing that it would pilot the Global Entry international trusted traveler (IRT) program * * * CBP's proposal to pilot Global Entry at three major U.S. airports is an important first step in what the Chamber hopes will be a nationwide program.''

facilitating legitimate travel while securing the homeland.

A. Eligibility Requirements

1. Persons Eligible To Enroll

U.S. citizens, U.S. nationals, and U.S. lawful permanent residents would be eligible for participation in the program. Children 14 years of age and older, but under the age of 18, must have the consent of a parent or legal guardian to participate in Global Entry. Children under the age of 14 are not eligible to participate in the program.

Additionally, CBP plans to expand the program to include nonimmigrant aliens from other countries via joint arrangements between CBP and its respective counterparts in foreign governments. CBP is working with other countries that operate comparable international trusted traveler programs to enter into reciprocal arrangements for the purposes of expanding eligibility for Global Entry. For example, under the Global Entry pilot program, CBP has entered into an arrangement with the Netherlands to allow citizens of the Netherlands who participate in Privium, an expedited travel program operated by the Government of the Netherlands, to participate in the Global Entry pilot.

Pursuant to the terms of these reciprocal arrangements, both CBP and the respective government of the nonimmigrant alien applicant would vet these applicants during separate enrollments. Each government would determine if the individual is eligible to participate in its respective program. To receive CBP approval to participate in Global Entry, applicants from these other countries would have to satisfy all the requirements specified in this proposed rule. CBP will announce any expansions of the Global Entry regulatory program through such reciprocal arrangements, as well as any substantial modifications or retractions (*i.e.,* cancellations of such arrangements) by publication of a notice in the **Federal Register**. CBP anticipates that each country that participates under the Global Entry pilot would also participate under the permanent Global Entry program.

2. Disqualifying Factors

An individual is ineligible to participate in Global Entry if such individual is inadmissible to the United States under the U.S. immigration laws. An individual may also be ineligible to participate in Global Entry if CBP determines that the individual presents a potential risk for terrorism, criminality or smuggling, or is otherwise not a low-risk traveler. This risk determination will be based in part upon an applicant's ability to demonstrate past compliance with laws, regulations, and policies. An applicant may not qualify for participation if any of the following risk factors are applicable:

- The applicant provides false or incomplete information on the application;
- The applicant has been arrested for, or convicted of any criminal offense or has pending criminal charges or outstanding warrants;
- The applicant has been found to be in violation of any customs, immigration, or agriculture regulations, procedures, or laws in any country;
- The applicant is the subject of an investigation by any Federal, State, or local law enforcement agency;
- The applicant is inadmissible to the United States under U.S. immigration laws and regulations, including applicants with approved waivers of inadmissibility or parole documentation;
- The applicant cannot satisfy CBP of their low-risk status or meet other program requirements; or
- The applicant has been identified on a government watch list.

B. Program Application and Selection Process

The application for the Global Entry program will continue to be available on-line through the Global On-Line Enrollment System (GOES) at *http://www.globalentry.gov*. The application (the same application currently used for the pilot) would be completed and submitted electronically through GOES. Alternative application options, such as providing enrollment data via private sector entities, will be considered by CBP. If and when CBP provides for alternative application processes, CBP will announce those options to the public.

There would be three steps to the application process:

Step 1: *Completion of on-line application:* Applicants would complete and submit the program application on-line through GOES and submit payment of a non-refundable fee through Pay.gov. Applicants would be provided with a GOES on-line account in order to assist them and permit CBP to communicate with the applicant during the application process.

Step 2: *Application review and notification:* CBP officers would review the applicant's information for processing to ensure that the applicant is in compliance with U.S. customs and immigration laws and regulations. CBP also will compare the information provided in the application against government criminal and antiterrorism databases. CBP may also use foreign government databases and sources to the extent permitted by relevant U.S. laws and regulations, and to the extent allowed under applicable arrangements with foreign governments.

Applicants should check their GOES account after the application is filed to ensure that CBP received the application. After review, the applicant will receive notification from CBP through the applicant's GOES account regarding the status of the application. CBP will also send a message to the e-mail address provided by the applicant at the time of the application to check their GOES account. Applicants meeting the eligibility criteria will be notified that they can schedule an interview as indicated below. If the application is denied, instructions will be given on how to proceed if the applicant wishes to seek additional information.

Step 3: *Interview and Processing at Enrollment Center:* Applicants will be notified that they can schedule an interview at an Enrollment Center using the GOES link to the on-line scheduling feature. Applicants would choose an Enrollment Center at any Global Entry airport location. The list of Enrollment Centers and contact information for those locations can be found at *http://www.globalentry.gov*. As operation of the program expands, CBP would add additional enrollment locations to the list.

At the Enrollment Center, CBP officers would review the information provided by the applicant and conduct an interview of the applicant. The applicant would be required to bring to the interview originals of the identification documentation he or she specified in the application. Usually, this will be a U.S. passport or Lawful Permanent Resident Card (Form I–551) or, in the case of aliens, a foreign passport (and visa, if applicable). During this process, CBP officers would perform the following procedures: verify identity and proof of citizenship, U.S. national or lawful permanent resident status, as applicable; confirm admissibility to the United States; confirm the validity of travel documents; confirm that the candidate meets eligibility requirements; electronically capture a full set of ten fingerprints; conduct various checks, including a check for criminal records in law enforcement databases (which involves submission of the fingerprints to the Federal Bureau of Investigation (FBI)); and take a digital photograph of each applicant for the Global Entry database. CBP may consider whether to

require the submission of other biometrics in the future.

Although an application can be made for a child (14 years of age or older, but under 18) to travel with a non-custodial adult, a child appearing at the Enrollment Center for processing must be accompanied by at least one custodial adult (parent or guardian). At the interview, the CBP officer may request appropriate documentary evidence of parental custody from the parent or guardian seeking to enroll the child in the Global Entry program.

After the interview, applicants will be notified of their acceptance into the Global Entry program by a message posted to their GOES account. If an applicant is denied participation in Global Entry, a notice will be sent to the applicant's GOES account advising him or her of the denial, with instructions on how to proceed if the applicant wishes to seek additional information.

Each Global Entry participant would be screened against the relevant criminal and anti-terrorism government databases each time he or she uses the Global Entry kiosk. CBP would also continue to conduct periodic checks for all participants during the entire period of enrollment to ensure that CBP can quickly take action should new information be made available that would disqualify the participant.

The required immigration status and citizenship of participants must be valid at all times. Participants must possess required immigration and identity documents at all times during their travel, including at the time of arrival to participating airports.

C. Redress

An individual whose application is denied or whose participation is suspended or terminated has three possible methods for redress. These processes do not create or confer any legal right, privilege or benefit, but are wholly discretionary on the part of CBP. The methods of redress include:

(1) *Enrollment Center*

The applicant/participant may contest his or her denial, suspension or removal in writing to the enrollment center where that individual's interview was conducted, or if the applicant/participant has not been interviewed, he or she can write to the CBP Ombudsman as described in paragraph (3) below. The enrollment center addresses are available at *http://www.globalentry.gov*. The letter must be received by CBP within 30 calendar days of the date provided as the date of suspension or removal. The individual should write on the envelope ''Redress Request RE: Global Entry.'' The letter should address any facts or conduct listed in the notification from CBP as contributing to the denial, suspension or removal and why the applicant/participant believes the reason for the action is invalid. The applicant/participant may also contact the enrollment center where the interview was conducted if it is believed that the denial, suspension or revocation was based upon inaccurate information. The individual should also include any reasonably available supporting documentation. After review, CBP will inform the individual of its redress decision. The decision of CBP in the matter is final. If the individual's request for redress is successful, the individual's eligibility to participate in Global Entry will resume immediately.

(2) *DHS Travelers Redress Inquiry Program (DHS TRIP)*

The applicant/participant may choose to initiate the redress process through DHS TRIP. An applicant/participant seeking redress may obtain the necessary forms and information to initiate the process on the DHS TRIP Web site at *http://www.dhs.gov/xtrvlsec/programs/gc_1169676919316.shtm,* or by contacting DHS Trip by mail at the address on this Web site.

(3) *Ombudsman*

If an applicant/participant believes the denial, suspension or revocation was based upon inaccurate information he or she may contact the CBP Trusted Traveler Ombudsman at the address on the Web site *http://www.globalentry.gov* and following the link for ''Trusted Traveler Program Denials.''

D. Enrollment Period and Payment of Fee

Congress has authorized the Secretary to charge a reasonable fee for participation in the program. *See* 8 U.S.C. 1365b(k)(3)(B). Pursuant to this authority, CBP is proposing a fee of $100. This non-refundable fee would be paid to CBP at the time of application through the Federal Government's on-line payment system, Pay.gov. Pay.gov is a system by which parties can make secure electronic payments to many Federal Government agencies. If the applicant is enrolled, this fee would cover his or her participation in the Global Entry Program for a total of five years. CBP currently charges a fee of $100 to apply for participation in the Global Entry pilot. Participants in the Global Entry pilot would not have to reapply or pay an additional fee to participate in the Global Entry program. Upon implementation of the Global Entry program, participants in the Global Entry pilot would be automatically enrolled in the Global Entry program for five years from the date of their enrollment in the pilot program.

CBP believes that the $100 proposed fee is reasonable because, as explained in more detail below, it covers only the application processing costs associated with this program, including the submission of applicant fingerprints to the FBI, and provides a benefit to the applicant. Applicants who are enrolled as Global Entry participants will receive the benefit of expedited clearance through airports at which the Global Entry program is operational, for a period of five years, provided their participation is not terminated before the end of the five-year period.

(1) Alternatives To Charging a Fee

The only alternative to charging a fee to cover CBP's application processing costs associated with the Global Entry program would be for the United States Government, and specifically CBP, to pay for the costs out of its general appropriated funds, without reimbursement. However, IRTPA authorizes the Secretary to charge a reasonable fee and not charging a fee would be contrary to stated Congressional and Administration policy that a fee should be charged when a specific benefit is rendered. 31 U.S.C. 9701; Office of Management and Budget (OMB) Circular A–25, User Charges (Revised), section 6, 58 FR 38142 (July 15, 1993). Therefore, CBP has determined that charging a fee for the subject service is the only viable alternative.

(2) Amount of the Fee

CBP has determined that $100 is the amount necessary to recover the costs incurred by CBP for the processing of the application, including the submission of the applicant's fingerprints to the FBI, and other administrative costs of the program.

However, the program costs covered by this fee do not include inspection costs incurred by CBP each time a Global Entry participant enters the United States. Such costs are covered by the various inspection user fees already charged by CBP. *See* 8 U.S.C. 1356(d); 19 U.S.C. 58c(a)(5).

The application processing costs covered by the fee are provided as follows:

UNIT COST OF PROCESSING AN APPLICATION FOR GLOBAL ENTRY

[5-year cycle]

Unit Cost FBI Fingerprints	$17.25
Unit Cost of Vetting an Applicant	38.04
Unit Cost of Issuing Sticker	1.00
Unit Cost of Establishing, Operating, and Maintaining an Enrollment Center	32.53
Unit Cost of GES Servers, Storage, Enhancements and Upgrades	11.14
Grand Total Unit Cost of Processing a Global Entry Application	99.96

Notes for Table

1. Position costs for application processing is calculated by multiplying .5 by the hourly rate of a U.S. Customs and Border Protection Officer (CBPO), (Total position cost = $144,000, including training, equipment and other costs). A 3.16% pay raise and benefits weighted average rate was applied.
2. A 3% inflation rate adjustment was applied for all costs.
3. GES is the acronym for CBP's Global Enrollment System. Application for the Global Entry program will occur in the Global On-Line Enrollment System (GOES), which is part of GES. The GES is housed in the CBP Secure network.

Other Assumptions

CBPOs working at the enrollment centers will perform other functions when no application processing-related work exists.

Unit cost is based on regular hours. Overtime is excluded.

Total enrollees = 250,000 (This total would be reached in a five-year cycle).

As the above table indicates, the total calculated costs to CBP, per applicant, are $99.96. To simplify accounting tasks for both applicants and CBP, and to allow for the possibility of small variations in the estimated costs compared to the actual costs, CBP is setting the cost per applicant at one hundred dollars. This fee will be non-refundable.

Based on the above considerations, CBP is proposing to amend its regulations at 8 CFR 103.7 to add language prescribing a fee of one hundred dollars ($100) to apply for participation in the Global Entry program.

E. Participating Airports

The Global Entry program, like the existing Global Entry pilot program, would allow participants expedited entry into the United States at any of its airport locations by using automated kiosks located in the Federal Inspection Services (FIS) area of each participating airport. Although it is anticipated that the Global Entry program would eventually operate at most major international airport locations, the program initially would be limited to those airports that are participating in the Global Entry pilot. The airports chosen for Global Entry are those which typically experience the largest numbers of travelers arriving there from outside of the United States. The Global Entry pilot is currently operational at the following seven airports: John F. Kennedy International Airport, Jamaica, New York, (JFK); George Bush Intercontinental Airport, Houston, Texas (IAH); Washington Dulles International Airport, Sterling, Virginia (IAD); Los Angeles International Airport, Los Angeles, California (LAX); Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia (ATL); Chicago O'Hare International Airport, Chicago, Illinois (ORD); and Miami International Airport, Miami, Florida (MIA).

Expansions to new airports would be announced to the public in a **Federal Register** notice and on the Web site *http://www.globalentry.gov,* just as they are currently announced for the pilot. An updated list of all the airports at which Global Entry is operational will be available at *http://www.globalentry.gov.*

F. Arrival Procedures for Global Entry Participants

A Global Entry participant would not have to wait in the regular passport control primary inspection lines. After arriving at the FIS area, the participant would proceed directly to the Global Entry kiosk. A sticker affixed to the participant's passport at the time of acceptance in Global Entry would provide visual identification that the individual can be referred to the kiosk. These stickers will be made available to participants at the enrollment center located in each participating airport. Global Entry would use fingerprint biometrics technology to verify a participant's identity and confirm his or her status as a participant in the program. In addition to fingerprint biometrics, CBP may offer the use of additional biometric technologies as options for identity verification at Global Entry kiosks to participants when the technologies become available to the Global Entry program.

After arriving at the kiosk, the participant would activate the system by inserting either a machine-readable passport or a machine-readable Lawful Permanent Resident card into the document reader. On-screen instructions would guide the participant to provide fingerprints electronically. These fingerprints would be compared with the fingerprint biometrics on file to validate identity and confirm that the individual is a participant of the program. The participant would also be prompted to look at the camera for a digital photograph and to respond to several questions by use of a touch-screen. CBP Officers stationed in booths next to the kiosk lanes would oversee activities at the kiosk. If a problem occurs with a participant's validation, the participant will be directed to proceed to the front of the regular inspection lines.

When the procedures at the kiosk have been successfully completed, the participant would be issued a transaction receipt. This receipt would be provided to the CBP Officer along with the passport or Lawful Permanent Resident card at the exit control area for examination.

When using the Global Entry kiosks, Global Entry participants would be required to declare all articles being brought into the United States pursuant to 19 CFR 148.11.

If Global Entry participants declare any of the following, the kiosk would redirect the user to the nearest open passport control primary inspection station:

1. Commercial merchandise or commercial samples, or items that exceed the applicable personal exemption amount;
2. More than $10,000 in currency or other monetary instruments (checks, money orders, etc.), or foreign equivalent in any form; or
3. Restricted/prohibited goods, such as agricultural products, firearms, mace, pepper spray, endangered animals, birds, narcotics, fireworks, Cuban goods, and plants.

Pursuant to 19 CFR part 162, Global Entry participants may be subject to random examination or further examination and inspection at any time during the arrival process if determined necessary by CBP. Each successful use of Global Entry would constitute a separate and completed inspection and application for entry by the participants on the date that Global Entry is used.

All aliens seeking admission to the United States generally must be inspected by the examining officer in order to determine admissibility and shall present required documentation. *See* 8 U.S.C. 1225(a)(3), (b), 1182(a)(7); 8 CFR part 235. Additionally, pursuant to 8 U.S.C. 1185(b) and 8 CFR part 235, a person claiming U.S. citizenship must establish that fact to the examining officer's satisfaction and must present a U.S. passport or other acceptable documentation. The advance inspection and identification, when the enrolled participant satisfies the conditions and

requirements set fourth in this section, satisfies the reporting requirements of 8 CFR 235.1(a). Each successful use of Global Entry constitutes a separate and completed inspection and application for entry by the program participants on the date Global Entry is used.

G. Electronic System for Travel Authorization (ESTA)

The Visa Waiver Program (VWP) enables citizens and nationals from participating countries to travel to and enter the United States for business or pleasure for up to ninety days without obtaining a visa. Nonimmigrant aliens who wish to travel to the United States under the VWP are required to obtain a travel authorization via ESTA (Electronic System for Travel Authorization) in advance of departure to the United States. To obtain travel authorization, applicants must submit biographical data and answer eligibility questions. ESTA is accessible online at *https://esta.cbp.dhs.gov* for citizens and eligible nationals of VWP countries.

The Global Entry regulatory program is separate from VWP. Therefore, when CBP expands the program to include persons other than U.S. citizens, U.S. nationals, and U.S. lawful permanent residents, any Global Entry participants who are nonimmigrant aliens from a participating VWP country (e.g., the Netherlands) and who wish to travel to the United States under the VWP would be required to receive a travel authorization via ESTA in advance of departure to the United States. Global Entry applicants who have not already received a travel authorization via ESTA will be able to do so as part of the Global Entry application and enrollment process. During the Global Entry enrollment and interview phase the applicant will be asked whether he or she is in possession of an ESTA number. If not in possession of an ESTA number, the applicant will be asked questions from which it can be determined whether the applicant is VWP-eligible, and a determination regarding ESTA authorization will be made.

IV. Statutory and Regulatory Requirements

A. Executive Order 12866

This rule is not an ''economically significant'' rulemaking action under Executive Order 12866 because it will not result in the expenditure of more than $100 million in any one year. This rule, however, is a significant regulatory action under Executive Order 12866; therefore, this proposed rule has been reviewed by the Office of Management and Budget.

Global Entry is a voluntary program that provides a benefit to the public by speeding the CBP processing time for participating travelers. Travelers who are otherwise admissible to the United States will be able to enter or exit the country regardless of whether they participate in Global Entry. This evaluation explores the potential costs and benefits of this voluntary trusted traveler program.

As noted above, CBP estimates that over a five year period, 250,000 enrollees will be processed, an annual average of 50,000 individuals. CBP will charge a fee of $100 per applicant and estimates that each application will require 40 minutes (0.67 hours) of the enrollee's time to search existing data resources, gather the data needed, and complete and review the application form. Additionally, an enrollee will experience an ''opportunity cost of time'' to travel to an Enrollment Center upon acceptance of the initial application. We assume that one hour will be required for this time spent at the Enrollment Center and travel to and from the Center, though we note that during the pilot program, many applicants coordinated their trip to an Enrollment Center with their travel at the airport. We have used one hour of travel time so as not to underestimate potential opportunity costs for enrolling in the program. We use a value of $28.60 for the opportunity cost for this time, which is taken from the Federal Aviation Administration's *Economic Values for FAA Investment and Regulatory Decisions, A Guide.* (July 3, 2007. See Table ES–1). This value is the weighted average for U.S. business and leisure travelers. For this evaluation, we assume that all enrollees will be U.S. citizens, U.S. nationals, or Lawful Permanent Residents.

Using these values, we estimate that the cost per enrollee is $147.76 ($28.60 per hour × 1.67 hours + $100 enrollment fee). If there are 50,000 enrollees annually, this is a cost of $7,388,100 per year. Over five years, the total costs will be approximately $32 million at a seven percent discount rate ($35 million at a three percent discount rate).

As noted previously, Global Entry will allow for expedited processing for those travelers enrolled in the program. DHS currently estimates that, based on its statistical analysis from two-months worth of data, those enrolling in Global Entry will save seven minutes on average. Monetizing those benefits is difficult; entry processing times vary widely among airports and times of day, and the number of trips that the Global Entry benefit will be used for any given individual is unknown. During some peak periods at some international airports, entry processing times can be an hour or more. Avoiding such lines by using Global Entry kiosks and avoiding all other entry processing would likely represent a clear savings in time for a typical participant.

Because participation in the Global Entry program is voluntary, the perceived benefits of reduced wait time would have to equal or exceed the cost of the program over five years. Potential enrollees will determine whether or not it is worthwhile to enroll in the program based on their individual preferences, which will be influenced by the number of trips they make and the typical wait times they experience when entering the United States. The most likely participants in the program are those that plan to make multiple trips over five years, typically experience long waits at the airports they use, or are averse to the perceived hassle or inconvenience of standing in line for entry processing. Using the estimates presented above, if the annualized cost of the program is $36 (total cost of $147.76 amortized over five years at a seven percent discount rate) and the average time saved per trip is seven minutes (monetized savings of $3.34 per trip), then an average traveler would need to make approximately eleven trips annually through participating airports to consider enrollment in the Global Entry program worth the cost and estimated burden.

Additionally, those travelers not enrolled in Global Entry could experience a small benefit in time-savings as well. If Global Entry participants are not standing in the regular entry processing lines, non-enrollees could experience reduced wait times.

Finally, the costs for CBP to administer this program are not included here because they will be recovered through the $100 enrollment fee. CBP could experience benefits by speeding entry processing and avoiding time needed to process proven low-risk travelers.

B. Regulatory Flexibility Act

This section examines the impact of the proposed rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 604), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small

governmental jurisdiction (locality with fewer than 50,000 people).

CBP has considered the impact of this proposed rule on small entities. The individuals to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). CBP acknowledges that there are certain ''sole proprietors'' who would be considered small businesses and could be affected if they chose to participate in Global Entry. However, Global Entry is voluntary and the fee to enroll in Global Entry is one hundred dollars plus the opportunity cost of the individual applying. CBP believes such an expense would not rise to the level of being a ''significant economic impact,'' particularly as the expense need not be incurred unless the enrollee chooses to incur it. However, we welcome comments on that assumption. The most helpful comments are those that can give us specific information or examples of a *direct impact* on small entities. If we do not receive comments that demonstrate that the rule causes small entities to incur direct costs, we may, during the process of drafting the final rule, certify that this action does not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Executive Order 13132

The proposed rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Paperwork Reduction Act

Information is being collected from voluntary applicants in order to assess whether the individuals meet the eligibility requirements and are otherwise deemed to be low-risk travelers and therefore may appropriately participate in the voluntary Global Entry program. This information will be collected through the Global On-Line Enrollment System (GOES). This collection of information is required and authorized by 8 U.S.C. 1365b and 8 CFR part 235 for use in international trusted traveler programs. Additionally, the information being collected is necessary to satisfy the requirements regarding examination of aliens applying for admission to the United States pursuant to 8 U.S.C. 1225(a)(3), 8 U.S.C. 1225(b) and 8 U.S.C. 1182(a)(7), and U.S. Citizens entering the United States pursuant to 8 U.S.C. 1185(b).

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. OMB has already approved the collection of the Global Entry application information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB Control Number 1651–0121. A revision request will be submitted to OMB to reflect the additional respondents that will be submitting the requisite information through GOES.

The burden estimates for collecting and entering information for the GOES on-line application for Global Entry, interview time, and travel time are presented below:

Estimated Number of Respondents: 50,000.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 50,000.

Estimated Time per Response: 40 minutes.

Estimate Total Annual Burden Hours: 33,500.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Border Security Regulations Branch, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20001–4501.

Comments are invited on:

(a) Whether the collection 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 the burden of the collection of the information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operations, maintenance, and purchases of services to provide information.

F. Privacy

The on-line application for Global Entry collects information similar to that collected on applications for CBP's other trusted traveler programs (e.g., NEXUS, SENTRI and FAST). The information collected through the on-line application is deposited into the Global Enrollment System (GES), as the system of record for CBP trusted traveler programs. The personal information provided by the applicants, including the fingerprint biometrics taken at the time of the personal interview, may be shared with other government and law enforcement agencies in accordance with applicable laws and regulations. The personal information that is collected through GOES is maintained in a Privacy Act system of records (GES) that was last published in the **Federal Register** (71 FR 20708) on April 21, 2006. CBP has also published two Privacy Impact Assessments that cover this program on the DHS Privacy Office Web site, *http://*www.dhs.gov/privacy [GES, GOES]. In addition, an update addressing on-line functionality of the enrollment process was posted to the DHS Privacy Office Web site on November 1, 2006. Applicant biometrics (fingerprints, photographs) are stored in the DHS Automated Biometric Identification System (IDENT). The IDENT Privacy Act System of Records notice was last published on June 5, 2007.

G. Signing Authority

The signing authority for this document falls under 8 U.S.C. 1365b(k) pertaining to the authority of the Secretary of Homeland Security to develop and implement a trusted traveler program to expedite the travel of previously screened and known travelers across the borders of the United States.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of

information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Proposed Amendments to CBP Regulations

For the reasons set forth in this document, it is proposed to amend 8 CFR parts 103 and 235 as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 would continue to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by adding at the end of the list of forms (after the entry for ''Form N–644'') the following: ''Global Entry. For filing an application for Global Entry—$100.''

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

3. The authority citation for part 235 would continue to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458 as amended by section 546 of Pub. L. 109–295 and by section 723 of Pub. L. 110–53).

4. A new section 235.7a is added to read as follows:

§ 235.7a Global Entry program.

(a) *Program Description.* The Global Entry program is a voluntary international trusted traveler program consisting of an integrated passenger processing system that will expedite the movement of low-risk air travelers into the United States by providing an expedited inspection process for pre-approved, pre-screened travelers. In order to participate, a person must meet the eligibility requirements specified in this section, apply in advance, undergo pre-screening by CBP, and be accepted into the program. The Global Entry program allows participants expedited entry into the United States at selected airports identified by CBP at *http://www.globalentry.gov*. Participants will be processed through the use of CBP-approved technology that will include the use of biometrics to validate identity and to perform enforcement queries.

(b) *Definitions.* For purposes of this section:

Nonimmigrant Alien means any person not a citizen or U.S. national who has been granted the right to reside temporarily in the United States. The individuals making up this category are described at section 101(a)(15) of the Act.

U.S. Citizen means a person who acquired U.S. citizenship at birth or upon naturalization as provided by law and who has not subsequently lost such citizenship.

U.S. Lawful Permanent Resident means, in accordance with section 101(a)(20) of the Act, a person who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and whose status has not changed. Such status terminates upon entry of a final administrative order of exclusion, deportation, or removal.

U.S. National means a citizen of the United States or a non-citizen who owes permanent allegiance to the United States as provided in section 101(a)(22) of the Act.

(c) *Program Eligibility Criteria*—(1) *Eligible Individuals.* The following individuals, who hold a valid, machine-readable passport or a valid, machine-readable Lawful Permanent Resident Card, may apply to participate in Global Entry:

(i) U.S. citizens, U.S. nationals, and U.S. lawful permanent residents absent any of the disqualifying factors described in paragraph (c)(2) of this section.

(ii) Certain nonimmigrant aliens from countries that have entered into reciprocal arrangements with CBP concerning international trusted traveler programs absent any of the disqualifying factors described in paragraph (c)(2) of this section, and subject to the conditions set forth in the particular arrangement. Individuals from a country that has entered into such an arrangement with CBP may be eligible to apply for participation in Global Entry only after announcement by CBP by publication of a notice in the **Federal Register**. The notice will include the country, the scope of eligibility of nonimmigrant aliens from that country (whether citizens of the foreign country only or also non-citizens) and other conditions that may apply based on the terms of the arrangement. CBP may change or terminate these arrangements without prior notice to the public, but will announce such actions as soon as practicable by publication of a notice in the **Federal Register**.

(iii) Children 14 years of age and older, but under the age of 18 who meet the eligibility criteria of paragraph (c)(1)(i) or (ii) of this section, must have the consent of a parent or legal guardian to participate in Global Entry. Children under the age of 14 are not eligible to participate in the program.

(2) *Disqualifying Factors.* An individual is ineligible to participate in Global Entry if CBP determines that the individual presents a potential risk for terrorism, criminality or smuggling, or is otherwise not a low-risk traveler. This risk determination will be based in part upon an applicant's ability to demonstrate past compliance with laws, regulations, and policies. An applicant may not qualify for participation if any of the following risk factors are applicable:

(i) The applicant provides false or incomplete information on the application;

(ii) The applicant has been arrested for, or convicted of any criminal offense or has pending criminal charges or outstanding warrants;

(iii) The applicant has been found in violation of any Customs, Immigration, or Agriculture regulations, procedures, or laws in any country;

(iv) The applicant is the subject of an investigation by any Federal, State, or local law enforcement agency;

(v) The applicant is inadmissible to the United States under the immigration laws, including applicants with approved waivers of inadmissibility or parole documentation;

(vi) The applicant cannot satisfy CBP of their low-risk status or meet other program requirements; or

(vii) The applicant has been identified on a Government watch list.

(d) *Participating Airports.* The Global Entry program allows participants expedited entry into the United States at the locations identified at *http://www.cbp.gov.* Expansions of the Global Entry program to new airports will be announced by publication in the **Federal Register** and at *http://www.cbp.gov.*

(e) *Program Application.*

(1) Each applicant must complete and submit the program application electronically through the Global On-Line Enrollment System (GOES). The application and application instructions for the Global Entry program are available at *http://www.globalentry.gov*.

(2) Each applicant must pay a non-refundable fee in the amount set forth at 8 CFR 103.7(b)(1) for ''Global Entry'' at the time of application. The fee covers participation for a total of 5 years

(provided participation is not suspended or terminated by CBP prior to the end of the 5 years, which is the length of the membership period). The fee is to be paid to CBP at the time of application through the Federal Government's on-line payment system, Pay.gov.

(3) Each applicant may apply to renew participation up to 90 days prior to the close of the original membership period but before the expiration date to prevent a lapse in participation.

(4) Each applicant may check the status of his or her application through his or her personal GOES account.

(f) *Interview and Enrollment.*

(1) After submitting the application, the applicant will be notified by CBP to schedule an in-person interview at a Global Entry Enrollment Center. Applicants may schedule the interview by using GOES and may select an Enrollment Center from the list presented.

(2) Each applicant must bring to the interview with CBP the original of the identification document specified in his or her application.

(3) CBP will collect a full set of ten fingerprints to conduct biometric based background checks.

(4) Each applicant must allow CBP to take a digital photograph of the applicant.

(5) An applicant may be required to provide additional biometric information that CBP may require to participate in the program.

(6) After the interview, each applicant will be notified by CBP of his or her acceptance or denial in Global Entry by a message posted to his or her personal GOES account.

(g) *Valid Machine-Readable Passport or Valid Lawful Permanent Resident Card.* Each participant must possess a valid, machine-readable passport or valid, machine-readable U.S. Lawful Permanent Resident Card (Form I–551). Machine-readable passports must include two optical-character, typeface lines at the bottom of the biographical page of the passport that help to quickly read the biographical information on the passport. Machine-readable U.S. Lawful Permanent Resident Cards must also include two optical-character, typeface lines that help to read the information on the card.

(h) *Arrival Procedures.* In order to utilize the Global Entry program upon entry in the United States, each participant must:

(1) Use the Global Entry kiosk and follow the on-screen instructions;

(2) Declare all articles being brought into the United States pursuant to 19 CFR 148.11. A Global Entry participant will be redirected to the nearest open passport control primary inspection station, if the participant declares any of the following:

(i) Commercial merchandise or commercial samples, or items that exceed the applicable personal exemption amount;

(ii) More than $10,000 in currency or other monetary instruments (checks, money orders, etc.), or foreign equivalent in any form; or

(iii) Restricted/prohibited goods, such as agricultural products, firearms, mace, pepper spray, endangered animals, birds, narcotics, fireworks, Cuban goods, and plants.

(i) *Application for Entry, Examination and Inspection.* Each successful use of Global Entry constitutes a separate and completed inspection and application for entry by the participants on the date that Global Entry is used. Pursuant to the enforcement provisions of 19 CFR part 162, Global Entry participants may be subject to further examination and inspection at any time during the arrival process if determined necessary by CBP.

(j) *Pilot Participant Enrollment.* Upon implementation of the Global Entry Program, participants in the Global Entry pilot will be automatically enrolled in the Global Entry Program for 5 years from the date of enrollment in the pilot program.

(k) *Denial, Removal and Suspension.*

(1) If an applicant is denied participation in Global Entry, a notice will be sent to the applicant's GOES account advising him or her of the denial, with instructions on how to proceed if the applicant wishes to seek additional information.

(2) A Global Entry participant may be suspended or removed from the program for any of the following reasons:

(i) CBP, at its sole discretion, determines that the participant has engaged in any misconduct under the Global Entry program;

(ii) CBP, at its sole discretion, determines that the participant provided false information during the application and/or application process;

(iii) CBP, at its sole discretion, determines that the participant failed to follow the terms, conditions and requirements of the program;

(iv) CBP, at its sole discretion, determines that the participant has been arrested or convicted of a crime or otherwise no longer meets the program eligibility criteria; or

(v) CBP, at its sole discretion, determines that such action is otherwise necessary.

(3) CBP will notify the participant of his or her suspension or removal in writing. Such suspension or removal is effective immediately.

(l) *Redress.*

An individual whose application is denied or whose participation is suspended or terminated has three possible methods for redress. These processes do not create or confer any legal right, privilege or benefit, but are wholly discretionary on the part of CBP. The methods of redress include:

(1) *Enrollment Center.*

The applicant/participant may contest his or her denial, suspension or removal in writing to the enrollment center where that individual's interview was conducted or if the applicant/participant has not been interviewed, he or she can write to the CBP Ombudsman in accordance with paragraph (l)(3) of this section. The enrollment center addresses are available at *http://www.globalentry.gov*. The letter must be received by CBP within 30 calendar days of the date provided as the date of suspension or removal. The individual should write on the envelope ''Redress Request RE: Global Entry.'' The letter should address any facts or conduct listed in the notification from CBP as contributing to the denial, suspension or removal and why the applicant/participant believes the reason for the action is invalid. The applicant/participant may also contact the enrollment center where the interview was conducted if it is believed that the denial, suspension or revocation was based upon inaccurate information. The individual should also include any reasonably available supporting documentation. After review, CBP will inform the individual of its redress decision. The decision of CBP in the matter is final. If the individual's request for redress is successful, the individual's eligibility to participate in Global Entry will resume immediately.

(2) *DHS Travelers Redress Inquiry Program (DHS TRIP).*

The applicant/participant may choose to initiate the redress process through DHS TRIP. An applicant/participant seeking redress may obtain the necessary forms and information to initiate the process on the DHS TRIP Web site at: *http://www.dhs.gov/xtrvlsec/programs/gc_1169676919316.shtm*, or by contacting DHS Trip by mail at the address on this Web site.

(3) *Ombudsman.*

If an applicant/participant believes the denial, suspension or revocation was based upon inaccurate information he or she may contact the CBP Trusted Traveler Ombudsman at the address on the Web site *http://www.globalentry.gov*

and following the link for ''Trusted Traveler Program Denials.''

Dated: November 13, 2009.

Janet Napolitano,

Secretary.

[FR Doc. E9–27774 Filed 11–18–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1081; Directorate Identifier 2009–CE–058–AD]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A. Model PIAGGIO P–180 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:

An operator reported a short circuit between a generator power cable and an anti-ice shutoff valve, which was caused by chafing between the cable and the valve; the insulation of the cable and surrounding sleeve were worn off.

An investigation revealed that a scarce clearance between the cables and adjacent parts, together with vibrations of generator power cables favoured by insufficient clamping, was the root cause of the damage.

If left uncorrected, this situation could lead to short circuits with possible fire and/or loss of important aircraft systems.

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 January 4, 2010.

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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

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–2009–1081; Directorate Identifier 2009–CE–058–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 European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2009–0212, dated October 6, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

An operator reported a short circuit between a generator power cable and an anti-ice shutoff valve, which was caused by chafing between the cable and the valve; the insulation of the cable and surrounding sleeve were worn off.

An investigation revealed that a scarce clearance between the cables and adjacent parts, together with vibrations of generator power cables favoured by insufficient clamping, was the root cause of the damage.

If left uncorrected, this situation could lead to short circuits with possible fire and/or loss of important aircraft systems.

This Airworthiness Directive (AD) requires an inspection to detect damaged cables/sleeves, and replacement/repair as necessary; in addition, this AD requires to ensure that acceptable minimum clearances between cables and parts exist, and to improve clamping to minimize vibrations of the cables.

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

Relevant Service Information

PIAGGIO AERO INDUSTRIES S.p.A. has issued Service Bulletin (Mandatory) N.: 80–0271, dated May 18, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 63 products of U.S. registry.

We also estimate that it would take about 2 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 $10,080, or $160 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $10, for a cost of $490 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:

PIAGGIO AERO INDUSTRIES S.p.A.: Docket No. FAA–2009–1081; Directorate Identifier 2009–CE–058–AD.

Comments Due Date

(a) We must receive comments by January 4, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model PIAGGIO P–180 airplanes, all serial numbers through 1180, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 24: Electric Power.

Reason

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

An operator reported a short circuit between a generator power cable and an anti-ice shutoff valve, which was caused by chafing between the cable and the valve; the insulation of the cable and surrounding sleeve were worn off.

An investigation revealed that a scarce clearance between the cables and adjacent parts, together with vibrations of generator power cables favoured by insufficient clamping, was the root cause of the damage.

If left uncorrected, this situation could lead to short circuits with possible fire and/or loss of important aircraft systems.

This Airworthiness Directive (AD) requires an inspection to detect damaged cables/sleeves, and replacement/repair as necessary; in addition, this AD requires to ensure that acceptable minimum clearances between cables and parts exist, and to improve clamping to minimize vibrations of the cables.

Actions and Compliance

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

(1) Within 3 months after the effective date of this AD, inspect for minimum clearance and insulation damage to the generator power cables in accordance with Part A of the ACCOMPLISHMENT INSTRUCTIONS of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0271, dated May 18, 2009.

(2) If, as a result of the inspection required by paragraph (f)(1) of this AD, any discrepancy (inadequate clearance or insulation damage) is found, before further flight, do all necessary corrective actions in accordance with Part B of the ACCOMPLISHMENT INSTRUCTIONS of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0271, dated May 18, 2009.

FAA AD Differences

Note: 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD No.: 2009–0212, dated October 6, 2009; and PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0271, dated May 18, 2009, for related information.

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

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–27779 Filed 11–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–112756–09]

RIN 1545–BI60

Amendments to the Regulations Regarding Questions and Answers Relating to Church Tax Inquiries and Examinations; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on a notice of proposed rulemaking amending the questions and answers relating to church tax inquiries and examinations. These proposed regulations replace references to positions that were abolished by the Internal Revenue Service Restructuring and Reform Act of 1998 with references that are consistent both with the statute and the IRS's current organizational structure.

DATES: The public hearing is being held on January 20, 2010, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by December 9, 2009.

ADDRESSES: The public hearing is being held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC: PA: LPD: PR (REG–112756–09), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC: PA: LPD: PR (REG–112756–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Benjamin Akins, (202) 622–1124 or Monice Rosenbaum, (202) 622–6070; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–112756–09) that was published in the **Federal Register** on Wednesday, August 5, 2009 (74 FR 39003).

Persons, who wish to present oral comments at the hearing that submitted written comments, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by December 9, 2009.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue NW. entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration)

[FR Doc. E9–27773 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2009–0164; FRL–8982–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of the Shelby County, TN Portion of the Memphis, Tennessee-Arkansas 1997 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 26, 2009, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Air Pollution Control Division, submitted a request to redesignate the Tennessee portion of the bi-State Memphis, Tennessee-Arkansas 8-hour ozone nonattainment area (the ''bi-State Memphis Area'') to attainment for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS); and to approve the State Implementation Plan (SIP) revision containing a maintenance plan for the Tennessee portion of the bi-State Memphis Area. The bi-State Memphis 1997 8-hour ozone NAAQS nonattainment area is composed of Shelby County, Tennessee and Crittenden County, Arkansas. In this action, EPA is proposing to approve the February 26, 2009 redesignation request for Shelby County, Tennessee as part of the Memphis Area. Additionally, EPA is proposing to approve the 1997 8-hour ozone NAAQS maintenance plan for Shelby County, including the emissions inventory and the State motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for the years 2006, 2009, 2017, and 2021. This proposed approval of Tennessee's redesignation request is based on EPA's determination that Tennessee has demonstrated that Shelby County has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire bi-State Memphis ozone nonattainment area has attained the 1997 8-hour ozone standard. The State of Arkansas has submitted a similar redesignation request and maintenance plan for the Arkansas portion of this 8-hour ozone area. EPA is taking action on Arkansas' redesignation request and maintenance plan through a separate rulemaking action. In this action, EPA is also describing the status and proposing approval of its transportation conformity adequacy determination for the new 2006, 2009, 2017 and 2021 MVEBs that are contained in the 1997 8-hour ozone NAAQS maintenance plan for Shelby County, Tennessee. MVEBs for Crittenden County, Arkansas are included in the Arkansas submittal, and will be addressed through EPA's separate action for that submittal.

DATES: Comments must be received on or before December 21, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0164, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: benjamin.lynorae@epa.gov.*
- *Fax:* (404) 562–9019.
- *Mail:* EPA–R04–OAR–2009–0164, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

• *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2009–0164. 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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Spann or Ms. Twunjala Bradley of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Jane Spann may be reached by phone at (404) 562–9029, or via electronic mail at *spann.jane@epa.gov.* The telephone number for Ms. Bradley is (404) 562–9352, and the electronic mail is *bradley.twunjala@epa.gov.*

SUPPLEMENTARY INFORMATION:

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X. Statutory and Executive Order Reviews

I. What Proposed Actions Is EPA Taking?

EPA is proposing several related actions, which are summarized below and described in greater detail throughout this notice of rulemaking: (1) To redesignate Shelby County, Tennessee to attainment for the 1997 8-hour ozone NAAQS; (2) to approve under section 182(a)(1) the emissions inventory submitted with the maintenance plan; and (3) to approve under section 175A Tennessee's 1997 8-hour ozone NAAQS maintenance plan into the Tennessee SIP, including the associated MVEBs. In addition, and related to today's actions, EPA is also notifying the public of the status of EPA's adequacy determination for the Shelby County MVEBs.

First, EPA is proposing to determine that the bi-State Memphis Area has attained the 1997 8-hour ozone standard. EPA further proposes to determine that, if EPA's proposed approval of the emissions inventory for the Shelby County, Tennessee portion of this area is finalized, the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The bi-State Memphis 1997 8-hour ozone area is composed of Shelby County in Tennessee and Crittenden County in Arkansas. Today's proposal addresses only the Tennessee portion of the bi-State Memphis Area. In a separate action, EPA will address the redesignation request and maintenance plan for the Crittenden County, Arkansas portion of the bi-State Memphis Area. In this action, EPA is now proposing to approve a request to change the legal designation of Shelby County, Tennessee from nonattainment to attainment for the 1997 8-hour ozone NAAQS.

Second, EPA is proposing to approve under section 182(a)(1) Tennessee's 2006 inventory for Shelby County, Tennessee. In coordination with Arkansas, Tennessee selected 2006 as ''the attainment year'' for the bi-State Memphis Area for the purpose of demonstrating attainment of the 1997 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the Area, which is sufficient to attain the 1997 8-hour ozone standard.

Third, EPA is proposing to approve Tennessee's 1997 8-hour ozone NAAQS maintenance plan for Shelby County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the bi-State Memphis Area (of which Shelby County is a part) in attainment of the 1997 8-hour ozone NAAQS through 2021. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2006, 2009, 2017 and 2021 NO_X and VOC MVEBs. EPA is proposing to approve (into the Tennessee SIP) the 2006, 2009, 2017 and 2021 State MVEBs that are included as part of Tennessee's maintenance plan for the 1997 8-hour ozone NAAQS. These MVEBs apply only to Shelby County, Tennessee.

MVEBs contained in the Arkansas submittal for Crittenden County will be addressed in a separate action.

EPA is also notifying the public of the status of EPA's adequacy process for the newly-established 2006, 2009, 2017, and 2021 NO_X and VOC State MVEBs for Shelby County, Tennessee. The MVEBs for the Arkansas portion of this 8-hour ozone area will be addressed in a separate action. The Adequacy comment period for the Shelby County, Tennessee 2006, 2009, 2017, and 2021 State MVEBs began on March 12, 2009, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site. (*http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*). The adequacy comment period for these MVEBs closed on April 13, 2009. No adverse comments were received during the adequacy public comment period. Please *see* section VIII of this proposed rulemaking for further explanation of this process, and for more details on the MVEBs determination.

Today's notice of proposed rulemaking is in response to Tennessee's February 26, 2009, SIP submittal requesting the redesignation of Shelby County, Tennessee as part of the bi-State Memphis 1997 8-hour ozone area, and includes a SIP revision addressing the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

II. What Is the Background for EPA's Proposed Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). (*See* 69 FR 23857 (April 30, 2004) for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, *Comparisons with the Primary and Secondary Ozone Standards* states:

> ''The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.''

The CAA required EPA to designate as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The bi-State Memphis 1997 8-hour ozone nonattainment area was initially designated nonattainment for the 1997 8-hour ozone standard using 2001–2003 ambient air quality data. The **Federal Register** document making these designations was signed on April 15, 2004, and published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 1997 8-hour ozone areas are also subject to the provisions of Subpart 2. Under EPA's Phase 1 1997 8-hour ozone implementation rule (69 FR 23857) (Phase 1 Rule), signed on April 15, 2004, and published April 30, 2004, an area was classified under subpart 2 based on its 1997 8-hour ozone design value (*i.e.,* the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas were covered under subpart 1, based upon their 8-hour ambient air quality design values.

Shelby County, Tennessee was originally designated as a marginal nonattainment area for the 1-hour ozone standard on November 6, 1991 (56 FR 56694). Crittenden County, Arkansas was designated attainment at that time. On February 16, 1995 (60 FR 3352) Shelby County, Tennessee was redesignated as attainment for the 1-hour ozone standard, and was considered to be a maintenance area subject to a CAA section 175A maintenance plan for the 1-hour standard.

On April 30, 2004, EPA designated the bi-State Memphis Area (which then included Crittenden County, Arkansas) under subpart 2 as a ''moderate'' 1997 8-hour ozone NAAQS nonattainment area (69 FR 23857, April 30, 2004). On July 15, 2004, pursuant to section 181(a)(4) of the CAA, the States of Tennessee and Arkansas submitted a petition to EPA, requesting that the classification of the bi-State Memphis Area be adjusted downward from ''moderate'' to ''marginal'' for the 1997 8-hour ozone standard. The petition was based on the fact that the area's ''moderate'' design value of 0.092 ppm was within five percent of the maximum ''marginal'' design value of 0.091 ppm. Pursuant to Section 181(a)(4), areas with design values within five percent of the standard may request a reclassification under specific circumstances. EPA approved the petition for reclassification, which became effective on November 22, 2004 (69 FR 56697, September 22, 2004). As a result of the downward classification, the new attainment date for the bi-State Memphis ''marginal'' nonattainment area was set at June 15, 2007, consistent with the CAA, with attainment to be determined based on 2004–2006 air quality data.

However, from 2004–2006, the bi-State Memphis Area measured 8-hour average ozone concentrations that precluded the bi-State Memphis Area from attaining the 1997 8-hour ozone NAAQS by the June 15, 2007, the deadline for marginal areas. Section 181(b)(2) of the CAA provides that, when EPA finds that an area failed to attain by the applicable date, the area is reclassified by operation of law to the higher of: the next higher classification or the classification applicable to the area's ozone design value at the time of the required notice under Section 181(b)(2)(B). On March 28, 2008, EPA issued a notice that the bi-State Memphis Area was reclassified by operation of law to ''moderate,'' for failing to attain the standard by the

marginal area applicable attainment date (73 FR 16547). EPA set a deadline of March 1, 2009, for Tennessee and Arkansas to submit the moderate area SIP provisions required under the area's new classification (73 FR 16550).

As part of the 2004 designations, EPA also promulgated an implementation rule—the Phase 1 Rule. Various aspects of EPA's Phase 1 Rule were challenged in court. On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated EPA's Phase 1 Rule (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD)* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 1997 8-hour ozone NAAQS nonattainment areas, the 1997 8-hour ozone NAAQS attainment dates and the timing for emissions reductions needed for attainment of the 1997 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 1997 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 1997 8-hour ozone NAAQS budgets were available for 8-hour ozone conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour ozone conformity determinations are not required for anti-backsliding purposes.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, nor does EPA believe the Court's ruling prevents EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of the Shelby County, Tennessee portion of the bi-State Memphis Area to attainment, because (1) this area is already classified as a subpart 2 area and is obligated to meet subpart 2 requirements; and (2) redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

At the time the redesignation request was submitted, the bi-State Memphis Area was classified as subpart 2 moderate, but the requirements under its moderate area classification had not yet become due. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni Memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). *See also* Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) (upholding this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit Court has recognized the inequity in such retroactive rulemaking (*see Sierra Club* v. *Whitman* 285 F. 3d 63 (D.C. Cir. 2002)), in which the Court upheld a district court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated, ''[a]lthough EPA failed to make the nonattainment determination within the statutory frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here, it would be unfair to penalize the area by applying to it for purpose of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request, or the time that the Area attained the standard.

With respect to the requirements under the 1-hour ozone standard, Shelby County had been redesignated attainment subject to a maintenance plan under section 175A. The D.C. Circuit Court's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court, in its June 8th decision, clarified that for those areas with 1-hour MVEBs in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until they are replaced by 1997 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

First, there are no conformity requirements relevant for evaluating the bi-State Memphis Area redesignation request, such as a transportation conformity SIP.[1] It is EPA's longstanding policy that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See* 40 CFR 51.390; *see also Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding EPA's interpretation); 60 FR 62748 (Dec. 7, 1995) (redesignation of Tampa, Florida). Tennessee currently has a fully approved 1-hour ozone transportation

[1] CAA Section 176(c)(4)(E) requires States to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

conformity SIP, which was approved on May 16, 2003 (68 FR 26492).

Second, with regard to the three other anti-backsliding provisions for the 1-hour standard that the D.C. Circuit Court found were not properly retained, Shelby County, Tennessee is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR requirement no longer applies to this area because it was redesignated to attainment of the 1-hour standard. (Because Shelby County was a marginal 1-hour nonattainment area, the contingency measure (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements never applied to it). As a result, the decisions in *SCAQMD* should not alter any requirements that would preclude EPA from finalizing the redesignation of the bi-State Memphis Area to attainment for the 1997 8-hour ozone standard.

As was noted earlier, in 2008, the ambient ozone data for the bi-State Memphis Area indicated no further violations of the 1997 8-hour ozone NAAQS, using data from the 3-year period of 2006–2008 to demonstrate attainment. As a result, on February 26, 2009, Tennessee requested redesignation of Shelby County, Tennessee to attainment for the 1997 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (March 1st through October 31st) of 2006–2008, indicating that the 1997 8-hour ozone NAAQS has been achieved for the entire bi-State Memphis Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Proposing These Actions?

On February 26, 2009, Tennessee requested redesignation of the Tennessee portion (Shelby County) of the bi-State Memphis 1997 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone standard. EPA's evaluation indicates that the bi-State Memphis Area has attained the standard and that Shelby County has met the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. EPA is also proposing to approve the 2006 baseline emission inventory under section 182(a)(1). EPA is also announcing the status of its adequacy determination and proposing approval of the 2006, 2017, 2009 and 2021 NO_X and VOC MVEBs which are relevant to the requested redesignation.

V. What Is the Effect of EPA's Proposed Actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Tennessee's redesignation request would change the legal designation of Shelby County for the 1997 8-hour ozone NAAQS found at 40 CFR part 81 from nonattainment to attainment. Approval of Tennessee's request would also incorporate into the Tennessee SIP, a plan for Shelby County for maintaining the 1997 8-hour ozone NAAQS in the area through 2021. This maintenance plan includes contingency measures to remedy future violations of the 1997 8-hour ozone NAAQS. The maintenance plan also establishes NO_X and VOC State MVEBs for Shelby County. Table 1 identifies the State NO_X and VOC MVEBs for the years 2006, 2009, 2017 and 2021 for Shelby County. Final action would also approve the

Area's emissions inventory under section 182(a)(1).

TABLE 1—SHELBY COUNTY NO_X AND VOC MVEBS

[Summer season tons per day]

	2006	2009	2017	2021
NO_X	55.878	55.620	55.173	54.445
VOC	25.216	27.240	18.323	13.817

Approval of Tennessee's maintenance plan would also result in approval of the NO_X and VOC State MVEBs. Additionally, EPA is notifying the public of the status of its adequacy determination for the 2006, 2009, 2017 and 2021 NO_X and VOC State MVEBs pursuant to 40 CFR 93.118(f)(1).

VI. What Is EPA's Analysis of the Request?

EPA is proposing to make the determination that the bi-State Memphis 1997 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard, and that all other redesignation criteria have been met for the Tennessee portion of the bi-State Memphis Area. The basis for EPA's determination for the area is discussed in greater detail below.

Criteria (1)—Shelby County, Tennessee Has Attained the 1997 8-Hour Ozone NAAQS

EPA is proposing to determine that the bi-State Memphis Area has attained the 1997 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 1997 8-hour ozone NAAQS if it meets the 1997 8-hour ozone standard, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed ozone monitoring data from ambient ozone monitoring stations in the bi-State Memphis Area for the ozone season from 2006–2008. These data have been quality-assured and are recorded in AQS. The fourth-highest 8-hour ozone average for 2006, 2007 and 2008, and the 3-year average of these values (*i.e.*, design values), are summarized in the following Table:

TABLE 2—ANNUAL 4TH MAX HIGH AND DESIGN VALUE CONCENTRATION FOR 8-HOUR OZONE FOR THE MEMPHIS, TN-ARKANSAS AREA

[Parts per million]

County	Shelby County, Tennessee		Crittenden County, Arkansas
Monitor (AIRS ID)	Memphis-Frayser Boulevard (#47–157–0021)	Edmond Orgill Park (#47–157–1004)	Marion (#05–035–0005)
2006	0.083	0.084	0.089
2007	0.081	0.080	0.084
2008	0.084	0.077	0.074
Design Value	0.082	0.080	0.082

As discussed above, the design value for an area is the highest 3-year average of the annual fourth-highest 8-hour ozone value recorded at any monitor in the area. Therefore, the most recent 3-year design value (2006–2008) for the bi-State Memphis Area is 0.082 ppm, which meets the standard as described above. Currently available data show that the Area continues to attain the standard. If the area does not continue to attain until EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, Tennessee has committed to continue monitoring in this Area in accordance with 40 CFR part 58. EPA proposes to find that the bi-State Memphis Area has attained the 1997 8-hour ozone NAAQS.

Criteria (2)—Tennessee Has a Fully Approved SIP Under Section 110(k) for Shelby County and Criteria (5)—Tennessee Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

Below is a summary of how these two criteria were met.

EPA proposes to find that Tennessee has met all applicable SIP requirements for Shelby County under section 110 of the CAA (general SIP requirements) for purposes of redesignation. EPA also proposes to find that the Tennessee SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to subpart 2 moderate 1997 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. Shelby County, Tennessee Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992, Calcagni Memorandum describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. *See also* Michael Shapiro Memorandum, (''SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992,'' September 17, 1993); 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA; *Sierra Club*, 375 F.3d 537; *see also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the State after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address the transport of air pollutants (NO_X SIP Call and Clean Air Interstate Rule (CAIR)). The section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State. Thus, we do not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Therefore, as was discussed above, for purposes of redesignation, they are not considered applicable requirements. Nonetheless, EPA notes it has previously approved provisions in the Tennessee SIP addressing section 110 elements under the 1-hour ozone NAAQS (45 FR 53809, August 13, 1980). The State believes that the section 110 SIP approved for the 1-hour ozone NAAQS are sufficient to meet the requirements under the 1997 8-hour ozone NAAQS. The State has submitted a letter dated December 14, 2007, setting forth its belief that the section 110 SIP approved for the 1-hour ozone NAAQS is also sufficient to meet the requirements under the 1997 8-hour ozone NAAQS. EPA has not yet approved this submission, but such approval is not necessary for purposes of redesignation.

Part D requirements. EPA proposes that if EPA approves the State's base year emissions inventory, which is part of the maintenance plan submittal, the Tennessee SIP will meet applicable SIP requirements under part D of the CAA. We believe the emission inventory is approvable because the 2006 VOC and NO_X emissions, as well as the emissions for other years, for the bi-State Memphis Area were developed consistent with EPA guidance for emission inventories and the choice of the 2006 base year is appropriate because it represents the 2006–2008 period when the 8 hour ozone NAAQS was not violated. EPA also proposes to determine that the Tennessee SIP meets applicable SIP requirements under part D of the CAA since no subpart 2 moderate requirements became due prior to the submission of the Area's redesignation request, and the area has met all the requirements under its previous marginal classification. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification.

Part D, subpart 2 applicable SIP requirements. For purposes of evaluating this redesignation request, the applicable part D, subpart 2 SIP requirements for all moderate nonattainment areas are contained in sections 182(b)(1)–(5). A thorough discussion of the requirements contained in section 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498). No moderate area requirements applicable for purposes of redesignation under part D became due prior to the submission of the redesignation request, and therefore none are applicable to the Area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of reasonable further progress (RFP) (section 182(b)(1), Reasonably Achievable Control Technology (RACT) (section 182(b)(2)), Gasoline Vapor Recovery section 182(b)(3), and Motor Vehicle Inspection and Maintenance section 182(b)(4). If

EPA finalizes its proposed approval of the Area's emissions inventory under section 182(a)(1), the Area will have met all the requirements applicable under its prior marginal classification for purposes of redesignation.

In addition to the fact that no moderate area part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See Wall*, 265 F.3d 426 (upholding this interpretation); *See also* 60 FR 62748 (December 7, 1995, Tampa, Florida).

NSR Requirements. EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment.'' Memphis, Tennessee maintained in their submittal that sources locating to the Memphis area will continue to undergo NSR requirements and existing source control will continue. Tennessee has demonstrated that Shelby County will be able to maintain the standard without a part D NSR program in effect, and therefore, Tennessee need not have a fully approved part D NSR program prior to approval of the redesignation request. Tennessee's PSD program will become effective in Shelby County upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, Shelby County, Tennessee has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. Shelby County, Tennessee Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Tennessee SIP for the Shelby County portion of the Memphis 8-hour ozone nonattainment area, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, *see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Tennessee has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the bi-State Memphis Area (45 FR 53809, August 13, 1980).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the moderate area part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation. As set forth above, the Area has met all other applicable requirements for purposes of redesignation under its prior marginal classification.

Criteria (3)—The Air Quality Improvement in the Shelby County Portion of the Memphis, TN–AR 1997 8-Hour Ozone NAAQS Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that Tennessee has demonstrated that the observed air quality improvement in Shelby County (as part of the bi-State Memphis Area) is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a continued decrease in emissions throughout the region.

Measured reductions in ozone concentrations in and around Shelby County are largely attributable to reductions from emission sources of VOC and NO_X, which are precursors in the formation of ozone. Table 3 summarizes several of the measures adopted that resulted in emission reductions. The majority of these reductions have been realized from Federal measures related to mobile sources and electrical power generation.

TABLE 3—SHELBY COUNTY EMISSION REDUCTIONS PROGRAMS

Mobile Sources:
○ Tier 2 Fuel and Vehicle Emission Standards
○ Onboard Refueling Vapor Recovery (ORVR) for light-duty vehicles
○ NO_X SIP Call
State and Local Measures:
○ Inspection and Maintenance (I/M) Program
○ Expressway speed limit Reductions
○ ''No Burn'' Days for increase ozone levels
○ Memphis Area Transit Authority Ozone Action Day Fare Reduction
○ Retrofit of refuse trucks with diesel oxidation catalyst
○ Motor Vehicle Tampering Rule

Emission reductions in Shelby County as a result of Federal motor vehicle controls from 2002 to 2006 are estimated to be 7 tons per day of VOC and 28 tons per day of NO_X.

Regarding point source emissions, the Tennessee Valley Authority's (TVA's) Allen Steam Plant located in Shelby County operates three coal-fired boilers. As a result of EPA's ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group

Region for Purposes of Reducing Region Transport of Ozone'' (NO_X SIP Call), TVA began operation of two selective catalytic reduction (SCR) systems during the 2002 ozone control season, May 1st through September 30th. The third SCR began operating in 2003. Ozone season daily NO_X reductions in the Area as a result of these controls equal approximately 45 tons per day.

These are substantial reductions when compared to the remaining total NO_X inventory from all sources in Shelby and Crittenden counties in 2006 of 116.81 tons per day (99.09 tons per day in Shelby county and 17.72 tons per day in Crittenden County) and a VOC inventory of 128.67 tons per day (99.11 tons per day in Shelby County and 29.56 tons per day in Crittenden county).

Because of the uncertainty introduced by the recent court actions affecting the CAIR Rule and NO_X SIP Call, EPA undertook an analysis of the changes in NO_X expected across a broader region. In particular, EPA reviewed available projections of NO_X emissions from nearby States from 2002 to 2018.

TABLE 4—2002 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO_X*

[Tons per year]

States	EGU point	Non-EGU point	Non-road	Area	Mobile	Fires	Total
AR	24,722	47,698	62,472	21,700	141,894	5,492	303,978
KY	201,928	38,434	104,571	39,507	156,417	534	541,391
LA	111,703	199,218	114,711	93,069	180,664	6,942	706,307
MS	40,433	61,533	88,787	4,200	111,914	308	307,175
MO	145,438	36,144	99,306	32,435	189,852	2,442	505,617
TN	152,137	64,344	96,827	17,844	238,577	217	569,946
Total	676,361	447,371	566,674	208,755	1,019,318	15,935	2,934,414

TABLE 5—2018 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO_X*

[tons per year]

States	EGU point	Non-EGU point	Non-road	Area	Mobile	Fires	Total
AR	34,938	36,169	34,305	25,672	33,640	5,600	170,324
KY	64,378	41,034	79,392	44,346	52,263	714	282,127
LA	44,485	225,748	106,685	114,374	44,806	6,969	543,067
MS	21,535	61,252	68,252	4,483	30,619	1,073	187,214
MO	83,181	51,489	59,625	35,213	50,861	2,442	282,811
TN	31,715	62,519	70,226	19,597	69,385	405	253,847
Total	280,232	478,211	418,485	243,685	281,574	17,203	1,708,390

* From Tennessee Regional Haze SIP, Appendix D, page D.3–5 and support table for Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans, page 2–40, figure 2–4.

From 2002 to 2018 NO_X emissions are projected to decrease in the region by 1,215,024 tpy or 41.4 percent in all. Energy Generating Unit (EGU) NO_X anticipated decreases due to CAIR and the NO_X SIP Call are projected to be 198,150 tpy. However the largest source in this region remains the motor vehicle sector, which is projected to decrease 737,744 tpy. Hence, even without EGU controls on NO_X emissions, total NO_X emissions are projected to continually decrease throughout the maintenance period.

The NO_X SIP Call requires States to make significant, specific emissions reductions. It also provided a mechanism, the NO_X Budget Trading Program, which States could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_X Budget Trading Program, 40 CFR 51.121(r), but created another mechanism—the CAIR ozone season trading program—which States could use to meet their SIP Call obligations, 70 FR 25289–90. EPA notes that a number of States, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program removed the SIP provisions that required sources to participate in the NO_X Budget Trading Program. In addition, because the provisions of CAIR including the ozone season NO_X trading program remain in place during the remand (*North Carolina* v. *EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008)), EPA is not currently administering the NO_X Budget Trading Program. Nonetheless, all States, regardless of the current status of their regulations that previously required participation in the NO_X Budget Trading Program, will remain subject to all of the requirements in the NO_X SIP Call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including the statewide NO_X emission budgets, continue to apply after revocation of the 1-hour standard.

All NO_X SIP Call States have SIPs that currently satisfy their obligations under the SIP Call, the SIP Call reduction requirements are being met, and EPA will continue to enforce the requirements of the NO_X SIP Call even after any response to the CAIR remand. For these reasons, EPA believes that regardless of the status of the CAIR program, the NO_X SIP call requirements can be relied upon in demonstrating maintenance. Here, the State has demonstrated maintenance based in part on those requirements.

These regional projections of emissions data have been prepared through 2018. However, since motor vehicle and non-road emissions continue to decrease long after a rule is adopted as the engine population is gradually replaced by newer engines, it is reasonable to expect that this projected decrease in regional NO_X

emissions from mobile and non-road sources should continue through 2020 and assure that ozone in the Memphis region will continue to decline throughout the 10-year maintenance period. Hence, we believe the projected regional NO_X reductions are adequate to assure that the Memphis region will continue demonstrating maintenance throughout the 10-year maintenance period.

Criteria (4)—The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate Shelby County, Tennessee (as part of the bi-State Memphis 1997 8-hour ozone nonattainment area) to attainment, Tennessee submitted a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment.

a. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of Tennessee must submit a revised maintenance plan, which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 1997 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, Tennessee's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

In coordination with Arkansas, Shelby County, Tennessee selected 2006 as ''the attainment year'' for the purposes of demonstrating attainment of the 1997 8-hour ozone NAAQS. The attainment inventory identifies the level of emissions in the area, which is sufficient to attain the 1997 8-hour ozone standard. Shelby County began development of the attainment inventory by first developing a baseline emissions inventory for the bi-State Memphis Area. The year 2006 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2009, 2017 and 2021. The projected inventory estimates emissions forward to 2021, which is beyond the 10-year interval required in Section 175(A) of the CAA. Non-road mobile emissions estimates were based on EPA's NONROAD2005 model. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2006 VOC and NO_X emissions, as well as the emissions for other years, for Shelby County were developed consistent with EPA guidance, and are summarized in Tables 4 and 5 in the following subsection.

c. Maintenance Demonstration

The February 26, 2009, final submittal includes a maintenance plan for Shelby County. This demonstration:

(i) Shows compliance and maintenance of the 1997 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOC and NO_X remain at or below attainment year 2006 emissions levels. The year 2006 was chosen as the attainment year because it is one of the most recent three years (*i.e.,* 2006, 2007, and 2008) for which Shelby County has clean air quality data for the 1997 8-hour ozone standard.

(ii) Uses 2006 as the attainment year and includes future emission inventory projections for 2009, 2017, and 2021.

(iii) Identifies an ''out year,'' at least 10 years (and beyond) after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, State NO_X and VOC MVEBs were established for the last year (2021) of the maintenance plan. Additionally, Tennessee chose, through interagency consultation, to establish MVEBs for the years 2006, 2009 and 2017 for NO_X and VOC. *See* section VII below.

(iv) Provides the following actual and projected emissions inventories, in tons per day (tpd) for Shelby County, Tennessee. *See* Tables 6 and 7.

TABLE 6—SHELBY COUNTY VOC EMISSIONS

[Summer season tons per day]

Source category	2006	2009	2017	2021
Point	13.665	14.335	16.985	18.391
Area	37.531	36.880	44.185	47.039
Mobile *	25.216	21.019	12.811	11.362
Non-road **	22.698	20.328	19.327	19.734
Total	99.110	92.562	93.308	96.526
Safety Margin	N/A	6.221	5.512	2.455

* Calculated using MOBILE6.2.
** Calculated using NONROAD2005c.

TABLE 7—SHELBY COUNTY AREA NO_X EMISSIONS

[Summer season tons per day]

Source category	2006	2009	2017	2021
Point *	14.458	15.353	17.254	18.376
Area	2.101	2.271	2.595	2.695

TABLE 7—SHELBY COUNTY AREA NO_X EMISSIONS—Continued

[Summer season tons per day]

Source category	2006	2009	2017	2021
Mobile **	55.878	44.477	20.925	16.999
Non-road ***	26.657	25.264	22.270	21.607
Total	99.094	87.365	63.044	59.677
Safety Margin	N/A	11.142	32.247	37.447

* TVA Allen Plant addressed in 2002–2003 by NO_X SIP call.
** Calculated using MOBILE6.2.
*** Calculated using NONROAD2005c.

A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Tennessee has decided to allocate a portion of the available safety margin to the Area's VOC and NO_X MVEBs for the years 2006, 2009, 2017, and 2021 for Shelby County and has calculated the safety margin in its submittal. *See* Tables 6 and 7, above. This allocation and the resulting available safety margin for Shelby County are discussed further in section VII of this proposed rulemaking.

d. Monitoring Network

There are currently three monitors measuring ozone in the bi-State Memphis Area (two in Shelby County, Tennessee and one in Crittenden County, Arkansas). TDEC has committed, in the maintenance plan, to continue operation of the two monitors in Shelby County, Tennessee in compliance with 40 CFR part 58, and has addressed the requirement for monitoring. Arkansas has made a similar commitment in their redesignation and maintenance plan submission to EPA for this area.

e. Verification of Continued Attainment

The State of Tennessee and the Memphis-Shelby County Health Department (MSCHD) have the legal authority to enforce and implement the requirements of the ozone maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Both agencies will track the progress of the maintenance plan by performing future reviews of triennial emissions inventory for Shelby County using the latest emissions factors, models and methodologies. For these periodic inventories, Shelby County will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, Shelby County will re-project emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the State. A State should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a State will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the February 26, 2009, submittal, Shelby County affirms that all programs instituted by the State and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the area. The contingency plan included in the submittal provides a three-phase approach to tracking and triggering mechanisms to determine when contingency measures are needed and a process of developing and adopting appropriate control measures.

Phase I

Designed to respond immediately in the event MSCHD *forecasts ozone levels above the 2008 NAAQS. An air quality alert will be issued to the local media and other parties. In the event such an alert is given, Shelby County will take the following actions:*

- Suspend all open burning permits until the ozone forecasts exhibits improvements; during ozone season, entities with permits are required to contact MSCHD daily to determine if burning will be allowed.
- Reduce fares for public transportation (conducted by the Memphis Area Transit Authority).
- Beginning in 2009, air quality alerts will be posted on the Intelligent Transportation System boards located on the expressway system in Shelby County encouraging motorists to take actions to reduce emissions.
- TVA Allen Steam Plant as agreed to postpone any scheduled operation of combustion turbines during an alert of peak energy generation.

In addition to these contingency measures, MSCHD will continue to work with State and local agencies to encourage adoption of measures to reduce ozone formation at all times especially during air quality alerts.

Phase II

Potential increases in local emissions specifically, when the certified triennial emissions inventory for VOC or NO_X exceed the 2006 base year attainment inventory by ten percent or more and at least one documentation of an exceedance of the 1997 ozone NAAQS from any nonattainment monitor in the area based on certified data during the most recent monitoring season.

In the event this occurs, MSCHD will conduct an investigation into the cause to determine if they are due to reporting errors or a non-recurring variance in the local emission profile. The investigation will last approximately three months from the time the inventory data is certified after which results will be reported to EPA and the State of Tennessee. If the investigation reveals the data are valid, MSCHD will expand voluntary programs and develop regulations to address the concerns. All

regulatory programs will be implemented within 18–24 months and include the following measures:

- Programs or incentives to decrease motor vehicle use;
- Programs to require additional emissions reduction on stationary sources;
- Employer-based transportation incentive plans;
- Restrictions of certain roads or lanes for, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles.

Phase III

Addresses a monitored violation of the 1997 ozone NAAQS in the nonattainment area according to certified data during the most recent monitoring season.

In the event this occurs, MSCHD will conduct an investigation to determine if the cause of the violation can be attributed to errors or clearly identifiable exceptional events outside of local control. MSCHD will solicit the involvement of all State agencies having jurisdiction in the surrounding area. The investigation will last no longer than three months after which results will be submitted to EPA and the State of Tennessee. If the investigation reveals the data are valid, further action will be taken. In addition to provisions described in Phase II, the following provisions will be adopted and implemented according to EPA guidance.

- Expand Basic I/M in Shelby County that meets requirements of Section 182(a)(2)(B) of the CAA;
- Develop RACT regulation for remaining major sources of NO_X emissions in Shelby County;
- Adopt all industrial and commercial VOC controls as provided in final EPA-approved Control Technology Guidelines through the date of the monitored violations.
- Develop regulations for submission to the Shelby County Commission or Tennessee State Air Board to adopt necessary control measures (within six months after the investigation)

All regulatory programs will be implemented within 18–24 months by the appropriate entity within Tennessee.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by the State of Tennessee for Shelby County meets the requirements of section 175A of the CAA and is approvable.

VII. What Is EPA's Analysis of Tennessee's Proposed State NO_X and VOC MVEBs for Shelby County, Tennessee?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (reasonable further progress and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB is established for the last year of the maintenance plan. A State may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for Shelby County, Tennessee has elected to develop State MVEBs for VOC and NO_X. Shelby County is developing these MVEBs, as required, for the last year of its maintenance plan, 2021, an interim year, 2017 and the first year, 2009 and a base year of 2006. The MVEBs for 2006 reflect mobile emissions for that year. The remaining MVEBs reflect the total on-road emissions for 2009, 2017 and 2021, plus an allocation from the available NO_X and VOC safety margin for each year. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. These MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model VMT and new emission factor models. The NO_X and VOC State MVEBs for Shelby County are defined in Table 8 below.

TABLE 8—SHELBY COUNTY VOC AND NO_X MVEBS

[Summer season tons per day]

Year	2006	2009 *	2017 *	2021 *
NO_X	55.878	55.620	55.173	54.445
VOC	25.216	27.240	18.323	13.817

* Includes an allocation from the available NO_X and VOC safety margins (*see* Table 7).

As mentioned above, Shelby County has chosen to allocate a portion of the available safety margin to the 2009, 2017 and 2021 NO_X and VOC State MVEBs. No safety margin was available to apply to the 2006 MVEBs. The following table identifies the amount of the NO_X and VOC safety margin that was allotted to the State MVEBs for applicable years.

TABLE 9—NO_X AND VOC SAFETY MARGIN ALLOCATION

[Summer season tons per day]

Year	2009	2017	2021
NO_X	11.142	32.247	37.447
VOC	6.221	5.512	2.455

Ninety-five percent of the safety margin emissions is allocated to the MVEBs. Specifically, 6.221 tpd of the available VOC safety margin and 11.142 tpd of the available NO_X safety margin are allocated to the 2009 MVEB, 5.512 tpd of the available VOC safety margin and 34.247 tpd of the available NO_X safety margin are allocated to the 2017 MVEB, and, 2.455 tpd of the available VOC safety margin and 37.447 tpd of the available NO_X safety margin are allocated to the 2021 MVEB. The remaining NO_X safety margin after allocation of some of the safety margin to the MVEBs for Shelby County is 0.586 tpd in 2009, 1.802 tpd in 2017 and 1.971 tpd in 2021. The remaining VOC safety margin after allocation of some of the safety margin to the MVEBs for Shelby County is 0.327 tpd in 2009, 0.290 tpd in 2017 and 0.129 tpd in 2021.

Through this rulemaking, EPA is proposing to approve the 2006, 2009, 2017 and 2021 MVEBs for VOC and NO_X for Shelby County because EPA has determined that the area maintains the 1997 8-hour ozone standard with the emissions at the levels of the budgets. Once the MVEBs for Shelby County (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future conformity determinations.

VIII. What Is the Status of EPA's Adequacy Determination for the Proposed State NO_X and VOC MVEBs for the years 2006, 2009, 2017 and 2021 for Shelby County, Tennessee?

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by State and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining ''adequacy'' of an MVEB are set out in 40 CFR 93.118(e)(4). The process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8–Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; transportation conformity rule amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for MVEBs is available in the proposed rule entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Tennessee's maintenance plan submission includes VOC and NO_X State MVEBs for Shelby County for the years 2006, 2009, 2017 and 2021. EPA reviewed both the VOCs and NO_X State MVEBs through the adequacy process. The Tennessee SIP submission, including the Shelby County VOC and NO_X MVEBs was open for public comment on EPA's adequacy Web site on March 12, 2009, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2006, 2009, 2017 and 2021 VOC and NO_X State MVEBs for Shelby County, Tennessee closed on April 13, 2009. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal. EPA provided a separate adequacy posting for the MVEBs in association with Crittenden County, Arkansas. The status of the adequacy process for the Crittenden County MVEBs will be discussed in EPA's separate action related to Crittenden County.

EPA intends to make its determination on the adequacy of the 2006, 2009, 2017 and 2021 MVEBs for Shelby County for transportation conformity purposes in the near future by completing the adequacy process that was started on March 12, 2009. After EPA finds the 2006, 2009, 2017 and 2021 MVEBs, adequate or approves them, the new MVEBs for VOC and NO_X must be used, for future transportation conformity determinations. For required regional emissions analysis years that involve the years 2009 through 2016, the applicable budgets for the purposes of conducting transportation conformity will be the new 2009 MVEBs; for years that involve the years 2017 through 2020, the applicable budget will be the new 2017 MVEBs for Shelby County. For required regional emissions analysis years that involve 2021 or beyond, the applicable budgets will be the new 2021 MVEBs. The 2006, 2009, 2017 and 2021 MVEBs are defined in section VII of this proposed rulemaking.

IX. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Approval of the 2006, 2009, 2017 and 2021 State NO_X and VOC MVEBs for Shelby County, Tennessee

EPA is proposing to make the determination that Shelby County, Tennessee has met the criteria for redesignation from nonattainment to attainment for the 1997 8-hour ozone NAAQS. Further, EPA is proposing to approve Tennessee's February 26, 2009, SIP submittal including the redesignation request for Shelby County, Tennessee (as part of the bi-State Memphis Area). Additionally, EPA is proposing to approve the emissions inventory for Shelby County in association with the bi-State Memphis Area. EPA will address the redesignation request, emission inventory and maintenance plan for Crittenden County, Arkansas (as a portion of the bi-State Memphis Area) in a separate but coordinated action. EPA believes that the redesignation request and monitoring data demonstrate that the bi-State Memphis Area has attained the 1997 8-hour ozone standard.

EPA is also proposing to approve the maintenance plan for Shelby County included as part of the February 26, 2009, SIP revision as meeting the requirements of section 175A of the CAA. The maintenance plan includes

State NO_X and VOC State MVEBs for 2006, 2009, 2017 and 2021. EPA is proposing to approve the 2006, 2009, 2017 and 2021 NO_X and VOC State MVEBs for Shelby County because the maintenance plan demonstrates that in light of expected emissions for all source categories, the area will continue to maintain the 1997 8-hour ozone standard.

Further as part of today's action, EPA is describing the status of its adequacy determination for the 2006, 2009, 2017 and 2021 State NO_X and VOC State MVEBs, in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy finding for the MVEBs, or the effective date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e).

X. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

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

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

Dated: November 6, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–27815 Filed 11–18–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2009–0036; MO 92210 50083 B2]

RIN 1018–AV47

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Flying Earwig Hawaiian Damselfly (Megalagrion nesiotes) and Pacific Hawaiian Damselfly (M. pacificum) Throughout Their Ranges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our July 8, 2009, proposal to list two species of Hawaiian damselflies, the flying earwig Hawaiian damselfly (*Megalagrion nesiotes*) and the Pacific Hawaiian damselfly (*M. pacificum*), as endangered under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*).

DATES: The comment period for the proposed rule published July 8, 2009 (74 FR 32490) is reopened. To allow us adequate time to consider and incorporate submitted information into our review, we request that we receive information on or before December 21, 2009.

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

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R1–ES–2009–0036, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Loyal Mehrhoff, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Box 50088, Honolulu, HI 96850; telephone 808–792–9400; facsimile 808–792–9581. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We reopen the public comment period on our July 8, 2009, proposal (74 FR 32490) to list two species of Hawaiian damselflies: the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly, as endangered under the Act (16 U.S.C. 1531 *et seq.*). Some peer review comments have already been received during the initial comment period on the proposal and may be found at *http://www.regulations.gov*. In order to allow for additional peer review, we are reopening the comment period for an additional 30 days. Comments previously received on this proposal need not be resubmitted, as they are already incorporated in the public record and will be fully considered in

the final determination. We request information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of these species. We are seeking information regarding:

(1) Biological, commercial trade, or other relevant data concerning threats (or lack thereof) to these species and regulations that may be addressing those threats;

(2) Additional information concerning the range, distribution, and population sizes of these species, including the locations of any additional populations of these species;

(3) Any information on the biological or ecological requirements of these species;

(4) Current or planned activities in the areas occupied by these species and their possible impacts on these species;

(5) Which physical and biological factors are essential to the conservation of each species and whether those features may require special management considerations or protections;

(6) Which specific areas are essential to the conservation of each species; and

(7) The reasons why any areas should or should not be designated as critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether the benefits of designation would outweigh the threats to the species that designation could cause, such that the designation of critical habitat is prudent.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' Information previously submitted need not be resubmitted as it has already been incorporated into the public record and will be fully considered.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hard copy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee we will be able to do so. We will post all hard copy comments on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation used to prepare this notice, will be available for public inspection at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Background

On July 8, 2009, we published a proposed rule to list two species of Hawaiian damselflies: the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly, as endangered under the Act (74 FR 32490). We determined that critical habitat for these two Hawaiian damselflies is prudent but not determinable at this time.

We are reopening the public comment period on this proposed rule in response to a request from the public to provide time for the compilation and submission of additional information relevant to the threat factors affecting these two Hawaiian damselflies. This proposal, if made final, would extend the Act's protection to these species. The Service seeks data and comments from the public on our proposed rule. In order to allow for the public to review these comments and have an opportunity to comment, we are reopening the public comment period for 30 days.

The flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly are unique insects found only in Hawaii and nowhere else in the world. Historically found on the islands of Hawai'i and Maui, the flying earwig Hawaiian damselfly has not been seen on the island of Hawai'i for over 80 years. Currently, the species is known only from one location on Maui. The primary threats to the flying earwig Hawaiian damselfly are: habitat loss and degradation due to agriculture and urban development, stream modifications, feral pigs, and nonnative plants; natural catastrophes such as hurricanes and landslides; predation by nonnative insects and bullfrogs; and the demographic and genetic consequences of small population size.

The Pacific Hawaiian damselfly was historically found on all of the main Hawaiian Islands except Kaho'olawe and Ni'ihau. This species is found at lower elevations and breeds predominantly in standing water such as marshes, ponds, and pools along stream channels. Currently, the Pacific Hawaiian damselfly is known only from the islands of Hawai'i, Maui and Moloka'i. The primary threats to the Pacific Hawaiian damselfly are: habitat loss and modification by agriculture and urban development, stream modifications, and nonnative plants; natural catastrophes such as hurricanes, drought, and landslides; and predation by nonnative fish, insects, and bullfrogs.

We are seeking public comment on our proposal to list the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly as endangered. If we finalize this rule as proposed, it would extend the Act's protections to these species.

References Cited

A complete list of all references cited in the proposed rule is available on the Internet at *http://www.regulations.gov* or by contacting the Pacific Islands Fish and Wildlife Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this notice are the staff members of the Pacific Islands Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 10, 2009.

Gary Frazer,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–27797 Filed 11–18–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 74, No. 222

Thursday, November 19, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Federal and Non-Federal Financial Assistant Instruments

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Federal and Non-Federal Financial Assistant Instruments.

DATES: Comments must be received in writing on or before January 19, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Chris Coppenbarger, Director of Acquisitions Management, USDA Forest Service, 1400 Independence Ave. SW., Mailstop 1138, Washington, DC 20250.

Comments also may be submitted via facsimile to 720–605–5100 or by e-mail to: *ccoppenbarger@fs.fed.us*.

The public may inspect comments received at Forest Service, U.S. Department of Agriculture, 1621 N. Kent Street, RPE 707, Arlington, VA during normal business hours. Visitors are encouraged to call ahead to 703–605–4719 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Chris Coppenbarger, Acquisitions Management at USDA Forest Service, 703–605–4719. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal and Non-Federal Financial Assistant Instruments.

OMB Number: 0596–NEW.

Type of Request: New.

Abstract: In order to carry out specific Forest Service activities, Congress created several authorities to assist the Agency in carrying out its mission. The Forest Service issues Federal Financial Assistance (FFA) awards (which are grants and cooperative agreements), as authorized by the Federal Grants and Cooperative Agreements Act (FGCAA), as well as agreements expressly exempted from FGCAA. In addition, Congress created specific authorizations for acts outside the scope of the FGCAA; as well as appropriations language conveying authority for the Forest Service to enter into relationships that are outside the scope of the FGCAA.

The Forest Service implements these authorizations using instruments such as collection agreements, FGCAA exempted agreements, memorandums of understanding, and other agreements (which contain mutual benefits for participating parties). These instruments fall outside the scope of the Federal Acquisition Regulations and often require financial plans and statements of work. To create, develop, and administer these funded and non-funded agreements, Forest Service employees collect information from cooperating parties from the pre-award to the closeout stage via telephone calls, e-mails, postal mail, and person-to-person meetings. Respondents usually have multiple options for responding, including forms, non-forms, electronically, face-to-face, over the telephone, and over the Internet. The scope of information collected varies, but typically includes project type, project scope, financial plan, statement of work, and cooperator's business information.

The information is collected from non-profit and for-profit institutions; institutions of higher education; State, local, and Native American tribal governments; individuals; foreign governments; and organizations. Without the collected information, the Forest Service would not be able to create, develop, and administer these funded and non-funded agreements. The Agency would be unable to develop or monitor projects, make or receive payments, or identify financial and accounting errors.

Estimate of Annual Burden: .1 to 4 hours annually per person.

Type of Respondents: Non-profit and for profit institutions; institutions of higher education; State, local, and Native American tribal governments, individuals; foreign governments; and organizations.

Estimated Annual Number of Respondents: 29,000.

Estimated Annual Number of Responses per Respondent: 1 to 4.

Estimated Total Annual Burden on Respondents: 23,101.9 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: November 13, 2009.

Charles L. Myers,

Deputy Chief.

[FR Doc. E9–27831 Filed 11–18–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Youth Conservation Corps Application and Medical History

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension, with no revision, of a currently approved

information collection, Youth Conservation Corps Application and Medical History. The collected information will help the Forest Service evaluate the employment eligibility of youth 15 to 18 years old through the Youth Conservation Corps Program. Under the Program, the Forest Service cooperates with other Federal agencies to provide seasonal employment for youth.

DATES: Comments must be received in writing on or before January 19, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Crystal Merica, USDA Forest Service, Recreation, Heritage, and Volunteer Resources, 201 14th Street, SW., Mailstop 1125, Washington, DC 20250.

Comments also may be submitted via facsimile to 202–205–1145 or by e-mail to: *ckmerica@fs.fed.us*.

The public may inspect comments received at USDA Forest Service, Yates Building, 201 14th Street, SW., Room 4 Central, Washington, DC, during normal business hours. Visitors are encouraged to call ahead to 202–205–1706 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Nancy Coyote, Recreation, Heritage, and Volunteer Resources staff, at 503–808–2816. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Youth Conservation Corps Application and Medical History.

OMB Number: 0596–0084.

Expiration Date of Approval: 2/2010.

Type of Request: Extension of a currently approved collection.

Abstract: Under the Youth Conservation Corps Act of August 13, 1970, as amended (U.S. 18701–1706), the Forest Service, U.S. Department of Agriculture; the Fish and Wildlife Service, National Park Service; and the Bureau of Land Management, U.S. Department of the Interior, cooperate to provide seasonal employment for eligible youth 15 to 18 years old. The Youth Conservation Corps stresses three important objectives:

1. Accomplish needed conservation work on public lands;

2. Provide gainful employment for 15- to 18-year-old males and females from all social, economic, ethnic, and racial backgrounds; and

3. Foster, on the part of the 15- to 18-year-old youth, an understanding and appreciation of the Nation's natural resources and heritage.

Youths seeking training and employment with the Youth Conservation Corps must complete the following forms: FS–1800–18, Youth Conservation Corps Application, and FS–1800–3, Youth Conservation Corps Medical History. The applicant's parent or guardian must sign both forms. The application and medical history form are evaluated by participating agencies to determine the eligibility of each youth for employment with the Youth Conservation Corps.

FS–1800–18, Youth Conservation Corps (YCC) Application: Applicants are asked to answer questions that include their name, Social Security number, date of birth, mailing address, and telephone number.

FS–1800–3, Youth Conservation Corps Medical History: Applicants are asked to answer questions regarding their personal health. The purpose of form FS–1800–3 is to certify the youth's physical fitness to work in the seasonal employment program.

Estimate of Annual Burden: 6 minutes.

Type of Respondents: Youth between the ages of 15 and 18 years old seeking seasonal employment with the Forest Service through the YCC program.

Estimated Annual Number of Respondents: 20,000.

Estimated Annual Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 2,000 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: November 13, 2009.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. E9–27832 Filed 11–18–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: U.S. Census Bureau.

Title: The Boundary and Annexation Survey, Boundary Validation Program.

Form Number(s): BAS 1, BAS 2, BAS 3, BAS 4, BAS 5, BAS 6, BAS–ARF1, BAS–ARF2, BVP–1, BVP–2.

OMB Control Number: 0607–0151.

Type of Request: Revision of a currently approved collection.

Burden Hours: 241,750.

Number of Respondents: 74,000.

Average Hours per Response: 3 hours and 16 minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension and revision to the Paperwork Reduction Act clearance for the Boundary and Annexation Survey (BAS) in order to continue the current BAS collection and conduct the Boundary Validation Program (BVP). The BAS is conducted annually to collect information about selected legally defined geographic areas, such as counties (and equivalent areas), incorporated places, minor civil divisions (MCDs), as well as federally recognized American Indian reservations, including off-reservation trust land and tribal subdivisions. The BVP is conducted every ten years to provide the highest elected or appointed official (HEO) an opportunity to review the boundary data collected during the BAS over the last decade. The 2010 BVP is conducted in parallel with the 2010 BAS.

The BVP validates the following actions by governmental units, as reported in the BAS:

- The creation of newly incorporated places and MCDs.
- The creation of new counties, and the addition of new federally recognized American Indian areas (AIAs).[1]
- The dissolution of incorporated places and MCDs.

[1] AIAs American Indian Areas include reservations and/or off-reservation trust lands and tribal subdivisions

• The changes in the boundaries of incorporated places, MCDs, counties, barrios, subbarrios, municipios, consolidated cities, and AIANNHAs.[2]

The results of the BAS and BVP provide geographic information to support the following products and/or services:

• Decennial and economic censuses.
• American Community Survey.
• Population Estimates Program.
• OMB Circular A–16 Responsibilities for:
○ Geospatial One Stop E–GOV Initiative.
○ Federal Geographic Data Committee (FGDC) Responsibilities for:
• FGDC Subcommittee on Cultural and Demographic Data.
• Boundaries.
• U.S. Geological Survey (USGS) Initiative on The National Map.
• Federal Information Processing Standards (FIPS) program.
• Geographic Names Information Systems (GNIS) program.

The 2010 BVP will include all actively functioning counties or statistically equivalent entities, incorporated places (including consolidated cities), minor civil divisions (MCDs), all federally recognized American Indian reservations (AIRs) and off-reservation trust land entities in the United States, and municipios, barrios and subbarrios in Puerto Rico. In addition, the Census Bureau will send a letter to the governor of each state explaining the 2010 BVP process and advising them that state boundaries will be reviewed in conjunction with relevant counties boundaries as part of the BVP.

The data and information collected from the BAS and BVP serve Federal, State, local, and tribal governments, and the private sector. The BVP provides validation for the information collected through the BAS. The BAS is the primary provider for the following services and products:

• Data collection for the decennial and economic censuses, and annual surveys.
• Primary data on new municipal incorporations and disincorporations.
• Legal boundary changes for governmental units.
• Inventory for the FIPS and GNIS programs.
• Updates of population estimates for governments including: the creation of new governments; the dissolution of governments; or changes in boundaries for local or tribal governments.
• Legal boundary framework layer for the FGDC National Spatial Data Infrastructure, the USGS National Map, and the E–GOV Geospatial One Stop.

Affected Public: State, Local, or Tribal government.

Frequency: The BVP is conducted only during the year of the decennial census, whereas the BAS is conducted annually.

Respondent's Obligation: Voluntary.

Legal Authority: The BAS and BVP fulfill the requirements specified in Title 13, United States Code, Section 6.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: November 13, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–27722 Filed 11–18–09; 8:45 am]

BILLING CODE 3510–07–P

[2] AIANNHAs American Indian, Alaska Native, Native Hawaiian Areas include reservations and/or off-reservation trust lands and tribal subdivisions, Alaska Native Regional Corporations (ANRCs) and Hawaiian home lands.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–946]

Pre–Stressed Concrete Steel Wire Strand from the People's Republic of China: Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

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

SUMMARY: The Department of Commerce (the Department) is aligning the final determination in the countervailing duty investigation of pre–stressed concrete steel wire strand (PC Strand) from the People's Republic of China (PRC) with the final determination in the companion antidumping duty investigation.

EFFECTIVE DATE: November 19, 2009.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8362.

SUPPLEMENTARY INFORMATION:

Background

On June 23, 2009, the Department initiated the countervailing and antidumping duty investigations on PC Strand from the PRC. *See Pre–stressed Concrete Steel Wire Strand from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 29670 (June 23, 2009), and accompanying Initiation Checklist,[1] and *Pre–stressed Concrete Steel Wire Strand From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 29665, (June 23, 2009). The countervailing and antidumping duty investigations have the same scope with regard to the subject merchandise covered. On November 2, 2009, the Department published the preliminary affirmative countervailing duty determination pertaining to PC strand from the PRC. *See Pre–stressed Concrete Steel Wire Strand from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 74 FR 56576 (November 2, 2009). On October 29, 2009, the petitioners submitted a letter, pursuant to 19 CFR 351.210(b)(4), requesting alignment of the final countervailing duty determination with the final determination in the companion antidumping duty investigation of PC strand from the PRC.

Therefore, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(4), we are aligning the final countervailing duty determination on PC Strand from the PRC with the final determination in the companion antidumping duty investigation of PC Strand from the PRC. The final countervailing duty determination will be issued on the same date as the final antidumping duty determination currently scheduled for March 8, 2010.

This notice is issued and published pursuant to section 705(a)(1) of the Act.

Dated: November 13, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–27837 Filed 11–18–09; 8:45 am]

BILLING CODE 3510–DS–S

[1] A public version of this and all public Departmental memoranda is on file in the Central Records Unit (CRU), room 1117 in the main building of the Commerce Department.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS97

Endangered Species; File No. 14604

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Harold Brundage, Environmental Research and Consulting, Inc, 126 Bancroft Road, Kennett Square, PA 19348, has applied in due form for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before December 21, 2009.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14604 from the list of available applications. These documents are also available for review upon written request or by appointment. The application and related documents are available for review upon written request or by appointment in the following offices: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and Northeast Region, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA, 01930; phone (978)281–9328; fax (978)281–9394. Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 14604.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant is seeking a five-year scientific research permit to characterize habitat use, relative abundance, reproduction, juvenile recruitment, temporal and spatial distributions, and reproductive health of the shortnose sturgeon population in the Delaware River and Estuary. The proposed permit requests annual authorization for non-lethal sampling methods on up to 1,000 adult and juvenile shortnose sturgeon. Research activities would include: capturing via gill net, trammel net, and trawl net; measuring and weighing; tagging with PIT and Floy T-bar tags; and sampling tissue for genetic analysis. A subset of 30 adults and 30 juveniles would be tagged with acoustic transmitters. Another subset of 24 adults would be examined internally using laparoscopic techniques and each would also have gonad biopsy and blood samples taken for analyses. Additionally, lethal takes of up to 500 eggs and larvae each year would be collected during seasonal spawning activity by artificial substrate, D-frame ichthyoplankton net, and/or epibenthic sled. Finally, one unintentional mortality or serious injury is requested annually.

Dated: November 13, 2009.

P. Michael Payne,

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

[FR Doc. E9–27829 Filed 11–18–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes and Tubes from Thailand: Extension of Time Limit for Final Results of Antidumping Duty New Shipper Review

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

EFFECTIVE DATE: November 19, 2009.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–2371.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2009, the Department published the preliminary results of the new shipper review of the antidumping duty order on circular welded carbon steel pipes and tubes (pipes and tubes) from Thailand for the period March 1, 2008 through September 30, 2008. *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 44825 (August 31, 2009) (*Preliminary Results*). This review covers the respondent, Pacific Pipe Public Company, Limited (Pacific Pipe), a producer/exporter of the subject merchandise to the United States.

Extension of Time Limit for Final Results

The final results of this new shipper review are currently due on November 22, 2009. Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act) requires the Department to issue the final results of a new shipper review of an antidumping order within 90 days after the date the preliminary results are issued. However, if the review is extraordinarily complicated, the Act allows the Department to extend the time limit for the final results to a maximum of 150 days. See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). In this new shipper review, the Department conducted verification after the publication of the *Preliminary Results*. The Department must now perform additional analysis on the complex information collected at verification. Thus, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is

extending the time period for issuing the final results of review by an additional 60 days to January 21, 2010.

This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act and 351.214(i)(2) of the Department's regulations.

Dated: November 13, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–27833 Filed 11–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the New Shipper Review

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

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

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0780.

Background

On June 24, 2009, the Department of Commerce (Department) initiated a new shipper review of fresh garlic from the People's Republic of China (PRC) for Qingdao Sea-line International Trading Co., Ltd. (Sea-line) covering the period November 1, 2008 through April 30, 2009. See Fresh Garlic from the People's Republic of China: Initiation of New Shipper Review, 74 FR 31241 (June 30, 2009). The preliminary results of this new shipper review are currently due no later than December 21, 2009.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated. *See* also 19 CFR 351.214(i)(1). The Act further provides that the Department may extend that 180-day period to 300 days if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214(i)(2).

Extension of Time Limit for Preliminary Results

The Department determines that this new shipper review involves extraordinarily complicated methodological issues, including the examination of importer information. Additional time is also required to ensure that the Department has adequate time to include Sea line's supplemental questionnaire responses in its examination of the bona fides of the company's sale. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for this preliminary results to 300 days, until no later than April 20, 2010.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: November 4, 2009.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–27653 Filed 11–18–09; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–952, A–583–844]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations

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

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

FOR FURTHER INFORMATION CONTACT: Maisha Cryor at (202) 482–5831 or Zhulieta Willbrand at (202) 482–3147 (the People's Republic of China (''PRC'')); Elizabeth Eastwood at (202) 482–3874 or Miriam Eqab at (202) 482–3693 (Taiwan), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determinations

On July 29, 2009, the Department of Commerce (''Department'') initiated antidumping duty investigations on narrow woven ribbons with woven selvedge from the PRC and Taiwan.[1] The *Initiation Notice* stated that, unless postponed, the Department would issue its preliminary determinations no later than 140 days after the date of issuance of the initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (''Act''). The preliminary determinations are currently due no later than December 16, 2009.

On October 30, 2009, Berwick Offray LLC, and its wholly-owned subsidiary Lion Ribbon Company, Inc. (collectively, ''Petitioner''), made timely requests, pursuant to section 773(b)(1)(A) of the Act, as amended, and 19 CFR 351.205(e), for a 50-day postponement of the preliminary determinations, in order to allow additional time for the Department to: (1) Fully investigate the mandatory respondents in both the PRC and Taiwan investigations and numerous separate rate applications in the PRC investigation; and (2) consider the significant number of complex transactions and adjustments in each investigation, *e.g.,* the substantial number of raw material inputs and the corresponding substantial amount of surrogate value data to be developed in the PRC investigation and the complexity of the model matching in the Taiwan investigation.[2] Also, Petitioner requested the postponement as this is the first petition ever filed involving the subject merchandise, and given the variety and complexity of the products involved, make this case in combination with the aforementioned reasons identified extraordinarily complicated, therefore requiring additional time to complete. *Id.* Because there are no compelling reasons to deny the requests, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the aforementioned preliminary determinations by 50 days.

An extension of 50 days from the current deadline of December 16, 2009, would result in a new deadline of February 4, 2010. The deadline for the final determinations will continue to be

[1] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations,* 74 FR 39291, 39296 (August 6, 2009) (''*Initiation Notice*'').

[2] *See* Petitioner's Letters regarding, ''Narrow Woven Ribbons With Woven Selvedge From China: Petitioner's Request For Postponement Of The Preliminary Determination,'' dated October 30, 2009, and ''Narrow Woven Ribbons with Woven Selvedge from Taiwan: Petitioner's Request for Postponement of the Preliminary Determination,'' dated October 30, 2009.

75 days after the date of the preliminary determinations, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 13, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–27835 Filed 11–18–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–875]

Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China: Rescission of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from Norca Engineered Products LLC and NEP Tianjin Machinery Company (collectively ''NEP''), exporter of subject merchandise, on April 30, 2009, the Department of Commerce (the ''Department'') initiated an administrative review of the antidumping duty order on non–malleable cast iron pipe fittings from the People's Republic of China (''PRC''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 74 FR 25711 (May 29, 2009). The period of review (''POR'') is April 1, 2008, through March 31, 2009. For the reason discussed below, we are rescinding this administrative review.

EFFECTIVE DATE: November 19, 2009.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Robert Bolling, Office 4, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–4081 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2009, the Department published a notice of opportunity to request an administrative review. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 14771 (April 1, 2009). On May 29, 2009, pursuant to a request made by NEP, the Department initiated an administrative review of the antidumping duty order on non–malleable cast iron pipe fittings from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 74 FR 25711 (May 29, 2009). On October 26, 2009, NEP withdrew its request for an administrative review of non–malleable cast iron pipe fittings from the PRC.

Rescission of Antidumping Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. As indicated above, NEP withdrew its request for a review on October 26, 2009, which is after the 90-day deadline. NEP stated that it was the only party to request a review.

Given the fact that we have not yet committed significant resources to the administrative review of NEP, we find it reasonable to accept NEP's withdrawal from this review. Specifically, we have not determined the factors of production and surrogate values of inputs used by NEP, calculated a preliminary margin for NEP, nor verified NEP's data.

No other party had requested a review for NEP, and no party has opposed NEP's withdrawal request. Accordingly, the Department is rescinding this review with respect to NEP in accordance with 19 CFR 351.213(d)(1).

Assessment Instructions

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For NEP rescinded antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

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

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 251.213(d)(4).

Dated: November 13, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–27834 Filed 11–18–09; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2009–0095]

Notice of Workshop on Product Testing; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; correction.

SUMMARY: The Consumer Product Safety Commission published a notice in the **Federal Register** of November 13, 2009, announcing an upcoming workshop on product testing. The document contained an incorrect telephone number.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone: 301–504–6836.

Correction

In the **Federal Register** of November 13, 2009 (74 FR 58611), on page 58612, at the top of the first column under the heading **FOR FURTHER INFORMATION CONTACT**, the correct telephone number should be (301) 504–7621.

Dated: November 13, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–27830 Filed 11–18–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Department of Defense Military Family Readiness Council (MFRC)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Department of Defense Military Family Readiness Council (MFRC). The purpose of the Council meeting is to review the Council's Charter, review the status of warrior care, and address selected concerns of military family organizations. The meeting is open to the public, subject to the availability of space.

DATES: The meeting will be held on 8 December 2009, from 1–3 p.m.

ADDRESSES: The meeting will be held at the Pentagon Conference Center B6 (escorts will be provided from Pentagon Conference Center entrance).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Osborn, Office of the Deputy Under Secretary (Military Community & Family Policy), 4000 Defense Pentagon, Room 5A726, Washington, DC 20301–4000. Telephone (703) 588–0099 and/or e-mail: *george.osborn.ctr@osd.mil.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public, subject to the availability of space. Persons desiring to attend may contact Mr. Michael Osborn at 703–588–0099 no later than 5 p.m. on Friday, 4 December 2009 to arrange for parking and escort into the conference room inside the Pentagon.

Written Statements

Interested persons may submit a written statement for consideration by the Council. Persons desiring to submit a written statement to the Council must notify the point of contact listed under **FOR FURTHER INFORMATION CONTACT** no later than 5 p.m., Friday, 4 December 2009.

Meeting Agenda

Tuesday, 8 December 2009 from 1–3 p.m.

Welcome and Introductions
Federal Advisory Committee Act Rules and Restrictions
Brief: Interstate Compact
Discussion of Data from Guard and Reserve Task Force, Joint Family Readiness Conference 2009, MC&FP Focus Groups, Nationwide Listening Sessions, Panel Recommendations from the Summit on Military Families
Review of and Voting on the Council's DRAFT Annual Report
Intentions for the Spring 2010 Meeting
Discussion: Service Exceptional Family Member Programs
Closing Remarks

Note: Exact order may vary.

Dated: November 16, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–27795 Filed 11–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0216]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Bonds and Insurance

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through November 30, 2009. DoD proposes that OMB approve an extension of the information collection requirement, to expire 3 years after the approval date.

DATES: DoD will consider all comments received by January 19, 2010.

ADDRESSES: You may submit comments identified by OMB Control Number 0704–0216, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: dfars@acq.osd.mil. Include OMB Control Number 0704–0216 in the subject line of the message.

Fax: (703) 602–7887.

Mail: Defense Acquisition Regulations System, Attn: Ms. Cassandra R. Freeman, OUSD(AT&L)DPAP(DARS), IMD3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any person information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra R. Freeman, at (703) 602–8383. The information collection requirement addressed in this notice is available on the World Wide Web at *http://www.acq.osd.mil/dpap/dars/dfars/index.htm.* Paper copies are available from Ms. Cassandra R. Freeman, OUSD(AT&L)DPAP(DARS), IMD3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 228, Bonds and Insurance, and related clauses at 252.228; OMB Control Number 0704–0216.

Needs and Uses: DoD uses the information obtained through this collection to determine the allowability of a contractor's costs of providing war-hazard benefits to its employees; to determine the need for an investigation regarding an accident that occurs in connection with a contract; and to determine whether a contractor performing a service or construction contract in Spain has adequate insurance coverage.

Affected Public: Businesses or other for profit and not-for profit institutions.

Annual Burden Hours: 859.

Number of Respondents: 49.

Responses per Respondent: 1.

Annual Responses: 49.

Average Burden per Response: Approximately 17.5 hours.

Frequency: On Occasion.

Summary of Information Collection

The clause at DFARS 252.228–7000, Reimbursement for War-Hazard Losses, requires the contractor to provide notice and supporting documentation to the contracting officer regarding claims or potential claims for costs of providing war-hazard benefits to contractor employees.

The clause at DFARS 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, requires the contractor to report promptly to the administrative contracting officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with the contract.

The clause at DFARS 252.228–7006, Compliance with Spanish Laws and Insurance, requires the contractor to provide the contracting officer with a written representation that the contractor has obtained the required types of insurance in the minimum amounts specified in the clause, when performing a service or construction contract in Spain.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

[FR Doc. E9–27851 Filed 11–18–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[OMB Control Number 0704–0434]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Radio Frequency Identification Advance Shipment Notices

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through December 31, 2009. DoD proposes that OMB approve an extension of the information collection requirement, to expire 3 years after the approval date.

DATES: DoD will consider all comments received by January 19, 2010.

ADDRESSES: You may submit comments identified by OMB Control Number 0704–0434, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: dfars@acq.osd.mil. Include OMB Control Number 0704–0434 in the subject line of the message.

Fax: (703) 602–7887.

Mail: Defense Acquisition Regulations System, Attn: Ms. Cassandra R. Freeman, OUSD (AT&L) DPAP (DARS), IMD3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any person information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra R. Freeman, at (703) 602–8383. The information collection requirement addressed in this notice is available on the World Wide Web at *http://www.acq.osd.mil/dpap/dars/dfars/index.htm.* Paper copies are available from Ms. Cassandra R. Freeman, OUSD (AT&L) DPAP (DARS), IMD3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 211 and related clause at 252.211; Radio Frequency Identification Advance Shipment Notices, OMB Control Number 0704–0434.

Needs and Uses: DoD uses advance shipment notices for the shipment of material containing RFID tag data. DoD receiving personnel use the advance shipment notice to associate the unique identification encoded on the RFID tag with the corresponding shipment. Use of the RFID technology permits DoD an automated and sophisticated end-to-end supply chain, which has increased visibility of assets and permits delivery of supplies to the warfighter more quickly.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 31,556.

Number of Respondents: 25,000.

Responses per Respondent: 3,981.

Annual Responses: 101,515,500.

Average Burden per Response: Approximately 1.1 seconds.

Frequency: On Occasion.

Summary of Information Collection

The clause at DFARS 252.211–7006, Radio Frequency Identification Advance Shipment Notices, requires the contractor to ensure that the data on each passive RFID tag are unique and conforms to the requirements that they are readable and affixed to the appropriate location on the specific level of packaging in accordance with MIL–STD–129 tag placement specifications. The contractor shall encode an approved RFID tag using the appropriate instructions at the time of contract award. Regardless of the selected encoding scheme, the contractor is responsible for ensuring that each tag contains a globally unique identifier. The contractor shall electronically submit advance shipment notices with the RFID tag identification in advance of the shipment in accordance with the procedures at *http://www.acq.osd.mil/log/rfid/advance_shipment_ntc.htm.*

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

[FR Doc. E9–27853 Filed 11–18–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Revise Scope of Draft Environmental Impact Statement for Updating the Water Control Manuals for the Apalachicola-Chattahoochee-Flint River Basin To Account for Federal District Court Ruling

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Army Corps of Engineers (Corps), Mobile District, intends to revise the scope of the Environmental Impact Statement (EIS) for the Water Control Manuals updates for the Apalachicola-Chattahoochee-Flint (ACF) River Basin in Alabama, Florida, and Georgia, to account for a July 17, 2009 Federal court ruling. On July 17,

2009, Judge Paul A. Magnuson issued a memorandum and order in the case *In re Tri-State Water Rights Litigation* (M.D. Fla. No. 3:07-md-01), addressing the Corps' authority to provide water supply benefits through its operation of the Buford Dam/Lake Sidney Lanier project. The Corps solicits comments from interested persons regarding significant new information and circumstances introduced by the July 17, 2009, Order related to the scope of the EIS in connection with the water control manual updates. Public comments will be considered in preparation of the Draft EIS and updated water control manuals.

A Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** (73 FR 9780) on February 22, 2008. In January 2009, after considering public comments, the Corps published a Final Scoping Report, Environmental Impact Statement, Update of the Apalachicola-Chattahoochee-Flint (ACF) River Basin, in Alabama, Florida, and Georgia, available at *http://www.sam.usace.army.mil/pa/acf-wcm/.* Any comments previously submitted will be reviewed and addressed in any scoping revisions. There is no need to resubmit comments previously provided during the 2008 scoping effort, unless in your opinion the above-cited district court decision necessitates additional comments from you.

DATES: The public comment period will commence with publication of this notice, and will end 45 days after its publication. This notice will also be distributed to those who commented during the original scoping period of October-December 2008. This distribution will occur by mail and/or e-mail on or about the date of this notice. No additional public scoping meetings are planned. Comments on the scope of the EIS, including concerns, issues, or proposed alternatives that should be considered in the EIS, should be submitted in writing to (see **ADDRESSES**) and will be accepted throughout the public comment period. Comments may also be submitted by using the electronic comment form at: *http://www.sam.usace.army.mil/pa/acf-wcm/mail_list.htm#form.*

ADDRESSES: To facilitate the Master Water Control Manual update, a support contract has been awarded to Tetra Tech, Inc. for preparation of the EIS and additional scoping. Please mail written comments to Tetra Tech, Inc., 107 Saint Francis Street, Ste. 1403, Mobile, AL 36602–9986.

FOR FURTHER INFORMATION CONTACT: Questions about the manual update or National Environmental Policy Act (NEPA) process should be directed to: Mr. Brian Zettle, Biologist, Environment and Resources Branch, Planning and Environmental Division, U.S. Army Engineer District-Mobile, Post Office Box 2288, Mobile, AL 36628–0001; Telephone (251) 690–2115; or delivered by electronic facsimile at (251) 694–3815; or e-mail: *brian.a.zettle@usace.army.mil.* You may also request to be included on the mailing list for public distribution of notices, meeting announcements and documents.

SUPPLEMENTARY INFORMATION: The Corps is updating the water control plans and manuals for the ACF Basin. This effort will include an updated Master Water Control Manual, containing plans for the coordinated operation of the five Federal reservoirs within the ACF basin as a system, and updated Water Control Manuals for each of those reservoirs, containing plans for the operation of those projects for their authorized purposes. Collectively, these documents may be referred to as the ''water control plans and manuals,'' ''water control manuals,'' or simply as the ''Master Water Control Manual,'' which includes the project-specific water control manuals. The water control plans and manuals will contain drought plans and action zones to assist Federal water managers in knowing when to reduce or increase reservoir releases and conserve storage in the Federal reservoirs and how to ensure the safety of dams during atypical conditions such as droughts and floods. The draft EIS will assess environmental impacts associated with these updated operating criteria and guidelines.

On July 17, 2009, Judge Paul A. Magnuson issued a memorandum and order in the Tri-State Water Rights litigation available at *http://www.sam.usace.army.mil/pa/acf-wcm/pdf/071709court_ruling.PDF.* The court's ruling has introduced new information and circumstances that bear upon certain determinations reflected in the Corps' January 2009 Final Scoping Report, to the extent that those determinations included operating the Lake Lanier/Buford Dam project to support present or increased levels of municipal and industrial water supply withdrawals.

The court determined that the Corps has exceeded its authority under the project authorization and the Water Supply Act of 1958 by operating the Buford Dam/Lake Lanier project to accommodate present levels of withdrawals for water supply. The court's order states that ''absent Congressional authorization or some other resolution of this dispute'' within three years of July 17, 2009, ''the operation of Buford Dam will return to the 'baseline' operation of the mid-1970s. Thus, the required off-peak flow will be 600 cfs [cubic feet per second] and only Gainesville and Buford will be allowed to withdraw water from the lake.'' The order states that until that time, ''the parties may continue to operate at current water-supply withdrawal levels but should not increase those withdrawals absent the agreement of all other parties to this matter.''

As a result of this ruling, the Corps is revising the scope of the EIS and water control manual updates in the following respects:

a. In updating the ACF water control plans and manuals, which are expected to be implemented in approximately three years, i.e., in July 2012, the Corps will consider only operations that are within existing authority. The Corps previously announced its intent to update the plans and manuals ''to reflect current operations.'' Because the court has held that the Corps lacks authority to continue to support present levels of water supply withdrawals at Lake Lanier or to reallocate storage to accommodate those or additional withdrawals, and because the court has ordered that most withdrawals from Lake Lanier must cease in 2012, the Corps will update the plans and manuals for operating the Lake Lanier project in a manner that reflects the court's order. Thus, the Corps will not continue to accommodate the present level of withdrawals beyond July 2012, nor will the Corps consider a reallocation of storage for water supply at Lake Lanier as part of the process for updating the ACF water control plans and manuals. Should the States and other interested parties to *In re Tri-State Water Rights Litigation* reach an agreement that involves reallocation of storage for water supply, the Corps would be prepared to submit that agreement to the Army and higher Executive Branch authorities for consideration and possible referral to Congress. Should Congress enact legislation authorizing additional water supply at Lake Lanier, the Corps would update its operations, plans and manuals accordingly.

b. Pursuant to the court's order, as of July 17, 2012, the updated manuals will reflect that water supply withdrawals from Lake Lanier will be limited to the amounts authorized by relocation agreements with the Cities of Gainesville and Buford, Georgia. Those agreements, which were executed at the

time of the reservoir's construction, authorize withdrawals of 8 million gallons per day (mgd) for Gainesville and 2 mgd for Buford, a combined 10 mgd.

c. Pursuant to the court's order, as of July 17, 2012, the updated manuals will reflect that ''the required off-peak flow [at Buford Dam] will be 600 cfs.'' Currently, peak hydropower demand at Buford Dam typically occurs on weekdays from 0500–0900 and 1500–2200 between October 1 and March 31, and on weekdays from 1300–1900 between April 1 and September 30. When the Corps is not generating hydropower to meet this peak demand, the Corps will not release more than 600 cfs from Buford Dam to support water supply withdrawals.

All other aspects described in the notice of intent published in the **Federal Register** (73 FR 9780) on February 22, 2008 remain the same. To satisfy its obligations under NEPA, the Corps will evaluate present circumstances as part of its EIS, while acknowledging that it currently lacks authority to continue to accommodate present levels of water supply at Lake Lanier beyond July 17, 2012.

Additional information on the ACF River Basin and the Master Water Control Manual Update process will be posted on the Mobile District Web page as it becomes available: *http://www.sam.usace.army.mil.*

R. Daren Payne,

Lieutenant Colonel, Corps of Engineers, Acting District Commander.

[FR Doc. E9–27787 Filed 11–18–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

The Release of the Draft Environmental Impact Statement (DEIS) for the Town of Nags Head Proposed Beach Nourishment Project in Dare County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Regulatory Division, has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899, from the Town of Nags Head to dredge up to 4.6 million cubic yards of beach-quality sediment from an offshore borrow source, and deposit the material along approximately 10 miles of ocean shoreline in the Town of Nags Head.

The applicant proposes to utilize a self-contained hopper dredge during a proposed construction window from April through September to undertake the dredging operations and discharge the sand on the beach via submerged pipeline. The applicant's proposed borrow areas include sites identified as having beach quality material in the U.S. Army Corps of Engineers, Wilmington District's EIS, entitled *Final Feasibility Report and Environmental Impact Statement on Hurricane Protection and Beach Erosion Control,* dated September 2000 (USACE 2000).

DATES: Written comments on the Draft EIS will be received until December 30, 2009.

ADDRESSES: Copies of comments and questions regarding the Draft EIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Washington Regulatory Field Office. ATTN: File Number 200640282, 2407 W. Fifth Street, Washington, NC 27889. Copies of the Draft EIS can be reviewed on the Wilmington District Regulatory homepage at, *http://www.saw.usace.army.mil/wetlands/regtour.htm,* or contact Ms. Sharon Barnett, at (910) 251–4555, to receive written or CD copies of the Draft EIS.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Raleigh Bland, Project Manager, Regulatory Division, telephone: (910) 251–4564.

SUPPLEMENTARY INFORMATION:

1. *Project Description.* The project site is located off NC Highway 12, adjacent to the Atlantic Ocean, in the Town of Nags Head, Dare County, NC. The proposed project totals approximately 10 miles of ocean shoreline beginning approximately 1 mile from the town's northern limit and extending south to the town line adjacent to the Cape Hatteras National Seashore. The proposed borrow area is located in the Atlantic Ocean approximately 2–3 miles offshore of the project site. The Town of Nags Head encompasses approximately 11 miles of ocean shoreline on a barrier island located at the northern end of North Carolina's Outer Banks. The width of the berm of the island's dune system varies considerably with location along the town's beach and with the season. Along most of the project area, the winter berm is non-existent due to continuing erosion processes. Dune habitat is currently decreasing due to excessive erosion of the base or toe of the dunes by waves that travel unimpeded over eroded wet beach to directly impact dunes. The Town of Nags Head proposes to excavate 4.6 million cubic yards of beach-quality sediment from an offshore borrow source, and deposit the material along approximately 10 miles of ocean shoreline owned by the Town of Nags Head.

2. *Proposed Action.* The purpose of the proposed action is to nourish the Town of Nags Head's ocean shoreline to restore a protective beach, replace sand lost during the period of delay in the implementation of the Federal *Dare County Hurricane Protection and Beach Erosion Control Project* (USACE 2000), and to help preserve property values and the tax base of Dare County.

The proposed borrow area includes portions of offshore areas identified by the Corps of Engineers in the 2000 Federal Dare County Project. The anticipated optimal equipment for excavations will include ocean-certified, self-contained hopper dredges. Such equipment typically excavates shallow trenches (approximately 2–3 foot sections) in each pass (leaving narrow undisturbed areas at the margin of each cut), then travels to a buoyed pipeline anchored close to shore. Discharge to the beach is via submerged pipeline across the surf zone, then by way of shore-based pipe positioned along the dry beach. Only a small area of the Corps borrow area will be required to provide up to 4.6 million cubic yards of beach quality material. The applicant is coordinating the specific area for use in the proposed project with the Corps with the following understanding: (1) The final borrow area required for the emergency beach nourishment project can be limited to the equivalent of a 0.9 square-mile (approximately 575 acres) area, (2) the borrow area used will be contiguous rather than a series of small impact areas, (3) once used, the borrow area will no longer be available for use, consistent with the Dare County Project, and (4) the borrow area will be delineated so as to avoid ongoing biological monitoring stations established by the Corps in connection with the Dare County Project. The project will be built in approximate 1–2 mile sections, optimizing the disposition of pipeline. Sections will be pumped into place with the aid of temporary dikes pushed up by bulldozers in the surf zone. Daily operations will impact approximately 500–1,000 linear feet of shoreline as work progresses in either direction from the submerged pipeline. Upon completion of a section, the submerged pipe and beach-building equipment will be shifted to the next section. As construction progresses, sections will be

graded to final contours, dressed to eliminate low areas, and opened for use by the public. Support equipment will be shifted out of completed sections as soon as practicable, so that construction activities in a particular reach will not disrupt normal beach use for only a month or so at any locality. The finished sections will be allowed to adjust to natural processes for several months. The final process will include the placement of dune fencing and/or dune plantings as needed or required.

4. *Alternatives.* An extensive alternatives analysis was performed and reviewed for this project. This included the evaluation of a no action alternative; a retreat and relocate alternative; and the preferred alternative. Many alternatives were identified and evaluated through the scoping process, and further detailed descriptions of all alternatives is disclosed in Section 5.0 of the Draft EIS.

5. *Scoping Process.* A public scoping meeting was held on April 28, 2009 and public and agency comments were solicited for input in the preparation of the Draft EIS. The scoping meeting was well attended by the public, as well as representatives from local, State, and Federal governmental agencies.

The COE coordinated closely with the North Carolina Division of Coastal Management, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service in the development of the Draft EIS to ensure the process complies with State Environmental Policy Act (SEPA) requirements, as well as the NEPA requirements. The Draft EIS has been designed to consolidate both NEPA and SEPA processes, but the State of North Carolina will administer their own Coastal Zone Management Permit process.

Dated: November 9, 2009.

Jefferson M. Ryscavage,

Colonel, U.S. Army, District Commander.

[FR Doc. E9–27790 Filed 11–18–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation, Board of Visitors Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the annual meeting of the Board of Visitors (BoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). The Board's charter was renewed on February 1, 2008 in compliance with the requirements set forth in Title 10 U.S.C. 2166.

Date: Friday, December 4, 2009.

Time: 8 a.m. to 4 p.m.

Location: The National Infantry Museum and Soldier Center Classroom, 1775 Legacy Way, Columbus, GA 31903.

Proposed Agenda: The WHINSEC BoV will be briefed on activities at the Institute since the last Board meeting on June 18, 2009, as well as receive other information appropriate to its interests

FOR FURTHER INFORMATION CONTACT: WHINSEC Board of Visitors Office of the Designated Federal Official at (703) 692–7381.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Pursuant to the Federal Advisory Committee Act of 1972 and 41 CFR 102–3.140(c), members of the public or interested groups may submit written statements to the advisory committee for consideration by the committee members. Written statements should be no longer than two type-written pages and sent via fax to (706) 545–6964 by 5 p.m. EST on Wednesday, December 2, 2009 for consideration at this meeting. In addition, public comments by individuals and organizations may be made from 9:30 a.m. to 9:45 a.m. during the meeting. Public comments will be limited to three minutes each. Anyone desiring to make an oral statement must register by sending a fax to (703) 614–8920 with their name, phone number, e-mail address, and the full text of their comments (no longer than two type-written pages) by 5 p.m. EST on Friday, November 27, 2009. The first five requestors will be notified by 5 p.m. EST on Tuesday, December 1, 2009 of their time to address the Board during the public comment forum. All other comments will be retained for the record. Public seating is limited to ten seats and will be available on a first come, first serve basis.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–27789 Filed 11–18–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

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

FOR FURTHER INFORMATION CONTACT: Elizabeth Shelley, Civilian Senior Leader Management Office, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Department of the Army Performance Review Boards are:

1. Ms. Stephanie Barna, Deputy General Counsel (Operations and Personnel), Office of the General Counsel.
2. Dr. Craig College, Deputy, Deputy Assistant Chief of Staff for Installation Management, Office of the Assistant Chief of Staff for Installation Management.
3. Ms. Kathryn Condon, Special Assistant to the Under Secretary of the Army, Office of the Under Secretary of the Army.
4. General Ann E. Dunwoody, Commanding General, United States Army Materiel Command.
5. Ms. Teresa Gerton, Deputy Chief of Staff for Resource Management, United States Army Materiel Command.
6. Mr. Jerry Hansen, Deputy Assistant Secretary of the Army (Strategic Infrastructure), Office of the Assistant Secretary of the Army (Installations and Environment).
7. Ms. Ellen Helmerson, Deputy Chief of Staff, G–1/4 (Personnel and Logistics), United States Army Training and Doctrine Command.
8. Mr. Thomas Lamont, Assistant Secretary of the Army (Manpower and Reserve Affairs), Office of the Secretary of the Army Manpower and Reserve Affairs.
9. Mr. Mark Lewis, Assistant Deputy Chief of Staff for Operations (G–3/5/7), Office of Deputy Chief of Staff for Operations.
10. Mr. Joseph McDade, Assistant Deputy Chief of Staff, G–1, Office of the Assistant G–1.
11. Ms. Joyce E. Morrow, Administrative Assistant to the Secretary of the Army, Office of the Secretary of the Army.

12. Major General Roger Nadeau, Commanding General, Army Test and Evaluation Command.

13. Mr. John Nerger, Executive Director/Director of Services, Assistant Chief of Staff for Installation Management, Installation Management Command.

14. Mr. Levator Norsworthy Jr., Deputy General Counsel (Acquisition)/ Senior Deputy General Counsel, Office of the General Counsel.

15. Lieutenant General James H. Pillsbury, Deputy to the Commanding General, United States Army Material Command.

16. Mr. Dean G. Popps, Principal Deputy Assistant Secretary of the Army (Acquisition, Logistics and Technology)/Director for Iraq Reconstruction and Program Management, Office of the Assistant Secretary of the Army Acquisition, Logistics and Technology).

17. Mr. Danny Pummill, Director of Operations, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).

18. Mr. Wimpy Pybus, Deputy Assistant Secretary of the Army for Integrated Logistics Support, Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology).

19. Major General Don Riley, Deputy to the Commanding General, United States Army Corps of Engineers.

20. Mr. Craig Schmauder, Deputy General Counsel (Installation, Environment and Civil Works), Office of the General Counsel.

21. Mr. Karl F. Schneider, Principal Deputy to the Assistant Secretary of the Army (Manpower and Reserve Affairs), Office of Assistant Secretary of the Army, Manpower and Reserve Affairs.

22. Mr. Larry Stubblefield, Deputy Administrative Assistant to the Secretary of the Army/Director, Shared Services, Office of the Administrative Assistant to the Secretary of the Army.

23. Lieutenant General Robert L. Van Antwerp Jr., Commanding General, United States Army Corps of Engineers.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–27788 Filed 11–18–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice—New computer matching agreement between the Department of Education and the Department of Defense.

SUMMARY: Section 473(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1087mm(b)) requires the Secretary of Defense to provide the Secretary of Education with information to identify children whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001. Beginning with the 2009–2010 Award Year, a qualifying student may be eligible for a higher amount of Title IV, HEA program assistance. The qualifying student must have been age 24 or less at the time of the parent or guardian's death or, if older than 24, enrolled in an institution of higher education on a part-time or full-time basis at the time of the parent or guardian's death. Beginning July 1, 2010, students who are otherwise qualified children of deceased U.S. military who meet the requirements of section 420R of the HEA (20 U.S.C. 1070h) (effective July 1, 2010) may also be eligible for higher amounts of Title IV, HEA program assistance.

In order to ensure that students whose parent or guardian died as a result of performing United States military service in Iraq or Afghanistan after September 11, 2001 receive the maximum allowable amount of Title IV, HEA program assistance, the Department of Defense and the Department of Education are implementing a new computer matching program to commence in the fall of 2009.

The purpose of this notice is to announce the new computer matching program and to provide certain required information concerning the computer matching program.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818, June 19, 1989), and OMB Circular A–130, the following information is provided:

1. *Names of Participating Agencies.*

The Department of Education (ED) (recipient agency) and the Department of Defense (DoD)(source agency).

2. *Purpose of the Match.*

The purpose of this matching program is to ensure that the requirements of sections 420R and 473(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070h and 20 U.S.C. 1087mm(b)) are fulfilled.

DoD is the lead contact agency for information related to benefits for military service dependents and, as such, provides these data to ED. ED (recipient agency) seeks access to the information contained in the DoD (source agency) Defense Manpower Data Center (DMDC) system and the Defense Enrollment Eligibility Reporting System (DEERS) that contains information ED requires.

3. *Authority for Conducting the Matching Program.*

Under sections 420R and 473(b) of the HEA (20 U.S.C. 1070h and 20 U.S.C. 1087mm(b)) ED must identify the children of military personnel who have died as a result of their military service in Iraq or Afghanistan after September 11, 2001 to determine if the child is eligible for increased amounts of Title IV, HEA program assistance.

DoD and ED have determined that using DoD data provided to ED for matching against ED's Federal Student Aid Application File (18–11–01) is the only practical method that the agencies can use to meet the statutory requirements of the HEA.

4. *Categories of Records and Individuals Covered by the Match.*

DoD will submit, for verification, records from its DMDC and DEERS data bases to ED's Central Processing System files (Federal Student Aid Application File (18–11–01)), the Social Security number (SSN) and other identifying information for each DoD selected qualifying dependent record. ED will use the SSN, date of birth, and the first two letters of an applicant's last name to match with the Federal Student Aid Application File.

The DoD DMDC and DEERS systems contains the names, SSNs, dates of birth, and other identifying information regarding dependents of service personnel who died as a result of performing their military service in Iraq or Afghanistan after September 11, 2001. This system of records also contains the date the servicemember died.

5. *Effective Dates of the Matching Program.*

The matching program will be effective on the last of the following dates: (1) Thirty (30) days after notice of the matching program has been published in the **Federal Register**; or (2) forty (40) days after a report concerning the matching program has been transmitted to OMB and transmitted to the Congress along with a copy of this agreement, unless OMB waives 10 days of this 40-day period for compelling reasons, in which case, 30 days after transmission of the report to OMB and Congress.

The matching program will continue for 18 months after the effective date of the computer matching agreement and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. *Address for Receipt of Public Comments or Inquiries.*

Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street, NE., Washington, DC 20202–5454. Telephone: (202) 377–3385. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

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.

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.*

Authority: 5 U.S.C. 552a; 21 U.S.C. 862(a)(1).

Dated: November 13, 2009.

William J. Taggart,

Chief Operating Officer, Federal Student Aid.

[FR Doc. E9–27841 Filed 11–18–09; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act; Notice of Public Meeting of the Technical Guidelines Development Committee

DATE AND TIME: The meeting will be held on Wednesday, December 9, 2009, from 8:30 a.m. until 5 p.m., and Thursday, December 10, 2009 from 8:30 a.m. to 5 p.m., Eastern Time.

STATUS: This meeting will be open to the public. There is no fee to attend, but, due to security requirements, advance registration is required. Registration information will be available at: *http://www.vote.nist.gov.*

SUMMARY: The Technical Guidelines Development Committee (TGDC) will meet in open session on Wednesday, December 9, 2009 from 8:30 a.m. to 5 p.m., Eastern Time, and Thursday, December 10, 2009 from 8:30 a.m. to 5 p.m., Eastern Time.

The Technical Guidelines Development Committee (the ''Development Committee'') has scheduled a plenary meeting for December 9–10, 2009. The Committee was established to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The purpose of the meeting of the Development Committee will be to receive information from both National Institute of Standards and Technology (NIST) and the EAC regarding current standards development work. The Development Committee will also be briefed on the EAC's Testing and Certification process, UOCAVA work, as well as the EAC's Voting System Election Operations Assessment. The Development Committee will also begin to develop a work plan for its future work.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology (NIST), 100 Bureau Drive, Building 101, Gaithersburg, Maryland 20899–8900. Members of the public wishing to attend the meeting must notify Mary Lou Norris or Angela Ellis by COB. Wednesday, December 2, 2009, per instructions under the **SUPPLEMENTARY INFORMATION** section of this Notice.

FOR FURTHER INFORMATION CONTACT: John Wack, NIST Voting Program, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8970, Gaithersburg, MD 20899–8930, telephone: (301) 975–3411.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the TGDC will meet Wednesday, December 9, 2009 from 8:30 a.m. to 5 p.m., Eastern time, and Thursday, December 10, 2009 from 8:30 a.m. to 5 p.m., Eastern time. All sessions will be open to the public. The TGDC was established pursuant to 42 U.S.C 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. Details regarding the TGDC's activities are available at *http://vote.nist.gov.*

The Technical Guidelines Development Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather information and review preliminary reports on issues pertinent to voluntary voting standard recommendations. At subsequent plenary sessions, additional resolutions were debated and adopted by the TGDC. The resolutions define technical work tasks for NIST that assist the TGDC in developing recommendations for voluntary voting system guidelines. The Development Committee approved initial recommendations for voluntary voting system guidelines at the April 20th & 21st, 2005 meeting. The recommendations were formally delivered to the EAC in May 2005 for their review. In September of 2005, the Development Committee began review of preliminary technical reports for the next iteration of voluntary voting system guidelines. The Development Committee began consideration of future recommendations for voluntary voting system guidelines at the September 29, 2005 meeting. At the March 29th, 2006 meeting, the Development Committee reviewed and approved draft technical guidance documents that will form the bases for recommendations for future voluntary voting system guidelines. The Committee reviewed, debated and approved draft recommendations for the next iteration of voluntary voting system guidelines at the May 21st and 22nd, 2007 meeting.

All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register by COB. Wednesday, December 2, 2009, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Mary Lou Norris or Angela Ellis, and they will provide you with instructions for admittance. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mary Lou Norris' e-mail address is *marylou.norris@nist.gov,* and her phone number is (301) 975–2002. Angela Ellis' e-mail address is *angela.ellis@nist.gov,* and her phone number is (301) 975–3881.

Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and

coordination with the Commission's Communications Office.

Alice Miller,

Chief Operating Officer, U.S. Election Assistance Commission.

[FR Doc. E9–27874 Filed 11–17–09; 11:15 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1490–050]

Brazos River Authority; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 12, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands.

b. *Project No:* 1490–050.

c. *Date Filed:* August 11, 2009, supplemented October 27, 2009.

d. *Applicant:* Brazos River Authority.

e. *Name of Project:* Morris Sheppard Hydroelectric Project.

f. *Location:* Possum Kingdom Lake in Palo Pinto County, TX.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Phillip Ford, (254) 761–3100.

i. *FERC Contact:* Mark Carter, (202) 502–6554.

j. *Deadline for filing comments, motions to intervene, and protests:* December 14, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Brazos River Authority (licensee) requests Commission authorization to grant Tim Hester and Gaines Bend Development Inc. (grantees), permission to construct and operate a marina on lands within the project boundary. The marina's facilities would include 91 boat slips, a ship store, a 740-foot wave attenuator, a swim area, a fuel dock, and a boat ramp. These facilities would serve the public and residents of the Gaines Bend subdivision, and would provide access to a restaurant and a dry storage facility located adjacent to and outside the project boundary. Prior to filing of the application, the grantee consulted with appropriate agencies and other entities, including the U.S. Fish and Wildlife Service, Texas Parks and Wildlife Department, and Texas Historical Commission.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27734 Filed 11–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–13–000]

Wyoming Interstate Company, Ltd.; Notice of Application

November 13, 2009.

Take notice that on November 4, 2009, Wyoming Interstate Company, Ltd. (WIC) whose mailing address is Post Office Box 1087, Colorado Springs, Colorado, 80944, filed an Application for a Certificate of Public Convenience and Necessity in Docket No. CP10–13–000, pursuant to Section 7(c) of the Natural Gas Act, to modify existing its facilities, construct and operate new facilities for the WIC 2010 System Enhancement Project, all as more fully set forth in the application on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.fer.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding WIC's application should be directed to: Richard Derryberry, Director, Regulatory Affairs Department, Wyoming Interstate Company, Ltd., Post Office Box 1087,

Colorado Springs, Colorado 80904; Phone (719) 520–3782.

The WIC 2010 System Enhancement Project includes: (1) The modification of one of the two Taurus 70 compressor installed at WIC's Wamsutter Compressor Station, in Sweetwater County, Wyoming, to improve delivery capabilities at the Wamsutter Compressor Station (Wamsutter); (2) the modification of piping and measurement facilities at WIC's Cheyenne Compressor Station (Cheyenne) in Weld County, Colorado, to allow for bi-directional flow on WIC's mainline system between Cheyenne and Wamsutter; and (3) the construction of a 2.43-mile, 20-inch lateral pipeline from the modified Wamsutter Compressor Station to a new interconnect and meter station with Questar Overthrust Pipeline Company (Overthrust) and a new interconnection at an existing meter station between WIC and Rockies Express Pipeline, LLC, (REX), all in Sweetwater County, Wyoming.

The proposed project will provide about 285,000 dekatherms per day (Dth/d) of transportation capacity from Cheyenne to Wamsutter with delivery capabilities to Overthrust and REX. So far, 97,500 Dth/d of that amount has been subscribed and the remaining 187,5000 MDth/d of east-to west delivery capability will be available at Wamsutter for WIC's existing and new shippers on a primary firm or alternate basis. WIC is requesting that the Section 7(c) authorization for the above activities be issued by June 1, 2010, in order to meet a projected in-service date of October 31, 2010.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s).

Comment Date: December 7, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27811 Filed 11–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–289]

Union Electric Company dba AmerenUE; Notice of Application for Amendment of License and SolicitingComments, Motions To Intervene, and Protests

November 13, 2009.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* P–459–289.

c. *Dated Filed:* September 30, 2009.

d. *Applicant:* AmerenUE.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The proposed non-project use is located at mile marker 18.8 + 2.9, off the Grand Glaize arm of the Lake of the Ozarks, in Camden County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791a–825r.

h. *Applicant Contact:* Mr. Jeff Green, Shoreline Supervisor, AmerenUE, P.O. Box 993, Lake Ozark, MO 65049, (573) 365–9214.

i. *FERC Contact:* Any questions on this notice should be addressed to John Mark at (212) 273–5940, or by e-mail at *john.mark@ferc.gov*.

j. *Deadline for filing comments and/or motions:* December 14, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments

or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Union Electric Company, dba AmerenUE, filed an application seeking Commission authorization to permit Mystic Bay Development to add one dock with six multi-family residential boat slips to its four existing community docks with a total of 60 boat slips. The proposed dock would be located along the shoreline fronting Mystic Bay Condominiums.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary link. Enter the docket number excluding the last three digits in the docket number field (P–459) to access the document. You may also register online at: *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27808 Filed 11–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13607–000]

Central Oregon Irrigation District; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

November 12, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* P–13607–000.

c. *Date Filed:* October 19, 2009.

d. *Applicant:* Central Oregon Irrigation District.

e. *Name of Project:* Juniper Ridge Hydroelectric Project.

f. *Location:* The Juniper Ridge Hydroelectric Project would be located on the Central Oregon Irrigation District's Pilot Butte Canal, also referred to as the North Canal, in Deschutes County, Bend, Oregon. The land in which all the project structures are located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Steven Johnson, Central Oregon Irrigation District, 1055 SW. Lake Court, Redmond, OR 97756; *stevej@coid.org.*

i. *FERC Contact:* Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for Filing Responsive Documents:* The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533, issued May 8, 1991, 56 FR 23,108 (May 20, 1991)), that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission by December 10, 2009. All reply comments must be filed with the Commission by December 28, 2009.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The proposed Juniper Ridge Hydroelectric Project consists of: (1) A proposed powerhouse containing one generating unit having an installed capacity of 5,000 kilowatts, and (2) appurtenant facilities.

The project would have an estimated annual generation of 12.6 megawatt-hours that would be used on-site with any excess being sold to a local utility.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, here P–12624, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h. above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the

particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27735 Filed 11–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–13–000]

Tampa Electric Company, Complainant v. Calpine Construction Finance Company, L.P., Respondent; Notice of Complaint

November 13, 2009.

Take notice that on November 10, 2009, pursuant to section 206 of the Federal Energy Regulatory Commission (Commission) Rules and Practice and Procedure, 18 CFR 385.206 and section 206 of the Federal Power Act, 16 U.S.C. 824(e), Tampa Electric Company (Complainant) filed a formal complaint against Calpine Construction Finance Company, L.P. (Respondent) requesting that the Commission issue an order vacating the Respondent's Rate Schedule FERC No. 3, effective no later than November 10, 2009, under which the Respondent charges the Complainant for reactive power service.

The Complainant states that copies of the complaint were served on the Respondent and the Florida Service Commission

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 30, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27809 Filed 11–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–10–000]

National Action Plan on Demand Response; Notice Announcing Agenda for the November 19–20, 2009 Technical Conference

November 12, 2009.

Section 529 of the Energy Independence and Security Act of 2007 (EISA) [1] directed the Commission to develop a National Action Plan. On October 28, 2009, the Commission issued a notice (October 28 Notice) scheduling a staff technical conference to elicit further input from interested stakeholders on the possible elements of the National Action Plan on Demand Response (National Action Plan) as discussed in the *Discussion Draft on Possible Elements of a National Action Plan on Demand Response* (Discussion Draft). Commission Staff will draw on the comments received and the discussion at the technical conference to prepare a draft of the National Action Plan.

Attached is the agenda for the November 19–20, 2009 technical

[1] Public Law 110–140, § 529, 121 Stat. 1492, 1664 (to be codified at National Energy Conservation Policy Act, 42 U.S.C. 8241–8287d, 8279).

conference. The sessions will be held in the Commission Meeting Room and other conference rooms at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please note that the conference will begin at 1 p.m. on Thursday, November 19.

Panelists in the afternoon session on November 19 will discuss the overall approach to and scope of the National Action Plan, as proposed in the Discussion Draft, followed by a closing plenary session. The morning breakout sessions on November 20 will focus on each of the three statutory objectives set out in EISA and the possible activities identified in the Discussion Draft. The technical conference represents one of the means for stakeholders to provide input on the National Action Plan. Those interested will also have an opportunity to submit comments on the Discussion Draft and the technical conferences.

The November 19 panel sessions and the November 20 plenary session of the conference will be transcribed. Transcripts of the conference will be immediately available for a fee from Ace-Federal Reporters, Inc. (202–347–3700 or 1–800–336–6646). A free Web cast of the November 19 panel sessions and the November 20 closing plenary session will be available. Anyone with Internet access interested in viewing this conference can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating the appropriate event in the Calendar. The events will contain a link to the applicable Web cast option. The Capitol Connection provides technical support for the Web casts and offers the option of listening to the conferences via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call 703–993–3100. The morning breakout sessions on November 20 will not be Web cast or transcribed, but they are open to everyone and we encourage all to attend. During the breakouts, Commission staff anticipates detailed discussion on the elements described in the Discussion Draft.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27736 Filed 11–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1048–000; Docket No. ER09–1049–000; Docket Nos. ER09–1050–000; ER09–1192–000; Docket No. ER09–1051–000; Docket No. ER09–1063–000; Docket No. ER09–1142–000]

California Independent System Operator Corporation, et al.; First Notice of Technical Conference on California Independent System Operator Corporation; Midwest Independent Transmission System Operator, Inc.; Southwest Power Pool, Inc.; ISO New England, Inc. and New England Power Pool; PJM Interconnection, LLC; New York Independent System Operator, Inc.; and RTO/ISO Responsiveness

Date: November 13, 2009.

In Order Nos. 719 and 719–A, the Commission established reforms to improve the operation of organized wholesale electric power markets and amended its regulations under the Federal Power Act in the areas of: (1) Demand response; (2) long-term power contracting; (3) market monitoring policies; and (4) the responsiveness of regional transmission organizations (RTOs) and independent system operators (ISOs) to their customers and other stakeholders.[1] The RTOs and ISOs filed in compliance with Order Nos. 719 and 719–A in the above-referenced proceedings.

The staff of the Federal Energy Regulatory Commission will hold a technical conference in the near future to provide a forum for interested participants to discuss the fourth topic identified above—the responsiveness of RTOs and ISOs to their customers and other stakeholders. The technical conference will be held in the Commission Meeting Room at the Commission's Washington, DC headquarters, 888 First Street, NE.

The purpose of this notice is to advise the public of the technical conference. The Commission will notify the public as to the date for the technical conference, as well as specific information on the starting and ending times, the topics to be explored, and the format of the technical conference in a subsequent notice. All interested parties are invited to attend. There is no registration fee to attend this technical conference.

[1] *Wholesale Competition in Regions with Organized Electric Market,* Order No. 719, 73 FR 64,100 (Oct. 28, 2008), FERC Stats & Regs. ¶ 31,281 (2008); *order on reh'g,* 74 FR 37,772 (July 29, 2009), 128 FERC ¶ 61,059 (2009) (Order No. 719–A).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27810 Filed 11–18–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8981–8]

Proposed Reissuance of the NPDES General Permit for Concentrated Animal Feeding Operations (CAFOs) Located in the State of Idaho (IDG010000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed NPDES general permit reissuance.

SUMMARY: The Director, Office of Water and Watersheds, EPA Region 10 proposes to reissue the National Pollutant Discharge Elimination System (NPDES) General Permit for Concentrated Animal Feeding Operations (CAFOs) in the State of Idaho (permit), including Indian Country. As proposed, all animal feeding operations (AFOs) that meet the regulatory definition of a CAFO, discharge or propose to discharge, and are subject to 40 CFR Part 412 are eligible for coverage under the permit. Eligible CAFOs may apply for authorization under the terms and conditions of the permit by submitting a Notice of Intent (NOI) and nutrient management plan (NMP). Upon receipt, EPA will review the NOI and NMP to ensure that all permit requirements are met. If EPA makes a preliminary determination that the NOI is complete, the NOI, NMP, and draft terms of the NMP to be incorporated into the permit will be made available for a thirty (30) day public review and comment period. If determined appropriate by EPA, CAFOs will be granted coverage under the permit upon written notification by EPA.

Public Comment: EPA will be accepting public comments on the permit. Interested persons may submit written comments on the permit to the attention of Nicholas Peak at the address below. Copies of the permit and fact sheet are available upon request. These

documents may also be downloaded from the Region 10 Web site at: *http://yosemite.epa.gov/R10/water.nsf/NPDES+Permits/Permits+Homepage.* All comments must include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated. After the expiration date of the Public Notice on January 19, 2010, the Director, Office of Water and Watersheds, EPA Region 10, will consider all comments before making a final determination with respect to issuance of the permit.

DATES: Comments must be received by January 19, 2010.

ADDRESSES: Comments should be sent to: Director, Office of Water and Watersheds, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, M/S OWW–130, Seattle, Washington 98101. Comments may also be submitted via e-mail to the following address: *peak.nicholas@epa.gov.*

Public Meetings Dates and Locations

The public is invited to attend one of three public informational meetings that EPA is hosting to provide information on the permit and to answer any questions concerning the permit. These public meetings are not public hearings as set forth in 40 CFR 124.12. The informational meetings will be held at the following dates/locations: Idaho Department of Fish and Wildlife, South Regional Office, 1345 Barton Road, Pocatello, ID 83204, December 8, 2009, 1 p.m.–5 p.m.; Idaho Department of Fish and Game, Magic Valley Regional Office, 324 South 417 East, #1, Jerome, ID 83338, December 9, 2009, 10 a.m.–2 p.m.; Idaho Department of Fish and Game, Southwest Regional Office, 3101 S. Powerline Road, Nampa, ID 83686, December 10, 2009, 10 a.m.–2 p.m.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained by contacting Mr. Nicholas Peak at the following address/phone number: U.S. EPA, Region 10, Idaho Operations Office, 1435 N. Orchard Street, Boise, Idaho 83706; Telephone: (208) 378–5765. In addition, additional information is available on the EPA Region 10 Web site at: *http://yosemite.epa.gov/R10/water.nsf/NPDES+Permits/Permits+Homepage.*

SUPPLEMENTARY INFORMATION: An existing permit, NPDES Permit No. IDG010000 (existing permit), was previously reissued on May 27, 1999 and expired on May 27, 2002. The existing permit was administratively extended and will remain in effect until a new permit is reissued for those discharges which were covered at the time of expiration. The existing permit authorizes discharges of process wastewater from all operations classified as a CAFO in the State of Idaho. EPA proposes to replace the existing permit with the permit numbered as IDG010000. The permit adds additional requirements contained in the revised CAFO regulations at 40 CFR parts 122 and 412 which were published in the **Federal Register** at 73 FR 70418 (November 20, 2008.) The permit adds new requirements relating to NMPs for permitted CAFOs. CAFO owners or operators were required to develop and implement NMPs under the 2003 rule; the 2008 rule now requires CAFO owners or operators to submit their facility's NMPs along with the NOI. EPA Region 10, as the permitting authority, will review the NMPs submitted with the NOIs and will establish the terms of the NMP that are enforceable elements of the permit. EPA Region 10 will provide the public with an opportunity for meaningful review and comment on the NMPs and the terms of the NMPs will be incorporated into the permit.

Regulated entities. The permit regulates discharges from CAFOs located in the State of Idaho including Indian Country. To determine whether your facility, company, business, organization, etc., may be affected by today's action, you should carefully examine the applicability criteria in Part I of the permit. Questions on the permit's application to specific facilities may also be directed to Mr. Peak at the telephone number or address listed above.

State Certification. Section 401 of the Clean Water Act, 33 U.S.C. 1341 requires EPA to seek a certification from the State that the conditions of the permit are stringent enough to comply with State water quality standards. EPA obtained a draft certification from the Idaho Department of Environmental Quality (IDEQ) on October 6, 2009. EPA intends to seek a final certification from IDEQ prior to issuing the final permit. When IDEQ issues certification, it may impose more stringent conditions than are currently included in the permit to ensure compliance with State water quality standards.

National Environmental Policy Act. The National Environmental Policy Act (NEPA) requires EPA to conduct an environmental review for new source NPDES permit actions pursuant to the Council on Environmental Quality (CEQ) regulations at 40 CFR Parts 1500–1508 and EPA's NEPA implementing regulations at 40 CFR Part 6. NEPA requirements must be complied with prior to allowing permit coverage of new sources (*i.e.* Large CAFOs whose construction began after April 14, 2003). New sources seeking permit coverage must submit an Environmental Information Document (EID) or Draft Environmental Assessment (EA) along with their Notice of Intent (NOI) and Nutrient Management Plans (NMPs) pursuant to the requirements at 40 CFR 6.200(g)(2) and 40 CFR Part 6, Subpart C.

Endangered Species Act. Section 7 of the Endangered Species Act requires Federal agencies to consult with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) if their actions have the potential to either beneficially or adversely affect any threatened or endangered species. EPA has determined that the permit is not likely to adversely affect any threatened or endangered species. The fact sheet and the permit will also be submitted to NMFS and USFWS for review during the public comment period. EPA will obtain concurrence with its determination from NMFS and USFWS prior to issuing the final permit.

Executive Order 12866. The Office of Management and Budget has exempted this action from the review of requirements of Executive Order 12866 pursuant to Section 6 of that order.

Paperwork Reduction Act. The information collection requirements of this permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number: 2040–0250 for NPDES Form 2B (NPDES permit application).

Regulatory Flexibility Act. After review of the facts presented in the notice of intent, permit and fact sheet, the Administrator of EPA certifies, pursuant to the provisions of 5 U.S.C. 605(b), that this permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Unfunded Mandates Reform Act. Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' [defined to be the same as ''rules'' subject to the RPA] on Tribal, State and local governments, and the permit issued today is not a ''rule'' subject to the RFA, and is therefore not subject to the UMRA.

Dated: November 6, 2009.

Michael A. Bussell,

Director, Office of Water and Watersheds, Region 10.

[FR Doc. E9–27825 Filed 11–18–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Infomation Collection Being Reviewed by the Federal Communications Commission, Comments Requested

November 13, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on January 19, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0757.

Title: FCC Auctions Customer Survey.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for–profit.

Number of Respondents: 1,000 respondents; 1,000 responses.

Estimated Time Per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 309(j)(3), and 309(j)(12).

Total Annual Burden: 250 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. Respondents may request materials or information to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Need and Uses: The Commission is requesting a revision of this information collection due to changes in the survey questions, clarification of data, etc. The Commission has not changed the existing burden estimates.

Since enactment of Section 6002 of the Omnibus Budget Reconciliation Act of 1993, the Commission has conducted a series of spectrum auctions. Approximately, 3,700 bidders have participate in these auctions, including individuals in their entrepreneurial capacity, businesses (both large and small) and other entities. By seeking input from auction participants, through the use of the FCC Auctions Customer Survey, the Commission expects to gather information to evaluate the competitive bidding methodologies and other operational processed used to date and to improve these techniques for use in future auctions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. E9–27737 Filed 11–18–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 09–2418]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice; announcement of meeting.

SUMMARY: This document announces the date and agenda of the Committee's next meeting.

DATES: The next meeting of the Committee will take place on Friday, December 4, 2009, 9 a.m. to 4 p.m., at the Commission's Headquarters Building, Room TW–C305, 445 12th Street, SW., Washington, DC 20554.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer & Governmental Affairs Bureau, (202) 418–2809 (voice), (202) 418–0179 (TTY), or e-mail *scott.marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice DA 09–2418, released on November 13, 2009 announcing the agenda, date and time of the Committee's next meeting.

The Committee is organized under and will operate in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (1988).

The mission of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as American Indians and persons living in rural areas) in proceedings before the Commission.

Each meeting of the full Committee will be open to the public. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection.

Synopsis

At its December 4, 2009 meeting, the Committee is expected to consider recommendations and/or receive progress reports regarding captioned telephony, digital closed captioning and video description, Consumer Information, Disclosure, Truth in Billing Notice of Inquiry (CG Docket No. 09–158), web/new media design, and the new Electronic Comment Filing System.

In connection with the development of the National Broadband Plan, the Committee will also host a roundtable discussion among consumer, regulatory, and industry leaders regarding consumer complaint resolution best practices. The Committee may also consider other consumer issues within the jurisdiction of the Commission. A limited amount of time on the agenda will be available for oral comments from the public. Meetings are open to the public and are broadcast on the Internet in Real Audio/Real Video format with captioning at *http://www.fcc.gov/cgb/cac.* Members of the public may address the Committee or may send written comments to: Scott Marshall, Designated Federal Officer of the Committee, at the address noted above.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site.

Simultaneous with the webcast, the meeting will be available through Accessible Event, a service that works with your web browser to make presentations accessible to people with disabilities. You can listen to the audio and use a screen reader to read displayed documents. You can also watch the video with open captioning. Accessible Event is available at *http://accessibleevent.com.* The web page prompts for an Event Code, which is 005202376. To learn about the features of Accessible Event, consult its User's Guide at *http://accessibleevent.com/doc/user_guide/.*

Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Thomas Wyatt,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E9–27828 Filed 11–18–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice; one new Privacy Act system of records.

SUMMARY: Pursuant to subsection (e)(4) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the FCC proposes to add a new system of records, FCC/MB–1, ''Ownership Report for Commercial Broadcast Stations.'' The FCC's Media Bureau (MB) will use the information contained in FCC/MB–1 to administer the FCC's regulatory responsibilities that relate to ownership of commercial broadcast stations, including AM and FM radio and television, as well as to interests in daily newspapers that are subject to the Commission's media ownership rules. The Commission uses these records in this system:

To address the data contained in responses to FCC Form 323, ''Ownership Report for Commercial Broadcast Stations,'' which the Commission uses to evaluate licensees' or permittees' compliance with the Commission's media ownership rules, etc. This form is filed:

To satisfy the biennial filing requirement (Biennial Ownership Report);

As a validation or resubmission of a previously filed Biennial Report;

In connection with the transfer of control or assignment of a broadcast station;

By a permittee (within 30 days of the grant of a construction permit grant) (''Permittee Report'') and on the date that it files its license application;

As an update or certification of accuracy of the initial Permittee Report; or

As an amendment of a previously filed Ownership Report.

To undertake studies of minority and female ownership that support its diversity policy goals and other ownership studies to support its statutory requirement to review the media ownership goals quadrennially to determine whether they are necessary in the public interest as the result of competition.

Any other uses of FCC Form 323 within the Commission's authority.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (e)(11) of the Privacy Act of 1974, as amended, any interested person may submit written comments concerning the routine uses of this system on or before December 21, 2009. Pursuant to Appendix I, 4(e) of OMB Circular A–130, the FCC is asking the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, to grant a waiver of the 40 day review period by OMB, the House of Representatives, and the Senate for this system of records. The FCC is requesting this waiver because the FCC has obtained OMB approval for a revised Form 323, which has been revised to allow the form to be used as the basis of studies of minority and female ownership as well as ownership studies to support the upcoming statutorily required 2010 quadrennial review of the Commission's media ownership rules. To allow trend studies to be undertaken, the Commission has set a uniform date as to when the information reported on the form must be current, October 1 of the applicable filing year. However, because of time required to obtain OMB approval, the Commission, on a one-time-only basis, changed the ''as of'' date to November 1, 2009. Public notice of OMB approval of the revised Form 323 was published in the **Federal Register** on October 30, 2009, and the revised form became effective on that date. The Commission has established a deadline of December 15, 2009 by which the form must be filed. The Commission established a filing deadline that is as early as possible so that studies based on the data may be commenced quickly. At the same time, the Commission sought to provide as much time as possible for the form to be available before the filing date so that the public has ample time to work with the revised form.

The proposed new system of records will become effective on December 21, 2009, unless the FCC receives comments that require a contrary determination. The FCC will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, the FCC is submitting reports on this proposed new system to OMB and to both Houses of Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–0217

or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed new system of records maintained by the FCC. This notice is a summary of the more detailed information about the proposed new system of records, which may be viewed at the location given above in the **ADDRESSES** section. The purposes for adding this new system of records, FCC/MB–1, Ownership Report for Commercial Broadcast Stations,'' are to enable the FCC's Media Bureau (MB) to administer the FCC's regulatory responsibilities that relate to ownership of commercial broadcast stations, including AM and FM radio and television, as well as to interests in daily newspapers that are subject to the Commission's media ownership rules. The Commission uses these records in this system:

(1) To address the data contained in responses to FCC Form 323, ''Ownership Report for Commercial Broadcast Stations,'' which the Commission uses to evaluate licensees' or permittees' compliance with the Commission's media ownership rules, etc. This form is filed:

(a) To satisfy the biennial filing requirement (Biennial Ownership Report);

(b) As a validation or resubmission of a previously filed Biennial Report;

(c) In connection with the transfer of control or assignment of a broadcast station;

(d) By a permittee (within 30 days of the grant of a construction permit grant) (''Permittee Report'') and on the date that it files its license application;

(e) As an update or certification of accuracy of the initial Permittee Report; or

(f) As an amendment of a previously filed Ownership Report.

(2) To undertake studies of minority and female ownership that support its diversity policy goals and other ownership studies to support its statutory requirement to review the media ownership goals quadrennially to determine whether they are necessary in the public interest as the result of competition.

(3) Any other uses of FCC Form 323 within the Commission's authority.

This notice meets the requirement documenting the proposed new system of records that is to be added to the systems of records that the FCC maintains, and provides the public, Congress, and the Office of Management and Budget with an opportunity to comment.

FCC/MB–1

SYSTEM NAME:

Ownership Report for Commercial Broadcast Stations.

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Media Bureau (MB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Licensees, permittees, and respondents, and other individuals or entities with interests therein that are required to be reported on the Form 323 (as described below) who must either file FCC Form 323 or have their interests reported on Form 323 under 47 CFR 73.3615, 73.6026, and 74.797;

(2) Contact individuals, *e.g.,* representatives, relating to commercial AM, FM, and TV broadcast stations, and/or newspapers that are subject to the Commission's media ownership rules, as required under 47 CFR 73.3555, etc.;

(3) Individuals with ownership or attributable interests in media companies subject to the Commission's ownership rules or otherwise required to be reported on FCC Form 323;

(4) Individuals who are married to or otherwise related, *i.e.,* parent-child or siblings, etc., to other individuals who have attributable, reportable, and/or ownership interests and who must either file FCC Form 323 or have their interests reported on FCC Form 323.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Information that is required to be submitted on FCC Form 323, ''Ownership Report for Commercial Broadcast Stations,'' including the ownership or other interests of the licensee/permittee/respondent, home mailing address, home telephone number, home e-mail address, listing type, relationship to licensee/permittee/respondent/other interest holder, positional interest, marital/familial relationship, and gender, ethnicity, race, and citizenship, etc.;

(2) All exhibits, organizational charts, correspondence, *i.e.,* letters, etc., supporting documentation, and other materials, etc., which are associated with processing the FCC Form 323, ''Ownership Report for Commercial Broadcast Station,'' submission(s); and

(3) Any other records that are submitted in connection with or created as the result of the filing of FCC Form 323.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 CFR 73.3555, 73.3615, 73.6026, and 74.797.

PURPOSES:

The records are kept to administer the Federal Communications Commission's (FCC) regulatory responsibilities that relate to ownership of commercial broadcast stations, including AM and FM radio and television, as well as to interests in daily newspapers that are subject to the Commission's media ownership rules. The Commission uses these records in this system:

(1) To address the data contained in responses to FCC Form 323, ''Ownership Report for Commercial Broadcast Stations,'' which the Commission uses to evaluate licensees' or permittees' compliance with the Commission's media ownership rules, etc. This form is filed:

(a) To satisfy the biennial filing requirement (Biennial Ownership Report);

(b) As a validation or resubmission of a previously filed Biennial Report;

(c) In connection with the transfer of control or assignment of a broadcast station;

(d) By a permittee (within 30 days of the grant of a construction permit grant) (''Permittee Report'') and on the date that it files its license application;

(e) As an update or certification of accuracy of the initial Permittee Report; or

(f) As an amendment of a previously filed Ownership Report.

(2) To undertake studies of minority and female ownership that support its diversity policy goals and other ownership studies to support its statutory requirement to review the media ownership goals quadrennially to determine whether they are necessary in the public interest as the result of competition.

(3) Any other uses of FCC Form 323 within the Commission's authority.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Public Access—under the rules of the Commission, documents filed under CDBS are publicly available;

2. Adjudication and Litigation—where by careful review, the agency

determines that the records are both relevant and necessary to litigation and the use of such records is deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records, these records may be used by a court or adjudicative body in a proceeding when: (a) the agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation;

3. Financial Obligations under the Debt Collection Acts—a record from this system may be disclosed to other Federal agencies for the purpose of collecting and reporting on delinquent debts as authorized by the Debt Collection Act of 1982 or the Debt Collection Improvement Act of 1996. A record from this system may be disclosed to any Federal, state, or local agency to conduct an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals who are delinquent in their repayment of certain debts owed to the U.S. Government. A record from this system may be used to prepare information on items considered income for taxation purposes to be disclosed to Federal, state, and local governments;

4. Law Enforcement and Investigation—where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be shared with appropriate Federal, State, or local authorities either for purposes of obtaining additional information relevant to a FCC decision or for referring the record for investigation, enforcement, or prosecution by another agency;

5. Congressional Inquiries—when requested by a Congressional office in response to an inquiry by an individual made to the Congressional office for their own records;

6. Government-wide Program Management and Oversight—when requested by the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906; when the U.S. Department of Justice is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act; or when the Office of Management and Budget is contacted in order to obtain that office's advice regarding obligations under the Privacy Act; and

7. Breach Notification—a record from this system may be disclosed to appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Broadcast Station Ownership database is the repository for all electronically filed ownership reports and associated information, including exhibits (*e.g.*, organizational charts, appendices, scanned images, and all other supplementary documents and materials, etc.). All Form 323 filings must be submitted electronically (*e.g.*, paper copy filings are not acceptable) via the Media Bureau Electronic Filing system at: *http://www.fcc.gov/mb/elecfile.html.*

RETRIEVABILITY:

Information in this system is publicly retrievable. The information may be viewed via the ''Public Access'' Search functionality in the Consolidated Database System (CDBS) at: *http://www.fcc.gov/mb/elecfile.html* by clicking on the ''Ownership Search'' link. Information may be retrieved by searching electronically using a variety of parameters including the call sign, facility ID number, service, file number, application type, channel, frequency, community of license city and state, name of the licensee/permittee, or name/address of the person or entity holding the interest reported on Form 323. All ownership data can also be downloaded via a set of files that correspond to database tables from the Media Bureau Public CDBS Database Files Web site: *http://www.fcc.gov/mb/databases/cdbs.* Information is retrieved internally via database commands by authorized FCC staff and contractors who have been granted permission to access the data.

SAFEGUARDS:

Information in these records and files is available to the public via the FCC Internet portal at: *http://www.fcc.gov/mb/elecfile.html.* Access to the ownership records housed in the CDBS databases is restricted to authorized MB supervisory and staff and ITC staff and contractors. Other employees and contractors may be granted access on a ''need-to-know'' basis. The CDBS network computer databases are protected by the FCC's security protocols, which include controlled access, passwords, and other security features. Information resident on the CDBS database server is backed-up routinely onto magnetic media. Back-up tapes are stored on-site and at a secured location.

RETENTION AND DISPOSAL:

The information in this system is limited to electronic files, records, and data, which includes:

(1) The information that pertains to current filing requirements; and

(2) The information that pertains to historical records, which is used for archival purposes.

Until the National Archives and Records Administration (NARA) approves the retention and disposal schedule, these records will be treated as permanent.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Address inquiries to the Media Bureau (MB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the Media Bureau (MB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

Address inquiries to the Media Bureau (MB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CONTESTING RECORD PROCEDURES:

Address inquiries to the Media Bureau (MB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

The sources for the information in this system include all entities that are required to file an ownership report, either biennially or at other occasions, under §§ 73.3615, 73.6026, and 74.797 of the Commission's rules. These entities include, but are not limited to:

(1) Licensees, permittees, and respondents, and other individuals or entities with interests therein that are required to be reported on the Form 323 (as described below) who must either file FCC Form 323 or have their interests reported on Form 323 under 47 CFR 73.3615, 73.6026, and 74.797;

(2) Contact individuals, *e.g.,* representatives, relating to commercial AM, FM, and TV broadcast stations, and/or newspapers that are subject to the Commission's media ownership rules, as required under 47 CFR 73.3555, etc.;

(3) Individuals with ownership or attributable interests in media companies subject to the Commission's ownership rules or otherwise required to be reported on FCC Form 323; and

(4) Individuals who are married to or otherwise related, *i.e.*, parent-child or siblings, etc., to other individuals who have attributable, reportable, and/or ownership interests and who must either file FCC Form 323 or have their interests reported on FCC Form 323.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–27665 Filed 11–18–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 2, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Notice by White Bay Capital LLLP (LLLP), Grand Rapids, Michigan, the Stephen A. Van Andel 2009 WBC Trust (Trust), Grand Rapids, Michigan, as the general partner of LLLP, and Stephen A. Van Andel, Grand Rapids, Michigan, as trustee of Trust, to acquire voting shares of Macatawa Bank Corporation, Holland, Michigan, and thereby indirectly acquire control of Macatawa Bank, Holland, Michigan.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Kenneth G. Walker Grantor Trust, to acquire membership interest of Palomar Enterprises, LLC, and thereby together with other related parties, control Palomar Enterprises, LLC which controls Farmers and Merchants Bank, all of Long Beach, California.

Board of Governors of the Federal Reserve System, November 13, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–27694 Filed 11–18–09; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0278]

National Contact Center; Information Collection; National Contact Center Customer Evaluation Survey

AGENCY: Citizen Services and Communications, Federal Consumer Information Center, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a previously approved information collection requirement regarding the National Contact Center customer evaluation survey. The clearance currently expires on December 31, 2009.

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: January 19, 2010.

FOR FURTHER INFORMATION CONTACT: Tonya Beres, Federal Information Specialist, Office of Citizen Services and Communications, at telephone (202) 501–1803 or via e-mail to *tonya.beres@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 (MVPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0278, National Contact Center Customer Evaluation Survey, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection will be used to assess the public's satisfaction with the National Contact Center service, to assist in increasing the efficiency in responding to the public's need for Federal information, and to assess the effectiveness of marketing efforts.

B. Annual Reporting Burden

Respondents: 4,200.

Responses per Respondent: 1.

Hours per Response: .05 (3 minutes) for phone survey, .066 (4 minutes) for email survey, and .066 (4 minutes) for chat survey.

Total Burden Hours: 270.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0278, National Contact Center Customer Evaluation Survey, in all correspondence.

Dated: November 10, 2009.

Casey Coleman,

Chief Information Officer.

[FR Doc. E9–27842 Filed 11–18–09; 8:45 am]

BILLING CODE 6820–CX–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–09AI]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of the Action Plan for the National Public Health Initiative on Diabetes and Women's Health—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Diabetes can have unique and profound effects on women's lives and health. For instance, diabetes is a more common cause of coronary heart disease among women than men, and the prognosis of heart disease is worse for women with diabetes than men with diabetes. The burden of diabetes for women is also unique because the disease can affect both mothers and their unborn children. It is projected that from 2000 to 2025, women will represent more than half of all cases of diabetes in the United States.

The National Public Health Initiative on Diabetes and Women's Health (''The Initiative'') was established to provide support and resources for the creation and implementation of a national public health Action Plan. The Initiative is co-sponsored by the American Diabetes Association (ADA), the American Association of Diabetes Educators (AADE), the American Public Health Association (APHA), the Association of State and Territorial Health Officials (ASTHO), and the Centers for Disease Control and Prevention (CDC).

The Initiative's Action Plan identifies gaps in diabetes-related research and programmatic activities, and strategic objectives, within the areas of community health, diabetes state programs, education and community outreach, quality of care, research, and surveillance.

CDC proposes to conduct a survey to assess collective progress toward achieving the objectives outlined in the Action Plan. The survey will also request information about the specific strategies, steps, resources and partnerships that have been employed to meet the objectives. Respondents will be the 4 co-sponsors of The Initiative, 20 CDC-funded, state-based diabetes prevention and control programs (DPCPs), and approximately 100 private-sector public health organizations with a focus on diabetes and/or women's health. Survey responses will be compiled into a progress report and disseminated to respondents, allowing them to learn about each other's activities and the steps needed to replicate successful diabetes prevention and control efforts.

Information will be collected once per year for a period of 3 years, and the progress report will be updated annually to reflect recent activities and progress. Private-sector partners and state-based partners will submit one survey response per organization per year. Co-sponsors will receive a modified version of the survey. Due to the size and complexity of the activities managed by co-sponsors, the co-sponsoring organizations will have the option of submitting multiple survey responses from different areas of the organization, in order to capture the full range of activities conducted. It is estimated that each co-sponsor will submit an average of three responses. Participation in the survey is voluntary.

Information will be collected electronically through a web-based survey tool. There are no costs to respondents other than their time. The total estimated annualized burden hours are 66.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)
Co-Sponsors	Co-Sponsor Survey	4	3	.5
State-based DPCPs	Partner Survey	20	1	.5
Private Sector Partners	Partner Survey	100	1	.5

Dated: November 10, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–27726 Filed 11–18–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0533]

Draft Guidance for Industry: Recommendations for the Assessment of Blood Donor Suitability, Blood Product Safety, and Preservation of the Blood Supply in Response to Pandemic (H1N1) 2009 Virus; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Draft Guidance for Industry: Recommendations for the Assessment of Blood Donor Suitability, Blood Product Safety, and Preservation of the Blood Supply in Response to Pandemic (H1N1) 2009 Virus''. This draft guidance provides recommendations for assessing blood donor suitability and blood product safety and maintaining blood and blood product availability in response to pandemic (H1N1) 2009 virus. It is intended for establishments that manufacture Whole Blood and blood components intended for use in

transfusion and blood components intended for further manufacture, including recovered plasma, Source Plasma and Source Leukocytes.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by December 3, 2009. The abbreviated comment period is necessary because pandemic (H1N1) 2009 virus has the potential to cause disruptions in the blood supply and given this possibility, the agency needs to finalize the guidance as soon as possible.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the 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*.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Chacko, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Recommendations for the Assessment of Blood Donor Suitability, Blood Product Safety, and Preservation of the Blood Supply in Response to Pandemic (H1N1) 2009 Virus'' dated November 2009. This draft guidance provides recommendations for assessing blood donor suitability and blood product safety and maintaining blood and blood product availability in response to pandemic (H1N1) 2009 virus. It is intended for establishments that manufacture Whole Blood and blood components intended for use in transfusion and blood components intended for further manufacture, including recovered plasma, Source Plasma and Source Leukocytes. At the present time, FDA is working with other HHS agencies to monitor the pandemic (H1N1) 2009 virus and its potential impact on blood availability and blood safety. The agency notes that the Centers for Disease Control and Prevention (CDC) has issued a document entitled ''Interim Infection Control Guidance on 2009 H1N1 Influenza for Personnel at Blood and Plasma Collection Facilities.''[1] We recognize the importance of the CDC recommendations for infection control in blood and plasma collection establishments.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. 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 statutes and regulations.

II. Paperwork Reduction Act of 1995

The draft guidance refers to previously approved collections of information found in FDA regulations. The collection of information in 21 CFR part 606 has been approved under OMB control number 0910–0116. The collection of information for 21 CFR part 601 has been approved under OMB control number 0910–0338.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. 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. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/guidances/default.htm* or *http://www.regulations.gov*.

Dated: November 13, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–27729 Filed 11–18–09; 8:45 am]

BILLING CODE 4160–01–S

[1] *http://www.cdc.gov/h1n1flu/infectioncontrol.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on Tuesday, December 15, 2009, from 1:30 p.m. to approximately 5 p.m.

Location: National Institutes of Health, Bldg. 29, conference rm. 121. The public is welcome to attend the meeting at the specified location where a speakerphone will be provided. Public participation in the meeting is limited to the use of the speakerphone in the conference room. Important information about transportation and directions to the NIH campus, parking, and security procedures is available on the Internet at *http://www.nih.gov/about/visitor/index.htm*. Visitors must show two forms of identification, one of which must be a government-issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm*. Due to the limited available parking, visitors are encouraged to use public transportation.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401

Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 15, 2009, the committee will meet in open session to hear updates of the research programs in the Laboratory of Retroviruses, Laboratory of Immunoregulation, and Laboratory of Respiratory Viruses, Division of Viral Products, Office of Vaccines Research and Review, Center for Biologics Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: On December 15, 2009, from 1:30 p.m. to approximately 4:15 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 11, 2009. Oral presentations from the public will be scheduled between approximately 3:15 p.m. and 4:15 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 7, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 8, 2009.

Closed Committee Deliberations: On December 15, 2009, from approximately 4:15 p.m. to approximately 5 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the report of the intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 13, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–27728 Filed 11–18–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number (PA) PAR09–184]

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): State Based Occupational Health and Safety Surveillance Grants, Initial Review

Correction: This notice was published in the **Federal Register** on November 5, 2009, Volume 74, Number 2123, Page 57321. The time and date should read as follows:

Time and Dates

8 a.m.–5 p.m., December 3, 2009 (Closed).

8 a.m.–5 p.m., December 4, 2009 (Closed).

Contact Person for More Information: Mack Stiles, DDS, MPH, PhD, Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop E–74, Atlanta, Georgia 30333; Telephone (404) 498–2530.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: November 13, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–27805 Filed 11–18–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Special Emphasis Panel, Training in Developmental Biology and Child Health Research.

Date: December 1, 2009.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20852 (Telephone Conference Call).

Contact Person: Rita Anand, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute, of Child Health and Human Development, NIH, 6100 Executive Blvd. Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Training Program on Intellectual and Developmental Disabilities.

Date: December 1, 2009.

Time: 12:15 p.m. to 1:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Anne Krey, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, National Institutes of Health, Bethesda, MD 20892, 301–435–6908.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, 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: November 12, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27807 Filed 11–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Human Immunodeficiency Virus (HIV) Prevention Projects for Community-Based Organizations, Funding Opportunity Announcement (FOA), PS10–1003, Initial Review

Correction: This notice was published in the **Federal Register** on August 17, 2009, volume 74, Number 157, Page 41451. The place and time should read as follows:

Times and Dates

7:30 a.m.–5:50 p.m., February 7, 2010 (Closed).

7:30 a.m.–5:50 p.m., February 8, 2010 (Closed).

7:30 a.m.–5:50 p.m., February 9, 2010 (Closed).

7:30 a.m.–5:50 p.m., February 10, 2010 (Closed).

7:30 a.m.–5:50 p.m., February 11, 2010 (Closed).

7:30 a.m.–5:50 p.m., February 12, 2010 (Closed).

7:30 a.m.–5:50 p.m., February 13, 2010 (Closed).

Place: Hilton Atlanta, 255 Courtland Street, NE., Atlanta, Georgia 30303, Telephone (404) 659–6500.

Contact Person for More Information: Monica Farmer, M.Ed., Public Health Analyst, Strategic Science and Program Unit, Office of the Director, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, NE., Mailstop E–60, Atlanta, GA 30333, Telephone: (404) 498–2277.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: November 13, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–27806 Filed 11–18–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Cancer Prevention.

Date: December 1, 2009.

Time: 10 a.m. to 12:30 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: Lawrence Ka-Yun Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *ngkl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: November 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27793 Filed 11–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel; Large Scale Phase II.

Date: December 14–15, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting)

Contact Person: C. Craig Hyde, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, (301) 435–3825, *hydec@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and

Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 12, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27791 Filed 11–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 12 and 13, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel phone number is 301–589–5200.

Contact Person: Paul Tran, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *paul.tran@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512536. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On January 12, 2010, the committee will discuss new drug application (NDA) 21–348, ZAVESCA (miglustat), 100 milligram (mg) capsules, by Actelion Pharmaceuticals, Ltd., proposed for the treatment of progressive neurological manifestations (symptoms related to the nervous system) in patients with Niemann-Pick Disease (type C). On January 13, 2010, the committee will discuss NDA 22–562, CARBGLU (carglumic acid), 200 mg tablets, by Orphan Europe SARL, proposed for the treatment of hyperammonemia (elevated levels of ammonia in the blood) in patients with N acetyl glutamate synthetase (NAGS) deficiency, an inherited disorder that causes ammonia to accumulate in the blood.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 28, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 17, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 18, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/About AdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 13, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–27741 Filed 11–18–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–96]

Recovery Act Reporting for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided a one-time Indian Community Development Block Grant funding to eligible Indian Tribes (or Tribal organization on behalf of Indian Tribes) for the development of decent housing, environment, and economic opportunities for low and moderate-income persons in Indian service areas.

DATES: *Comments Due Date:* December 21, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0263) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at: *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the

accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Recovery Act Reporting for the Native American Housing Block Grant (NAHBG) Competitive Program.

OMB Approval Number: 2577–0263.

Form Numbers: SF–425.

Description of the Need for the Information and Its Proposed Use: The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided a one-time Indian Community Development Block Grant funding to eligible Indian Tribes (or Tribal organization on behalf of Indian Tribes) for the development of decent housing, environment, and economic opportunities for low and moderate-income persons in Indian service areas.

Frequency of Submission: Quarterly, Annually, Other (final report).

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	19	6		12.83		1,463

Total Estimated Burden Hours: 1,463.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 16, 2009

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–27856 Filed 11–18–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–94]

Neighborhood Stabilization Program 2 (NSP2)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information describes the reporting and recordkeeping requirements of the Neighborhood Stabilization Program 2 (NSP2). The data required includes program level, project level and beneficiary level information collected and reported on by NSP2 grantees. The data identifies who benefits from the NSP2 program and how statutory requirement are satisfied. The respondents are State, local government, non-profit and consortium applicants.

DATES: *Comments Due Date:* December 21, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0185) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at: *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Neighborhood Stabilization Program 2 (NSP2).

OMB Approval Number: 2506–0185.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

This information describes the reporting and recordkeeping requirements of the Neighborhood Stabilization Program 2 (NSP2). The data required includes program level, project level and beneficiary level information collected and reported on by NSP2 grantees. The data identifies who benefits from the NSP2 program and how statutory requirement are satisfied. The respondents are State, local government, non-profit and consortium applicants.

Frequency of Submission: Quarterly, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	80	4		32		10,240

Total Estimated Burden Hours: 10,240.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 16, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–27858 Filed 11–18–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–95]

Recovery Act Reporting for the Native American Housing Block Grant (NAHBG) Competitive Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Native American Housing Block Grant (NAHBG) funding was appropriated by the American Recovery and Reinvestment Act of 2009 (Recovery Act) to provide Indian tribes or their tribally designated housing entities (TDHEs), eligible to receive funding under the Native American Housing assistance and Self Determination Act (NAHASDA), with economic stimulus funds. The NAHBG provides competitive funding to eligible entities for the development and operation of low-income housing in Indian areas with priority given to projects that will spur construction and rehabilitation and will create employment opportunities for low-income and unemployed persons.

DATES: *Comments Due Date:* December 21, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0262) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Recovery Act Reporting for the Native American Housing Block Grant (NAHBG) Competitive Program.

OMB Approval Number: 2577–0262.

Form Numbers: SF–425 and HUD 52735–AS.

Description of the Need for the Information and Its Proposed Use: Native American Housing Block Grant (NAHBG) funding was appropriated by the American Recovery and Reinvestment Act of 2009 (Recovery Act) to provide Indian tribes or their tribally designated housing entities (TDHEs), eligible to receive funding under the Native American Housing assistance and Self Determination Act (NAHASDA), with economic stimulus funds. The NAHBG provides competitive funding to eligible entities for the development and operation of low-income housing in Indian areas with priority given to projects that will spur construction and rehabilitation and will create employment opportunities for low-income and unemployed persons.

Frequency of Submission: Quarterly, Other (final report).

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	102		5		34		17,340

Total Estimated Burden Hours: 17,340.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 16, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–27857 Filed 11–18–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–93]

Neighborhood Networks Management and Tracking Data Collection Instruments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD's Office of Multifamily Housing Programs is requesting clearance for a revision of a current data collection designed to capture information from the Neighborhood Networks center paper and START business plans. The revision includes enhancements to the format of the online Strategic Tracking and Reporting Tool (START), and contact verification information from an electronic postcard data collection. The data collection will assist HUD in obtaining up-to-date information regarding Neighborhood Networks centers.

DATES: *Comments Due Date:* December 21, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0553) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Neighborhood Networks Management and Tracking Data Collection Instruments.

OMB Approval Number: 2502–0553.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: HUD's Office of Multifamily Housing Programs is requesting clearance for a revision of a current data collection designed to capture information from the Neighborhood Networks center paper and START business plans. The revision includes enhancements to the format of the online Strategic Tracking and Reporting Tool (START), and contact verification information from an electronic postcard data collection. The data collection will assist HUD in obtaining up-to-date information regarding Neighborhood Networks centers.

Frequency of Submission: Annually, Semi-annually, Other (as needed).

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	738	1.81		0.80		1,070

Total Estimated Burden Hours: 1,070.

Status: Revision of a currently approved collection.

Authority Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 16, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–27859 Filed 11–18–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Proposed Information Collection; Program Announcement for the Establishment of DOI Regional Climate Change Response Centers, National Climate Change and Wildlife Science Center

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice; request for comments.

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. 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 January 19, 2010.

ADDRESSES: Please submit comments on this information collection directly to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, NCCSC in the subject line.

FOR FURTHER INFORMATION CONTACT: Nadine Hartke by mail at U. S. Geological Survey, MS 300 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192, or by telephone at 703–648–4607.

SUPPLEMENTARY INFORMATION:

I. Abstract

The primary objective of the National Climate Change and Wildlife Science Center (NCCWSC) will be to assist the Department of the Interior (DOI) in establishing a network of geographically dispersed DOI Regional Climate Response Centers (Centers), as described in the Department of the Interior Secretarial Order 3289 (*http://www.doi.gov/climatechange/index.html*). These Centers will be co-located at cooperating organizations at non-USGS facilities. The Centers will include NCCWSC staff that report to a national USGS office, but will involve other DOI or collaborating Bureaus. The goal of the NCCWSC and the affiliated Regional Centers is to work in close partnership with the climate change science; ecological or hydrological science; and natural and cultural resource management communities to understand high priority science needs for climate adaptation and to develop science and information porducts that can help resource managers develop strategies for responding to climate change.

The purpose of this information collection is to identify institutions that are willing to host a Regional Center, and determine if their science and partnership capabilities are sufficient to serve as a host organization. Host organizations must be able to contribute climate science and ecological capabilities that complement and enhance USGS scientific and computational capacity, and those of other science partners. Host science collaborations and experience with regional national and cultural

partnerships and communities will be a valuable and necessary component of serving as a host. The information collected will be used to establish DOI Regional Climate Change Response Centers through Cooperative Agreements with the host institution.

The National Climate Change and Wildlife Science Center will issue a Program Announcement that will request interested host institutions to submit proposals. Proposals will address the institution's current climate change science program, its existing linkages with USGS and other DOI bureaus, a description of linkages with potential Regional Center partners, and institution organization capabilities and contributions to serve as a host.

II. Data

OMB Control Number: None. This is a new collection.

Title: Establishment of DOI Regional Climate Change Response Centers, National Climate Change and Wildlife Science Center Program Announcement.

Respondent Obligation: Voluntary.

Frequency of Collection: Annually.

Estimated Annual Number of Respondents: 80. Respondents may include institutions of higher education and other non-profit organizations.

Estimated Total Annual Responses: 80.

Estimated Time per Response: 20 hours.

Estimated Total Annual Burden: 1,600 hours.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the public reporting will average 20 hours per response. This includes time to develop a technical proposal, budget sheets, perform internal proposal reviews, secure support letters, and submit the proposal through Grants.gov.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': There are no ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

To comply with the public consultation process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. This notice provides the required 60-day public comment period. We invite comments concerning this ICR on: (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 on the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

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 publically available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 10, 2009.

Susan D. Haseltine,

Associate Director for Biology, U.S. Geological Survey.

[FR Doc. E9–27780 Filed 11–18–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2009–N246; 30120–1113–0000–F6]

Endangered and Threatened Wildlife and Plants; Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing this permit.

DATES: We must receive any written comments on or before December 21, 2009.

ADDRESSES: Send written comments to the Regional Director, Attn: Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, MN 55111–4056; electronic mail, *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit application for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES**. When submitting comments, please refer to the appropriate permit application number.

Permit Applications

Permit Application Number: TE230947.

Applicant: Malacological Consultants, LaCrosse, Wisconsin.

The applicant requests a permit to take (capture and release/relocate) Higgins' eye pearlymussel and winged mapleleaf mussel (*Quadrula fragosa*) in Minnesota, Wisconsin, and Iowa to determine presence or absence of the species and to relocate individuals that may be in danger of injury or stranding. Proposed activities are aimed at enhancement of the survival of the species in the wild.

Public Comments

We seek public review and comments on this permit application. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Dated: November 9, 2009.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. E9–27804 Filed 11–18–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the National Capital Memorial Advisory Commission (the Commission) plans to meet at the National Building Museum, Room 312, 401 F Street, NW., Washington, DC, on Friday, December 4, at 10 a.m.

The meeting will be open to the public. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the Commission. The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and its environs.

In addition to discussing general matters and conducting routine business, the Commission will review three Action Items:

Action Items

(1) H.R. 482, a bill to authorize the rededication of the District of Columbia War Memorial as a National and District of Columbia World War I Memorial to honor the sacrifices made by American veterans of World War I.

(2) H.R. 3425, a bill to authorize the Fair Housing Commemorative Foundation to establish a commemorative work on Federal land in the District of Columbia to commemorate the enactment of the Fair Housing Act in 1968.

(3) H.R. 1466, A bill to amend title 40, United States Code, to authorize the National Capital Planning Commission to designate and modify the boundaries of the National Mall area in the District of Columbia reserved for the location of commemorative works of preeminent historical and lasting significance to the United States and other activities, to require the Secretary of the Interior and the Administrator of General Services to make recommendations for the termination of the authority of a person to establish a commemorative work in the District of Columbia and its environs, and for other purposes.

Non-action Items scheduled for discussion are:

Non-Action Items

(1) A presentation from the John Adams Memorial Foundation on the status of an alternative sites analysis being prepared for the John Adams Memorial.

(2) Review of the Commission's bylaws.

(3) Update on memorial legislation under consideration by the 111th Congress.

DATES: Friday, December 4, 2009.

ADDRESSES: National Building Museum, Room 312, 401 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the Commission, by telephone at (202) 619–7097, by e-mail at *nancy_young@nps.gov,* by telefax at (202) 619–7420, or by mail at the National Capital Memorial Advisory Commission, 1100 Ohio Drive, SW., Room 220, Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. Chapter 89 *et seq.*), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service;

Administrator, General Services Administration;

Chairman, National Capital Planning Commission;

Chairman, Commission of Fine Arts;

Mayor of the District of Columbia;

Architect of the Capitol;

Chairman, American Battle Monuments Commission;

Secretary of Defense.

Dated: October 22, 2009.

Margaret O'Dell,

Regional Director, National Capital Region.

[FR Doc. E9–27731 Filed 11–18–09; 8:45 am]

BILLING CODE 4312–JK–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on November 12, 2009, a Consent Decree in *United States* v. *Allen Greig & Perry, Inc., et al.,* No. 1:09–cv–482, was lodged with the United States District Court for the District of Maine.

The proposed Consent Decree resolves claims of the United States, on behalf of the Environmental Protection Agency (''EPA'') and the U.S. Department of the Interior, Fish and Wildlife Service (''DOI''), under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* in connection with the West Site/Hows Corner Superfund Site in Plymouth, Maine (''Site''), against 82 defendants.

The Consent Decree requires two settling defendants (''Performing Parties'') to perform the remedial action set forth in EPA's 2002 and 2006 Records of Decision (''RODs'') for the Site. The remedial action includes: Groundwater containment with on-site treatment for the ''Source Area Groundwater'' (as described in the 2002 ROD); groundwater restoration of the Non-Source Area Groundwater through monitored natural attenuation; a technical impracticability waiver for the Source Area Groundwater; institutional controls; long-term monitoring of groundwater, surface water, sediments, indoor air/vapors (if required by EPA), and institutional controls; operation and maintenance; residential well monitoring with a contingency for public water; and vapor intrusion investigation and response. The Consent Decree also requires the Performing Parties to pay: $10,953 to the State of Maine for its past costs; $900,000 to the State in prepayment of future oversight costs; $6,500 to DOI for its natural resource damages assessment costs; and $59,427 to the State for its natural resource damages assessment costs. The Consent Decree also requires the settlors to implement a natural resources project comprising the purchase of two parcels totalling 752.5 acres and making them subject to restrictive covenants. The two parcels will then be conveyed to the State to be held in perpetuity in a

protected status as part of a State wildlife management area and will be used as a drinking water source. The Consent Decree also provides that the other 80 settling defendants pay, in aggregate, $14,878,397. These payments will be deposited into a trust account that is being managed by the Performing Parties. These funds will be available to fund the payments and the work as required under the Consent Decree.

The Consent Decree also resolves potential contribution claims by the 82 settlors against five settling federal agencies (''SFAs'') in exchange for up-front payments totalling $63,661 by the SFAs, and payments by them collectively of 44.15% of the cost of the remedy after the trust funds are exhausted. The five SFAs are the Defense Logistics Agency/DRMS, the U.S. Coast Guard, the U.S. Air Force, the Army and Air Force Exchange Service, and the U.S. Army.

The Consent Decree provides that the settlors are entitled to contribution protection as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), for matters addressed by the settlement. The matters addressed by the Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States, the State or any other person with respect to the Site and all damages for natural resources at the Site under the trusteeship of DOI or the State.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, 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* v. *Allen Greig & Perry, Inc., et al.,* No. 1:09–cv–482, D.J. No. 90–11–3–1733/7. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Maine, 100 Middle Street, Portland, Maine 04104. During the public comment period, the proposed 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 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 of the proposed Consent Decree, please enclose a check in the amount of $170.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–27783 Filed 11–18–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0083]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection under review: application for limited permit.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 176, page 47020 on September 14, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 21, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Limited Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. *Abstract:* Any person who intends to acquire explosive materials from a licensee or permittee in the State in which that person resides on no more than 6 occasions per year, must obtain a limited permit from ATF.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 40,000 respondents will take 30 seconds to submit the required information.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 2,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry

Building, 601 D Street NW., Washington, DC 20530.

Dated: November 16, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–27802 Filed 11–18–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0080]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under review: notification of change of mailing or premise address.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 173, page 47020–47021 on September 14, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 21, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notification of Change of Mailing or Premise Address.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Not-for-profit Institutions. *Other:* Business or other for-profit. *Abstract:* Licensees and permittees whose mailing address will change must notify the Chief, Federal Explosives Licensing Center, at least 10 days before the change. The information is used by ATF to identify correct locations of storage of explosives licensees/permittees and location of storage of explosive materials for purposes of inspection, as well as to notify permittee/licensees of any change in regulations or laws that may affect their business activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,000 respondents, who will take 10 minutes to respond via letter to the Federal Explosives Licensing Center.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 170 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: November 16, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–27803 Filed 11–18–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 13, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King at 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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 submission of responses.

Agency: Office of Workers' Compensation Programs.

Type of Review: Existing collection in use without an OMB Control Number.

Title of Collection: Carrier's Report of Issuance of Policy.

OMB Control Number: Pending.

Agency Form Number: LS–570.

Affected Public: Private Sector—Businesses and other for-profits.

Total Estimated Number of Respondents: 358.

Total Estimated Annual Burden Hours: 8,333.

Total Estimated Annual Costs Burden (excludes hourly wage costs): $52,000.

Description: The Form LS–570 is used by authorized insurance carriers to report the policy of insurance issued for each insured employer. This form is to be sent to the Deputy Commissioner in the compensation district indicated by the employer's address. Section 32 (a) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932(a)), requires every employer to secure the payment of such compensation with any insurance company authorized by the Secretary, to insure payment of compensation under this Act; or (2) receiving an authorization from the Secretary to pay such compensation directly. For additional information, see related notice published at Volume 74 FR 46619 on September 10, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–27827 Filed 11–18–09; 8:45 am]

BILLING CODE 9111–97–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 09–099]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JE0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The subject information collection involves the collection of data to support the development of the National Aviation Safety Strategic Plan (NASSP) with strategies aligned with current and projected aviation safety issues. A major step in the development of the NASSP is the collection and analysis of worldwide safety issues.

II. Method of Collection

Aviation stakeholders will be contacted via electronic means and asked to respond by filling out a questionnaire. They will have the option of printing it and filling it out manually and then returning it via traditional mail, filling it out electronically and returning via e-mail, or visiting a Web site where the questionnaire can be filled out online. The information will be collected by the JPDO Aviation Safety Working Group's Strategic Planning Subcommittee and used to determine the efficacy of the Aviation Safety Strategic Plan.

III. Data

Title: Biennial NextGen Safety Issue Survey.

OMB Number: 2700–XXXX.

Type of Review: New Collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 2 hour.

Estimated Total Annual Burden Hours: 200 hours.

Estimated Annual Cost for Respondents: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA Clearance Officer.

[FR Doc. E9–27854 Filed 11–18–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL TRANSPORATION SAFETY BOARD

Office of the Managing Director: Strategic Management Division; Fiscal Year 2010–2015 Strategic Plan

AGENCY: National Transporation Safety Board.

ACTION: Notice: Request for Comments.

SUMMARY: This notice is in accordance with OMB Circular A–11, Section 210.3 (b), Consultation and Outreach, which requires that the NTSB solicits comments on the proposed strategic plan to be published by December 2009. All interested parties are invited to submit comments regarding this proposed strategic plan. As background, NTSB's 2007–2012 strategic plan was published February 9, 2007. The proposed strategic plan updates the original plan, incorporating lessons learned from three years of performance management at the agency. The revised plan includes similar strategic goals as the original plan, plus 17 enhanced strategic objectives and 28 key performance indicators to measure overall success of agency objectives. In addition, the proposed strategic plan includes an updated analysis of environmental factors affecting the agency, and a discussion of data reliability and evaluation methodology. You can view a copy of the draft strategic plan on the NTSB Web site at: *http://www.ntsb.gov/Abt_NTSB/Plans/Strategic-Plan_2010–2015.pdf.*

DATES: Parties should submit comments on or before December 3, 2009.

ADDRESSES: Submit electronic comments to *strategicplan@ntsb.gov.*

Submit written comments by regular mail to the National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594. Attn: MD–6 Strategic Management.

FOR FURTHER INFORMATION CONTACT: Agency contact, Eric Fielding, Associate Managing Director, Strategic Management; National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594, 202–314–6017.

SUPPLEMENTARY INFORMATION:

* * * * *

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. E9–27724 Filed 11–18–09; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0505; Docket No. 050–00255; License No. DPR–20; EA–09–060]

Confirmatory Order (Effective Immediately)

Entergy Nuclear Operations, Inc., Palisades Nuclear Plant, 27780 Blue Star Memorial Highway, Covert, MI 49043–9530.

I

Entergy Nuclear Operations, Inc. (Licensee or Entergy) is the holder of Reactor Operating License No. DPR–20 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on March 24, 1971. The license authorizes the operation of the Palisades Nuclear Plant in accordance with conditions specified therein.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on September 15, 2009.

II

On May 22, 2008, the NRC completed a security baseline inspection at the Palisades Nuclear Plant. The inspection covered one or more of the key attributes of the security cornerstone of the NRC's Reactor Oversight Process. As a result of the inspection observations, the NRC Office of Investigations (OI) initiated an investigation (OI Case No. 3–2008–020). Based on the evidence developed during the inspection and investigation, the NRC identified a violation of 10 CFR 50.9 for inaccurate and incomplete information. This violation is described in the separate Notice of Violation, included as Enclosure 3 to the transmittal letter. (Because the Notice of Violation contains Security-Related information, it is not being made publicly available.)

The results of the investigation were sent to Entergy in a letter dated July 14, 2009. This letter offered Entergy the opportunity to either participate in ADR mediation or to attend a Predecisional Enforcement Conference. On July 28, 2009, the NRC and Entergy agreed to mediate. On September 15, 2009, the NRC and Entergy 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 September 15, 2009, ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

1. Entergy will publish the corrective actions set forth in this Confirmatory Order to the Entergy fleet nuclear workforce, via *Inside Entergy,* within one month of the issuance of the Confirmatory Order. Entergy will provide a copy of the publication to the Regional Administrator, Region III, within one month of publication of the article.

2. Entergy agrees to develop and implement a formal process, within the current Corrective Action Program (CAP), that ensures that Safeguards and Security-Related information, which would otherwise not be contained in the CAP, is processed in an auditable manner, consistent with Entergy's existing CAP. Entergy will develop and implement this process within 6 months of the date of the Confirmatory Order and will provide a description of these program changes to the Regional Administrator, Region III, within one month of their implementation.

Entergy will complete training for those personnel with Safeguards access on the program described above within 90 days of the effective date of the procedure or process described above.

3. Entergy will provide training to Entergy's nuclear workforce on the sensitivity and importance of providing complete and accurate information to the NRC. This training will be completed within 1 year of the date of the issuance of the Confirmatory Order. Entergy will tailor the training, as appropriate, to reflect the level of the individuals within the organization and their specific responsibilities for communicating with the NRC. Entergy will maintain auditable records of the training and will provide notification to the Regional Administrator, Region III, within one month of completion of the training.

4. Entergy will assess its succession planning process with respect to how that process addresses unanticipated, short-term personnel losses in key positions. Entergy will complete this assessment, and will develop corrective actions, as appropriate, within 6 months of the date of the issuance of the Confirmatory Order. Entergy will provide the results of this assessment to the Regional Administrator, Region III, within one month of its completion.

5. An Entergy executive will meet with the three NRC Regional Administrators for the regions in which Entergy owns and operates plants, to share and discuss the results of the safety culture workplace survey conducted at each Entergy nuclear plant in 2009. Subject to the schedules of the Entergy and NRC executive participants, Entergy will seek to have these meetings conducted by March 31, 2010.

6. Entergy will provide a lessons-learned presentation to the Regional Utility Groups for the NRC Regions in which Entergy operates nuclear facilities within 1 year of the date of the issuance of the Confirmatory Order. That lessons-learned presentation will address the events which gave rise to the Confirmatory Order and the corrective actions taken. Entergy will provide a copy of the proposed presentation to the Regional Administrator, Region III, for review prior to the presentation.

7. The NRC agrees to cite Entergy for a single violation of 10 CFR 50.9, associated with incomplete and inaccurate information, based exclusively on the information contained in Condition Reports CR–PLP–2007–05448 and CR–PLP–2007–05758 and the February 5, 2008, verbal communications with the NRC. The NRC will not assign a Severity Level to the violation and will not issue a civil penalty for the violation.

8. Entergy, by signing the Agreement in Principle, makes no admission that any employee or former employee deliberately violated any NRC requirements and that this agreement is settlement of a disputed claim in order to avoid further action by the NRC.

On October 13, 2009, Entergy consented to issuing this Order with the commitments, as described in Section V below. Entergy further agreed that this

Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since Entergy 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 Entergy'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 Entergy's commitments be confirmed by this Order. Based on the above, and Entergy's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 104, 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 50, *it is hereby ordered, effective immediately:*

1. Entergy shall publish the corrective actions set forth in this Confirmatory Order to the Entergy fleet nuclear workforce, via *Inside Entergy,* within one month of the issuance of the Confirmatory Order. Entergy shall provide a copy of the publication to the Regional Administrator, Region III, within one month of publication of the article.

2. Entergy shall develop and implement a formal process, within the current Corrective Action Program (CAP), that ensures that Safeguards and Security-Related information, which would otherwise not be contained in the CAP, is processed in an auditable manner, consistent with Entergy's existing CAP. Entergy shall develop and implement this process at all of Entergy's licensed facilities within 6 months of the date of the Confirmatory Order and shall provide a description of these program changes to the Regional Administrator, Region III, within one month of their implementation.

Entergy shall complete training for those personnel with Safeguards access on the program described above within 90 days of the effective date of the procedure or process described above.

3. Entergy shall provide training to Entergy's nuclear workforce on the sensitivity and importance of providing complete and accurate information to the NRC. This training shall be completed at all of Entergy's licensed facilities within 1 year of the date of the issuance of the Confirmatory Order. Entergy shall tailor the training, as appropriate, to reflect the level of the individuals within the organization and their specific responsibilities for communicating with the NRC. Entergy shall maintain auditable records of the training and shall provide notification to the Regional Administrator, Region III, within one month of completion of the training.

4. Entergy shall assess its succession planning process with respect to how that process addresses unanticipated, short-term personnel losses in key positions. Entergy shall complete this assessment for all of Entergy's licensed facilities, and shall develop corrective actions, as appropriate, within 6 months of the date of the issuance of the Confirmatory Order. Entergy shall provide the results of this assessment to the Regional Administrator, Region III, within one month of its completion.

5. An Entergy executive shall meet with the three NRC Regional Administrators for the regions in which Entergy owns and operates plants, to share and discuss the results of the safety culture workplace survey conducted at each Entergy nuclear plant in 2009. Subject to the schedules of the Entergy and NRC executive participants, Entergy shall seek to have these meetings conducted by March 31, 2010.

6. Entergy shall provide a lessons-learned presentation to the Regional Utility Groups for the NRC Regions in which Entergy operates nuclear facilities within 1 year of the date of the issuance of the Confirmatory Order. That lessons-learned presentation shall address the events which gave rise to the Confirmatory Order and the corrective actions taken. Entergy shall provide a copy of the proposed presentation to the Regional Administrator, Region III, for review prior to the presentation.

The Regional Administrator, NRC Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by Entergy of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Entergy, may request a hearing within 20 days of the Confirmatory 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 a 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 Entergy 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.

Dated this 10th day of November 2009.

For the U.S. Nuclear Regulatory Commission.

Mark A. Satorius,

Regional Administrator, Region III.

[FR Doc. E9–27792 Filed 11–18–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2010–1; Order No. 335]

Inquiry Into Suspended Post Offices

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is establishing a docket to address Postal Service practices related to suspension of post offices. It invites comments from the public on this topic.

DATES: 1. Comments are due: January 15, 2010. 2. Reply comments are due: February 16, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Commenters who cannot submit their views electronically should contact the person identified **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

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

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Representative
III. Ordering Paragraphs

I. Background

Order No. 319 concluded Docket No. A2009–1, Appeal of the Hacker Valley, West Virginia Post Office Closing.[1] During that proceeding, information came to light that convinced the Commission that further inquiry and analysis was necessary. On August 14, 2009, the Postal Service filed with the Commission its response to Commission Information Request No. 1, questions 1 through 13 (CIR No. 1).[2] The Commission concerns arose as a result of the responses to questions 6 through 9. The Commission gathers from the Postal Service's responses that 97 post offices have been suspended due to lease expiration during the past 5 years and most of them remain suspended. Response to CIR No. 1 at 8. The Commission initiates this public inquiry to develop further information on the status of these suspended offices and the Postal Service practice of suspending offices for extended periods without affording the public the rights guaranteed by 39 U.S.C. 404(d). The Commission seeks input from the public on this matter.

In CIR No. 1, questions 6 through 9, the Commission sought information pertaining to post offices suspended during the last 5 years due to lease expirations. The Postal Service's response to CIR No. 1, question 6, informs the Commission that 97 offices have been suspended from 2004 to 2009. *Id.* The response includes a list naming each of the 97 offices, their ZIP Codes, and date of suspension. In CIR No. 1, question 7, the Commission asks how many of the suspended post offices were subsequently closed. The Postal Service responds that 25 of the 97 offices were subsequently closed and provides another list adding a column providing the close date. *Id.* at 12. CIR No. 1, question 8, seeks to know how many of the suspended post offices were reopened. The Postal Service states that 2 of the 97 offices have been reopened. *Id.* at 14. CIR No. 1, question 9, asks how many of the suspended offices are pending closure. The Postal Service reported that the closure process had been initiated for five offices. *Id.* at 15. Based on these responses, the Commission establishes that 65 post

[1] Docket No. A2009–1, Order on Appeal of Hacker Valley, West Virginia Post Office Closing, October 19, 2009 (Order No. 319).

[2] Response of the United States Postal Service to Commission Information Request No. 1, August 14, 2009 (Response).

offices suspended due to the expiration of a facility lease during the previous 5 years remain suspended.

The Commission is concerned that post office customers throughout the nation do not have access to local post offices and their services due to suspensions. It is evident that several post offices have been suspended for a number of years, and the Postal Service apparently has taken no effective action to reopen or close such offices. Pursuant to 39 U.S.C. 404(a)(3), the Postal Service has the authority to determine the need for post offices. Section 404 establishes the process with which the Postal Service must comply when closing or consolidating post offices. This process allows for public comment on the proposed closure and the appeal of a determination to close a post office. 39 U.S.C. 404(d). However, based on the information gathered in Docket No. A2009–1, it appears that the Postal Service may be avoiding this process by suspending post offices and allowing them to simply remain suspended without any action.

Pursuant to Handbook PO–101 section 617, the District Manager, Customer Service and Sales, must determine a plan of action to restore service, secure suitable alternate quarters, take other corrective action, or initiate a discontinuance study within 90 days of the suspension. Docket No. A2009–1, Commission Information Request No. 2, September 29, 2009, requests the Postal Service to provide a copy of its plan of action regarding the Hacker Valley post office. The Postal Service submitted the plan of action and indicated that it was studying the office for discontinuance.[3] However, in Commission Information Request No. 3, October 26, 2009, question 1, the Commission lists several of the tasks required for the Preparing for Investigation phase of the discontinuance study and asks which tasks had been completed. The Postal Service replied that though the study had commenced, none of the listed tasks had been completed.[4]

It is not sufficient to simply suspend operations at a post office without promptly developing a plan to reopen or close the existing office. The Commission initiates this public inquiry to investigate this matter to better understand the scope of this problem. Interested persons, including members of the public who are patrons of recently suspended and not so recently suspended post offices, are invited to provide written comments.

II. Public Representative

Section 505 of title 39 requires the designation of an officer of the Commission in all public proceedings to represent the interests of the general public. The Commission hereby designates Richard A. Oliver as Public Representative in this proceeding. Pursuant to this designation, he will direct the activities of Commission personnel assigned to assist him and will, upon request, provide their names for the record. Neither he nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

An aspect of the responsibilities of the Public Representative will be to work with the Postal Service to develop an accurate representation of how written procedures related to the emergency suspension of post offices are being adhered to in actual practice. In addition, the Public Representative should review subsequent Postal Service action related to the relocation or closing of post offices that were suspended due to the expiration of the lease for the facility.

III. Ordering Paragraphs

It is ordered:

1. Docket No. PI2010–1 is established for the purpose of receiving comments pertaining to the suspension of post offices due to lease expirations.

2. Interested persons may submit written comments by January 15, 2010.

3. Reply comments also may be filed by February 16, 2010.

4. Richard A. Oliver is designated as the Public Representative to represent the interests of the general public in this docket.

5. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–27778 Filed 11–18–09; 8:45 am]

BILLING CODE 7710–FW–S

[3] Response of United States Postal Service to Commission Information Request No. 2, September 29, 2009.

[4] Response of United States Postal Service to Commission Information Request No. 3, October 26, 2009, at 1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60996; File No. PCAOB–2009–03]

Public Company Accounting Oversight Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Postponing the Effective Date of Rules and Forms Related to Annual and Special Reporting by Registered Firms and Succession to the Registration Status of a Predecessor Firm

November 13, 2009.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on September 30, 2009, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule changes described in Items I, II, and III below, which items have been prepared by the Board. The PCAOB has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Securities Exchange of 1934 (as incorporated, by reference, into Section 107(b)(4) of the Act) and Rule 19b–4(f)(1), which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing with the Commission a rule change to postpone, from October 12, 2009, to December 31, 2009, the effective date of PCAOB Rules 2200, Annual Report; 2201, Time for Filing of Annual Report; 2202, Annual Fee; 2203, Special Reports; 2204, Signatures; 2205, Amendments; 2206 Date of Filing; 2207, Assertions of Conflicts with Non-U.S. Laws; 2108, Succeeding to the Registration Status of a Predecessor; 2109, Procedure for Succeeding to the Registration Status of a Predecessor; instructions to PCAOB Form 2, Annual Report Form; PCAOB Form 3, Special Report Form; and PCAOB Form 4, Succeeding to the Registration Status of a Predecessor; and related amendments to PCAOB Rules 1001(a)(vii), 1001(n)(ii), 1001(o)(i), 2107(c), 2107(f), 2300(a), 2300(b), 2300(c), 2300(f), 2300(g), 4000, and 4003(c).

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In the Board's filings under Rule 19b–4 seeking Commission approval of the proposed rules and form instructions identified in Section I above (PCAOB–2008–04 (June 17, 2008) and PCAOB–2008–05 (August 4, 2008)), the Board stated that those proposed rules and form instructions would take effect 60 days after Commission approval. The Commission approved those rules and form instructions in Commission Release Nos. 34–60496 and 34–60497 on August 13, 2009. Accordingly, the rules and form instructions were to take effect on October 12, 2009.

On the date that the rules and form instructions take effect, deadlines will begin to run for registered firms to report certain information to the Board by filing prescribed forms electronically through the Board's Web-based system for processing and publishing those forms. Because of technical issues related to deploying that Web-based system, it now appears that the system will not be sufficiently operational by October 12, 2009 to allow the filing of such forms by registered firms. Accordingly, the Board is delaying the effective date of the rules and form instructions to December 31, 2009 to permit time to resolve the technical issues and deploy the system.

The change in the effective date will have no impact on the timing of the first annual reports on Form 2 that will be required of registered firms pursuant to Rule 2200. Those reports will continue to be due by June 30, 2010, for the twelve-month period ending March 31, 2010, just as they would have been if the rules took effect on October 12, 2009. Similarly, the first annual fee due from firms pursuant to Rule 2202 will continue to be due by July 31, 2010, just as it would have been if the rules took effect on October 12, 2009.

Changing the effective date will, however, postpone to December 31, 2009 the onset of the obligation for registered firms to file special reports on Form 3 to report certain events that occur, and will similarly postpone the option of submitting a Form 4 to succeed to the registration status of a predecessor firm.

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Board's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Board did not solicit or receive written comments on the proposed rule change.

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) of the Securities Exchange of 1934 (as incorporated, by reference, into Section 107(b)(4) of the Act) and Rule 19b–4(f)(1) 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 is consistent with the requirements of Title I of 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/pcaob.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number PCAOB 2009–03 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 PCAOB 2009–03. 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/pcaob/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule 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 PCAOB. 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 available publicly. All submissions should refer to File No. PCAOB–2009–03 and should be submitted on or before December 10, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–27738 Filed 11–18–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60985; File No. SR–CTA/CQ–2009–02]

Consolidated Tape Association; Notice of Filing of the Thirteenth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan and Seventh Charges Amendment to the Restated Consolidated Quotation Plan

November 10, 2009.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on October 19, 2009,[3] the Consolidated Tape

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] On November 6, 2009, the Consolidated Tape Association sent a letter correcting the number of the proposed amendment.

Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (''Participants'')[4] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the ''Plans'').[5] The proposal represents the thirteenth charges amendment to the CTA Plan (''Thirteenth Charges Amendment'') and the seventh charges amendment to the CQ Plan (''Seventh Charges Amendment''), and reflects changes unanimously adopted by the Participants. The Thirteenth Charges Amendment to the CTA Plan and the Seventh Charges Amendment to the CQ Plan (''Amendments'') would: (1) Delete all program classification charges from the schedules of Network A and Network B computer input charges; and (2) replace the current combined Network A/Network B high speed line access charges with separate high speed line access charges for Network A and Network B. The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments.

I. Rule 608(a)

A. Description and Purpose of the Amendments

The Plans currently divide the different means of using market data into eight program classifications. The program classification fees payable by vendors and end-users depend on the category of use the vendor or end-user makes of the data and whether the vendor or end-user is using Network A market data or Network B market data, or both. Through the Amendments, the Participants propose to eliminate program classification charges and set separate fees for the receipt of Network A market data and Network B market data.

Over time, new technologies and new and innovative notions on how to use market data have made it increasingly difficult to place data uses into the existing program classifications in a manner that is consistent and equitable for all. The Participants have come to believe that it is inherently more equitable for them to charge vendors and end-users for the method of access to the data and the quantity of usage, rather than for the specific purposes (*i.e.,* by program classification) to which vendors and end-users put market data. The Participants believe that eliminating the manner-of-data-usage charges will modernize the CTA and CQ fee schedules and allow all vendors and users to use data as they see fit, without having to worry about whether a new usage would subject them to a new program classification fee. The elimination of program classification charges means that vendors will no longer need to provide detailed explanations of how they use the data or to update Exhibit A to their agreements with the Participants each time they put data to a new use.

Additionally, the Participants propose to revise the access fees by setting separate fees for the receipt of Network A market data and Network B market data. Therefore, if a vendor or end-user wishes to receive Network A last sale prices (or quotation information), but not Network B last sale prices (or quotation information), the vendor or end-user would now be allowed it to pay only for Network A last sale prices, without also having to pay for Network B last sale prices and vice versa.

In addition to establishing separate access fees for Network A and Network B, it is the intention of the Participants to set the new access fees at levels that will offset the revenues that the Participants anticipate they will lose as a result of eliminating the program classification fees. The Participants' goal is to eliminate the program classification fees and reset access fees in a revenue-neutral manner and simplify and modernize the fee schedule while offering vendors and end-users greater choice and flexibility in the receipt and use of market data.

The text of the proposed Amendments is available on the CTA's Web site (*http://www.nysedata.com/cta*), at the principal office of the CTA, and at the Commission's Public Reference Room.

B. Additional Information Required by Rule 608(a)

1. Governing or Constituent Documents

Not applicable.

2. Implementation of the Amendments

The Participants have manifested their approval of the proposed amendments to the CTA and CQ rate schedule by means of their execution of the Amendments. The Participants propose to make the rate changes effective for calendar year 2010.

3. Development and Implementation Phases

See Item I(B)(2) above.

4. Analysis of Impact on Competition

The amendment will impose no burden on competition.

5. Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the CTA Plan and CQ Plan as a result of the Amendments.

6. Approval by Sponsors in Accordance With Plan

In accordance with Section XII(b)(iii) of the CTA Plan and Section IX(b)(iii) of the CQ Plan, each of the Participants has approved the rate changes.

7. Description of Operation of Facility Contemplated by the Proposed Amendment

a. *Terms and Conditions of Access*
See Item I(A) above.
b. *Method of Determination and Imposition, and Amount of, Fees and Charges*
See Item I(A) above.
c. *Method of Frequency of Processor Evaluation*
Not applicable.
d. *Dispute Resolution*
Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

[4] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange, LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX, Inc.; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Amex LLC; and NYSE Arca, Inc.

[5] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

See Item I(A) above.

H. Identification of Marketplace Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Thirteenth Charges Amendment to the CTA Plan and the Seventh Charges Amendment to the CQ Plan are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CTA/CQ–2009–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CTA/CQ–2009–02. 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 Amendments that are filed with the Commission, and all written communications relating to the Amendments 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 Amendments also will be available for inspection and copying at the principal office of the CTA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CTA/CQ–2009–02 and should be submitted on or before December 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27745 Filed 11–18–09; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of: Apponline.Com, Inc.; Condor Gold Corp.; EPL Technologies, Inc.; General Credit Corp.; Integra, Inc.; Integrated Health Services, Inc.; Log On America, Inc.; Matlack Systems, Inc.; Pixtech, Inc.; and Virtual Communities, Inc.; Order of Suspension of Trading

November 17, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Apponline.Com, Inc. because it has not filed any periodic reports since the period ended March 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Condor Gold Corp. because it has not filed any periodic reports since the period ended August 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EPL Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of General Credit Corp. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integra, Inc. because it has not filed any periodic reports since the period ended March 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integrated Health Services, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Log On America, Inc. because it has not filed any periodic reports since the period ended December 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Matlack Systems, Inc. because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pixtech, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Virtual Communities, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on November 17, 2009, through 11:59 p.m. EST on December 1, 2009.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E9–27892 Filed 11–17–09; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60990; File No. SR–NASDAQ–2009–095]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto To Extend the Pilot Program and Reduce Fees for NASDAQ Last Sale Data Feeds and To Make a Technical Correction to NASDAQ Rule 7039

November 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2009, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On November 5, 2009, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal as amended on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to extend for three months the pilot, retroactively as of October 1, 2009, that created the NASDAQ Last Sale (''NLS'') market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the ''NASDAQ Last Sale for NASDAQ'' and ''NASDAQ Last Sale for NYSE/Amex'' data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the jointly-operated FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''). The purpose of this proposal is to extend the existing pilot program for three months, retroactively as of October 1, 2009, as well as to make a drafting error correction to the fee tables in NASDAQ Rule 7039 (NASDAQ Last Sale Data Feeds) concerning the distribution of NASDAQ Last Sale data products via television for both NASDAQ and NYSE/Amex that results in the correct lower monthly fee.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the current pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, Nasdaq believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on websites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is *in italics;* proposed deletions are in brackets.[3]

* * * * *

7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [July] *October* 1, 2009, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1) ''NASDAQ Last Sale for NASDAQ'' shall contain all transaction reports for NASDAQ-listed stocks; and

(2) ''NASDAQ Last Sale for NYSE/Amex'' shall contain all such transaction reports for NYSE- and Amex-listed stocks.

(b) Each distributor of the NASDAQ Last Sale Data Feeds may elect between two alternate fee schedules, depending upon the choice of distributors to report usage based on either a username/password entitlement system or a quote counting mechanism or both. All fees for the NASDAQ Last Sale Data Products are ''stair-stepped'' in that the fees are reduced for distributors with more users but the lower rates apply only to users in excess of the specified thresholds rather than applying to all users once a threshold is met. In addition, there shall be a maximum fee of $50,000 per month for NASDAQ Last Sale for NASDAQ and NASDAQ Last Sale for NYSE/Amex.

(1) Firms that choose to report usage for either a username/password entitlement system or quote counting mechanism or both shall elect between paying a fee for each user or a fee for each query. A firm that elects to pay for each query may cap its payment at the monthly rate per user. Firms shall pay the following fees:

Users/mo	Price	Query	Price
(A) NASDAQ Last Sale for NASDAQ			
1–9,999	$0.60/usermonth	0–10M	$0.003/query.
10,000–49,999	$0.48/usermonth	10M–20M	$0.0024/query.
50,000–99,999	$0.36/usermonth	20M–30M	$0.0018/query.
100,000+	$0.30/usermonth	30M+	$0.0015/query.
(B) NASDAQ Last Sale for NYSE/Amex			
1–9,999	$0.30/usermonth	0–10M	$0.0015/query.
10,000–49,999	$0.24/usermonth	10M–20M	$0.0012/query.
50,000–99,999	$0.18/usermonth	20M–30M	$0.0009/query.
100,000+	$0.15/usermonth	30M+	$0.000725/query.

(2) Firms that choose not to report usage based on either a username/password entitlement system or quote counting mechanism or both may distribute NASDAQ Last Sale Data Products under alternate fee schedules depending upon whether they distribute data via the Internet or via Television:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at *http://nasdaqomx.cchwallstreet.com.*

(A) The fee for distribution of NASDAQ Last Sale Data Products via the Internet shall be based upon the number of Unique Visitors to a website receiving such data. The number of Unique Visitors shall be validated by a vendor approved by NASDAQ in NASDAQ's sole discretion.

Unique visitors	Monthly fee
(i) NASDAQ Last Sale for NASDAQ	
1–100,000	$0.036/Unique Visitor.
100,000–1M	$0.03/Unique Visitor.
1M+	$0.024/Unique Visitor.
(iii) NASDAQ Last Sale for NYSE/Amex	
1–100,000	$0.018/Unique Visitor.
100,000–1M	$0.015/Unique Visitor.
1M+	$0.012/Unique Visitor.

(B) Distribution of NASDAQ Last Sale Data Products via Television shall be based upon the number of Households receiving such data. The number of Households to which such data is available shall be validated by a vendor approved by NASDAQ in NASDAQ's sole discretion.

Households	Monthly fee
(i) NASDAQ Last Sale for NASDAQ	
1–1M	$0.00096/Household.
1M–5M	$0.00084/Household.
5M–10M	$0.00072/Household.
10M+	$0.0006/Household.
(ii) NASDAQ Last Sale for NYSE/Amex	
1–1M	$0.00048/Household.
1M–5M	$0.00042/Household.
5M–10M	$0.00036/Household.
10M+	$0.0003/Household.

(C) A Distributor that distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms shall pay all fees applicable to each distribution mechanism, provided that there shall be a discount from the applicable Television rate as follows:

(i) 10 percent reduction in applicable Television fees when a Distributor reaches the second tier of Users, Queries, or Unique Visitors for its non-Television users;

(ii) 15 percent reduction in applicable Television fees when a Distributor reaches the third tier of Users, Queries, or Unique Visitors for its non-Television users; and

(iii) 20 percent reduction in applicable Television fees when a Distributor reaches the fourth tier of Users, Queries, or Unique Visitors for its non-Television users.

(c) All Distributors of a NASDAQ Last Sale Data Feed shall also pay a monthly fee of $1,500.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data via the Internet and Television at no cost to millions of Internet users and Television viewers. NASDAQ now proposes a three-month extension of that pilot program on the same terms as applicable today.[4]

The NLS pilot created two separate ''Level 1'' products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the ''NASDAQ Last Sale for NASDAQ Data Product,'' a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the NASDAQ Last Sale for NYSE/Amex data product that provides real-time last sale information including execution price, volume, and time for NYSE- and Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms will be eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product: Firms that were unable to maintain username/password entitlement systems and/or quote counting mechanisms will also have multiple options for purchasing the NASDAQ Last Sale data. These firms chose between a ''Unique Visitor'' model for internet delivery or a ''Household'' model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

Second, NASDAQ established a cap on the monthly fee, currently set at $50,000 per month for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products would pay a single $1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee will apply to all distributors and will not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the Internet and Television.

Finally, NASDAQ proposes to make a drafting error correction to the fee tables in NASDAQ Rule 7039 (NASDAQ Last Sale Data Feeds) concerning the distribution of NASDAQ Last Sale data products via television for both NASDAQ and NYSE/Amex. The correction results in the lower monthly fee as originally intended but for a drafting error. Since these particular market data products have yet to be procured the incorrect fees have never been assessed and the correction results in no practical effect.

[4] NASDAQ will file a proposed rule change within thirty days seeking permanent approval of the NLS pilot.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general and with Section 6(b)(4) of the Act,[6] as stated above, in that it provides an equitable allocation of reasonable fees among users and recipients of NASDAQ data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The NASDAQ Last Sale market data products proposed here appear to be precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[7]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether, proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

NASDAQ's ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including eleven self-regulatory organization (''SRO'') markets, as well as broker-dealers (''BDs'') and aggregators such as the DirectEdge electronic communications network (''ECN''). Each SRO market competes to produce transaction reports via trade executions, and an ever-increasing number of FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, and ECNs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ECN and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, Amex, NYSEArca, and BATS.

Any ECN or BD can combine with any other ECN, broker-dealer, or multiple ECNs or BDs to produce jointly proprietary data products. Additionally, non-broker-dealers such as order routers like LAVA, as well as market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ECNs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace writ large.

Consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only that data which will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to successfully market proprietary data products.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook,

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f–3(b)(4).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

Island, RediBook, Attain, TracECN, and BATS Trading. Today, BATS publishes its data at no charge on its Web site in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users.

Several ECNs have existed profitably for many years with a minimal share of trading, including Bloomberg Tradebook and NexTrade.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson. New entrants are already on the horizon, including ''Project BOAT,'' a consortium of financial institutions that is assembling a cooperative trade collection facility in Europe. These institutions are active in the United States and could rapidly and profitably export the Project Boat technology to exploit the opportunities offered by Regulation NMS.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fee and an equitable allocation of fees among all users.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the NASDAQ Last Sale Products respond to and enhance competition that already exists in the market.

On May 28, 2008, the internet portal Yahoo! announced that it would offer its website viewers real-time last sale data provided by BATS Trading. NASDAQ's last sale data products would compete directly with the BATS product disseminated via Yahoo!. Since that time, BATS has attracted additional purchasers of its last sale product that is free or charge or, at least, has not been the subject of a proposed rule change..

In addition, as set forth above, the market for last sale data is already competitive, with both real-time and delayed consolidated data as well as the ability for innumerable entities begin rapidly and inexpensively to offer competitive last sale data products. Moreover, the New York Stock Exchange distributes competing last sale data products and has reduced the price of its product. Under the deregulatory regime of Regulation NMS, there is no limit to the number of competing products that can be developed quickly and at low cost. The Commission should not stand in the way of enhanced competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Three comment letters were filed regarding the proposed rule change as originally published for comment NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at: *http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml.*

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–095 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–NASDAQ–2009–095. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–095 and should be submitted on or before December 10, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, to extend the pilot program for three months, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, it is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[11] which requires that the rules of an exchange not impose any burden on competition not necessary or

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[12] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[13]

The Commission approved the fee for the NASDAQ Last Sale Data Feeds for a pilot period which ran until September 30, 2009.[14] The Commission notes that the Exchange proposes to extend the pilot program for three months, with such extension retroactive to October 1, 2009. The Commission did not receive any comments on the previous extensions of the pilot program.[15]

On December 2, 2008, the Commission issued an approval order (''Order'') that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for ''non-core'' market data products, such as the NASDAQ Last Sale Data Feeds.[16] The Commission believes that Nasdaq's proposal to temporarily extend the pilot program to December 31, 2009 is consistent with the Act for the reasons noted in the Order.[17] The Commission believes that approving NASDAQ's proposal to temporarily extend the pilot program that imposes a fee for the NASDAQ Last Sale Data Feeds for an additional three months will be beneficial to investors and in the public interest, in that it is intended to allow continued broad public dissemination of increased real-time pricing information.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal is expected to benefit investors by continuing to facilitate their access to widespread, free, real-time pricing information contained in the NASDAQ Last Sale Data Feeds. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[18] to approve the proposed rule change as amended on an accelerated basis and retroactively to October 1, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2009–095) as amended is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27746 Filed 11–18–09; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 242.603(a).

[13] NASDAQ is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

[14] *See* Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060); 58894 (October 31, 2008), 73 FR 66953 (November 12, 2008) (SR–NASDAQ–2008–086); 59186 (December 30, 2008), 74 FR 743 (January 7, 2009) (SR–NASDAQ–2008–103); 59652 (March 31, 2009) 74 FR 15533 (April 6, 2009) (SR–NASDAQ–2009–027); 60201 (June 30, 2009), 74 FR 32670 (July 8, 2009) (SR–NASDAQ–2009–062).

[15] *Id.*

[16] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data).

[17] *See supra* note 14.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60991; File No. SR–NASDAQ–2009–092]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate Rules Related to Nasdaq's PORTAL Market

November 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') 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 Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to eliminate rules related to Nasdaq's PORTAL Market. The text of the proposed rule change is below. The text of the proposed rule change is attached as Exhibit 5 and [sic] is available at *http://www.cchwallstreet.com/nasdaq.*[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to eliminate rules related to its PORTAL Market.

Background

The National Association of Securities Dealers, Inc. (''NASD'') created the PORTAL Market in 1990,[5] simultaneously with the SEC's adoption of Rule 144A,[6] to be a new trading system for the purpose of quoting, trading, and reporting trades in securities deemed eligible for resale by Qualified Institutional Buyers under Rule 144A. Rule 144A provides an exemption from registration under Section 5 of the Securities Act[7] for resales of privately placed securities to investors that meet the eligibility requirements of being a qualified institutional buyer (''QIB'') under Rule 144A(a)(1),[8] *i.e.,* institutional investors that in the aggregate own or invest on a discretionary basis at least $100 million in securities and broker/dealers that in the aggregate own or invest on a discretionary basis at least $10 million in securities. The PORTAL Market did

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://nasdaqomx.cchwallstreet.com.*

[5] Securities Exchange Act Release No. 27956 (Apr. 27, 1990); 55 FR 18781 (May 4, 1990) (the ''original PORTAL rule filing'').

[6] Securities Act Release No. 6862 (April 23, 1990); 55 FR 17933 (April 30, 1990).

[7] 17 U.S.C. 77e.

[8] 17 CFR 230.144A(a)(1).

not develop as anticipated.[9] For many years, the sole function of the NASD related to the PORTAL market was to review whether an issue of privately placed securities met the eligibility requirements of Rule 144A, thereby qualifying the securities for book-entry services offered by the Depository Trust Company (''DTC'').

The staff of Nasdaq has historically had responsibility for review of PORTAL applications to determine the eligibility of securities and, originally, PORTAL participants (including broker/dealers and investors). Upon the separation of Nasdaq from the NASD and the approval of Nasdaq as a registered national securities exchange under Section 6 of the Act, the review functions for PORTAL market eligibility were retained by Nasdaq and the PORTAL Market Rules in the NASD Rule 5300 Series became the Nasdaq Rule 6500 Series.[10] The NASD continued, however, to regulate trading [sic] reporting for PORTAL-designated securities. On July 31, 2007, the SEC approved amendments to the PORTAL rules that reestablished a trading system for the purpose of quoting and trading securities eligible for resale by qualified institutional buyers under SEC Rule 144A.[11] During the period following the reestablishment of the Nasdaq PORTAL Market, Nasdaq reexamined the operational and ownership structure of PORTAL with a view to adopting changes that reflected the preferences of market participants and enhanced the operation of the system. As a result of this review, Nasdaq filed with the Commission rules that terminated the operation of the Nasdaq PORTAL Market for trading PORTAL equity securities, while allowing Nasdaq to continue to review and designate both restricted debt and equity securities as PORTAL-eligible securities in its SRO capacity. Nasdaq also indicated its intention to enter into agreements with certain of its members or their affiliates (the ''Firms'') to create, and take a minority interest in, the PORTAL Alliance, a Delaware limited liability company principally formed to operate a private open-access over-the-counter platform to facilitate transactions in 144A restricted securities.[12] Nasdaq has entered into such agreements and will be providing technological and operational support, in a non-SRO capacity, to that over-the-counter platform. Recently, DTC eliminated its book-entry eligibility requirement that certain Rule 144A securities be included in an SRO Rule 144A System, like PORTAL. As such, market participants no longer need to seek PORTAL designation to obtain DTC book-entry.[13]

The Proposal

Based on the foregoing, Nasdaq has determined to terminate its PORTAL security designation processes, as well as remove rules related to the PORTAL Market from its rulebook.[14] Nasdaq notes in making this proposal that the vast majority of PORTAL Market rules describe a system for the trading of PORTAL debt securities, a system that is not in operation. Further, Nasdaq's PORTAL security designation rules are no longer necessary as a result of DTC's elimination of the SRO Rule 144A System requirement.[15] Finally, Nasdaq specifically notes that nothing in this proposal is intended to impact securities previously designated as PORTAL securities or alter any existing regulatory obligation applicable to such securities, including, but not limited to, any trade reporting obligation imposed by any self-regulatory organization.[16]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[17] in general, and with Sections 6(b)(5) of the Act,[18] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq's current PORTAL operations are limited,[19] and its security designation processes are no longer need to [sic] for issuers to obtain DTC book-entry services. As such, elimination of the PORTAL rules will provide clarity regarding the status of the PORTAL Market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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, as amended.

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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[20] of the Act and Rule 19b–4(f)(6) thereunder.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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.

[9] For more information related to the background of The PORTAL Market, *see* Securities Exchange Act Release No. 55669 (April 25, 2007); 72 FR 23874 (May 1, 2007).

[10] Securities Exchange Act Release No. 53128 (Jan. 13, 2006); 71 FR 3550 (Jan. 23, 2006).

[11] Securities Exchange Act Release No. 56172 (July 31, 2007); 72 FR 44196 (SR–NASDAQ–2006–065). At the time of approval, Nasdaq indicated that it would first operate a system for trading PORTAL equity, and thereafter would enable the system to trade PORTAL debt securities. While the PORTAL equity functionality was made available on August 15, 2007, Nasdaq did not, and has not, implemented any trading functionality for PORTAL debt securities.

[12] Securities Exchange Act Release No. 58638 (September 24, 2008); 73 FR 57188 (October 1, 2008).

[13] Securities Exchange Act Release No. 59384 (February 11, 2009); 74 FR 7941 (February 20, 2009).

[14] Nasdaq will continue to impose fees for The PORTAL Reference Database. See NASDAQ Rule 7050.

[15] Nasdaq is no longer accepting new applications for debt or equity securities seeking PORTAL designation.

[16] For example, FINRA Rule 6630.

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

[19] The Commission understands that Nasdaq no longer performs any functions related to PORTAL.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–092 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–NASDAQ–2009–092. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–092 and should be submitted on or before December 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27747 Filed 11–18–09; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60995; File No. SR–CBOE–2009–084]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposal To Codify Certain Provisions of the Options Listing Procedures Plan Into CBOE's Rules

November 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

For ease of reference, CBOE proposes to codify certain provisions of the Options Listing Procedures Plan (''OLPP'') into its rules. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission'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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Options Listing Procedures Plan (''OLPP'') was approved by the Securities and Exchange Commission (the ''Commission'') on July 6, 2001 and has been amended several times.[5] The OLPP provides procedures for: (i) Listing and trading new option classes; (ii) selecting new options series; (iii) petitioning The Options Clearing Corporation (''OCC'') to review the eligibility, pursuant to the exchanges' listing standards, of a selected option class without delaying the trading of that option class; (iv) determining operational details for option contracts adjusted pursuant to OCC By-Laws; (v) admitting new sponsors; and (vi) losing eligibility to participate in the OLPP.

This current filing is primarily concerned with codifying certain provisions of the OLPP pertaining to selecting new option series and certain strike setting parameters that have been adopted under the OLPP. The Exchange believes that it is helpful to codify select provisions into CBOE's rules so that all applicable rules governing series selection and applicable strike setting parameters are located in a single place. In addition, the Exchange understands that other Sponsor Exchanges to the OLPP will be submitting similar filings to codify portions of the OLPP in their respective rulebooks. Below the Exchange briefly describes the provisions of the OLPP that the Exchange is proposing to codify into CBOE's rules.

OLPP Amendments Pertaining to LEAPS

Amendments 1 and 2 to the OLPP adopted provisions governing the listing of Long-Term Equity Option Series (''LEAPS''). Amendment 1 provided for a uniform time frame for the introduction of new LEAPS on equity option classes, options on exchange traded funds (''ETFs''), or options on Trust Issued Receipts (''TIRs''). The Exchange is proposing to codify the changes made to the OLPP by Amendment 1 as new subparagraph (c) to Rule 5.8, *Long-Term Equity Option Series (LEAPS®).* Amendment 2

[5] *See e.g.,* Securities Exchange Act Release Nos. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (order approving OLPP); 58205 (July 22, 2008), 73 FR 43798 (July 28, 2008) (order granting permanent approval to amendment no. 1 to the OLPP); 58630 (September 24, 2008) 73 FR 57166 (October 1, 2008) (order granting permanent approval to amendment no. 2 to the OLPP); and 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (order approving amendment no. 3 to the OLPP).

provided for a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year of LEAPs on equity, ETF and TIR classes. The Exchange is proposing to codify the changes made to the OLPP by Amendment 2 as new subparagraph (d) to Rule 5.8.

Strike Setting Parameters

Amendment 3 to the OLPP adopted uniform objective standards to the range of options series exercise (or strike) prices available for trading on Sponsor Exchanges to the OLPP as a quote mitigation strategy. The Exchange is proposing to codify the changes made to the OLPP by Amendment 3 as new Rule 5.5A, *Select Provisions of Options Listing Procedures Plan.* The Exchange is proposing to create a new rule that can be easily amended in the future if other amendments to the OLPP are made which similarly warrant being codified into CBOE's rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [6] of the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that codifying certain provisions of the OLPP, as amended, serves to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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 [8] and Rule 19b–4(f)(6) thereunder.[9] 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 [10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–084. 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 self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–084 and should be submitted on or before December 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27749 Filed 11–18–09; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). 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 the 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.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60992; File No. SR–ISE–2009–95]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to $1 Strike Price Intervals Below $200 for Options on the KBW Bank Index (BKX)

November 12, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 9, 2009, the International

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5] 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 certain of its rules to allow the Exchange to list options on the KBW Bank Index (''BKX'') at $1 strike price intervals. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend ISE Rule 2009, Terms of Index Option Contracts, to allow the Exchange to list options on the KBW Bank Index (''BKX'') at $1 strike price interval below $200.

Strike price intervals for options on indexes are established in ISE Rule 2009(c)(1) at three levels: (a) At no less than $5 generally, (b) at no less than $2.50 for options on indexes that are specifically listed in the rule, and (c) at no less than $1 for Mini-Nasdaq-100 Index (MNX), which are based on 1/10th the value of the Nasdaq 100 Index (NDX).[6] Thus, BKX options can be listed at $2.50 strike price intervals, as long as the strike price is below $200.[7]

The Exchange now proposes that the minimum strike price interval for BKX options to be $1 or greater, as long as the strike price is below $200. The Exchange believes that $1 strike price intervals in BKX options series will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

For initial series, the Exchange would list at least two strike prices above and two strike prices below the current value of BKX at or about the time a series is opened for trading on the Exchange. As part of this initial listing, the Exchange would list strike prices that are within 5 points from the closing value of BKX on the preceding day. As for additional series, the Exchange would be permitted to add series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the underlying BKX moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing value of BKX. The Exchange would also be permitted to open additional strike prices that are more than 30% above or below the current BKX value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account would not be considered when determining customer interest. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series in BKX options. In all cases, however, $1 strike price intervals may be listed on BKX options only where the strike price is less than $200. In addition, the Exchange notes that, consistent with ISE Rule 2009(c), it shall not list LEAPS on BKX options at intervals less than $2.50.

The Exchange is also proposing to set forth a delisting policy with respect to BKX options. Specifically, the Exchange would regularly review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of the BKX and may delist series with no open interest in both the put and the call series having a: (i) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in BKX options in series eligible for delisting shall be granted.

Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed BKX options.

It is expected that the proposed delisting policy for BKX options will be adopted by other options exchanges that list and trade BKX options.

ISE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes or greater for BKX options.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (''Exchange Act'') for this proposed rule change is the requirement under Section 6(b)(5) of the Exchange Act[8] that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the proposed rule change will allow the Exchange to list options on BKX options at $1 strike intervals for the benefit of investors and as a competitive response to the listing of BKX options at $1 strike price intervals by another exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] Rule 2009 also discusses, among other things, that the strike prices of options pursuant to the Quarterly Options Series Program (''Quarterly Options Series'') will be fixed at a price per share, with at least two, but not more than five, strike prices above and at least two, but not more than five, strike prices below the value of the underlying security at the time that a Quarterly Options Series is opened for trading on the Exchange. For strike price intervals for non-index options, *see* ISE Rule 504.

[7] *See* ISE Rule 2009(c)(1)(lxxxii).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay to permit the Exchange to compete effectively with other exchanges that have implemented similar rules permitting $1.00 strike price intervals for options on the KBW Bank Index.[11] The Commission believes such waiver is consistent with the protection of investors and the public interest.[12] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *See* Securities Exchange Act Release No. 60840 (October 20, 2009), 74 FR 55593 (October 28, 2009) (SR–Phlx–2009–77).

[12] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–ISE–2009–95 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–95 and should be submitted on or before December 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27748 Filed 11–18–09; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0082]

Occupational Information Development Advisory Panel

AGENCY: Social Security Administration (SSA).

ACTION: Notice of upcoming panel teleconference meeting.

DATES: December 3, 2009, 12 p.m.–2 p.m. (EST).

Call-in number: 1–866–244–4629. Passcode: Panel Teleconference.

Leader/Host: Debra Tidwell-Peters.

SUPPLEMENTARY INFORMATION:

Type of meeting: This Panel teleconference meeting is open to the public.

Purpose: This discretionary Panel, established under the Federal Advisory Committee Act of 1972, as amended, shall report to the Commissioner of Social Security. The Panel will provide independent advice and recommendations on plans and activities to replace the Dictionary of Occupational Titles used in the Social Security Administration's (SSA) disability determination process. The Panel will advise the Agency as it develops an occupational information system tailored specifically for SSA's disability programs and adjudicative needs. Advice and recommendations will relate to SSA's disability programs in the following areas: medical and vocational analysis of disability claims; occupational analysis, including definitions, ratings and capture of physical and mental/cognitive demands of work and other occupational information critical to SSA disability programs; data collection; use of occupational information in SSA's disability programs; and any other area(s) that will enable SSA to develop an occupational information system suited to its disability programs and improve the medical-vocational adjudication policies and processes.

Agenda: The agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/oidap/meetinginformation* at least one week prior to the start date and may be

received electronically, by e-mail or fax, upon request. Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office.

There is no public comment period scheduled during this teleconference meeting. Persons interested in providing feedback on the Panel report entitled *Content Model and Classification Recommendations for the Social Security Administration Occupational Information System (September 2009)* may do so no later than February 15, 2010 by mail, fax or e-mail to the staff. Please include your complete contact information (full name, mailing and e-mail address) with the submission.

Contact Information: For information about the Panel, please contact the staff:

By mail to: Occupational Information Development Advisory Panel, Social Security Administration, Operations Building, 3–E–26, Baltimore, MD 21235.

By fax to: (410) 597–0825

By e-mail to: OIDAP@ssa.gov.

Dated: November 13, 2009.

Debra Tidwell-Peters,

Designated Federal Officer.

[FR Doc. E9–27796 Filed 11–18–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 6814]

Notice of Intent To Renew the Charter of the Department of State's Advisory Committee on Private International Law

The Department of State intends to renew the Charter of the Advisory Committee on Private International Law established under Title 22 of the United States Code. Through the Committee, the Department of State obtains the views of the public with respect to significant private international law issues that arise in international organizations of which the United States is a Member State, in international bodies in whose work the United States has an interest, or in the foreign relations of the United States.

The Committee is comprised of representatives from other government agencies, representatives of national organizations, and experts and professionals active in the field of private international law.

Comments should be sent to Harold Burman, Executive Director, Advisory Committee on Private International Law at 202–776–8420 or *BurmanHS@state.gov* and to Patricia Smeltzer, 202–776–8423 or *SmeltzerTK@state.gov*. Copies of the draft Charter may be obtained by contacting Ms. Smeltzer.

Dated: November 12, 2009.

Keith Loken,

Assistant Legal Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. E9–27838 Filed 11–18–09; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number—DOT–OST–2009–0294]

Request for OMB Clearance of an Information Collection Renewal

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU), invites public comments regarding the Department of Transportation's intention to request the Office of Management and Budget's (OMB) approval to renew an information collection. The collection is in regard to the Disadvantaged Business Enterprise American Recovery and Reinvestment Act Bonding Assistance Reimbursable Fee Program (DBE ARRA BAP) application form. The continuation of the collection is necessary to determine the applicant's eligibility and approve or deny a bond fee reimbursement. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Written comments should be submitted by January 17, 2010.

ADDRESSES: You may submit a comment by utilizing the DMS identifier number, DOT–OST–2009–0294 through one of the following methods:

Web site: http://www.regulations.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–001.

Hand Delivery: Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All comments must include the agency name and DMS Docket Number DOT–OST–2009–0294. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on *http://www.regulations.gov.* The comments you provide to a Federal Department or Agency through regulations.gov are collected voluntarily and may be publicly disclosed in a rulemaking docket or on the Internet.

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

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket DOT–OST–2009–0294.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT.

Comments: We particularly request your comments on the accuracy of the estimated burden; ways to enhance the quality, usefulness, and clarity of the collected information; and ways to minimize the collection burden without reducing the quality of the information collected including additional use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nancy Strine, Manager, Financial Assistance Division, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W56–448, Washington, DC 20590. Phone number 202–366–1930, fax number 202–366–1930. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Estimate of burden hours for information requested:

Respondents: Certified Disadvantaged Business Enterprises (DBEs) that are pursuing, in the process, or have obtained contracts on ARRA transportation infrastructure projects. US DOT/OSDBU spoke to the SBA Surety Bond Guarantee Program personnel and a representative of the Surety and Fidelity Association of America (SFAA) who represents the small and emerging businesses to obtain the required estimates. The average bond for a small and emerging business or DBE is between $250,000 and $500,000. To calculate the universe US DOT/OSDBU can serve, an average bond is estimated to be $350,000. The Bonding Premium Fee charged by the Sureties is a range of 2 to 3% of the total bond, so using an average premium of 2.5% on a $350,000 bond the DBE would pay $8,750. The SBA Surety Guarantee Bond Program Principal Fee is currently set to .729% of the contract price, or bond amount. For a $350,000 bond, the SBA principal fee is $2,551. The average amount of financial assistance is $11,300.00 per DBE on one application, submittal to include both eligible fees. Using these estimates, the number of DBEs that US DOT/OSDBU can assist with $20 million is approximately 1,770.

Form: U.S. Disadvantaged Business Enterprise (DBE) American Reinvestment and Recovery Act of 2009 Bonding Assistance Reimbursable Fee Program DOT Form F4504.

Respondents: 1770.

Frequency: Once.

Estimated Average Burden per Response: 2 hours.

Estimated Total Annual Burden Hours: 3540 hours.

OMB Approval No.: OMB Control Number: 2105–0562.

Title: U.S Disadvantaged Business Enterprise (DBE) American Reinvestment and Recovery Act of 2009 Bonding Assistance Reimbursable Fee Program DOT Form F4504

Type of Review: Renewal.

1. *Needs and Uses:* The information collected will be from a DBE working on a transportation infrastructure ARRA funded project. Under the DBE ARRA BAP program, DBEs performing on transportation and infrastructure projects receiving ARRA funding assistance from any DOT mode of transportation such as Federal Highway Administration, (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), Maritime Administration (MARAD) will receive financial bonding assistance in the form of bonding fee cost reimbursement. This provision is applicable to a subcontract or prime contract at any tier in the construction project. Under this program DOT will directly reimburse DBEs the premiums paid to the surety company for performance, payment or bid/proposal bonds. The range of the premium fee is between 1–3% of the total bond amount. In the event the DBE also obtains a bond guarantee from Small Business Administration's (SBA) Surety Bond Guarantee Program (SBGP), the DOT will also reimburse the DBE for the small business concern (principal) fee of .729% of the contract price. The information collected will be used by DOT OSDBU to verify eligibility, including whether the applicant is a current certified DBE.

2. *Burden Statement:* This collection is for DBEs working on transportation infrastructure ARRA funded projects. DBEs are small businesses. Efforts have been made to simplify the application form, keeping it to one page with three page instructions to assist the DBE to submit a complete application package to expedite reimbursement and minimize burden. In addition a sample letter to show how to indicate the Federal project number is included. Applicants will be able to find further guidance at *http://www.dot.gov/recovery/ost/*. A coordinated effort has been made with the DOT Operating Administrations to minimize duplicative reporting. OSDBU's intent is to give this subsidy reimbursement fee to the DBEs trying to obtain surety bonding to assist DBEs to become more competitive and perform on more transportation infrastructure projects receiving ARRA funding assistance from any DOT mode of transportation and minimize cash flow difficulties. Every applicant we have spoken to since August 28, 2009 (program launch date) has told us the application is self-explanatory and they have not had any difficulties in filling it out or understanding the content and requirements.

Issued in Washington, DC on November 13, 2009.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.

BILLING CODE 4910–9–P

U.S. Department of Transportation
Disadvantaged Business Enterprise American Reinvestment and Recovery Act of 2009 Bonding Assistance Reimbursable Fee Program

OMB Control Number 2105-0562
Expiration Date 02/21/2010
Form DOT F4504

Application For Reimbursement of Bond Fees

Public Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number The OMB Control Number for this information collection is 2105-0562 Public reporting for this collection of information is estimated to be approximately 120 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information All responses to this collection of information are mandatory Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U S Department of Transportation, Office Of Small and Disadvantaged Business Utilization, 1200 New Jersey Ave, SE, Washington, D C 20590

1. Full Legal Name of Company:		**2.** TIN (Federal Tax ID No):
3. Full Street Address of Primary Business Location:	**4.** Dun & Bradstreet (DUNS) #:	Registered in Central Contractor Registration (ccr.gov) with Bank Information: ☐ Yes

PART B – BOND INFORMATION

6. Bond Information (One Bond Per Application)

a. Surety Bond Number: _____ Date of Issue: _____

b. Name of Surety Company: _____

c. Type of Bond: Performance ☐ Payment ☐ Bid/Proposal ☐

d. Bond Amount: _____ Total Bond Fees _____

Enclose a copy of your bond, invoice(s)s for premium(s)/fee(s), and proof of payment with your application

PART C – TRANSPORTATION-RELATED CONTRACT BEING BONDED

7. Transportation-related Contract Information

a. Contract Awarder (Agency/Prime/Subcontractor): _____

b. Contract Number: _____

c. Federal Project No. and Name on Contract: _____

d. Contract Amount. _____

e. Contract Start Date: _____ Estimated Completion Date : _____

Enclose documentation from the federal, state or local transportation authority indicating the federal project number and a copy of the contract for which you are receiving the bond with your application

PART D – DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION

8. DBE Certification

The definition of a Disadvantaged Business Enterprise, which includes woman-owned businesses and minority-owned businesses, are set forth in 49 Code of Federal Regulations Part 26.

The applicant, _____ certifies that it is a DBE and that the contract bonded is a transportation-related contract receiving funding pursuant to the ARRA.

a. Name of Agency which Certified your Business as a DBE: _____

b. State: _____ Certification Expiration/Renewal Date: _____ Current Annual Affidavit Date: _____

Enclose a copy of your certification and your annual affidavit, if applicable, with your application

PART E – SIGNATURES AND CONTACT INFORMATION

By signing this application, the DBE certifies: the DBE has not sought reimbursement for the bond fee(s) related to this bond from a third party; will not seek reimbursement from a third party in the event the DBE receives reimbursement from the U.S. Department of Transportation; and provides consent for the U.S. DOT to contact the agency/prime/subcontractor to confirm non-reimbursement of the bond fee(s).

Signature of Applicant ·

Name: _____ Title: _____ Date: _____

Type or Print Name: _____ Phone #: _____ Email· _____

PART F – FOR GOVERNMENT USE ONLY

OSDBU Approval for Bonding Fee Reimbursement:

Name: _____ Title: _____ Date: _____

U.S. Department of Transportation
Disadvantaged Business Enterprise American Reinvestment and Recovery Act of 2009 Bonding Assistance Reimbursable Fee Program

Instructions for Application For Reimbursement of Bond Fees

General Instructions

Purpose of Form

Use form Application for Reimbursement of Surety Bond Fees, OMB Control Number 2105-0562, to apply for reimbursement of the Contractor Fee paid to the surety company and if applicable, the U.S. Small Business Administration (SBA) in return for a surety bond.

Who is Eligible for the Reimbursement?

To be eligible, you must:

- Be A Disadvantaged Business Enterprise (DBE), which includes woman-owned businesses and minority-owned businesses, certified under 49 Code of Federal Regulations Parts 26.
- Have obtained a performance, payment, or bid/proposal surety bond during the period August 28, 2009 and September 8, 2010 for a contract for a transportation project receiving American Reinvestment and Recovery Act of 2009 funding from the U.S. Department of Transportation (DOT).
- Have paid a surety premium to the surety company and if applicable, a small business concern (principal) fee to SBA
- Have a Dun & Bradstreet Number (DUNS#) and have registered your DUNS# with Central Contractor Registration (CCR) at www.ccr.gov. Your bank information must be completed in your profile on ccr.gov to receive payment.

How do I Obtain More Information?

You can contact the U.S. Department of Transportation, Office of the Secretary, Office of Small and Disadvantaged Business Utilization for further information:

Email. bap.arra@dot.gov .

Voice. 1-800-532-1169 or 202-366-1930. A long-distance charge to callers located outside of the local calling area will apply when calling the 202-366-1930 number.

Internet Guidance. http://www.dot.gov/recovery/ost

How to Apply

You can apply for reimbursement by email or by mail. Use only one method per application. Applications must be **received** on or before September 8, 2010. Regardless, the applicant is advised to request delivery confirmation for mail submissions or return receipt for email submissions. Awards will be made in the order of application receipt until funding is fully expended or the program closes on September 8, 2010. In the event funding is fully expended prior to September 8, 2010, OSDBU will cease to accept new applications.

Applications submitted by mail may be delayed due to mail screening security requirements. For faster reimbursement, submit your application electronically by email.

Email. Scan your signed application and all supporting documentation to a .pdf document and email to bap.arra@dot.gov .

Mail. Mail your signed application and all supporting documentation to the following address:
U.S. Department of Transportation (DOT)
Office of Small and Disadvantaged Business Utilization (OSDBU)
1200 New Jersey Ave., SE, W56-448
Washington, DC 20590

How to assemble your application

Submitted Applications must contain in the following order:

- A completed and signed application
- A copy of the bond
- A copy of the contract
- DBE certification letter from the DBE certification office in their state and a current annual affidavit. A current annual affidavit is not required in the event the DBE is certified less than one (1) year.
- Whether the DBE is a prime contractor or a subcontractor, a letter from the federal, state or local transportation authority, on their letterhead, indicating the DBE is a contractor and the federal project number. In the event the DBE is already in possession of other documentation from the federal, state or local transportation authority indicating the federal project number, that documentation may be submitted in lieu of the letter.
- A copy of their invoice(s) from the surety company and if applicable, SBA and cancelled checks or other proof of payment of the bond fees in support of the total amount claimed for reimbursement.
- Certificate Regarding Lobbying in compliance with 49 CFR Part 20
- Certification stating that the DBE will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the Recovery Act.
- Certification Regarding Debarment, Suspension in compliance with 29 CFR Part 98

U.S. Department of Transportation
Disadvantaged Business Enterprise American Reinvestment and Recovery Act of 2009 Bonding Assistance Reimbursable Fee Program

Instructions for Application For Reimbursement of Bond Fees

Specific Instructions

Print or type all entries on the Application for Reimbursement of Surety Bond Fees, OMB Control Number 2105-0562. The application is an electronically fillable application form. We strongly suggest applicants utilize the electronically fillable form to complete the application entries. Illegible applications will delay processing time. Follow the instructions for each line to expedite processing and to avoid unnecessary requests for additional information.

Line 1. Full Legal Name of Company applying for reimbursement. Enter the company name as it appears on the legal document creating it.

Line 2. TIN (Federal Tax ID No). Enter your Employer Identification Number (EIN) exactly as it appears on the document provided by the Internal Revenue Service (IRS).

Line 3. Full Street Address of Primary Business Location. Enter the mailing address for the entity's primary physical location. Do not enter a P.O. Box here.

Line 4. Dun & Bradstreet (DUNS#). Enter your company's DUNS# exactly as it appears on the document provided by Dun & Bradstreet. If you are not registered, you can register online at http://fedgov.dnb.com/webform .

Line 5. Registered in Central Contractor Registration (ccr.gov) with Bank Information. Check "Yes" to indicate that you: 1) have a DUNS #; 2) have registered your DUNS# at www.ccr.gov; and 3) and you have populated your financial information for electronic payment (bank information) in your profile on ccr.gov. Instructions may be found in on-line help at www.ccr.gov.

Line 6a. Surety Bond Number and Date of Issue. Enter the Surety's bond number exactly as it appears on your Surety Bond. Enter the date of issue on your Surety Bond. A separate application must be submitted for each bond for which the applicant is seeking reimbursement of the bond premiums and fees paid by the applicant.

Line 6b. Name of Surety Company. Enter the name of the surety company exactly as it appears on your Surety Bond.

Line 6c. Type of Bond. Check the type of bond that corresponds to the type of bond denoted on your Surety Bond. Only premiums and fees for performance, payment, or bid/proposal bonds are eligible for reimbursement.

Line 6d. Bond Amount, Bond Number and Bond Fee(s). Enter the bond amount exactly as it appears on your Surety Bond. Enter the sum total of the bond fee(s) exactly as they appear on your cancelled check(s) or other form of proof of payment. You must add together all of the premium(s) and fee(s) you paid for the bond and place the total amount for which you are seeking reimbursement in this field.

Enclose a copy of your bond and your cancelled check(s), or other proof of payment documentation, with your application

Line 7a. Contract Awarder (Agency/Prime/Subcontractor). Enter the contract awarder exactly as it appears on your contract. Your contract awarder may be a federal, state or local agency, a prime contractor, or another subcontractor.

Line 7b. Contract Number. Enter the contract number exactly as it appears on your contract.

Enclose a copy of the contract that was bonded.

Line 7c. Federal Project No. on Contract. Enter the federal project number exactly as it appears on the letter from the federal, state or local transportation authority or other documentation provided by the federal, state or local transportation authority indicating the federal project number.

Enclose a letter from the federal, state or local transportation authority indicating the federal project number or other documentation indicating the federal project number provided by the federal, state or local transportation authority with your application.

Line 7d. Contract Amount. Enter the contract amount exactly as it appears on your contract.

Line 7e. Contract Start Date and Estimated Completion Date. Enter the period of performance /contract start date and contract completion date exactly as it appears on your contract.

Line 8. DBE Certification. Enter the applicant name exactly as it appears on the legal document creating it.

Line 8a. Name of DBE Certifying Agency. Enter the name of the agency granting your DBE certification exactly as it appears on the document informing your company that it has been certified as a DBE.

Line 8b. State, Certification Expiration/Renewal Date and Affidavit Date. Enter the state of certification and the certification expiration date exactly as it appears on your document granting DBE certification. If applicable, enter the date of your annual affidavit exactly as it appears on the document. A current annual affidavit is not required in the event the DBE is certified less than one (1) year.

Enclose a copy of your certification and your affidavit, if applicable, with your application

Sign and date the application. Print your name, title and contact information. You will not receive email confirmation of receipt unless an email address is provided on your application.

U.S. Department of Transportation
Disadvantaged Business Enterprise American Reinvestment and Recovery Act of 2009 Bonding Assistance Reimbursable Fee Program

Instructions for Application For Reimbursement of Bond Fees

Enclose the following certifications with your application:

- **Certificate Regarding Lobbying in compliance with 49 CFR Part 20**
- **Certification stating that the DBE will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the Recovery Act.**
- **Certification Regarding Debarment, Suspension in compliance with 29 CFR Part 98**

U.S. Department of Transportation
Disadvantaged Business Enterprise American Reinvestment and Recovery Act of 2009 Bonding Assistance Reimbursable Fee Program

Sample Letter From the Federal, State or Local Transportation Authority Indicating the Federal Project Number

STATE OR LOCAL TRANSPORTATION AUTHORITY LETTERHEAD

Today's Date

(contact information of individual writing the letter)
Name
Address
City, State, Zip
Telephone number

DOT/OSDBU
1200 New Jersey Avenue, SE.
Suite W56-497
Washington, DC 20590

Attn: DBE ARRA BAP

Dear DOT/OSDBU:

[Insert name of DBE] is a [Insert prime contractor or subcontractor] providing services on federal project [Insert federal project number and name] receiving funding pursuant to the American Recovery and Reinvestment Act of 2009.

I certify that the information presented in this letter is true and correct.

Sincerely,

Signature (of individual writing the letter)

Printed Name
Job Title or Position

[FR Doc. E9–27781 Filed 11–18–09; 8:45 am]
BILLING CODE 4910–9X–C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 31, 2009

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2009–0270.
Date Filed: October 26, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC23/123 Middle East-South East Asia Expedited, Resolution 002am and Specified Fares Tables (Memo 0422). *Intended effective date:* 1 January 2010.

Docket Number: DOT–OST–2009–0271.
Date Filed: October 26, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC23/123 Middle East-Japan, Korea Expedited, Resolutions and Specified Fares Tables (Memo 0424). *Intended effective date:* 1 December 2009.

Docket Number: DOT–OST–2009–0272.
Date Filed: October 26, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC23/123 Africa-Japan, Korea Expedited Resolution 002aj and Specified Fares Tables (Memo 0418). *Intended effective date:* 1 December 2009.

Docket Number: DOT–OST–2009–0273.
Date Filed: October 26, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC23/123 Africa-South East Asia Expedited Resolution 002ao (Memo 0421). *Intended effective date:* 1 December 2009.

Docket Number: DOT–OST–2009–0274.
Date Filed: October 26, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC23/123 Africa-South East Asia Expedited, Resolution 002ap and Specified Fares Tables (Memo 0422). *Intended effective date:* 1 January 2010.

Docket Number: DOT–OST–2009–0275.
Date Filed: October 26, 2009.
Parties: Members of the International Air Transport Association.
Subject: TC23/123 Africa-Japan, Korea Expedited, Resolutions and Specified Fares Tables (Memo 0419). *Intended effective date:* 15 January 2010.

Renee V. Wright,
Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–27782 Filed 11–18–09; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2009–0167]

National Emergency Medical Services Advisory Council to the Secretary of Transportation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: National Advisory Council; Correction to Notice of Request and Extension of Filing Deadline for Applicants for Appointment/Reappointment to the National Emergency Medical Services Advisory Council (NEMSAC).

SUMMARY: NHTSA is issuing a correction to its Notice of Request for Applicants for Appointment/Reappointment to NEMSAC, originally published in the **Federal Register** on October 20, 2009, and extending the filing deadline for such applications with NHTSA until Tuesday, December 1, 2009, due to errors in the original notice. The purpose of NEMSAC is to serve as a nationally recognized council of emergency medical services (EMS) representatives and consumers to provide advice and recommendations regarding EMS to DOT and its modal administration, NHTSA, and through NHTSA to the Federal Interagency Committee on EMS (FICEMS).

DATES: Applications for membership (including resume or curriculum vitae (CV), letters of recommendation, and a statement identifying the EMS sector or discipline that the applicant seeks to represent) should reach NHTSA at the address below on or before 5 p.m. EST, on Tuesday, December 1, 2009.

ADDRESSES: If you wish to apply for membership, your application should be submitted by:

- *E-mail: drew.dawson@dot.gov.*
- *Fax:* (202) 366–7149.
- *Mail: Use only overnight mail such as UPS or FedEx to:* U.S. Department of Transportation, National Highway Traffic Safety Administration, Office of Emergency Medical Services, Attn: NEMSAC, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer, Drew Dawson, Director, Office of Emergency Medical Services, telephone (202) 366–9966; e-mail *drew.dawson@dot.gov*, or Dana Sade, Office of the Chief Counsel, (202) 366–5251 or via e-mail at *dana.sade@dot.gov*.

SUPPLEMENTARY INFORMATION: NEMSAC is an advisory council established by DOT in accordance with the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.) and DOT Order 1120.3B. NEMSAC provides information, advice, and recommendations to the Secretary via the Administrator of NHTSA, and through NHTSA to FICEMS on matters relating to all aspects of development and implementation of EMS.

In accordance with the NEMSAC Charter, a copy of which is available at *https://www.fido.gov/facadatabase/docs_charters/29152_Charter%20(April%2009)_(2009–04–27–17–34–53).pdf*, members should represent a cross-section of the diverse agencies, organizations, and individuals involved in EMS activities and programs in the U.S. NEMSAC consists of not more than 26 members, each of whom shall be appointed by the Secretary. Members serve in a ''representatives'' capacity on NEMSAC and not as Special Government Employees. Pursuant to the charter, twenty four of these members must represent the perspectives of particular sectors of the EMS community. Members will be selected for their individual expertise and to reflect a balanced representation of interests from across the EMS community, but no member will represent a specific organization. To the extent practical, the final council membership shall assure representation from the following sectors of the EMS community:

- Volunteer EMS
- Fire-based (career) EMS
- Private (career non-fire) EMS
- Hospital-based EMS
- Tribal EMS
- Air Medical EMS
- Local EMS service directors/administrators
- EMS Medical Directors
- Emergency Physicians
- Trauma Surgeons
- Pediatric Emergency Physicians
- State EMS Directors
- State Highway Safety Directors
- EMS Educators
- Public Safety Call-taker/Dispatcher (911)
- EMS Data Managers
- EMS Researchers
- Emergency Nurses
- Hospital Administration
- Public Health
- Emergency Management
- State Homeland Security Director
- Consumers (not directly affiliated with an EMS or healthcare organization)
- State or local legislative bodies (*e.g.* city/county councils; State legislatures)

Qualified individuals interested in serving on the NEMSAC are invited to apply for appointment or reappointment by submitting a resume or CV along with letters of recommendation to the NEMSAC Designated Federal Officer. Each applicant must identify the EMS sector or discipline that he or she seeks to represent. Current NEMSAC members whose terms are ending should notify the Designated Federal Officer of their interest in reappointment in lieu of submitting a new application, and should provide an updated resume or CV and a restatement of the current sector they represent.

The NEMSAC meets in plenary session approximately once per quarter. At least one such quarterly meeting may be held via teleconference, during which NEMSAC sets up public call-in lines to facilitate public participation. Members serve without compensation from the Federal Government; however, pursuant to the terms of the Charter, they receive travel reimbursement and per diem in accordance with applicable Federal Travel Regulations.

Issued on: November 13, 2009.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. E9–27775 Filed 11–18–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be on December 9, 2009, at 10 a.m.

ADDRESSES: The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 10th floor, MacCracken Room.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9678; fax (202) 267–5075; e-mail *Gerri.Robinson@faa.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Executive Committee of the Aviation

Rulemaking Advisory Committee taking place on December 9, 2009, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The agenda includes:

1. Commercial Air Tour Maintenance (CATM) Working Group update.
2. FAA's Fall Certification, Management, Review (CMR) Meeting Industry Day Presentation—Rulemaking Harmonization update.
3. Continuous Improvement (Committee Process).

New ARAC Task—Advice and Recommendations to FAA about current ARAC process.

4. Status Reports.
5. Remarks from other EXCOM members.

Attendance is open to the interested public but limited to the space available. The FAA will arrange teleconference service for individuals wishing to join in by teleconference if we receive notice by December 1. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by December 1 to present oral statements at the meeting. Members of the public may present written statements to the executive committee by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on November 16, 2009.

Pamela A. Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. E9–27812 Filed 11–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Compatibility Program (NCP); 14 CFR Part 150; Notice of Record of Approval (ROA); the Louisville International Airport, Louisville, KY (SDF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program update submitted by the Louisville Regional Airport Authority (LRAA).

On October 29, 2008, the LRAA submitted to the FAA Air Traffic Organization (ATO) a request with supporting documentation for an offset approach to Runway 17R at Louisville International Airport (SDF). This request was for a re-evaluation of noise abatement measure NA–7, and associated measures NA–2 and NA–3, submitted to the FAA for action in its 2003 NCP but were deferred.

The FAA ATO evaluated the offset approach procedure provided by LRAA. After considerable review and evaluation, the procedure was disapproved. The FAA ATO notified LRAA of its determination on April 3, 2009. Subsequent to ATO's determination, the FAA issued its Record of Approval (ROA) concerning the LRAA's NCP update on August 4, 2009, and disapproved noise abatement measures NA–2, NA–3, and NA–7.

In its evaluation, the FAA reviewed the proposal under 14 CFR Part 150 and the Aviation Safety and Noise Abatement Act of 1979. Section 150.35 of Part 150 includes language stating that programs will be approved under this part if program measures relating to the use of flight procedures for noise control can be implemented within the period covered by the program and without reducing the level of aviation safety provided or adversely affecting the efficient use and management of the navigable airspace and air traffic control systems.

DATES: *Effective Date:* The effective date of the FAA's disapproval of the request for an offset approach to Runway 17R at Louisville International Airport is April 3, 2009. The effective date of FAA's ROA of LRAA's NCP update is August 4, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen Wilson, Community Planner, Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. Documents reflecting this FAA action can be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA has reviewed Noise Abatement Measures (NA–2), (NA–3) and (NA–7) in accordance with 14 CFR Part 150. The ROA contains the FAA's decisions for 3 of the 7 NCP measures that were previously deferred under LRAA's 2003 NCP. The FAA has given its disapproval to the Runway 17R offset approach request at LRAA. All other portions of the previously issued ROA remain in effect.

The following is a brief overview of the request:

On October 29, 2008, the LRAA provided the FAA Air Traffic Organization with a letter and supporting documentation requesting an offset approach to Runway 17R at Louisville International Airport (SDF). This was additional information submitted for re-evaluation of previously submitted but deferred noise abatement measures NA–2, NA–3, and NA–7 in LRAA's 2003 NCP

Issued in Memphis, TN, on November 3, 2009.

Tommy L. Dupree,

Acting Manager, Memphis Airports District Office, Southern Region.

[FR Doc. E9–27654 Filed 11–18–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–52]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before December 9, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0372 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anna Bruse, 202–267–9655, or Tyneka L. Thomas, 202–267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 16, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0372.

Petitioner: Frasca International, Inc.

Section of 14 CFR Affected: Part 60, Appendix A, Table A1A, Items 6.b through 6.d, and Appendix A, Table A2A, Items 4.b.1 through 4.b.3.

Description of Relief Sought: Frasca International seeks an exemption from 14 CFR part 60 to allow the use of real-image, (non-collimated) displays in place of the traditional collimated system on some Full Flight Simulators qualified under that part, in the interest of providing an improvement in the practicality, thoroughness, and economical effectiveness of certain flight training operations.

[FR Doc. E9–27799 Filed 11–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9561; FMCSA–2005–22194]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 6, 2009. Comments must be received on or before December 21, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2001–9561; FMCSA–2005–22194, using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 19 individuals who have requested a renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 19 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Norman E. Braden
Henry L. Chastain
Thomas R. Crocker
Clinton D. Edwards
Gerald W. Fox
Ronald K. Fultz
Richard L. Gandee

John L. Hynes
Richard H. Kind
Robert S. Larrance
John D. McCormick
Thomas C. Meadows
David A. Morris
Leigh E. Moseman
Richard P. Stanley
Paul D. Stoddard
Robert L. Tankersley, Jr.
Scott A. Tetter
Benny R. Toothman

These exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA.

The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 19 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 30502; 66 FR 41654; 70 FR 57353; 70 FR 72689; 73 FR 222). Each of these 19 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 21, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 19 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: November 12, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–27839 Filed 11–18–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2009–0303]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 27 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before December 21, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0303 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of

the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 27 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Teddy S. Bioni

Mr. Bioni, age 47, has complete loss of vision in his left eye. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2009, his ophthalmologist noted, ''I believe he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Bioni reported that he has driven straight trucks for 28 years, accumulating 140,000 miles, and tractor-trailer combinations for 28 years, accumulating 140,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John K. Butler

Mr. Butler, 55, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2009, his ophthalmologist noted, ''Mr. Butler displays sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Butler reported that he has driven straight trucks for 6 years, accumulating 156,000 miles, and tractor-trailer combinations for 29 years, accumulating 452,400 miles. He holds a Class A CDL from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James J. Coffield

Mr. Coffield, 47, has loss of vision in his left eye due a traumatic injury sustained 25 years ago. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, ''In my opinion, Mr. Coffield has sufficient visual performance to meet the driving requirements for a commercial vehicle operation license.'' Mr. Coffield reported that he has driven tractor-trailer combinations for 14 years, accumulating 770,000 miles. He holds a Class A Commercial Driver's License (CDL) from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Roy E. Crayne

Mr. Crayne, 57, has a macular hole in his left eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2009, his ophthalmologist noted, ''In my opinion, Mr. Crayne has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Crayne reported that he has driven tractor-trailer combinations for 35 years, accumulating 2.1 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows one crash, and no convictions for moving violations in a CMV.

Ralph G. DeBardi

Mr. DeBardi, 42, has had retinopathy of prematurity in his right eye since birth. The best corrected visual acuity in his right eye is light perception only, and in his left eye, 20/25. Following an examination in 2009, his optometrist noted, ''In my medical opinion, Mr. DeBardi has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. DeBardi reported that he has driven straight trucks for 15 years, accumulating 352,500 miles. He holds a Class D operator's license from West Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James A. DuBay

Mr. DuBay, 48, has had optic nerve hyperplasia, and apparent fibrotic scaring of the posterior hole in his left eye since birth. The best corrected visual acuity in his right eye is 20/20, and in his left eye, count-finger vision. Following an examination in 2009, his optometrist noted, ''I believe Mr. Dubay's Mr. DuBay has the visual skills required to perform the driving tasks required to operate a commercial vehicle.'' Mr. DuBay reported that he has driven straight trucks for 30 years, accumulating 900,000 miles. He holds a Class C chauffeur's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Chad D. Grose

Mr. Grose, 40, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, ''In my medical opinion, your vision is stable and more than adequate for you to perform the driving task required to operate a commercial vehicle.'' Mr. Grose reported that he has driven straight trucks for 18 years, accumulating 324,000 miles. He holds a Class D operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald E. Halvorson

Mr. Halvorson, 57, has complete loss of vision in his right eye due to a traumatic injury sustained in early 1990. The visual acuity in his left eye is 20/20. Following an examination in 2009, his ophthalmologist noted, ''It is my medical opinion that Mr. Halvorson has the necessary vision to see and operate a commercial vehicle safely.'' Mr.

Halvorson reported that he has driven straight trucks for 5 years, accumulating 50,000 miles, and tractor-trailer combinations for 25 years, accumulating 450,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gerald Harrison

Mr. Harrison, 59, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/40, and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, ''In my opinion, he has sufficient vision to operate a commercial vehicle.'' Mr. Harrison reported that he has driven tractor-trailer combinations for 30 years, accumulating 3 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; failure to obey a traffic control device.

Roger D. Kool

Mr. Kool, 54, has had central serous retinopathy in his left eye since 2005. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/800. Following an examination in 2009, his optometrist noted, ''It is my medical opinion that Roger has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Kool reported that he has driven straight trucks for 15 years, accumulating 37,500 miles, and tractor-trailer combinations for 15 years, accumulating 15,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Curtis M. Lawless

Mr. Lawless, 54, has wet macular degeneration in his right eye. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2009, his ophthalmologist noted, ''I certify that in medical opinion, Mr. Lawless has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lawless reported that he has driven straight trucks for 10 years, accumulating 150,000 miles, and tractor-trailer combinations for 21 years, accumulating 1.3 million miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows one crash and one conviction for a moving violation in a CMV. He failed to yield the right of way to another vehicle.

Michael E. Lindquist

Mr. Lindquist, 50, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2009, his optometrist noted, ''I certify that Michael Lindquist has sufficient and stable visual acuity to perform and operate a commercial motor vehicle in interstate commerce.'' Mr. Lindquist reported that he has driven straight trucks for 4 years, accumulating 93,600 miles. He holds a Class B CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Philip J.C. Locke

Mr. Locke, 39, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/300 and in his left eye, 20/20. Following an examination in 2009, his ophthalmologist noted, ''In my opinion, the patient continues to have sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Locke reported that he has driven straight trucks for 20 years, accumulating 200,000 miles, and tractor-trailer combinations for 18 years, accumulating 1.4 million miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Travis J. Luce

Mr. Luce, 36, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, ''In my opinion, Travis has sufficient visual ability to operate a commercial vehicle.'' Mr. Luce reported that he has driven straight trucks for 2 years, accumulating 20,000 miles, and tractor-trailer combinations for 7 years, accumulating 175,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Cameron S. McMillen

Mr. McMillen, 56, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is count-finger-vision, and in his left eye, 20/25. Following an examination in 2009, his ophthalmologist noted, ''In my opinion, Scott has adequate visual function to operate a commercial vehicle.'' Mr. McMillen reported that he has driven straight trucks for 38 years, accumulating 380,000 miles, and tractor-trailer combinations for 18 years, accumulating 1.7 million miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Carl L. Miles

Mr. Miles, 58, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye 20/200. Following an examination in 2009, his optometrist noted, ''Based upon my findings and medical expertise, I hereby certify Carl Miles to be visually able to safely operate a commercial motor vehicle.'' Mr. Miles reported that he has driven straight trucks for 14 years, accumulating 1.4 million miles, and tractor-trailer combinations for 8 years, accumulating 600,000 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rashawn L. Morris

Mr. Morris, 28, has loss of vision in his left eye since birth. The best corrected visual acuity in his right eye is 20/20, and in his left eye, count-finger vision. Following an examination in 2009, his ophthalmologist noted, ''I explained to Mr. Morris that his visual status appears to be stable and that I believe he can see well enough to perform all the tasks required to operate a commercial vehicle.'' Mr. Morris reported that he has driven straight trucks for 5 years, accumulating 50,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brian T. Nelson

Mr. Nelson, 43, has loss of vision in his left eye due to retinopathy since 1988. The best corrected visual acuity in his right eye is 20/40 and in his left eye, 20/200. Following an examination in 2009, his ophthalmologist noted, ''In my opinion, Brian Nelson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Nelson reported that he has driven straight trucks for 19 years, accumulating 114,000 miles, and tractor-trailer combinations for 16 years, accumulating 64,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James C. New

Mr. New, 66, has had aphakia and macular scarring in his left eye since 1965. The best corrected visual acuity in his right eye is 20/20, and in his left eye, count-finger vision. Following an examination in 2009, his optometrist noted, ''It is my opinion that Mr. New has sufficient vision to perform the commercial driving tasks in question.'' Mr. New reported that he has driven straight trucks for 2 years, accumulating 54,000 miles, and tractor-trailer combinations for 38 years, accumulating 2.7 million miles. He holds a Class D operator's license from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas E. O'Compo

Mr. O'Compo, 42, has had exotropia in his right eye since birth. The best corrected visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, ''In my opinion. Mr. O'Compo has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. O'Compo reported that he has driven straight trucks for 4 years, accumulating 100,000 miles, and tractor-trailer combinations for 9 years, accumulating 360,000 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Christopher M. Rivera

Mr. Rivera, 37, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, ''I certify that in my opinion, Christopher Rivera has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Rivera reported that he has driven straight trucks for 9 years, accumulating 60,300 miles, and tractor-trailer combinations for 9 years, accumulating 60,300 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes, and one conviction for speeding in a CMV. He exceeded the speed limit by 5mph.

Richard J. Robb

Mr. Robb, 55, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15, and in his left eye, 20/300. Following an examination in 2009, his ophthalmologist noted, ''It is my medical opinion that Mr. Robb has the necessary vision to see and operate a commercial vehicle safely.'' Mr. Robb reported that he has driven straight trucks for 5 years, accumulating 142,500 miles, and tractor-trailer combinations for 20 years, accumulating 750,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry L. Sapp

Mr. Sapp, 44, has a prosthetic left eye due to a traumatic injury since childhood. The visual acuity in his right eye is 20/20. Following an examination in 2009, his optometrist noted, ''Mr. Sapp has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Sapp reported that he has driven straight trucks for 9 years, accumulating 36,000 miles. He holds a Class O operator's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Temesgn H. Teklezig

Mr. Teklezig, 31, has loss of vision in his right eye due to a traumatic injury sustained 13 years ago. The visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2009, his ophthalmologist noted, ''In my professional opinion, Mr. Teklezig has sufficient vision to drive a commercial vehicle.'' Mr. Teklezig reported that he has driven straight trucks for 7 years, accumulating 252,000 miles, and tractor-trailer combinations for 3 years, accumulating 111,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert E. Whitney

Mr. Whitney, 71, has complete loss of vision in his left eye due to an injury sustained as a child. The best corrected visual acuity in his left eye is 20/25. Following an examination in 2009, his optometrist noted, ''In my opinion, he has sufficient vision to operate a commercial vehicle.'' Mr. Whitney reported that he has driven straight trucks for 3 years, accumulating 40,500 miles. He holds a Class D operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert D. Williams

Mr. Williams, 57, has a prosthetic right eye due to a traumatic injury since 1986. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2009, his optometrist noted, ''Vision is sufficient to operate a commercial vehicle.'' Mr. Williams reported that he has driven straight trucks for 38 years, accumulating 692,018 miles. He holds a Class E operator's license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James M. Wood

Mr. Wood, 59, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, ''His vision should not preclude him from operating a commercial vehicle.'' Mr. Wood reported that he has driven straight trucks for 13½ years, accumulating 474,997 miles. He holds a Class B CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business December 21, 2009. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on November 12, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–27840 Filed 11–18–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Economic Recovery Advisory Board (the PERAB)

AGENCY: Departmental Offices.

ACTION: Notice of open meeting.

SUMMARY: The President's Economic Recovery Advisory Board will meet on December 4, 2009 via conference call beginning at 3 p.m. Eastern Time. The meeting will be open to the public via live audio stream at *http://www.whitehouse.gov/live.*

DATES: The meeting will be held on December 4, 2009 at 3 p.m. Eastern Time.

ADDRESSES: The PERAB will convene its next meeting via conference call. The public is invited to submit written statements to the Advisory Committee by any of the following methods:

Electronic Statements

• Send written statements to the PERAB's electronic mailbox at: *PERAB@do.treas.gov;* or

Paper Statements

• Send paper statements in triplicate to Emanuel Pleitez, Designated Federal Officer, President's Economic Recovery Advisory Board, Office of the Under Secretary for Domestic Finance, Room 1325A, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, all statements will be posted on the White House Web site (*http://www.whitehouse.gov*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Emanuel Pleitez, Designated Federal Officer, President's Economic Recovery Advisory Board, Office of the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–2000.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. II, § 10(a), and the regulations thereunder, Emanuel Pleitez, Designated Federal Officer of the Advisory Board, has ordered publication of this notice that the PERAB will convene its next meeting on December 4, 2009 via conference call beginning at 3 p.m. Eastern Time. The meeting will be broadcast on the internet via live audio stream at *http://www.whitehouse.gov/live.* The purpose of this meeting is to continue discussion of the issues impacting the strength and competitiveness of the Nation's economy. The discussion will include administrative matters and an update on the research and preparatory work conducted in the PERAB subcommittees. The PERAB will deliberate on the work of the subcommittees and provide information and ideas obtained from across the country to promote the growth of the American economy, establish a stable and sound financial and banking system, create jobs, and improve the long-term prosperity of the American people. In addition, the PERAB will vote on presenting formal advice and recommendations to the President.

Dated: October 22, 2009.

Andrew Mayock,

Executive Secretary.

[FR Doc. E9–27733 Filed 11–18–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–656–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–656–87 (TD 8701), Treatment of Shareholders of Certain Passive Foreign Investment Companies (§§ 1.1291–9(d) and 1.1291–10(d)).

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Shareholders of Certain Passive Foreign Investment Companies.

OMB Number: 1545–1507.

Regulation Project Number: INTL–656–87.

Abstract: The reporting requirements affect United States persons that are direct and indirect shareholders of passive foreign investment companies (PFICSs). The requirements enable the Internal Revenue Service to identify PFICs, United States shareholders, and transactions subject to PFIC taxation and verify income inclusions, excess distributions, and deferred tax amounts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 131,250.

Estimated Time per Respondent: 46 minutes.

Estimated Total Annual Burden Hours: 100,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27753 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 972

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 972, Consent of Shareholder To Include Specific Amount in Gross Income.

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Consent of Shareholder To Include Specific Amount in Gross Income.

OMB Number: 1545–0043.

Form Number: 972.

Abstract: Form 972 is filed by shareholders of corporations who agree to include a consent dividend in gross income as a taxable dividend. The IRS uses Form 972 as a check to see if an amended return is filed by the shareholder to include the amount in income and to determine if the corporation claimed the correct amount as a deduction on its tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations. *Estimated Number of Responses:* 100.

Estimated Time per Response: 3 hrs., 51 mins.

Estimated Total Annual Burden Hours: 385.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 5, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27759 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 973

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 973, Corporation Claim for Deduction for Consent Dividends.

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Corporation Claim for Deduction for Consent Dividends.

OMB Number: 1545–0044.

Form Number: Form 973.

Abstract: Corporations file Form 973 to claim a deduction for dividends paid. If shareholders consent and the IRS approves, the corporation may claim a deduction for dividends paid, which reduces the corporation's tax liability. IRS uses Form 973 to determine if shareholders have included the dividend in gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500

Estimated Time per Respondent: 4 hrs., 25 mins.

Estimated Total Annual Burden Hours: 2,210.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 5, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27772 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4506, Request for Copy or Transcript of Tax Form.

DATES: Written comments should be received on or before *January 19, 2010* to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs,gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Copy or Transcript of Tax Form.

OMB Number: 1545–0429.

Form Number: Form 4506.

Abstract: Internal Revenue Code section 7513 allows taxpayers to request a copy of a tax return or related documents. Form 4506 is used for this purpose. The information provided will be used for research to locate the tax form and to ensure that the requestor is the taxpayer or someone authorized by the taxpayer to obtain the documents requested.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms, and Federal, State, local, or tribal governments.

Estimated Number of Respondents: 325,000.

Estimated Time per Respondent: 48 min.

Estimated Total Annual Burden Hours: 260,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 5, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27771 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–111–80]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–111–80 (TD 8019), Public Inspection of Exempt Organization Returns (§ 301.6104(b)–1).

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to Allan Hopkins, (202)-622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW.,

Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Public Inspection of Exempt Organization Returns.

OMB Number: 1545–0742.

Regulation Project Number: EE–111–80.

Abstract: Internal Revenue Code section 6104(b) authorizes the IRS to make available to the public the returns required to be filed by exempt organizations. The information requested in section 301.6104(b)–1(b)(4) of this regulation is necessary in order for the IRS not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 22.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 22.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 5, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27770 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–178–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–178–78 (TD 7898), Employers' Qualified Educational Assistance Programs (Section 1.127–2).

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins at (202) 622–6665, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employers' Qualified Educational Assistance Programs.

OMB Number: 1545–0768.

Regulation Project Number: EE–178–78.

Abstract: Internal Revenue Code section 127(a) provides that the gross income of an employee does not include amounts paid or expenses incurred by an employer if furnished to the employee pursuant to a qualified educational assistance program. This regulation requires that a qualified educational assistance program must be a separate written plan of the employer and that employees must be notified of the availability and terms of the program. Also, substantiation may be required to verify that employees are entitled to exclude from their gross income amounts paid or expenses incurred by the employer.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 5,200.

Estimated Time per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 615.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 5, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27769 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2439

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains.

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Alternative Minimum Tax-Individuals.

OMB Number: 1545–0145.

Form Number: 2439.

Abstract: Form 2439 is used by regulated investment companies or real estate investment trusts to show shareholders the amount of tax paid on undistributed capital gains under section 852(b)(3)(D) or 857(b)(3)(D).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 6,275.

Estimated Time per Respondent: 4 hrs., 47 min.

Estimated Total Annual Burden Hours: 29,995.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27768 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–112–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–112–88 (TD 8337). Allocation and Apportionment of Deduction for State Income Taxes (Section 1.861–8(e)(6)).

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation and Apportionment of Deduction for State Income Taxes.

OMB Number: 1545–1224.

Regulation Project Number: INTL–112–88.

Abstract: This regulation provides guidance on when and how the deduction for State income taxes is to be allocated and apportioned between gross income from sources within and without the United States in order to determine the amount of taxable income from those sources. The reporting requirements in the regulation affect those taxpayers claiming foreign tax credits who elect to use an alternative method from that described in the regulation to allocate and apportion deductions for state income taxes.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–27767 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–43–94]

Proposed Collection; Comment Request for Regulation Project.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–43–94 (TD 8649), Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions (§ 1.1258–1).

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Regulations Under Section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions.

OMB Number: 1545–1452.

Regulation Project Number: FI–43–94.

Abstract: Internal Revenue Code section 1258 recharacterizes capital gains from conversion transactions as ordinary income to the extent of the time value element. This regulation provides that certain gains and losses may be netted for purposes of determining the amount of gain recharacterized. To be eligible for netting relief, the taxpayer must identify on its books and records all the positions that are part of the conversion transaction. This must be done before the close of the day on which the positions become part of the conversion transaction.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–27766 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–80–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–80–93 (TD 8645), Rules for Certain Rental Real Estate Activities (Section 1.469–9).

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, at (202) 622–3634, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rules for Certain Rental Real Estate Activities.

OMB Number: 1545–1455.

Regulation Project Number: PS–80–93.

Abstract: This regulation provides rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations of Internal Revenue Code section 469.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20,100.

Estimated Time per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 3,015 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–27765 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8498

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8498, Program Sponsor Agreement for Continuing Education for Enrolled Agents.

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Program Sponsor Agreement for Continuing Education for Enrolled Agents.

OMB Number: 1545–1459.

Form Number: Form 8498.

Abstract: Form 8498 is used by the Director of Practice to determine the qualifications of those individuals or organizations seeking to present continuing professional educational programs for persons enrolled to practice before the Internal Revenue Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 36 minutes.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–27764 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9452

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning Form 9452, Filing Assistance Program (Do you have to file a Federal Income Tax Return?).

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Filing Assistance Program (Do you have to file a Federal Income Tax Return?).

OMB Number: 1545–1316.

Form Number: 9452.

Abstract: Form 9452 aids individuals in determining whether it is necessary to file a Federal tax return. Form 9452 will not be collected by IRS; it is to be used by individuals at their discretion. Form 9452 is used by the Service's taxpayer assistance programs. It is also available on the internet, and it is distributed in an annual mail out to taxpayers.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,650,000.

Estimated Time per Respondent: 30 min.

Estimated Total Annual Burden Hours: 825,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–27763 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8275 and 8275–R

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8275, Disclosure Statement, and Form 8275–R, Regulation Disclosure Statement.

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Disclosure Statement (Form 8275) and Regulation Disclosure Statement (Form 8275–R).

OMB Number: 1545–0889.

Form Number: Forms 8275 and 8275–R.

Abstract: Internal Revenue Code section 6662 imposes accuracy-related penalties on taxpayers for substantial understatement of tax liability or negligence or disregard of rules and regulations. Code section 6694 imposes similar penalties on return preparers. Regulations sections 1.662–4(e) and (f) provide for reduction of these penalties if adequate disclosure of the tax treatment is made on Form 8275 or, if the position is contrary to regulation on Form 8275–R.

Current Actions: There are no changes to the form at this time. However, due to inconsistencies with information currently on file with OMB, we requesting the OMB records be decreased by 80,298 responses and 447,661 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals, not-for-profit institutions, and farms.

Estimated Number of Responses: 666,666.

Estimated Time per Response: 5 hours, 34 minutes.

Estimated Total Annual Burden Hours: 3,716,664.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–27762 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2587

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2587, Application for Special Enrollment Examination.

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Special Enrollment Examination.

OMB Number: 1545–0949.

Form Number: Form 2587.

Abstract: Form 2587 is used by individuals to apply to take the Special Enrollment Examination to establish eligibility for enrollment to practice before the IRS. The information on the form is used by the Director of Practice to identify those individuals seeking to take the examination and to plan for the administration of the examination.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 11,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 11,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27761 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8831

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8831, Excise Taxes on Excess Inclusions of REMIC Residual Interests.

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Taxes on Excess Inclusions of REMIC Residual Interests.

OMB Number: 1545–1379.

Form Number: 8831.

Abstract: Form 8831 is used by a real estate mortgage investment conduit (REMIC) to figure its excise tax liability under Internal Revenue Code sections 860E(e)(1), 860E(e)(6), and 860E(e)(7). IRS uses the information to determine the correct tax liability of the REMIC.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 31.

Estimated Time per Response: 7 hours, 39 minutes.

Estimated Total Annual Burden Hours: 237.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27760 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–56–87 and IA–53–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–56–87 and IA–53–87 (TD 8416), Minimum Tax-Tax Benefit Rule (§§ 1.58–9(c)(5)(iii)(B), and 1.58–9(e)(3)).

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Minimum Tax—Tax Benefit Rule.

OMB Number: 1545–1093.

Regulation Project Number: IA–56–87 and IA–53–87.

Abstract: Section 58(h) of the Internal Revenue Code provides that the Secretary of the Treasury shall prescribe regulations that adjust tax preference items where such items provided no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items did not result in a tax benefit because of available credits or refund of minimum tax paid on such preferences.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 40.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27758 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209835–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209835–86 (TD 8708), Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes (§ 1.902–1).

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be

directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Computation of Foreign Taxes Deemed Paid under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes.

OMB Number: 1545–1458.

Regulation Project Number: Reg-209835–86 (formerly INTL–933–86).

Abstract: This regulation provides rules for computing foreign taxes deemed paid under Internal Revenue Code section 902. The regulation affects foreign corporations and their United States corporate shareholders that own directly at least 10% of the voting stock of the foreign corporation.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden for the collection of information is reflected in the burden for Form 1118, Foreign Tax Credit-Corporations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27754 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–57–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–57–94 (TD 8652), Cash Reporting by Court Clerks (§ 1.6050I–2).

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cash Reporting by Court Clerks.

OMB Number: 1545–1449.

Regulation Project Number: IA–57–94.

Abstract: This regulation concerns the information reporting requirements of the Federal and State court clerks upon receipt of more than $10,000 in cash as bail for any individual charged with a specified criminal offense. The Internal Revenue Service will use the information to identify individuals with large cash incomes. Clerks must also furnish the information to the United States Attorney for the jurisdiction in which the individual charged with the crime resides and to each person posting the bond whose name is required to be included on form 8300.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal, state, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27755 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208165–91; REG–209035–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, REG–208165–91 (TD 8770), Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements; and REG–209035–86 (TD 8862), Stock Transfer Rules (§§ 1.367(a)–8 and 1.367(b)–1).

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: REG–208165–91 (TD 8770), Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements; and REG–209035–86 (TD 8862), Stock Transfer Rules.

OMB Number: 1545–1271.

Regulation Project Number: REG–208165–91 and REG–209035–86.

Abstract: A United States entity must generally file a gain recognition agreement with the IRS in order to defer gain on a Code section 367(a) transfer of stock to a foreign corporation, and must file a notice with the IRS if it realizes any income in a Code section 367(b) exchange. These regulations provide guidance and reporting requirements related to these transactions to ensure compliance with the respective Code sections.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 580.

Estimated Time per Respondent: 4 hours, 7 minutes.

Estimated Total Annual Burden Hours: 2,390.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27757 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–115795–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–115795–97 (TD 8870), General Rules for Making and Maintaining Qualified Electing Fund Elections (§§ 1.1295–1 and 1.1295–3).

DATES: Written comments should be received on or before January 19, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: General Rules for Making and Maintaining Qualified Electing Fund Elections.

OMB Number: 1545–1555.

Regulation Project Number: REG–115795–97.

Abstract: This regulation provides guidance to a passive foreign investment company (PFIC) shareholder that makes the election under Code section 1295 to treat the PFIC as a qualified electing fund (QEF), and for PFIC shareholders that wish to make a section 1295 election that will apply on a retroactive basis. Guidance is also provided on revoking such elections.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organization, and not-for-profit institutions.

Estimated Number of Respondents: 1,290.

Estimated Time per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 623.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 2009.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. E9–27756 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 8418]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, T.D. 8418, Arbitrage Restrictions on Tax-exempt Bonds (§§ 1.148–1, 1.148–2, 1.148–3, 1.148–4, 1.148–5, 1.148–6, 1.148–7, 1.148–8, and 1.148–11).

DATES: Written comments should be received on or before *January 19, 2010* to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on tax-exempt Bonds.

OMB Number: 1545–1098.

Regulation Project Number: TD 8418.

Abstract: This regulation requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Issuers are required to submit a form with the rebate. The regulations provide for several elections, all of which must be in writing.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local, or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 3,100.

Estimated Time per Respondent: 2 hours, 45 minutes.

Estimated Total Annual Burden Hours: 8,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–27752 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, December 15, 2009, from 10 a.m. to 12 p.m., and 2:30 p.m. to 5:30 p.m., Wednesday, December 16, 2009, from 8 a.m. to 5:30 p.m., and Thursday, December 17, 2009, from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel will be held Tuesday, December 15, 2009 from 10 a.m. to 12 p.m., and from 2:30 p.m. to 5:30 p.m., Wednesday, December 16, 2009 from 8 a.m. to 5:30 p.m. and Thursday, December 17, 2009, from 8 to 4:30 p.m. at the Capital Hilton Hotel in Washington, DC. If you would like to

have the Taxpayer Advocacy Panel consider a written statement, please contact Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: November 10, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–27750 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended by the Health Insurance Portability and Accountability Act (HIPAA) of 1996. This listing contains the name of each individual losing their United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending September 30, 2009.

Last name	First name	Middle name/ initials
Alkalbani	Saeed	Saleh
Anderson	Stefanie	Andrea
Arnold	Richard	Lee
Batchelor	Nicholas	David
Bellm	Diane	
Bellm	Mark	James
Berson	Alan	Charles
Bonelli	Ann	Pauline
Bosch	Maya	Giselle
Boutros	Joanne	Lee
Brennan	Michael	John
Bresnahan	Sean	Patrick
Bucher	Nicole	Shelley
Burns Hamlyn	Sara	
Chan	Andrew	Kwan To
Chan	Tung	Moe
Chang	Herman	Hsiu Guo
Chau	Puiman	
Chazot	Christophe	Edge
Chen	Chih-Ming	James
Chen	Margaret	Sai Man
Cheng	Dorian	Pui Yin
Cheng	Kit	Heng Wong
Cheung	Allan	Chiwan
Cho	Kyu	Hwan
Choi	Joel	Will
Chung	Jane	
Chu-Yip	Pancy	Siu Ling
Corbin	Susan	Loviska
Cornell	Wade	Hampton
Cornwall	John	
De Cocinis	Mark	John
De Latour	Michael	Christopher
Effeney	Susan	Margaret Pond
Egli	Vanessa	Darcie
Ehrhart	Timothy	Lee
Feitknecht	Andreas	Jurg
Firmenich	Frederic	Alexandre
Fleming	Robert	Helmut
Flores	Eduardo	
Fong	Cecilia	Foo
Foo	Allison	Wei-Qian
Forrer	Thomas	James
Fournier	Frances	Margaret
Ghani	Ashraf	
Granger	Janis	Ellen
Guardia	Gilberto	Jose
Gutowski	Charles	Gregory
Hager	Edward	
Han	Jin	Hee
Heitmueller	Jan	Christoph
Ho	Benedict	Sze Man
Ho	Warren	Weilien
Hon	Kenneth	Sau Yee
Hood	Russell	William
Hung	Hak(Nak)	Fu
Hung	Marvin	Ming-Kei
Hussey	Martin	John
Im	Kaiser	
Islam	Anisul	
Jen	Stephen	Li
Jeong	Daniel	Eui
Jessee	Derek	Talbert
Joseph	Emma	Catherine
Kim	Dong	Jin
Kim	Min	Soo
Kim	Sol	Ha
Kinne	Judd	Clark
Kirsch	Gorm	David
Lai	Aida	
Langhammer	Mark	Richard
Larsen	James	Gregory
Laursen	Kristin	Leigh
Law	Wilson	Wai Shan
Lee	Andy	Hung Kee
Lee	Jae	Choon
Lee	Ki	In
Lee	Kihwang	
Lee	Maureen	Lam
Lee	Norman	Tak Lee
Lii	Mark	Ming Shing
Lim	William	Ooi Lee
Lo	Lois	Yick Sze
Long	Stephen	Thomas
Machinena	Fernando	
MacMeekin	Scott	Wright
Mahbubani	Kishore	Richard
Maira	Arun	Nath
Marrs Sr	David	Michael
Martin	Christina	Carol
Marx	Birgit	
McCamish	Julie	Ann
Meersman	Jane	Gay
Morgan	Kate	Louise
Morgan	Miranda	Elvira
Moss	Max	
Nakagawa	Makoto	
Nauer	Philip	Jacques
Ng	Chun	Wah
Ng	Edwin	Sai Wah
Ng	Lily	
Ng	Sarah	Ming-Yuen
Nylund	Richard	Alan
O'Donnell	Brian	
Ofer	Olivia	Kate
Oren	Michael	
Park	Sung	Soo
Peng	John	
Persson	Bente	Dagny
Piasente-Foligno	Massimo	
Pohan	Annisa	Larasati
Poon	Veronica	
Portlock	Charles	Christopher
Potocki	Tomasz	Jan
Pu	Mark	Siao Hing
Pyen	Kum	Woo
Rebaczonok-Padulo	Michael	
Renner	Scott	M
Roberts	Steve	
Roux	Romulo	A
Rutledge	Gregory	Karl
Saba	Hafid	Mekki
Salas	Henrique	Fernando
Salathe	Heidy	
Sandrin	Eric	Lee
Schindel	Peter	Hyde
Schneider	Kai-Niklas	A
Seo	Albert	Minwoo
Shen	Anita	Lai Luen Law
Shir	Bemellah	
Sincebaugh	Yeon	Hee
Slater	Michael	D
Sroka	Robert	John
Stamp	Josiah	Richard
Stanton	Raymond	Clifford
Stemple	Stewart	David
Suh	Nam	Jin Maria
Takahashi	Makoto	
Tam	Siobhan	Shiu Wun
Tenerelli	Dean	Philip
Thatcher	Marianne	Laura
Thompson, III	James	E
Tien	Osmund	Chung Yu
Udy	Anne	Benua
Venit	Alexander	Maria
Villalobos	Chun	Hui
Wang	Austin	Jesse
Weiss	Charlotte	Rubel
Wild	Roland	Oliver
Wong	Bill	Yim-Chi
Wong	Jeffrey	Mark
Woodburn	John	Andrew
Wu	Ingrid	G
Wu	Madeline	
Wu	Veronica	Shao-Ching
Yang	William	Chunsu
Zhang	Wanjuen	
Zukier	Hersz	

Dated: October 29, 2009.

Angie Kaminski,

Manager Team 103, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. E9–27751 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0649]

Agency Information Collection (National Registry of Veterans With Amyotrophic Lateral Sclerosis) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 21, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0649'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0649.''

SUPPLEMENTARY INFORMATION:

Titles:

a. ALS Registry Screening Form, VA Form 10–21047.

b. Biannual Telephone National Registry of Veterans with ALS, VA Form 10–21047a.

c. Verbal Informed Consent VIA Telephone, National Registry of Veterans with ALS, VA Form 10–21047b.

OMB Control Number: 2900–0649.

Type of Review: Extension of a currently approved collection.

Abstract: ALS is a disease of high priority to the Department of Veterans Affairs because of ongoing concerns about the health of veterans who served in the Gulf War. The creation of the registry will have significance both for VA and for the larger U.S. society in understanding the natural history of ALS. It will provide VA with crucial epidemiological data on the current population of veterans with ALS, as well as the ongoing identification of new cases. The data will help VA to understand how veterans are affected by ALS and may assist with early identification of new ALS clusters. This registry will provide a mechanism for informing veterans with ALS of new clinical drug trials and other studies.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 14, 2009, at page 47042.

Affected Public: Individuals or households.

Estimated Annual Burden: 882.

Estimated Average Burden Per Respondent: 29 minutes.

Frequency of Response: Semi-annually.

Estimated Number of Respondents: 1,808.

Dated: November 16, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–27784 Filed 11–18–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA)

ACTION: Notice of amendment to system of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled ''Patient Medical Records–VA'' (24VA19) as set forth in the **Federal Register**, 69 FR 18428 (Apr. 7, 2004). VA is amending the system by revising the Categories of Records in the System, and Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; and Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than December 21, 2009. If no public comment is received, the amended system will become effective December 21, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number). Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: The Patient Medical Records–VA (24VA19) system of records is amended to clarify the records in the system, to clarify records storage, and to clarify and add routine use disclosure statements.

Categories of Records in the System is amended to reflect subsidiary record information such as minimum data sets (MDS) being included in the consolidated health record (CHR).

Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System is amended to reflect records being maintained on electronic media, which includes images and scanned documents.

Routine use thirteen (13) is amended to add the phrase ''or designee, such as the Medical Center Director of the facility where the information is maintained'' after ''Under Secretary for Health.'' This language clarifies that designated individuals may approve the disclosure of information from records maintained at their facilities for the purpose of research.

Routine use fourteen (14) is amended to add the language ''health information, including.'' This language clarifies that not only names and addresses of veterans but any health information about veterans may also be disclosed for Federal research.

Routine use fifteen (15) is amended to permit disclosure to the Department of

Justice or other Federal agencies in litigation or other administrative or adjudicative proceedings that involve VA, a VA employee, or the Federal government. This language clarifies that, in addition to judicial proceedings in which VA is a party, information may be disclosed in non-judicial administrative or adjudicative proceedings and in proceedings where the Federal government is a party.

Routine use twenty-one (21) is amended to clarify that, consistent with § 7332, disclosure that a patient is infected with the human immunodeficiency virus may be made to an individual identified by the patient during counseling or testing for the virus as a sexual partner.

Routine use twenty-three (23) is amended to delete the phrase ''the acceptance of'' in order to clarify that a health care provider's surrender of or restriction on his or her privileges may not be a material factor in the decision to report the practitioner to the National Practitioner Data Bank or a State Licensing Board.

Routine use forty-three (43) is amended to add the language ''private health care providers or hospitals, DoD, or IHS providers.'' This language clarifies that VHA may disclose health information to all non-VA health care providers, including Federal, private, and public providers, for the purpose of treating veterans.

Routine use forty-six (46) is amended to delete the language excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia, and the names and home addresses of veterans and their dependents from the routine use. Congress enacted legislation to allow for the disclosure of information protected by 38 U.S.C. 5701 and 7332 to organ procurement organizations for the purpose of determining suitability of patients' organs or tissues for organ donation when death is imminent. This routine use allows VHA to honor the wishes of veterans to be organ donors.

Routine use forty-seven (47) is amended to clarify that the disclosure of information to DoD with respect to the transition, health care, benefits, and administrative needs of or for active duty service members or reserve components, veterans, and their beneficiaries is not limited to times of war or national emergency.

The following routine use disclosure statements are added:

Routine use forty-eight (48) states that disclosure to other Federal agencies may be made to assist those agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs. This routine use permits disclosures by the Department to report or respond to a suspected or confirmed incident of identity theft and provide information and/or documentation related to or in support of the reported incident.

Routine use forty-nine (49) states that VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to report or respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in § 5727.

Routine use fifty (50) states that information may be disclosed from this system of records to any third party or Federal agency, including contractors to those parties, that is responsible for payment of the cost of medical care for the identified patients, in support of VA recovery of medical care costs or for any activities related to payment of medical care costs. These records may also be disclosed as part of a computer matching program to accomplish these purposes. This routine use permits disclosure to third party payers or their contractors for purposes relating to audit of payment and claims management processes.

Routine use fifty-one (51) states that relevant information from this system of records may be disclosed to a quality review and/or peer review organization in connection with the audit of claims or other review activities, to determine quality of care or compliance with professionally accepted claims processing standards. This routine use permits disclosure of information for quality assessment audits received by Healthcare Effectiveness Data and Information Set or similar auditors.

Routine use fifty-two (52) permits the disclosure of health care information as deemed necessary and proper to Federal, State, and local government agencies and national health organizations in order to assist in the development of programs that will be beneficial to claimants, protect their rights under law, and ensure that they are receiving all benefits to which they are entitled. This routine use allows VHA to provide initial and follow-up abstracts to state central cancer registries charged with the protection of public health. A follow-up cancer abstract is generated by the state central cancer registry to the provider who initially reported the cancer case. The American College of Surgeons, Commission on Cancer, requires a 90% follow-up on all cancer patients for purposes of accreditation which in turn demonstrates a high-quality cancer program.

Routine use fifty-three (53) authorizes the disclosure of information to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in defense or reasonable anticipation of litigation against the individual regarding health care provided during his or her employment or contract with VA.

Routine use fifty-four (54) permits such disclosure when the former employee's or contractor's information or consultation assistance is necessary in a pending or reasonably anticipated tort claim, litigation, or other administrative or judicial proceeding that involves VA.

Routine use fifty-five (55) allows such disclosure in connection with or consideration of the reporting of that individual to the National Practitioner Data Bank or a state licensing board with respect to the payment of a medical malpractice settlement, a decision relating to possible incompetence or improper professional conduct, or surrender or restriction of privileges while under investigation.

Routine use fifty-six (56) authorizes such disclosure in connection with or in consideration of reporting that individual to a state licensing board for failure to conform to generally accepted standards of professional medical practice.

Routine use fifty-seven (57) also permits such disclosure in administrative proceedings before the Equal Employment Opportunity Commission.

Finally, routine use fifty-eight (58) authorizes such disclosure in administrative proceedings before the Merit Systems Protection Board or the Office of the Special Counsel.

The Department has also made minor edits to the system notice, including routine uses, for grammar and clarity purposes. These changes are not, and are not intended to be, substantive.

The Report of Intent to Amend a System on Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by the Privacy Act, 5 U.S.C. 552a(r), and guidelines issued by OMB, 65 FR 77677, (Dec. 12, 2000).

Approved: October 30, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

24VA19

SYSTEM NAME:

Patient Medical Records–VA

SYSTEM LOCATION:

Records are maintained at each VA health care facility (in most cases, back-up information is stored at off-site locations). Subsidiary record information is maintained at the various respective services within the health care facility (*e.g.*, Pharmacy, Fiscal, Dietetic, Clinical Laboratory, Radiology, Social Work, Psychology) and by individuals, organizations, and/or agencies with which VA has a contract or agreement to perform such services, as VA may deem practicable.

Address locations for VA facilities are listed in Appendix 1 of the biennial publication of the VA Privacy Act Issuances. In addition, information from these records or copies of these records may be maintained at the Department of Veteran Affairs Central Office, 810 Vermont, NW., Washington, DC 20420; VA National Data Centers; VA Health Data Repository (HDR), located at the VA National Data Centers; VA Chief Information Office (CIO) Field Offices; Veterans Integrated Service Networks; and Regional and General Counsel Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Veterans who have applied for health care services under Chapter 17 of Title 38, United States Code, and members of their immediate families;

2. Spouses, surviving spouses, and children of veterans who have applied for health care services under Chapter 17 of Title 38, United States Code;

3. Beneficiaries of other Federal agencies;

4. Individuals examined or treated under contract or resource sharing agreements;

5. Individuals examined or treated for research or donor purposes;

6. Individuals who have applied for Title 38 benefits but who do not meet the requirements under Title 38 to receive such benefits;

7. Individuals who were provided medical care under emergency conditions for humanitarian reasons; and

8. Pensioned members of allied forces provided health care services under Chapter I of Title 38, United States Code.

CATEGORIES OF RECORDS IN THE SYSTEM:

The patient medical record is a consolidated health record (CHR) which may include:

(i) An administrative (non-clinical information) record (*e.g.,* medical benefit application and eligibility information) including information obtained from Veterans Benefits Administration automated records such as the Veterans and Beneficiaries Identification and Records Locator Subsystem-VA (38VA23) and the Compensation, Pension, Education and Rehabilitation Records-VA (58VA21/22/28), and correspondence about the individual;

(ii) A medical record (a cumulative account of sociological, diagnostic, counseling, rehabilitation, drug and alcohol, dietetic, medical, surgical, dental, psychological, and/or psychiatric information compiled by VA professional staff and non-VA health care providers), and

(iii) Subsidiary record information (*e.g.,* tumor registry, minimum data set, dental, pharmacy, nuclear medicine, clinical laboratory, radiology, and patient scheduling information). The consolidated health record may include identifying information (*e.g.,* name, address, date of birth, VA claim number, social security number); military service information (*e.g.,* dates, branch and character of service, service number, medical information); family information (*e.g.,* next of kin and person to notify in an emergency; address information, name, social security number and date of birth for veteran's spouse and dependents; family medical history information); employment information (*e.g.,* occupation, employer name and address); financial information (*e.g.,* family income; assets; expenses; debts; amount and source of income for veteran, spouse, and dependents); third-party health plan contract information (*e.g.,* health insurance carrier name and address, policy number, amounts billed and paid); and information pertaining to the individual's medical, surgical, psychiatric, dental, and/or psychological examination, evaluation, and/or treatment (*e.g.,* information related to the chief complaint and history of present illness; information related to physical, diagnostic, therapeutic special examinations; clinical laboratory, pathology and x-ray findings; operations; medical history; medications prescribed and dispensed; treatment plan and progress; consultations; photographs taken for identification and medical treatment; education and research purposes; facility locations where treatment is provided; observations and clinical impressions of health care providers to include identity of providers and to include, as appropriate, the present state of the patient's health; and an assessment of the patient's emotional, behavioral, and social status, as well as an assessment of the patient's rehabilitation potential and nursing care needs). Abstract information (*e.g.,* environmental, epidemiological and treatment regimen registries) is maintained in auxiliary paper and automated records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Sections 501(b) and 304.

PURPOSE(S):

The paper and automated records may be used for such purposes as: Ongoing treatment of the patient; documentation of treatment provided; payment; health care operations such as producing various management and patient follow-up reports; responding to patient and other inquiries; for epidemiological research and other health care related studies; statistical analysis, resource allocation and planning; providing clinical and administrative support to patient medical care; determining entitlement and eligibility for VA benefits; processing and adjudicating benefit claims by Veterans Benefits Administration Regional Office (VARO) staff; for audits, reviews, and investigations conducted by staff of the health care facility, the networks, VA Central Office, and the VA Office of Inspector General (OIG); sharing of health information between and among Veterans Health Administration (VHA), Department of Defense (DoD), Indian Health Services (IHS), and other government and private industry health care organizations; law enforcement investigations; quality assurance audits,

reviews, and investigations; personnel management and evaluation; employee ratings and performance evaluations; and employee disciplinary or other adverse action, including discharge; advising health care professional licensing or monitoring bodies or similar entities of activities of VA and former VA health care personnel; accreditation of a facility by an entity such as the Joint Commission (JCAHO); and notifying medical schools of medical students' performance and billing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information may not be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. VA may disclose health care information as deemed necessary and proper to Federal, State, and local government agencies and national health organizations in order to assist in the development of programs that will be beneficial to claimants, protect their rights under law, and assure that they are receiving all benefits to which they are entitled.

2. VA may disclose health care information furnished and the period of care, as deemed necessary and proper to accredited service organization representatives and other approved agents, attorneys, and insurance companies to aid claimants whom they represent in the preparation, presentation, and prosecution of claims under laws administered by VA, or State or local agencies.

3. VA may disclose on its own initiative any information, except the names and addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

4. VA may disclose information to a Federal agency or the District of Columbia government, in response to its request, in connection with the hiring or retention of an employee and the issuance of a security clearance as required by law, the reporting of an investigation of an employee, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision.

5. Health care information may be disclosed by appropriate VA personnel to the extent necessary and on a need-to-know basis, consistent with good medical-ethical practices, to family members and/or the person(s) with whom the patient has a meaningful relationship.

6. In response to an inquiry from a member of the general public about a named individual, VA may disclose the patient's name, presence (and location when needed for visitation purposes) in a medical facility, and general condition that does not reveal specific medical information (*e.g.,* satisfactory, seriously ill).

7. In the course of presenting evidence to a court, magistrate, or administrative tribunal in matters of guardianship, inquests, and commitments, VA may disclose relevant information to private attorneys representing veterans rated incompetent in conjunction with issuance of certificates of incompetency and to probation and parole officers in connection with court-required duties.

8. VA may disclose relevant information to a guardian ad litem in relation to his or her representation of a claimant in any legal proceeding.

9. VA may disclose information to a member of Congress or a congressional staff member in response to an inquiry from the congressional office made at the request of that individual.

10. VA may disclose name(s) and address(es) of present or former members of the armed services and/or their dependents under certain circumstances: (a) To any nonprofit organization, if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, or (b) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such organization, agency, or instrumentality has made a written request for such name(s) or address(es) for a purpose authorized by law, provided that the records will not be used for any purpose other than that stated in the request and that the organization, agency, or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

11. VA may disclose the nature of the patient's illness, probable prognosis, estimated life expectancy, and need for the presence of the related service member to the American Red Cross for the purpose of justifying emergency leave.

12. VA may disclose relevant information to attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and courts, boards, or commissions, to the extent necessary to aid VA in the preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated thereunder.

13. VA may disclose health information for research purposes determined to be necessary and proper to epidemiological and other research entities approved by the Under Secretary for Health or designee, such as the Medical Center Director of the facility where the information is maintained.

14. VA may disclose health information, including the name(s) and address(es) of present or former personnel of the Armed Services and/or their dependents, (a) to a Federal department or agency or (b) directly to a contractor of a Federal department or agency, at the written request of the head of the agency or the designee of the head of that agency, to conduct Federal research necessary to accomplish a statutory purpose of an agency. When this information is to be disclosed directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to ensure the appropriateness of the disclosure to the contractor.

15. VA may disclose relevant information to the Department of Justice or other Federal agencies in pending or reasonably anticipated litigation or other proceedings before a court, administrative body, or other adjudicative tribunal, when:

(a) VA or any subdivision thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity, where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that the proceedings are likely to affect the operations of VA or any of its components is a party to or has an interest in the proceedings, and VA determines that the records are relevant and necessary to the proceedings.

16. Health care information may be disclosed by the examining VA physician to a non-VA physician when that non-VA physician has referred the individual to VA for medical care.

17. VA may disclose records to the National Archives and Records Administration and the General Services Administration in records management inspections and other activities conducted under Title 44.

18. VA may disclose health care information concerning a non-judicially declared incompetent patient to a third party upon the written authorization of the patient's next of kin in order for the patient or, consistent with the best interest of the patient, a member of the patient's family, to receive a benefit to which the patient or family member is entitled or to arrange for the patient's discharge from a VA medical facility. Sufficient information to make an informed determination will be made available to such next of kin. If the patient's next of kin is not reasonably accessible, the chief of staff, director, or designee of the custodial VA medical facility may make the disclosure for these purposes.

19. VA may disclose information to a Federal agency, a state or local government licensing board, and/or the Federation of State Medical Boards or a similar non-governmental entity that maintains records concerning individuals' employment histories or concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty, to inform the entity about the health care practices of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

20. VA may disclose information maintained in connection with the performance of any program or activity relating to infection with the Human Immunodeficiency Virus (HIV) to a Federal, State, or local public health authority that is charged under Federal or State law with the protection of the public health, and to which Federal or state law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by the law. The person to whom information is disclosed, under 38 U.S.C. 7332(b)(2)(C), should be advised that they shall not re-disclose or use such information for a purpose other than that for which the disclosure was made. The disclosure of patient name and address under this routine use must comply with the provisions of 38 U.S.C. 5701(f)(2).

21. Information indicating that a patient or subject is infected with the Human Immunodeficiency Virus (HIV) may be disclosed by a physician or professional counselor to the spouse of the patient or subject, to an individual with whom the patient or subject has a meaningful relationship, or to an individual whom the patient or subject has during the process of professional counseling or of testing to determine whether the patient or subject is infected with the virus, identified as being a sexual partner of the patient or subject. Disclosures may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient or subject to provide the information to the spouse or sexual partner, reasonably believes that the patient or subject will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner. Such disclosures should, to the extent feasible, be made by the patient's or subject's treating physician or professional counselor. Before any patient or subject gives consent to being tested for the HIV, as part of pre-testing counseling, the patient or subject must be informed fully about these notification procedures.

22. VA may disclose information, including name, address, social security number, and other information as is reasonably necessary to identify an individual, to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/re-privileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention, or termination of the applicant or employee.

23. VA may disclose relevant information to the National Practitioner Data Bank and/or State Licensing Board in the state(s) in which a practitioner is licensed, the VA facility is located, and/or an act or omission occurred upon which a medical malpractice claim was based, when VA reports information concerning: (a) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice, if an appropriate determination is made in accordance with Department policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (b) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or (c) the surrender of clinical privileges or any restriction of such privileges by a physician or dentist, either while under investigation by the health care entity relating to possible incompetence or improper professional conduct. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

24. VA may disclose relevant health care information to a state veterans home for the purpose of medical treatment and/or follow-up at the state home when VA makes payment of a per diem rate to the state home for the patient receiving care at such home, and the patient receives VA medical care.

25. VA may disclose relevant health care information to (a) a Federal agency or non-VA health care provider or institution when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services, and the information is needed by the Federal agency or non-VA institution or provider to perform the services, or (b) a Federal agency or a non-VA hospital (Federal, State and local, public, or private) or other medical installation having hospital facilities, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement, or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit, or recovery of the costs of the medical care.

26. VA may disclose health care information for program review

purposes and the seeking of accreditation and/or certification to survey teams of the Joint Commission (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accrediting agencies or boards with which VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

27. VA may disclose relevant health care information to a non-VA nursing home facility that is considering the patient for admission, when information concerning the individual's medical care is needed for the purpose of preadmission screening under 42 CFR 483.20(f), to identify patients who are mentally ill or mentally retarded so they can be evaluated for appropriate placement.

28. VA may disclose information which relates to the performance of a health care student or provider to a medical or nursing school or other health care related training institution, or other facility with which VA has an affiliation, sharing agreement, contract, or similar arrangement, when the student or provider is enrolled at or employed by the school, training institution, or other facility, and the information is needed for personnel management, rating, and/or evaluation purposes.

29. VA may disclose relevant health care information to individuals, organizations, and private or public agencies with which VA has a contract or sharing agreement for the provision of health care or administrative services.

30. VA may disclose identifying information, including social security number of a veteran, spouse, and dependent, to other Federal agencies for purposes of conducting computer matches to obtain information to determine, or to verify eligibility of veterans who are receiving VA medical care under Title 38.

31. VA may disclose the name and social security number of a veteran, spouse, and dependent, and other identifying information as is reasonably necessary, to the Social Security Administration, Department of Health and Human Services (HHS), for the purpose of conducting a computer match to obtain information to validate the social security numbers maintained in VA records.

32. VA may disclose the patient's name and relevant health care information concerning an adverse drug reaction to the Food and Drug Administration (FDA), HHS, for purposes of quality of care management, including detection, treatment, monitoring, reporting, analysis, and follow-up actions relating to adverse drug reactions.

33. VA may disclose information to Federal agencies and government-wide third-party insurers responsible for payment of the cost of medical care for the patients, in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

34. VA may disclose information pursuant to 38 U.S.C. 7464, and notwithstanding §§ 5701 and 7332, to a former VA employee, as well as an authorized representative of the employee, whose case is under consideration by the VA Disciplinary Appeals Board, in connection with the considerations of the Board, to the extent the Board considers appropriate for purposes of the proceedings of the Board in that case, when authorized by the chairperson of the Board.

35. Information that a patient is infected with Hepatitis C may be disclosed by a physician or professional counselor to the spouse, the person or subject with whom the patient has a meaningful relationship, or an individual whom the patient or subject has identified as being a sexual partner of the patient or subject.

36. VA may disclose to the Federal Labor Relations Authority, including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised in matters before the Federal Service Impasses Panel.

37. VA may disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

38. VA may disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, such other functions promulgated in 5 U.S.C. 1205 and 1206, or as otherwise authorized by law.

39. VA may disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examinations of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions of the Commission as authorized by law or regulation.

40. VA may disclose relevant health care information to health and welfare agencies, housing resources, and utility companies, possibly to be combined with disclosures to other agencies, in situations where VA needs to act quickly in order to provide basic and/or emergency needs for the patient and patient's family where the family resides with the patient or serves as a caregiver.

41. VA may disclose health care information to funeral directors or representatives of funeral homes in order for them to make necessary arrangements prior to and in anticipation of a patient's death.

42. VA may disclose health care information to the FDA, or a person subject to the jurisdiction of the FDA, with respect to FDA-regulated products for purposes of reporting adverse events, product defects or problems, or biological product deviations; tracking products; enabling product recalls, repairs, or replacement; and/or conducting post marketing surveillance.

43. VA may disclose health care information to a non-VA health care provider, such as private health care providers or hospitals, DoD, or IHS providers, for the purpose of treating VA patients.

44. VA may disclose information to telephone company operators acting in their capacity to facilitate phone calls for hearing impaired individuals, such as patients, patients' family members, or non-VA providers, using telephone devices for the hearing impaired, including Telecommunications Device for the Deaf (TDD) or Text Telephones (TTY).

45. VA may disclose information to any Federal, State, local, tribal, or foreign law enforcement agency in order to report a known fugitive felon, in compliance with 38 U.S.C. 5313B(d).

46. Relevant health care information may be disclosed by VA employees who are designated requesters (individuals who have completed a course offered or approved by an Organ Procurement Organization), or their designees, for the purpose of determining suitability of a patient's organs or tissues for organ donation to an organ procurement organization, a designated requester who is not a VA employee, or their designees acting on behalf of local organ procurement organizations.

47. VA may disclose relevant heath care information to DoD, or its components, as necessary in addressing the transition, health care, benefits, and administrative support needs of or for wounded, ill, and injured active duty service members or reserve components, veterans, and their beneficiaries.

48. VA may disclose information to other Federal agencies in order to assist those agencies in preventing, detecting, and responding to possible fraud or abuse by individuals in their operations and programs.

49. VA may, on its own initiative, disclose any information to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to report or respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

50. VA may disclose information to any third party or Federal agency, including contractors to those parties, who are responsible for payment of the cost of medical care for the identified patients, in support of VA recovery of medical care costs or for any activities related to payment of medical care costs. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

51. VA may disclose relevant information to a quality review and/or peer review organization in connection with the audit of claims or other review activities to determine quality of care or compliance with professionally accepted claims processing standards.

52. VA may disclose health care information as deemed necessary and proper to Federal, State, and local government agencies, and national health organizations in order to assist in the development of programs that will be beneficial to claimants, protect their rights under law, and ensure that they are receiving all benefits to which they are entitled.

53. VA may disclose information to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in pending or reasonably anticipated litigation against the individual regarding health care provided during the period of his or her employment or contract with VA.

54. VA may disclose information to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in defense or reasonable anticipation of a tort claim, litigation, or other administrative or judicial proceeding involving VA when the Department requires information or consultation assistance from the former employee or contractor regarding health care provided during the period of his or her employment or contract with VA.

55. VA may disclose information to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in connection with or in consideration of the reporting of:

(a) Any payment for the benefit of the former VA employee or contractor that was made as the result of a settlement or judgment of a claim of medical malpractice, if an appropriate determination is made in accordance with Department policy that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the individual;

(b) A final decision which relates to possible incompetence or improper professional conduct that adversely affects the former employee's or contractor's clinical privileges for a period longer than 30 days; or

(c) The former employee's or contractor's surrender of clinical privileges or any restriction of such privileges while under investigation by the health care entity relating to possible incompetence or improper professional conduct to the National Practitioner Data Bank or the state licensing board in any state in which the individual is licensed, the VA facility is located, or an act or omission occurred upon which a medical malpractice claim was based.

56. VA may disclose information to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in connection with or in consideration of reporting that the individual's professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients, to a Federal agency, a State or local government licensing board, or the Federation of State Medical Boards or a similar non-governmental entity which maintains records concerning individuals' employment histories or concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty.

57. VA may disclose information to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in connection with investigations by the Equal Employment Opportunity Commission pertaining to alleged or possible discrimination practices, examinations of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

58. VA may disclose information to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in proceedings before the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as otherwise authorized by law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, microfilm, electronic media including images and scanned documents, or laser optical media in the consolidated health record at the health care facility where care was rendered, in the VA Health Data Repository, and at Federal Record Centers. In most cases, copies of back-up computer files are maintained at off-site locations. Subsidiary record information is maintained at the various respective services within the health care facility (*e.g.*, pharmacy, fiscal, dietetic, clinical laboratory, radiology, social work, psychology) and by individuals, organizations, and/or agencies with whom VA has a contract or agreement to perform such services, as the VA may deem practicable.

Paper records are currently being relocated from Federal record centers to the VA Records Center and Vault. It is projected that all paper records will be stored at the VA Records Center and Vault by the end of the calendar year 2004.

RETRIEVABILITY:

Records are retrieved by name, social security number or other assigned identifiers of the individuals to whom they pertain.

SAFEGUARDS:

1. Access to working spaces and patient medical record storage areas in VA health care facilities is restricted to authorized VA employees. Generally, file areas are locked after normal duty hours. Health care facilities are protected from outside access by the Federal Protective Service and/or other security personnel. Access to patient medical records is restricted to VA employees who have a need for the information in the performance of their official duties. Sensitive patient medical records, including employee patient medical records, records of public figures, or other sensitive patient medical records are generally stored in separate locked files or a similar electronically controlled access environment. Strict control measures are enforced to ensure that access to and disclosures from these patient medical records are limited.

2. Access to computer rooms within health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Only authorized VA employees or vendor employees may access information in the system. Access to file information is controlled at two levels: the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file that is needed in the performance of their official duties. Information that is downloaded and maintained on personal computers must be afforded similar storage and access protections as the data that is maintained in the original files. Access by remote data users such as Veteran Outreach Centers, Veteran Service Officers (VSO) with power of attorney to assist with claim processing, VBA Regional Office staff for benefit determination and processing purposes, OIG staff conducting official audits or investigations and other authorized individuals is controlled in the same manner.

3. Access to the VA National Data Centers is generally restricted to Center employees, custodial personnel, Federal Protective Service, and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the computer may be accessed by authorized VA employees at remote locations including VA health care facilities, VA Central Office, Veterans Integrated Service Networks (VISNs), and OIG Central Office and field staff. Access is controlled by individually unique passwords/codes that must be changed periodically by the employee.

4. Access to the VA Health Data Repository (HDR), located at the VA National Data Centers, is generally restricted to Center employees, custodial personnel, Federal Protective Service, and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the computer may be accessed by authorized VA employees at remote locations including VA health care facilities, VA Central Office, VISNs, and OIG Central Office and field staff. Access is controlled by individually unique passwords/codes that must be changed periodically by the employee.

5. Access to records maintained at VA Central Office, the VA Boston Development Center, Chief Information Office Field Offices, and VISNs is restricted to VA employees who have a need for the information in the performance of their official duties. Access to information stored in electronic format is controlled by individually unique passwords/codes. Records are maintained in manned rooms during working hours. The facilities are protected from outside access during non-working hours by the Federal Protective Service or other security personnel.

6. Computer access authorizations, computer applications available and used, information access attempts, and frequency and time of use are recorded.

RETENTION AND DISPOSAL:

In accordance with the records disposition authority approved by the Archivist of the United States, paper records and information stored on electronic storage media are maintained for seventy-five (75) years after the last episode of patient care and then destroyed/or deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Patient Medical Records: Director, Information Assurance (19F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Health Data Repository: Director, Health Data Systems (19–SL), Department of Veterans Affairs, 295 Chipeta Way, Salt Lake City, UT 84108.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to review the contents of such record, should submit a written request or apply in person to the last VA health care facility where care was rendered. Addresses of VA health care facilities may be found in VA Appendix 1 of the Biennial Publication of Privacy Act Issuances. All inquiries must reasonably describe the portion of the medical record involved and the place and approximate date that medical care was provided. Inquiries should include the patient's full name, social security number, and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of VA medical records may write, call, or visit the last VA facility where medical care was provided.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The patient, family members, friends, or accredited representatives, employers; military service departments; health insurance carriers; private medical facilities and health care professionals; state and local agencies; other Federal agencies; VA Regional Offices, Veterans Benefits Administration automated record systems (including Veterans and Beneficiaries Identification and Records Location Subsystem-VA (38VA23) and the Compensation, Pension, Education and Rehabilitation Records-VA (58VA21/22/28); and various automated systems providing clinical and managerial support at VA health care facilities.

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 223, 404, and 665

Western Pacific Fisheries; Regulatory Restructuring; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 223, 404, and 665

[Docket No. 071220872–91160–02]

RIN 0648–AU71

Western Pacific Fisheries; Regulatory Restructuring

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

ACTION: Proposed rule; regulatory restructuring; request for comments.

SUMMARY: This proposed rule would restructure existing western Pacific fishery regulations. It would not make substantive changes to existing regulations. The regulations would be organized according to geographical areas, rather than target species as they are now, in order to be consistent with five new area-specific fishery ecosystem plans (FEP). This proposed rule would also amend references to the Paperwork Reduction Act (PRA) information collection requirements to reflect the restructuring. The purpose of this rule is to make the regulations easier for the public to use by organizing existing fishing regulations by geographic location.

DATES: Comments on this proposed rule must be received by December 4, 2009.

ADDRESSES: Comments on this proposed rule, identified by 0648–AU71, may be sent to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov;* or
- *Mail:* William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments will be posted for public viewing after the comment period has closed. 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, *etc.*) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (if you wish to remain anonymous, enter ''NA'' in the required name and organization fields). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the five current western Pacific fishery management plans (FMPs) (Bottomfish and Seamount Groundfish FMP, Coral Reef Ecosystems FMP, Crustaceans FMP, Pelagics FMP, and Precious Corals FMP), the five new FEPs (American Samoa, Hawaii, Mariana Archipelago, Pacific Remote Island Areas, and Western Pacific Pelagics), and the Programmatic Environmental Impact Statement (PEIS) that was prepared for the FEPs and regulatory restructuring are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or *http://www.wpcouncil.org.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to William L. Robinson, NMFS PIR, and by e-mail to *David_Rostker@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, NMFS PIR, 808–944–2272.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is also accessible at *http://www.gpoaccess.gov/fr.*

To date, fisheries in the western Pacific have been managed through five species- or fishery-directed FMPs: For bottomfish and seamount groundfish, crustaceans, precious corals, coral reef ecosystems, and pelagic species. The FEPs cover archipelagos or other broad geographic areas, including American Samoa, the Mariana Islands (Guam and the Northern Mariana Islands), Hawaii, the Pacific remote island areas (PRIA) (Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island), and one FEP would manage western Pacific pelagic fisheries. The FEPs incorporate and reorganize elements of the five existing FMPs, and do not change the current management regime. The FEPs enable the Council and NMFS to focus on a comprehensive ecosystem approach to fisheries management, consistent with NOAA's regional ecosystem-based management strategy. The objectives of the FEPs will be consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through the incorporation of ecosystem goals and principles in fisheries management.

The five Western Pacific FMPs, previously developed by the Council, and approved and implemented by NMFS, provide the source and structure of the regulations at title 50 of the Code of Federal Regulations, part 665 (50 CFR part 665). The FEPs establish management regimes that consider the unique ecosystems of each island group or area in the western Pacific. Accordingly, this proposed rule would restructure existing regulations for efficient use by fishermen, government agencies, and the general public. No substantive changes would be made to the regulations, but several definitions would be added to reference the FEPs, some sections would be redesignated and revised to reflect each geographic area, several errors would be corrected, and administrative titles and telephone numbers would be updated.

In 1996, NMFS consolidated six parts of the Code of Federal Regulations (CFR) into one new CFR part (50 CFR part 660) (61 FR 34570, July 2, 1996). Among other actions, that rule consolided regulations that implemented fishery conservation and management measures for fisheries operating in the exclusive economic zone (EEZ) off the west coast and in the western Pacific. The 1996 action also reorganized the rules into a more logical and cohesive order, removed duplicative and outdated provisions, and made editorial changes for readability, clarity and uniformity in the regulatory language. That final rule carried out a directive from President Clinton to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative, part of the National Performance Review, called for comprehensive regulatory reforms, and the President directed all agencies to review their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform.

Ten years later, NMFS again restructured the regulations (71 FR 17985, April 10, 2006). The measures in 50 CFR part 660 that had pertained to fisheries in the western Pacific were redesignated as a new part 665. The 2006 regulatory restructuring was consistent with NMFS' earlier establishment of the new Pacific Islands Region, which created the Pacific Islands Regional Office (PIRO) and Pacific Islands Fisheries Science Center. The new Region is responsible for administering NMFS conservation, management, and research programs in the western Pacific. Additionally, the Council at that time was in the process of creating FEPs to replace its fishery- or species-based FMPs. The 2006 rule was

a prelude to the transition to the FEP structure.

In September 2009, the Council finalized the FEPs and submitted them to NMFS for Secretarial review and approval. This proposed rule restructures the regulations to be consistent with the FEP organization, and makes the regulations easier for fishermen, managers and the general public to use.

This proposed rule would redesignate old subparts A (General) and B (Western Pacific Fisheries-General) of 50 CFR 665 as new subpart A (General). Old Subpart C (Western Pacific Pelagic Fisheries) would be redesignated as new subpart F (Western Pacific Pelagic Fisheries). Old subparts D (Western Pacific Crustacean Fisheries), E (Bottomfish and Seamount Groundfish Fisheries), F (Precious Coral Fisheries), and G (Western Pacific Coral Reef Ecosystem Fisheries) would be redesignated as B (American Samoa Fisheries), C (Hawaii Fisheries), D (Mariana Archipelago Fisheries), and E (Pacific Remote Island Area Fisheries). Each of these new geographic subparts would identify the management unit species (MUS) managed under the FEPs, as well as area restrictions within the management area. Each subpart would also be organized by fishery. For example, only those bottomfish species that are known to occur in the EEZ around American Samoa are included in the American Samoa bottomfish MUS in the section for American Samoa bottomfish fisheries.

Fishery-specific regulations would be redesignated and revised to reflect the correct cross-referenced sections and FEP naming conventions for the respective fishery sections in each of the four archipelagic ecosystem subparts. Thus, only those regulations relevant to the specific area, or general to all fisheries geographically located in the area, would be included within the subpart. Regulations for pelagic fisheries in all fishery management areas would be included in subpart F.

This proposed rule would redesignate regulations that define the fishery management process as new section 50 § 665.18, Framework Measures, in subpart A. This rule would also correct inadvertent errors in 50 CFR part 665 relating to cross-referenced section citations, and it would update several administrative names and contact information.

In a final rule published on December 12, 2008, (73 FR 75615) paragraphs (o) through (u) in old § 665.22 were redesignated as paragraphs (m) through (s) in § 665.15. That redesignation should also have included old § 665.22(n). This proposed rule corrects the error.

This proposed rule also would correct an error related to sea turtle mitigation measures. On March 28, 2000, NMFS published a final rule that implemented several measures intended to mitigate injuries to sea turtles by the Hawaii pelagic longline fishery, including requirements to carry and use line clippers, dip nets, and dehookers (65 FR 16346). In a subsequent final rule published on November 15, 2005, relating to sea turtle mitigation measures (70 FR 69282), the regulations relating to line clippers in § 665.32 were inadvertently omitted. This proposed rule would correct the error in new § 665.812.

In the definition of western Pacific pelagic management unit species, the spelling of the scientific names for the pelagic thresher shark and yellowfin tuna would be corrected, and the scientific name of the bigeye thresher shark would be revised to include the species, which was inadvertently omitted from the definition. The scientific names of a Hawaii black coral and the pelagic armorhead would also be updated.

This proposed rule would also correct current regulations to reflect that certain provisions have been superseded. In old 50 CFR 665.22 (proposed new § 668.802), paragraph (gg) prohibits Hawaii shallow-set longline fishing north of the Equator with hooks other than offset circle hooks sized 18/0 or larger with a 10 degree offset. This paragraph is superseded by paragraph (jj), which prohibits such fishing from any western Pacific longline vessel. Similarly, in old 50 CFR 665.22, paragraph (hh) prohibits Hawaii shallow-set longline fishing north of the Equator with bait other than mackerel-type bait. This provision is superseded by paragraph (kk), which prohibits such fishing from any western Pacific longline vessel. In old 50 CFR 665.22, paragraph (dd) prohibits owning or operating any western Pacific longline vessel without having on board a valid protected species workshop certificate issued by NMFS; paragraph (ll) applies that prohibition only to Hawaii longline operators, a subset of those covered in paragraph (dd). In old 50 CFR 665.22, paragraph (aa) prohibits operating a vessel under a longline limited access permit for American Samoa or Hawaii without complying with sea turtle handling requirements. This paragraph is superseded by paragraph (ii), which requires a vessel registered for use under *any* pelagic fishing permit to comply with sea turtle handling requirements. Thus, paragraphs (aa), (gg), (hh), and (ll) would be removed.

A technical clarification in old 50 CFR § 665.72(d) (proposed new § 665.211(d)) would revise the exception to the possession of Hawaii Restricted Bottomfish Species after the total allowable catch limit is reached.

This proposed rule would add or revise several definitions to be consistent with the FEPs and restructured regulations, correct errors in cross referencing, remove duplicative text, add geographic information, and correct inadvertent omissions. A technical clarification at § 665.12 would remove the definition for ''Bottomfish management area'' and ''Lobster closed area'' as these terms are artifacts from old regulations and are not currently used in part 665.

This proposed rule would remove a duplicate requirement for fishermen to complete a short-tailed albatross recovery data form. In old § 665.35(b), paragraph (8) was inadvertently duplicated by paragraph (12). This proposed rule would correct the error by removing the redundant paragraph.

This proposed rule also would revise several cross-references to 50 CFR part 665 found in 50 CFR part 404 regarding the Northwestern Hawaiian Islands Marine National Monument.

In a previous regulatory restructuring (71 FR 17985, April 10, 2006), the regulations were redesignated section-by-section from old 50 CFR part 660 to new 50 CFR part 665. In the resulting regulations, artifact cross-references to part 660 remain, and these would be corrected in this proposed rule. Also, in § 665.1(c), the cross-reference to 50 CFR part 600 subpart N was inadvertently changed to incorrectly reference 50 CFR part 665. This error would also be corrected.

The following table lists the distribution of the subparts and sections in 50 CFR part 665 proposed in these revisions:

Old section	New section
Subpart A—General.	Subpart A—General.
§ 665.1 Purpose and scope.	§ 665.1 Purpose and scope.
§ 665.2 Relation to other laws.	§ 665.2 Relation to other laws.
§ 665.3 Reporting and recordkeeping.	§ 665.14 Reporting and recordkeeping.
§ 665.4 Licensing and registration.	§ 665.3 Licensing and registration.
Subpart B—Western Pacific Fisheries—General.	Subpart B—American Samoa Fisheries.
§ 665.11 Purpose and scope.	§ 665.1 Purpose and scope.
§ 665.12 Definitions	§ 665.12 Definitions.

Old section	New section
	§ 665.101 Definitions. (American Samoa).
	§ 665.121 Definitions. (American Samoa).
	§ 665.141 Definitions. (American Samoa).
	§ 665.161 Definitions. (American Samoa).
	§ 665.201 Definitions. (Hawaii).
	§ 665.221 Definitions. (Hawaii).
	§ 665.241 Definitions. (Hawaii).
	§ 665.261 Definitions. (Hawaii).
	§ 665.401 Definitions. (Marianas).
	§ 665.421 Definitions. (Marianas).
	§ 665.441 Definitions. (Marianas).
	§ 665.461 Definitions. (Marianas).
	§ 665.601 Definitions. (PRIA).
	§ 665.621 Definitions. (PRIA).
	§ 665.641 Definitions. (PRIA).
	§ 665.661 Definitions. (PRIA).
	§ 665.800 Definitions. (Western Pacific Pelagic).
§ 665.13 Permits and fees.	§ 665.13 Permits and fees.
§ 665.14 Reporting and recordkeeping.	§ 665.14 Reporting and recordkeeping.
§ 665.15 Prohibitions.	§ 665.15 Prohibitions.
§ 665.16 Vessel identification.	§ 665.16 Vessel identification.
§ 665.17 Experimental fishing.	§ 665.17 Experimental fishing.
§ 665.18 Area restrictions.	§ 665.99 Area restrictions. (American Samoa).
	§ 665.199 Area restrictions. (Hawaii).
	§ 665.399 Area restrictions. (Marianas).
	§ 665.599 Area Restrictions. (PRIA).
§ 665.19 Vessel monitoring system.	§ 665.19 Vessel monitoring system.
Subpart C—Western Pacific Pelagic Fisheries.	Subpart C—Hawaii Fisheries.
§ 665.21 Permits	§ 665.801 Permits.
§ 665.22 Prohibitions.	§ 665.802 Prohibitions.
§ 665.23 Notifications.	§ 665.803 Notifications.
§ 665.24 Gear identification.	§ 665.804 Gear identification.
§ 665.26 Longline fishing prohibited area management.	§ 665.806 Longline fishing prohibited area management.
§ 665.27 Exemptions for longline fishing prohibited areas; procedures.	§ 665.807 Exemptions for longline fishing prohibited areas; procedures.
§ 665.28 Conditions for at-sea observer coverage.	§ 665.808 Conditions for at-sea observer coverage.
§ 665.29 Port privileges and transiting for unpermitted U.S. longline vessels.	§ 665.809 Port privileges and transiting for unpermitted U.S. longline vessels.
§ 665.30 Prohibition of drift gillnetting.	§ 665.810 Prohibition of drift gillnetting.
§ 665.31 Framework adjustments to management measures.	§ 665.18 Framework adjustments to management measures.
§ 665.32 Sea turtle take mitigation measures.	§ 665.812 Sea turtle take mitigation measures.
§ 665.33 Western Pacific longline fishing restrictions.	§ 665.813 Western Pacific longline fishing restrictions.
§ 665.34 Protected species workshop.	§ 665.814 Protected species workshop.
§ 665.35 Pelagic longline seabird mitigation measures.	§ 665.815 Pelagic longline seabird mitigation measures.
§ 665.36 American Samoa longline limited entry program.	§ 665.816 American Samoa longline limited entry program.
§ 665.37 American Samoa pelagic fishery area management.	§ 665.817 American Samoa pelagic fishery area management.
§ 665.38 Exemptions for American Samoa large vessel prohibited areas.	§ 665.818 Exemptions for American Samoa large vessel prohibited areas.
Subpart D—Western Pacific Crustacean Fisheries.	Subpart D—Mariana Archipelago Fisheries.
§ 665.41 Permits	§ 665.142 Permits. (American Samoa).
	§ 665.242 Permits. (Hawaii).
	§ 665.442 Permits. (Marianas).
	§ 665.642 Permits. (PRIA).
§ 665.42 Prohibitions.	§ 665.143 Prohibitions. (American Samoa).
	§ 665.243 Prohibitions. (Hawaii).
	§ 665.443 Prohibitions. (Marianas).
	§ 665.643 Prohibitions. (PRIA).
§ 665.43 Notifications.	§ 665.144 Notifications. (American Samoa).
	§ 665.244 Notifications. (Hawaii).
	§ 665.444 Notifications. (Marianas).
	§ 665.644 Notifications. (PRIA).
§ 665.44 Lobster size and condition restrictions—Permit Area 2.	§ 665.249 Lobster size and condition restrictions—Permit Area 2.
§ 665.45 Closed seasons.	§ 665.250 Closed seasons.
§ 665.46 Closed areas.	§ 665.251 Closed areas.
§ 665.47 Gear identification.	§ 665.246 Gear identification.
§ 665.48 Gear restrictions.	§ 665.245 Gear restrictions.
§ 665.49 At-sea observer coverage.	§ 665.145 At-sea observer coverage. (American Samoa).
	§ 665.247 At-sea observer coverage. (Hawaii).
	§ 665.445 At-sea observer coverage. (Marianas).
	§ 665.645 At-sea observer coverage. (PRIA).
§ 665.50 Harvest limitation program.	§ 665.252 Harvest limitation program.
§ 665.51 Monk seal protective measures.	§ 665.248 Monk seal protective measures.
§ 665.52 Monk seal emergency protective measures.	
§ 665.53 Framework procedures.	§ 665.18 Framework adjustments to management measures.
§ 665.54 Five-year review.	
Subpart E—Bottomfish and Seamount Groundfish Fisheries.	Subpart E—Pacific Remote Island Area Fisheries.
§ 665.61 Permits	§ 665.203 Permits. (Hawaii).
	§ 665.404 Permits. (Marianas).
	§ 665.603 Permits. (PRIA).
§ 665.62 Prohibitions.	§ 665.103 Prohibitions. (American Samoa).
	§ 665.204 Prohibitions. (Hawaii).
	§ 665.405 Prohibitions. (Marianas).
	§ 665.604 Prohibitions. (PRIA).
§ 665.63 Notification	§ 665.205 Notification. (Hawaii).
§ 665.64 Gear restrictions.	§ 665.104 Gear restrictions. (American Samoa).
	§ 665.206 Gear Restrictions. (Hawaii).
	§ 665.406 Gear restrictions. (Marianas).
	§ 665.605 Gear restrictions. (PRIA).
§ 665.65 At-sea observer coverage.	§ 665.105 At-sea observer coverage. (American Samoa).

Old section	New section
	§ 665.207 At-sea observer coverage. (Hawaii).
	§ 665.407 At-sea observer coverage. (Marianas).
	§ 665.606 At-sea observer coverage. (PRIA).
§ 665.66 Protected species conservation.	§ 665.208 Protected species conservation.
§ 665.67 Framework for regulatory adjustments.	§ 665.18 Framework adjustments to management measures.
§ 665.68 Fishing moratorium on Hancock Seamount.	§ 665.209 Fishing moratorium on Hancock Seamount.
§ 665.69 Management subareas.	§ 665.98 Management area. (American Samoa).
	§ 665.198 Management areas. (Hawaii).
	§ 665.202 Management subareas. (Hawaii).
	§ 665.398 Management areas. (Marianas).
	§ 665.402 Management subareas. (Marianas).
	§ 665.598 Management area. (PRIA).
§ 665.70 Bottomfish fishery area management.	§ 665.403 Bottomfish fishery area management.
§ 665.71 Hawaii restricted bottomfish species.	§ 665.210 Hawaii restricted bottomfish species.
§ 665.72 Total Allowable Catch (TAC) limit.	§ 665.211 Total Allowable Catch (TAC) limit.
§ 665.73 Non-commercial bag limits.	§ 665.212 Non-commercial bag limits.
Subpart F—Precious Corals Fisheries.	Subpart F—Western Pacific Pelagic Fisheries.
§ 665.81 Permits	§ 665.162 Permits. (American Samoa).
	§ 665.262 Permits. (Hawaii).
	§ 665.462 Permits. (Marianas).
	§ 665.662 Permits. (PRIA).
§ 665.82 Prohibitions.	§ 665.163 Prohibitions. (American Samoa).
	§ 665.263 Prohibitions. (Hawaii).
	§ 665.463 Prohibitions. (Marianas).
	§ 665.663 Prohibitions. (PRIA).
§ 665.83 Seasons ...	§ 665.168 Seasons. (American Samoa).
	§ 665.267 Seasons. (Hawaii).
	§ 665.468 Seasons. (Marianas).
	§ 665.668 Seasons. (PRIA).
§ 665.84 Quotas	§ 665.167 Quotas. (American Samoa).
	§ 665.269 Quotas. (Hawaii).
	§ 665.467 Quotas. (Marianas).
	§ 665.667 Quotas. (PRIA).
§ 665.85 Closures ...	§ 665.166 Closures. (American Samoa).
	§ 665.268 Closures. (Hawaii).
	§ 665.466 Closures. (Marianas).
	§ 665.666 Closures. (PRIA).
§ 665.86 Size restrictions.	§ 665.165 Size restrictions. (American Samoa).
	§ 665.265 Size restrictions. (Hawaii).
	§ 665.465 Size restrictions. (Marianas).
	§ 665.665 Size restrictions. (PRIA).
§ 665.87 Area restrictions.	§ 665.266 Area restrictions. (Hawaii).
§ 665.88 Gear restrictions.	§ 665.164 Gear restrictions. (American Samoa).
	§ 665.264 Gear restrictions. (Hawaii).
	§ 665.464 Gear restrictions. (Marianas).
	§ 665.664 Gear restrictions. (PRIA).
§ 665.89 Framework procedures.	§ 665.18 Framework adjustments to management measures.
§ 665.90 Gold coral harvest moratorium.	§ 665.169 Gold coral harvest moratorium. (American Samoa).
	§ 665.270 Gold coral harvest moratorium. (Hawaii).
	§ 665.469 Gold coral harvest moratorium. (Marianas).
	§ 665.669 Gold coral harvest moratorium. (PRIA).
Subpart G—Western Pacific Coral Reef Ecosystem Fisheries.	None.
§ 665.601 Relation to other laws.	§ 665.123 Relation to other laws. (American Samoa).
	§ 665.223 Relation to other laws. (Hawaii).
	§ 665.423 Relation to other laws. (Marianas).
	§ 665.623 Relation to other laws. (PRIA).
§ 665.602 Permits and fees.	§ 665.124 Permits and Fees. (American Samoa).
	§ 665.224 Permits and Fees. (Hawaii).
	§ 665.424 Permits and Fees. (Marianas).
	§ 665.624 Permits and Fees. (PRIA).
§ 665.603 Prohibitions.	§ 665.125 Prohibitions. (American Samoa).
	§ 665.225 Prohibitions. (Hawaii).
	§ 665.425 Prohibitions. (Marianas).
	§ 665.625 Prohibitions. (PRIA).
§ 665.604 Notifications.	§ 665.126 Notifications. (American Samoa).
	§ 665.226 Notifications. (Hawaii).
	§ 665.426 Notifications. (Marianas).
	§ 665.626 Notifications. (PRIA).
§ 665.605 Allowable gear and gear restrictions.	§ 665.127 Allowable gear and gear restrictions. (American Samoa).
	§ 665.227 Allowable gear and gear restrictions. (Hawaii).
	§ 665.427 Allowable gear and gear restrictions. (Marianas).
	§ 665.627 Allowable gear and gear restrictions. (PRIA).
§ 665.606 Gear identification.	§ 665.128 Gear identification. (American Samoa).
	§ 665.228 Gear identification. (Hawaii).
	§ 665.428 Gear identification. (Marianas).
	§ 665.628 Gear identification. (PRIA).
§ 665.607 Framework for regulatory adjustments.	§ 665.18 Framework for regulatory adjustments.
§ 665.608 Regulatory area.	§ 665.98 Management area. (American Samoa).
	§ 665.222 Management area. (Hawaii).
	§ 665.422 Management area. (Marianas).
	§ 665.598 Management area. (PRIA).
§ 665.609 Annual reports.	§ 665.18 Framework for regulatory adjustments.

Old section	New section
Table 1 to Part 665—Quotas for Precious Corals Permit Areas.	§ 665.167 Quotas. (American Samoa).
	§ 665.269 Quotas. (Hawaii).
	§ 665.467 Quotas. (Marianas).
	§ 665.667 Quotas. (PRIA).
Table 2 to Part 665—Currently Harvested Coral Reef Taxa.	§ 665.121 Definitions. (American Samoa).
	§ 665.221 Definitions. (Hawaii).
	§ 665.421 Definitions. (Marianas).
	§ 665.621 Definitions. (PRIA).
Table 3 to Part 665—Potentially Harvested Coral Reef Taxa.	§ 665.121 Definitions. (American Samoa).
	§ 665.221 Definitions. (Hawaii).
	§ 665.421 Definitions. (Marianas).
	§ 665.621 Definitions. (PRIA).
Figure 1 to Part 665—Carapace Length of Lobsters.	Figure 1 to Part 665—Carapace Length of Lobsters.
Figure 2 to Part 665—Length of Fishing Vessel.	Figure 2 to Part 665—Length of Fishing Vessel.
None	Figure 3 to Part 665—Sample Fabricated Arceneaux Line Clipper.

Old section	New section
None	§ 665.100 American Samoa Bottomfish and Seamount Groundfish Fisheries.
	§ 665.120 American Samoa Coral Reef Ecosystem Fisheries.
	§ 665.140 American Samoa Crustacean Fisheries.
	§ 665.160 American Samoa Precious Coral Fisheries.
None	§ 665.200 Hawaii Bottomfish and Seamount Groundfish Fisheries.
	§ 665.220 Hawaii Coral Reef Ecosystem Fisheries.
	§ 665.240 Hawaii Crustacean Fisheries.
	§ 665.260 Hawaii Precious Coral Fisheries.
None	§ 665.400 Mariana Bottomfish and Seamount Groundfish Fisheries.
	§ 665.420 Mariana Coral Reef Ecosystem Fisheries.
	§ 665.440 Mariana Crustacean Fisheries.
	§ 665.460 Mariana Precious Coral Fisheries.

Old section	New section
None	§ 665.600 PRIA Bottomfish and Seamount Groundfish Fisheries.
	§ 665.620 PRIA Coral Reef Ecosystem Fisheries.
	§ 665.640 PRIA Crustacean Fisheries.
	§ 665.660 PRIA Precious Coral Fisheries.
None	§ 665.798 Management Area (Western Pacific Pelagic).

Revisions to Paperwork Reduction Act (PRA) References

Section 3507 of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection, and 15 CFR § 902.1(b) identifies the location of NOAA regulations for which OMB approvals have been issued. Because this proposed rule would codify recordkeeping and reporting requirements, 15 CFR § 902.1(b) would be revised to correctly reference the new sections resulting from the reorganization.

The following table lists the derivation of the NOAA PRA approvals for regulatory requirements in 50 CFR part 665:

Old section	New section	OMB control No.
§ 665.13 Permits and fees	§ 665.13 Permits and fees	0648–0463, –0490, –0577, –0584, –0586, and –0589.
§ 665.14 Reporting and recordkeeping	§ 665.14 Reporting and recordkeeping	0648–0214, –0462, –0577, –0584, –0586, and –0589.
§ 665.16 Vessel identification	§ 665.16 Vessel identification	0648–0361, –0584, –0586, and –0589.
§ 665.17 Experimental fishing	§ 665.17 Experimental fishing	0648–0214 and –0490.
§ 665.19 Vessel monitoring system	§ 665.19 Vessel monitoring system	0648–0441, –0519, and –0584.
§ 665.21(l) Permits; Hawaii longline limited access permit.	§ 665.801 Permits	0648–0490.
§ 665.21(g) Permits; squid jig	§ 665.801(g)	0648–0589.
§ 665.23 Notifications	§ 665.803 Notifications	0648–0214.
§ 665.24 Gear identification	§ 665.804 Gear identification	0648–0360.
§ 665.27 Exemptions for longline fishing prohibited areas; procedures.	§ 665.807 Exemptions for longline fishing prohibited areas; procedures.	0648–0490.
§ 665.28 Conditions for at-sea observer coverage.	§ 665.808 Conditions for at-sea observer coverage.	0648–0214.
§ 665.35 Pelagic longline seabird mitigation measures.	§ 665.815 Pelagic longline seabird mitigation measures.	0648–0456.
§ 665.41 Permits	§ 665.142 Permits	0648–0490 and –0586.
	§ 665.242 Permits.	
	§ 665.442 Permits.	
	§ 665.642 Permits.	
§ 665.43 Notifications	§ 665.144 Notifications	0648–0214.
	§ 665.244 Notifications.	
	§ 665.444 Notifications.	
	§ 665.644 Notifications.	
§ 665.47 Gear indentification	§ 665.246 Gear indentification	0648–0360.
§ 665.49 At-sea observer coverage	§ 665.145 At-sea observer coverage	0648–0214.
	§ 665.247 At-sea observer coverage.	
	§ 665.445 At-sea observer coverage.	

Old section	New section	OMB control No.
	§ 665.645 At-sea observer coverage.	
§ 665.61 Permits	§ 665.203 Permits	0648–0490 and –0584.
	§ 665.404 Permits.	
	§ 665.603 Permits.	
§ 665.63 Notification	§ 665.205 Notification	0648–0214.
§ 665.65 At-sea observer coverage	§ 665.105 At-sea observer coverage	0648–0214.
	§ 665.207 At-sea observer coverage.	
	§ 665.407 At-sea observer coverage.	
	§ 665.606 At-sea observer coverage.	
§ 665.81 Permits	§ 665.162 Permits	0648–0490
	§ 665.262 Permits.	
	§ 665.462 Permits.	
	§ 665.662 Permits.	
§ 665.602 Permits and Fees	§ 665.124 Permits and Fees	0648–0463.
	§ 665.224 Permits and Fees.	
	§ 665.424 Permits and Fees.	
	§ 665.624 Permits and Fees.	
§ 665.604 Notifications	§ 665.126 Notifications	0648–0462.
	§ 665.226 Notifications.	
	§ 665.426 Notifications.	
§ 665.606 Gear identification	§ 665.128 Gear identification	0648–0360.
	§ 665.228 Gear identification.	
	§ 665.428 Gear identification.	
	§ 665.628 Gear identification.	

To be considered, comments on this proposed rule must be received by NMFS by December 4, 2009, not postmarked or otherwise transmitted by that date. Late comments may not be considered. In addition to soliciting public comments on this proposed rule, NMFS is soliciting comments on the five new FEPs through December 1, 2009, as stated in the Notice of Availability published on October 2, 2009 (74 FR 50944). If they are received by December 1, 2009, public comments on this proposed rule will also be considered in the approval/disapproval decision for the FEPs. Comments received after that date may not be considered in the approval/disapproval decision for the FEPs, but will be considered for this proposed rule.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the new FEPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

A PEIS was prepared for the FEPs, and a Notice of Availability of the draft PEIS was published on April 13, 2007 (72 FR 18644). The PEIS discusses impacts on target and non-target fish stocks, including bottomfish, precious corals, coral reef ecosystem species, and crustaceans; Essential Fish Habitat and Habitat Areas of Particular Concern; protected species; fishery participants and communities; and administration and enforcement. All of the current fisheries in the Western Pacific Region that are covered by the management measures of the FEPs have been reviewed for compliance with applicable laws. None of the actions considered would result in irreversible or irretrievable commitments of resources and none would result in significant or unavoidable adverse impacts.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The analysis follows:

The Western Pacific Fishery Management Council prepared five fishery ecosystem plans (FEPs) to incorporate and reorganize elements of the five existing species-based fishery management plans. The FEPs would cover archipelagos or other broad geographic areas, including American Samoa, the Mariana Islands (comprising Guam and the Northern Mariana Islands), Hawaii, the Pacific remote island areas, and one FEP would manage western Pacific pelagic fisheries. This rule restructures codified language that would change the fisheries from species-based to area-based, but would not change the current management regimes or affect regulations that are presently in place. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. This rule does not duplicate, overlap, or conflict with other Federal rules. All fishing vessels having the potential to participate in western Pacific fisheries are considered to be small entities under the current Small Business Administration definition of small fish-harvesting businesses (gross receipts not in excess of $ 4.0 million). There are no additional small entities that could be affected by this rulemaking.

This rule does not affect the profitability of fishing firms under Federal management. Therefore, there are no disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size. For these reasons, NMFS has determined that this proposed rule will not have a significant impact on a substantial number of small entities.

Any forthcoming additions or alterations to the reorganized regulations after the implementation of this rule would require a complete regulatory flexibility act analysis and analysis of significance under E.O. 12866.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains collection-of-information requirements subject to the PRA that have been approved by OMB, as follows:

1. Approved under 0648–0214, 0648–0577, 0648–0584, 0648–0586, and 0649–0589. (a) Pacific Islands Region (PIR) logbook family of forms estimated at 5 minutes (min) per reporting action; (b) pre-trip and post-landing notifications estimated at 5 min per reporting action; (c) experimental fishing reports estimated at 4 hours (hr) per reporting action; (d) sales and transshipment reports estimated at 5 min per reporting

action; (e) report on gear left at sea estimated at 5 min per reporting action; (f) claims for reimbursement for lost fishing time estimated at 4 hr per claim; (g) request for pelagics area closure exemption estimated at 1 hr per request; and (h) observer placement meetings estimated at 1 hr per reporting action. (§§ 665.14, 665.17, 665.105, 665.144, 665.145, 665.205, 665.207, 665.244, 665.247, 665.407, 665.444, 665.445, 665.606, 665.644, 665.645, 665.803, and 665.808.)

2. Approved under 0648–0360, 0648–0361, 0648–0584, 0648–0586 and 0648–0589. PIR gear and vessel and identification estimated at 45 min to 1 hr 15 min per vessel for vessel identification and 2 min for each gear marking. (§§ 665.16, 665.128, 665.228, 665.246, 665.428, 665.628, and 665.804.)

3. Approved under 0648–0441, 0648–0519, and 0648–0584. PIR vessel monitoring system (a) installation, estimated at 4 hr per reporting action; (b) repair and maintenance, estimated at 2 hr per reporting action; and (c) hourly automated position reports, estimated at 24 sec per day. (§ 665.19.)

4. Approved under 0648–0456. PIR seabird interaction reporting (a) at-sea notification, estimated at 1 hr per reporting action; (b) reporting on recovery data form, estimated at 1 hr per reporting action; and (c) specimen tagging, estimated at 0.5 hr per reporting action. (§ 665.815.)

5. Approved under 0648–0462. PIR coral reef logbook reporting (a) at-sea notification, estimated at 3 min per reporting action; (b) logbook reporting, estimated at 0.5 hr per reporting action; and (c) transshipment reports, estimated at 15 min per reporting action. (§§ 665.14, 665.126, 665.226, and 665.426.)

6. Approved under 0648–0463. PIR coral reef special permit (a) application, estimated at 2 hr per application; and (b) special permit appeals, estimated at 3 hr per appeal. (§§ 665.124, 665.224, 665.424, and 665.624.)

7. Approved under 0648–0490, 0648–0577, 0648–0584, 0648–0586, and 0649–0589: (a) PIR permit family of forms estimated at 0.5 hr per permit action; (b) experimental fishing permits, estimated at 2 hr per application; and (c) appeals from permit actions estimated at 2 hr per permit appeal. (§§ 665.13, 665.17, 665.142, 665.162, 665.203, 665.242, 665.262, 665.404, 665.442, 665.462, 665.603, 665.642, 665.662, 665.801, and 665.807.)

Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to William L. Robinson (see **ADDRESSES**), and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 223

Exports, Imports, Marine mammals, Transportation.

50 CFR Part 404

Northwestern Hawaiian Islands Marine National Monument.

50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific remote island areas, Reporting and recordkeeping requirements.

Dated: October 29, 2009.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX, 50 CFR chapter II, 50 CFR chapter IV, and 50 CFR chapter VI are proposed to be amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for Part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Amend the table in § 902.1(b) by:

a. Removing the entries and corresponding OMB numbers under 50 CFR for §§ 665.21(k), 665.23, 665.24, 665.27, 665.28, 665.35, 665.41, 665.43, and 665.48, 665.61, 665.63, 665.65, 665.81, 665.602, 665.604, and 665.606.

b. Amending the table in § 902.1(b) by revising the entries for §§ 665.13, 665.14, 665.16, 665.17, and 665.19, and

c. Adding new entries and corresponding OMB numbers under 50 CFR for §§ 665.105 through 665.815.

The revisions and additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
665.13	0463, 0490, 0577, 0584, 0586, and 0589.
665.14	0214, 0462, 0577, 0584, 0586, and 0589.
665.16	0361, 0584, 0586, and 0589.
665.17	0214 and 0490.
665.19	0441, 0519, and 0584.
665.105	0214.
665.124	0463.
665.126	0462.
665.128	0360.
665.142	0490 and 0586.
665.144	0214.
665.145	0214.
665.162	0490.
665.203	0490 and 0577.
665.205	0214.
665.207	0214.
665.224	0463.
665.226	0462.
665.228	0360.
665.242	0490 and 0586.
665.244	0214.
665.246	0360.
665.247	0214.
665.262	0490.
665.404	0490 and 0584.
665.407	0214.
665.424	0463.
665.426	0462.
665.428	0360.
665.442	0490 and 0586.
665.444	0214.
665.445	0214.
665.462	0490.
665.603	0490.
665.606	0214.
665.624	0463.
665.628	0360.
665.642	0490 and 0586.
665.644	0214.
665.445	0214.
665.662	0490.
665.801	0490 and 0589.
665.803	0214.
665.804	0360.
665.807	0490.
665.808	0214.
665.815	0456.
* * * * *	

50 CFR Chapter II

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

4. The authority citation for 50 CFR part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 *et seq.*

5. In § 223.206, revise paragraph (d)(9) to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(9) Restrictions applicable to Pacific pelagic longline vessels. In addition to the general prohibitions specified in § 600.725 of Chapter VI, it is unlawful for any person who is not operating under a western Pacific longline permit under § 665.801 to do any of the following on the high seas of the Pacific Ocean east of 150° W. long. and north of the Equator (0° N. lat.):

* * * * *

50 CFR Chapter IV

PART 404—NORTHWESTERN HAWAIIAN ISLANDS MARINE NATIONAL MONUMENT

6. The authority citation for 50 CFR Part 404 continues to read as follows:

Authority: 16 U.S.C. 431 *et seq.*; 16 U.S.C. 460k–3; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 742f; 16 U.S.C. 742l; 16 U.S.C. 668 dd–ee; 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 1531 *et seq.*; Pub. L. 106–513, § 6(g) (2000).

7. In § 404.3, revise the definitions of ''Bottomfish species'' and ''Pelagic species'' to read as follows:

§ 404.3 Definitions.

* * * * *

Bottomfish species means Hawaii bottomfish management unit species as defined at 50 CFR 665.201.

* * * * *

Pelagic species means western Pacific pelagic management unit species as defined at 50 CFR 665.800.

* * * * *

8. In § 404.10, revise paragraph (b)(1)(ii) to read as follows:

§ 404.10 Commercial fishing.

* * * * *

(b) * * *

(1) * * *

(ii) Such permit was in effect on June 15, 2006, and is subsequently renewed pursuant to NOAA regulations at 50 CFR part 665, as necessary.

* * * * *

50 CFR Chapter VI

PART 665—FISHERIES IN THE WESTERN PACIFIC

9. The authority citation for 50 CFR part 665 continues to read as follows:

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

10. Revise part 665 to read as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

Subpart A—General

Sec.

665.1 Purpose and scope.
665.2 Relation to other laws.
665.3 Licensing and registration.
665.4–665.11 [Reserved]
665.12 Definitions.
665.13 Permits and fees.
665.14 Reporting and recordkeeping.
665.15 Prohibitions.
665.16 Vessel identification.
665.17 Experimental fishing.
665.18 Framework adjustments to management measures.
665.19 Vessel monitoring system.

Subpart B—American Samoa Fisheries

665.98 Management area.
665.99 Area restrictions.
665.100 American Samoa bottomfish fisheries [Reserved].
665.101 Definitions.
665.102 [Reserved]
665.103 Prohibitions.
665.104 Gear restrictions.
665.105 At-sea observer coverage.
665.106–665.119 [Reserved]
665.120 American Samoa coral reef ecosystem fisheries [Reserved].
665.121 Definitions.
665.122 [Reserved]
665.123 Relation to other laws.
665.124 Permits and fees.
665.125 Prohibitions.
665.126 Notifications.
665.127 Allowable gear and gear restrictions.
665.128 Gear identification.
665.129–665.139 [Reserved]
665.140 American Samoa crustacean fisheries [Reserved].
665.141 Definitions.
665.142 Permits.
665.143 Prohibitions.
665.144 Notifications.
665.145 At-sea observer coverage.
665.146–665.159 [Reserved]
665.160 American Samoa precious coral fisheries [Reserved].
665.161 Definitions.
665.162 Permits.
665.163 Prohibitions.
665.164 Gear restrictions.
665.165 Size restrictions.
665.166 Closures.
665.167 Quotas.
665.168 Seasons.
665.169 Gold coral harvest moratorium.

Subpart C—Hawaii Fisheries

665.198 Management areas.
665.199 Area restrictions [Reserved].
665.200 Hawaii bottomfish and seamount groundfish fisheries [Reserved].
665.201 Definitions.
665.202 Management subareas.
665.203 Permits.
665.204 Prohibitions.
665.205 Notification.
665.206 Gear restrictions.
665.207 At-sea observer coverage.
665.208 Protected species conservation.
665.209 Fishing moratorium on Hancock Seamount.
665.210 Hawaii restricted bottomfish species.
665.211 Total Allowable Catch (TAC) limit.
665.212 Non-commercial bag limits.
665.213–665.219 [Reserved]
665.220 Hawaii coral reef ecosystem fisheries [Reserved].
665.221 Definitions.
665.222 Management area.
665.223 Relation to other laws.
665.224 Permits and fees.
665.225 Prohibitions.
665.226 Notifications.
665.227 Allowable gear and gear restrictions.
665.228 Gear identification.
665.229–665.239 [Reserved]
665.240 Hawaii crustacean fisheries [Reserved].
665.241 Definitions.
665.242 Permits.
665.243 Prohibitions.
665.244 Notifications.
665.245 Gear restrictions.
665.246 Gear identification.
665.247 At-sea observer coverage.
665.248 Monk seal protective measures.
665.249 Lobster size and condition restrictions in Permit Area 2.
665.250 Closed seasons.
665.251 Closed areas.
665.252 Harvest limitation program.
665.253–665.259 [Reserved]
665.260 Hawaii precious coral fisheries [Reserved].
665.261 Definitions.
665.262 Permits.
665.263 Prohibitions.
665.264 Gear restrictions.
665.265 Size restrictions.
665.266 Area restrictions.
665.267 Seasons.
665.268 Closures.
665.269 Quotas.
665.270 Gold coral harvest moratorium.

Subpart D—Mariana Archipelago Fisheries

665.398 Management areas.
665.399 Area restrictions.
665.400 Mariana bottomfish fisheries [Reserved].
665.401 Definitions.
665.402 Management subareas.
665.403 Bottomfish fishery area management.
665.404 Permits.
665.405 Prohibitions.
665.406 Gear restrictions.
665.407 At-sea observer coverage.
665.418–665.419 [Reserved]
665.420 Mariana coral reef ecosystem fisheries [Reserved].
665.421 Definitions.
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Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 665.1 Purpose and scope.

(a) The regulations in this part govern fishing for western Pacific fishery ecosystem management unit species by vessels of the United States that operate or are based inside the outer boundary of the U.S. EEZ around American Samoa, Hawaii, Guam, the Northern Mariana Islands, Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island.

(b) General regulations governing fishing by all vessels of the United States and by fishing vessels other than vessels of the United States are contained in 50 CFR part 600.

(c) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found in 50 CFR part 600, subpart N.

(d) This subpart contains regulations that are common to all western Pacific fisheries managed under Fishery Ecosystem Plans (FEPs) prepared by the Western Pacific Fishery Management Council under the Magnuson-Stevens Act.

(e) Regulations specific to individual areas and fisheries are included in subparts B through F of this part.

(f) Nothing in subparts B through F of this part is intended to supersede any valid State or Federal regulations that are more restrictive than those published here.

§ 665.2 Relation to other laws.

NMFS recognizes that any State law pertaining to vessels registered under the laws of that State while operating in the fisheries regulated under this part, that is consistent with this part and the FEPs implemented by this part, shall continue in effect with respect to fishing activities regulated under this part.

§ 665.3 Licensing and registration.

Any person who is required to do so by applicable State law or regulation must comply with licensing and registration requirements in the exact manner required by applicable State law or regulation.

§§ 665.4—665.11 [Reserved]

§ 665.12 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, § 600.10 of this chapter, and subparts B through F of this part, general definitions for western Pacific fisheries have the following meanings:

American Samoa FEP means the Fishery Ecosystem Plan for American Samoa.

Bottomfish FMP means the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region established in 1986 and replaced by FEPs.

Carapace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace of a spiny lobster (see Figure 1 to this part).

Circle hook means a fishing hook with the point turned perpendicularly back towards the shank.

Commercial fishing means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade. All lobster fishing in Crustacean Permit Area 1 is considered commercial fishing.

Commonwealth of the Northern Mariana Islands (CNMI) means the Northern Mariana Islands.

Coral Reef Ecosystems FMP means the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region established in 2004 and replaced by FEPs.

Council means the Western Pacific Fishery Management Council.

Crustacean receiving vessel means a vessel of the United States to which lobsters taken in a crustacean management area are transferred from another vessel.

Crustaceans FMP means the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region established in 1982 and replaced by FEPs.

Currently harvested coral reef taxa (CHCRT) means coral reef associated species, families, or subfamilies, as defined in §§ 665.121, 665.221, 665.421, and 665.621, that have annual landings

greater than 454.54 kg (1,000 lb) as reported on individual State, commonwealth, or territory catch reports or through creel surveys. Fisheries and research data from many of these species have been analyzed by regional management agencies.

Dead coral means any precious coral that no longer has any live coral polyps or tissue.

EFP means an experimental fishing permit.

First level buyer means:

(1) The first person who purchases, with the intention to resell, management unit species, or portions thereof, that were harvested by a vessel that holds a permit or is otherwise regulated under crustacean fisheries in subparts B through E of this part; or

(2) A person who provides recordkeeping, purchase, or sales assistance in the first transaction involving management unit species (such as the services provided by a wholesale auction facility).

Fishing gear, as used in regulations for the American Samoa, CNMI, Hawaii, and PRIA bottomfish fisheries in subparts B through E of this part, includes:

(1) *Bottom trawl,* which means a trawl in which the otter boards or the footrope of the net are in contact with the sea bed;

(2) *Gillnet,* (see § 600.10);

(3) *Hook-and-line,* which means one or more hooks attached to one or more lines;

(4) *Set net,* which means a stationary, buoyed, and anchored gill net; and

(5) *Trawl,* (see § 600.10).

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish.

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31, with the exception of fishing for Hawaii Restricted Bottomfish Species and any precious coral management unit species.

Freeboard means the straight line vertical distance between a vessel's working deck and the sea surface. If the vessel does not have gunwale door or stern door that exposes the working deck, freeboard means the straight line vertical distance between the top of a vessel's railing and the sea surface.

Harvest guideline means a specified numerical harvest objective.

Hawaiian Archipelago means the Main and Northwestern Hawaiian Islands, including Midway Atoll.

Hawaii FEP means the Fishery Ecosystem Plan for the Hawaiian Archipelago.

Hookah breather means a tethered underwater breathing device that pumps air from the surface through one or more hoses to divers at depth.

Incidental catch or incidental species means species caught while fishing for the primary purpose of catching a different species.

Land or landing means offloading fish from a fishing vessel, arriving in port to begin offloading fish, or causing fish to be offloaded from a fishing vessel.

Large vessel means, as used in this part, any vessel equal to or greater than 50 ft (15.2 m) in length overall.

Length overall (LOA) or length of a vessel as used in this part, means the horizontal distance, rounded to the nearest foot (with any 0.5 foot or 0.15 meter fraction rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 2 to this part). ''Stem'' is the foremost part of the vessel, consisting of a section of timber or fiberglass, or cast forged or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end. ''Stern'' is the aftermost part of the vessel.

Live coral means any precious coral that has live coral polyps or tissue.

Live rock means any natural, hard substrate, including dead coral or rock, to which is attached, or which supports, any living marine life form associated with coral reefs.

Low-use marine protected area (MPA) means an area of the U.S. EEZ where fishing operations have specific restrictions in order to protect the coral reef ecosystem, as specified under area restrictions in subparts B through F of this part.

Main Hawaiian Islands (MHI) means the islands of the Hawaii Archipelago lying to the east of 161° W. long.

Mariana Archipelago means Guam and the Northern Mariana Islands.

Mariana FEP means the Fishery Ecosystem Plan for the Mariana Archipelago.

Medium vessel, as used in this part, means any vessel equal to or more than 40 ft (12.2 m) and less than 50 ft (15.2 m) LOA.

Non-commercial fishing means fishing that does not meet the definition of commercial fishing.

Non-precious coral means any species of coral other than those listed under the definitions for precious coral in §§ 665.161, 665.261, 665.461, and 665.661.

Non-selective gear means any gear used for harvesting coral that cannot discriminate or differentiate between types, size, quality, or characteristics of living or dead coral.

Northwestern Hawaiian Islands (NWHI) means the islands of the Hawaiian Archipelago lying to the west of 161° W. long.

No-take MPA means an area of the U.S. EEZ that is closed to fishing for or harvesting of any management unit species, as defined in subparts B through F of this part.

Offload means to remove management unit species from a vessel.

Offset circle hook means a circle hook in which the barbed end of the hook is displaced relative to the parallel plane of the eyed end, or shank, of the hook when laid on its side.

Owner, as used in the regulations for the crustacean fisheries in subparts B through E of this part and § 665.203(i) and (j), means a person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG–1270) issued by the United States Coast Guard (USCG) for a documented vessel, or in a registration certificate issued by a State, a territory, or the USCG for an undocumented vessel. As used in the regulations for the precious coral fisheries in subparts B through E of this part and § 665.203(c) through (h), the definition of ''owner'' in § 600.10 of this chapter continues to apply.

Pacific Islands Regional Office (PIRO) means the headquarters of the Pacific Islands Region, NMFS, located at 1601 Kapiolani Blvd., Suite 1110, Honolulu, Hawaii 96814; telephone number 808–944–2200.

Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean) means Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll.

Pelagics FEP means the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region.

Pelagics FMP means the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region that was established in 1987 and replaced by the western Pacific pelagic FEP.

Potentially harvested coral reef taxa (PHCRT) means coral reef associated species, families, or subfamilies, as defined in §§ 665.121, 665.221, 665.421, and 665.621, for which little or no information is available beyond general taxonomic and distribution descriptions. These species have either not been caught in the past or have been harvested annually in amounts less than 454.54 kg (1,000 lb).

Precious Corals FMP means the Fishery Management Plan for Precious Corals of the Western Pacific Region established in 1983 and replaced by fishery ecosystem plans (FEPs).

PRIA FEP means the Fishery Ecosystem Plan for the Pacific Remote Island Areas of Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island.

Protected species means an animal protected under the MMPA, as amended, listed under the ESA, as amended, or subject to the Migratory Bird Treaty Act, as amended.

Receiving vessel means a vessel that receives fish or fish products from a fishing vessel, and with regard to a vessel holding a permit under § 665.801(e) that also lands western Pacific pelagic management unit species taken by other vessels using longline gear.

Regional Administrator means Regional Administrator, Pacific Islands Region, NMFS (*see* Table 1 of § 600.502 of this chapter for address).

Selective gear means any gear used for harvesting coral that can discriminate or differentiate between type, size, quality, or characteristics of living or dead coral.

Special Agent-In-Charge (SAC) means the Special-Agent-In-Charge, NMFS, Pacific Islands Enforcement Division, or a designee of the SAC, located at 1601 Kapiolani Blvd., Suite 950, Honolulu, HI 96814, telephone number 808–203–2500.

Special permit means a permit issued to allow fishing for coral reef ecosystem management unit species in low-use MPAs or to fish for any PHCRT.

State of Hawaii commercial marine license means the license required by the State of Hawaii for anyone to take marine life for commercial purposes (also known as the commercial fishing license).

Transship means to offload or otherwise transfer management unit species or products thereof to a receiving vessel.

Trap means a box-like device used for catching and holding lobsters or fish.

U.S. harvested coral means coral caught, taken, or harvested by vessels of the United States within any fishery for which an FMP or FEP has been implemented under the Magnuson-Stevens Act.

Vessel monitoring system unit (VMS unit) means the hardware and software owned by NMFS, installed on vessels by NMFS, and required to track and transmit the positions of certain vessels.

Western Pacific fishery management area means those waters shoreward of the outer boundary of the EEZ around American Samoa, Guam, Hawaii, CNMI, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands.

§ 665.13 Permits and fees.

(a) Applicability. The requirements for permits for specific western Pacific fisheries are set forth in subparts B through F of this part.

(b) Validity. Each permit is valid for fishing only in the specific fishery management areas identified on the permit.

(c) Application.

(1) A western Pacific Federal fisheries permit application may be obtained from NMFS PIRO to apply for a permit or permits to operate in any of the fisheries regulated under subparts B through F of this part. The completed application must be submitted to PIRO. In no case shall PIRO accept an application that is not on the western Pacific Federal fisheries permit application form.

(2) A minimum of 15 days after the day PIRO receives a complete application should be allowed for processing a permit application for fisheries under subparts B through F of this part. If an incomplete or improperly completed application is filed, the applicant will be sent a letter of notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of the letter of notification of deficiency, the application will be considered abandoned.

(d) Change in application information. Any change in the permit application information or vessel documentation, submitted under paragraph (c) of this section, must be reported to PIRO in writing within 15 days of the change to avoid a delay in processing the permit application. A minimum of 10 days from the day the information is received by PIRO should be given for PIRO to record any change in information from the permit application submitted under paragraph (c) of this section. Failure to report such changes may result in a delay in processing an application, permit holders failing to receive important notifications, or sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1858(g) or 15 CFR part 904, subpart D.

(e) Issuance. After receiving a complete application submitted under paragraph (c) of this section, the Regional Administrator will issue a permit to an applicant who is eligible under this part, as appropriate.

(f) Fees.

(1) PIRO will not charge a fee for a permit issued under §§ 665.142, 665.162, 665.242, 665.262, 665.442, 665.462, 665.642, or 665.662 of this part, for a Ho'omalu limited access permit issued under § 665.203, or for a Guam bottomfish permit issued under § 665.404.

(2) PIRO will charge a non-refundable processing fee for each application (including transfers and renewals) for the permits listed in paragraphs (f)(2)(i) through (viii) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, for determining the administrative costs of each special product or service incurred in processing the permit. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude the issuance, transfer or renewal of any of these permits:

(i) Hawaii longline limited access permit.

(ii) Mau Zone limited access permit.

(iii) Coral reef ecosystem special permit.

(iv) American Samoa longline limited access permit.

(v) MHI non-commercial bottomfish permit.

(vi) Western Pacific squid jig permit.

(vii) Crustacean permit.

(viii) CNMI commercial bottomfish permit.

(g) Expiration. Permits issued under subparts B through F of this part are valid for the period specified on the permit unless revoked, suspended, transferred, or modified under 15 CFR part 904.

(h) Replacement. Replacement permits may be issued, without charge, to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(i) Transfer. An application for a permit transfer under §§ 665.203(d), 665.242(e), or 665.801(k), or for registration of a permit for use with a replacement vessel under § 665.203(i), must be submitted to PIRO as described in paragraph (c) of this section.

(j) Alteration. Any permit that has been altered, erased, or mutilated is invalid.

(k) Display. Any permit issued under this subpart, or a facsimile of such permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing management unit species shoreward of the outer boundary of the fishery management area. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(l) Sanctions. Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

(m) Permit appeals. Procedures for appeals of permitting and administrative actions are specified in the relevant subparts of this part.

§ 665.14 Reporting and recordkeeping.

(a) Except for precious coral and crustacean fisheries, any person who is required to do so by applicable State law or regulation must make and/or file all reports of management unit species landings containing all data and in the exact manner required by applicable State law or regulation.

(b) Fishing record forms.

(1) Applicability.

(i) The operator of any fishing vessel subject to the requirements of §§ 665.124, 665.142, 665.162, 665.203(a)(2), 665.224, 665.242, 665.262, 665.404, 665.424, 665.442, 665.462, 665.603, 665.624, 665.642, 665.662, or 665.801 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator, except as allowed in paragraph (b)(1)(iii) of this section.

(ii) All information specified by the Regional Administrator must be recorded on paper or electronically within 24 hours after the completion of each fishing day. The logbook information, reported on paper or electronically, for each day of the fishing trip must be signed and dated or otherwise authenticated by the vessel operator in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this paragraph (b).

(iii) In lieu of the requirements in paragraph (a)(1)(i) of this section, the operator of a fishing vessel registered for use under a Western Pacific squid jig permit pursuant to the requirements of § 665.801(g) may participate in a State reporting system. If participating in a State reporting system, all required information must be recorded and submitted in the exact manner required by applicable State law or regulation.

(2) Timeliness of submission.

(i) If fishing was authorized under a permit pursuant to §§ 665.142, 665.242, 665.442, 665.404, 665.162, 665.262, 665.462, 665.662, or 665.801, the vessel operator must submit the original logbook information for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraph (iii) of this section.

(ii) If fishing was authorized under a permit pursuant to § 665.203(a)(2), the vessel operator or vessel owner must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip.

(iii) If fishing was authorized under a PRIA bottomfish permit pursuant to § 665.603(a), PRIA pelagic troll and handline permit pursuant to § 665.801(f), crustacean fishing permit for the PRIA (Permit Area 4) pursuant to § 665.642(a), or a precious coral fishing permit for Permit Area X–P–PI pursuant to § 665.662, the original logbook form for each day of fishing within EEZ waters around the PRIA must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

(iv) If fishing was authorized under a permit pursuant to §§ 665.124, 665.224, 665.424, or 665.624, the original logbook information for each day of fishing must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

(c) Transshipment logbooks. Any person subject to the requirements of §§ 665.124(a)(2), 665.224(a)(2), 665.424(a)(2), 665.624(a)(2), or 665.801(e) must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours after the day of transshipment. Each form must be signed and dated by the receiving vessel operator. The original logbook for each day of transshipment activity must be submitted to the Regional Administrator within 72 hours of each landing of western Pacific pelagic management unit species. The original logbook for each day of transshipment activity must be submitted to the Regional Administrator within 7 days of each landing of coral reef ecosystem management unit species.

(d) Sales report. The operator of any fishing vessel subject to the requirements of §§ 665.142, 665.242, 665.442, or 665.642, or the owner of a medium or large fishing vessel subject to the requirements of § 665.404(a)(2) must submit to the Regional Administrator, within 72 hours of offloading of crustacean management unit species, an accurate and complete sales report on a form provided by the Regional Administrator. The form must be signed and dated by the fishing vessel operator.

(e) Packing or weigh-out slips. The operator of any fishing vessel subject to the requirements of §§ 665.142, 665.242, 665.442, or 665.642 must attach packing or weighout slips provided to the operator by the first-level buyer(s), unless the packing or weighout slips have not been provided in time by the buyer(s).

(f) Modification of reporting and recordkeeping requirements. The Regional Administrator may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the fishing record forms, transshipment logbook, and sales report forms and timeliness by which the information is to be provided, including the submission of packing or weighout slips.

(g) Availability of records for inspection.

(1) Western Pacific pelagic management unit species. Upon request, any fish dealer must immediately provide an authorized officer access to inspect and copy all records of purchases, sales, or other transactions involving western Pacific pelagic management unit species taken or handled by longline vessels that have permits issued under this subpart or that are otherwise subject to subpart F of this part, including, but not limited to, information concerning:

(i) The name of the vessel involved in each transaction and the owner and operator of the vessel.

(ii) The weight, number, and size of each species of fish involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(2) Crustacean management unit species. Upon request, any first-level buyer must immediately allow an authorized officer and any employee of NMFS designated by the Regional Administrator, to access, inspect, and copy all records relating to the harvest, sale, or transfer of crustacean management unit species taken by vessels that have permits issued under this subpart or §§ 665.140 through 665.145, 665.240 through 665.252, 665.440 through 665.445, or 665.640 through 665.645 of this part. This requirement may be met by furnishing the information on a worksheet provided by the Regional Administrator. The information must include, but is not limited to:

(i) The name of the vessel involved in each transaction and the owner or operator of the vessel.

(ii) The amount, number, and size of each management unit species involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(3) Bottomfish and seamount groundfish management unit species. Any person who is required by State laws and regulations to maintain records of landings and sales for vessels regulated by this subpart and by §§ 665.100 through 665.105, 665.200 through 665.212, 665.400 through 665.407, and 665.600 through 665.606 of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer.

(4) Coral reef ecosystem MUS. Any person who has a special permit and who is required by State laws and regulations to maintain and submit records of catch and effort, landings and sales for coral reef ecosystem MUS by this subpart and §§ 665.120 through 665.128, 665.220 through 665.228, 665.420 through 665.428, or 665.620 through 665.628 of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer as defined in § 600.10 of this chapter.

(h) State reporting. Any person who has a permit under §§ 665.124, 665.203, 665.224, 665.404, 665.424, 665.603, or 665.624 and who is regulated by State laws and regulations to maintain and submit records of catch and effort, landings and sales for vessels regulated by subparts B through F of this part must maintain and submit those records in the exact manner required by State laws and regulations.

§ 665.15 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter, it is unlawful for any person to:

(a) Engage in fishing without a valid permit or facsimile of a valid permit on board the vessel and available for inspection by an authorized officer, when a permit is required under § 665.13 or 665.17, unless the vessel was at sea when the permit was issued under § 665.13, in which case the permit must be on board the vessel before its next trip.

(b) File false information on any application for a fishing permit under § 665.13 or an EFP under § 665.17.

(c) Fail to file reports in the exact manner required by any State law or regulation, as required in § 665.14.

(d) Falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other record or report required under §§ 665.14 and 665.17.

(e) Refuse to make available to an authorized officer or a designee of the Regional Administrator for inspection or copying, any records that must be made available in accordance with § 665.14.

(f) Fail to affix or maintain vessel or gear markings, as required by §§ 665.16, 665.128, 665.228, 665.246, 665.428, 665.628, or 665.804.

(g) Violate a term or condition of an EFP issued under § 665.17.

(h) Fail to report any take of or interaction with protected species as required by § 665.17(k).

(i) Fish without an observer on board the vessel after the owner or agent of the owner has been directed by NMFS to make accommodations available for an observer under §§ 665.17, 665.105, 665.145, 665.207, 665.247, 665.407, 665.445, 665.606, 665.645, or 665.808.

(j) Refuse to make accommodations available for an observer when so directed by the Regional Administrator under §§ 665.105, 665.145, 665.207, 665.247, 665.407, 665.445, 665.606, 665.645, or 665.808, or under any provision in an EFP issued under § 665.17.

(k) Fail to notify officials as required in §§ 665.126, 665.144, 665.205, 665.226, 665.244, 665.426, 665.444, 665.626, 665.644, 665.803, or 665.808.

(l) Fish for, take or retain within a no-take MPA, defined in §§ 665.99, 665.199, 665.399, or 665.599, any bottomfish management unit species, crustacean management unit species, western Pacific pelagic management unit species, precious coral, seamount groundfish or coral reef ecosystem MUS.

(m) Fail to comply with a term or condition governing the vessel monitoring system in violation of § 665.19.

(n) Fish for, catch, or harvest management unit species without an operational VMS unit on board the vessel after installation of the VMS unit by NMFS, in violation of § 665.19(e)(2).

(o) Possess management unit species, that were harvested after NMFS has installed the VMS unit on the vessel, on board that vessel without an operational VMS unit, in violation of § 665.19(e)(2).

(p) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or attempt any of the same; or move or remove a VMS unit without the prior permission of the SAC in violation of § 665.19(e)(3).

(q) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit, in violation of § 665.19(e).

(r) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit, in violation of § 665.19(e).

(s) Interfere with, impede, delay, or prevent access to a VMS unit by an NMFS observer, in violation of § 665.808(f)(4).

(t) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC, in violation of § 665.19(f).

§ 665.16 Vessel identification.

(a) Each fishing vessel subject to this subpart, except those identified in paragraph (e) of this section, must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be visible from enforcement vessels and aircraft.

(b) The official number must be affixed to each vessel subject to this part in block Arabic numerals at least 18 inches (45.7 cm) in height for fishing and receiving vessels of 65 ft (19.8 m) LOA or longer, and at least 10 inches (25.4 cm) in height for all other vessels, except that vessels in precious coral fisheries and 65 ft (19.8 m) LOA or longer must be marked in block Arabic numerals at least 14 inches (35.6 cm) in height. Marking must be legible and of a color that contrasts with the background.

(c) The vessel operator must ensure that the official number is clearly legible and in good repair.

(d) The vessel operator must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(e) The following fishing vessels are exempt from the vessel identification requirements in this section:

(1) A vessel registered for use under a MHI non-commercial bottomfish permit that is in compliance with State of Hawaii bottomfish vessel registration and marking requirements.

(2) A vessel less than 40 ft (12.2 m) LOA registered for use under a CNMI commercial bottomfish permit that is in compliance with CNMI bottomfish vessel registration and marking requirements.

§ 665.17 Experimental fishing.

(a) General. The Regional Administrator may authorize, for limited purposes, the direct or incidental harvest of management unit species that would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Regional Administrator in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) Observers. No experimental fishing for crustacean management unit

species may be conducted unless an NMFS observer is aboard the vessel.

(c) Application. An applicant for an EFP must submit to the Regional Administrator at least 60 days before the desired date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application.

(2) The applicant's name, mailing address, and telephone number.

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP.

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals.

(5) For each vessel to be covered by the EFP:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) USCG documentation, State license, or registration number.

(iv) Home port.

(v) Length of vessel.

(vi) Net tonnage.

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount of such harvest necessary to conduct the experiment.

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used.

(8) The signature of the applicant.

(d) Incomplete applications. The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(e) Issuance.

(1) If an application contains all of the required information, NMFS will publish a notice of receipt of the application in the **Federal Register** with a brief description of the proposal and will give interested persons an opportunity to comment. The Regional Administrator will also forward copies of the application to the Council, the USCG, and the fishery management agency of the affected State, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested.

(ii) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(iii) Biological information relevant to the proposal.

(2) At a Council meeting following receipt of a complete application, the Regional Administrator will consult with the Council and the Director of the affected State fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application, if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (e)(2) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the EFP and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way.

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FEP.

(v) The applicant has failed to demonstrate a valid justification for the permit.

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision to grant or deny an EFP is final and unappealable. If the permit is granted, NMFS will publish a notice in the **Federal Register** describing the experimental fishing to be conducted under the EFP. The Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species that can be harvested and landed during the term of the EFP, including trip limits, where appropriate.

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP.

(iii) The times and places where experimental fishing may be conducted.

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP.

(v) The condition that observers be carried aboard vessels operating under an EFP.

(vi) Data reporting requirements.

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FEP.

(f) Duration. Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one (1) year from the date of issuance, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(g) Alteration. Any EFP that has been altered, erased, or mutilated is invalid.

(h) Transfer. EFPs issued under subparts B through F of this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(i) Inspection. Any EFP issued under subparts B through F of this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(j) Sanctions. Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of subparts A through F of this part, any other applicable provision of this part, the Magnuson-Stevens Act, or any other regulation promulgated thereunder, is grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR part 904 subpart D. Other sanctions available under the statute will be applicable.

(k) Protected species. Persons fishing under an EFP must report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports must be submitted to the Regional Administrator within 3 days of arriving in port.

§ 665.18 Framework adjustments to management measures.

Framework measures described below for each specific fishery are valid for all management areas, except where specifically noted in this section.

(a) Pelagic measures.

(1) Introduction. Adjustments in management measures may be made through rulemaking if new information demonstrates that there are biological, social, or economic concerns in the fishery. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(2) Annual report. By June 30 of each year, the Council-appointed pelagics monitoring team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(3) Procedure for established measures.

(i) Established measures are regulations for which the impacts have been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(4) Procedure for new measures.

(i) New measures are regulations for which the impacts have not been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council will publicize, including by **Federal Register** notice, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** notice summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Administrator about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(b) Crustacean measures.

(1) Introduction. New management measures may be added through rulemaking if new information demonstrates that there are biological, social, or economic concerns in Permit Areas 1, 2, or 3. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(2) Annual report. By June 30 of each year, the Council-appointed team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(3) Procedure for established measures.

(i) Established measures are regulations for which the impacts have been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(4) Procedure for new measures.

(i) New measures are regulations for which the impacts have not been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council will publicize, including by a **Federal Register** document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Administrator about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(c) Bottomfish measures.

(1) Annual reports. By June 30 of each year, a Council-appointed bottomfish monitoring team will prepare an annual report on the fishery by area covering the following topics:

(i) Fishery performance data.

(ii) Summary of recent research and survey results.

(iii) Habitat conditions and recent alterations.

(iv) Enforcement activities and problems.

(v) Administrative actions (*e.g.*, data collection and reporting, permits).

(vi) State and territorial management actions.

(vii) Assessment of need for Council action (including biological, economic, social, enforcement, administrative, and State/Federal needs, problems, and trends). Indications of potential problems warranting further investigation may be signaled by the following indicator criteria:

(A) Mean size of the catch of any species in any area is a pre-reproductive size.

(B) Ratio of fishing mortality to natural mortality for any species.

(C) Harvest capacity of the existing fleet and/or annual landings exceed best estimate of MSY in any area.

(D) Significant decline (50 percent or more) in bottomfish catch per unit of effort from baseline levels.

(E) Substantial decline in ex-vessel revenue relative to baseline levels.

(F) Significant shift in the relative proportions of gear in any one area.

(G) Significant change in the frozen/fresh components of the bottomfish catch.

(H) Entry/exit of fishermen in any area.

(I) Per-trip costs for bottomfish fishing exceed per-trip revenues for a significant percentage of trips.

(J) Significant decline or increase in total bottomfish landings in any area.

(K) Change in species composition of the bottomfish catch in any area.

(L) Research results.

(M) Habitat degradation or environmental problems.

(N) Reported interactions between bottomfish fishing operations and protected species in the NWHI.

(viii) Recommendations for Council action.

(ix) Estimated impacts of recommended action.

(2) Recommendation of management action.

(i) The team may present management recommendations to the Council at any time. Recommendations may cover actions suggested for Federal regulations, State/territorial action, enforcement or administrative elements,

and research and data collection. Recommendations will include an assessment of urgency and the effects of not taking action.

(ii) The Council will evaluate the team's reports and recommendations, and the indicators of concern. The Council will assess the need for one or more of the following types of management action: catch limits, size limits, closures, effort limitations, access limitations, or other measures.

(iii) The Council may recommend management action by either the State/territorial governments or by Federal regulation.

(3) Federal management action.

(i) If the Council believes that management action should be considered, it will make specific recommendations to the Regional Administrator after requesting and considering the views of its Scientific and Statistical Committee and Bottomfish Advisory Panel and obtaining public comments at a public hearing.

(ii) The Regional Administrator will consider the Council's recommendation and accompanying data, and, if he or she concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Administrator rejects the Council's proposed action, a written explanation for the denial will be provided to the Council within 2 weeks of the decision.

(iii) The Council may appeal a denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(iv) The Regional Administrator and the Assistant Administrator will make their decisions in accord with the Magnuson-Stevens Act, other applicable law, and the bottomfish measures of the FEPs.

(v) To minimize conflicts between the Federal and State management systems, the Council will use the procedures in paragraph (c)(2) of this section to respond to State/territorial management actions. Council consideration of action would normally begin with a representative of the State or territorial government bringing a potential or actual management conflict or need to the Council's attention.

(4) Access limitation procedures.

(i) Access limitation may be adopted under this paragraph (c)(4) only for the NWHI, American Samoa, and Guam.

(ii) If access limitation is proposed for adoption or subsequent modification through the process described in this paragraph (c)(4), the following requirements must be met:

(A) The bottomfish monitoring team must consider and report to the Council on present participation in the fishery; historical fishing practices in, and dependence on, the fishery; economics of the fishery; capability of fishing vessels used in the fishery to engage in other fisheries; cultural and social framework relevant to the fishery; and any other relevant considerations.

(B) Public hearings must be held specifically addressing the limited access proposals.

(C) A specific advisory subpanel of persons experienced in the fishing industry will be created to advise the Council and the Regional Administrator on administrative decisions.

(D) The Council's recommendation to the Regional Administrator must be approved by a two-thirds majority of the voting members.

(5) Five-year review. The Council will conduct a comprehensive review on the effectiveness of the Mau Zone limited access program 5 years following implementation of the program. The Council will consider the extent to which the FEP objectives have been met and verify that the target number of vessels established for the fishery is appropriate for current fishing activity levels, catch rates, and biological condition of the stocks. The Council may establish a new target number based on the 5-year review.

(d) Precious coral measures.

(1) Introduction. Established management measures may be revised and new management measures may be established and/or revised through rulemaking if new information demonstrates that there are biological, social, or economic concerns in a precious coral permit area. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, quotas, season, or levels of catch and/or in effort.

(2) Annual report. By June 30 of each year, the Council-appointed precious coral team will prepare an annual report on the fisheries in the management area. The report will contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(3) Procedure for established measures.

(i) Established measures are regulations for which the impacts have been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation will include supporting rationale and analysis and will be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(4) Procedure for new measures.

(i) New measures are regulations for which the impacts have not been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council will publicize, including by a **Federal Register** document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** document summarizing the Council's deliberations, rationale, and analysis for the preferred action and the time and place for any subsequent Council meeting(s) to consider the new measure. At a subsequent public meeting, the Council will consider public comments and other information received before making a recommendation to the Regional Administrator about any new measure. If approved by the Regional Administrator, NMFS may implement the Council's recommendation by rulemaking.

(e) Coral reef ecosystem measures.

(1) Procedure for established measures.

(i) Established measures are regulations for which the impacts have been evaluated in Council or NMFS documents in the context of current conditions.

(ii) The Council may recommend to the Regional Administrator that established measures be modified, removed, or reinstituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(2) Procedure for new measures.

(i) New measures are regulations for which the impacts have not been evaluated in Council or NMFS documents in the context of current conditions. New measures include, but are not limited to, catch limits, resource size limits, closures, effort limitations, reporting and recordkeeping requirements.

(ii) The Regional Administrator will publicize, including by **Federal Register** notice, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Administrator about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(A) The Regional Administrator will consider the Council's recommendation and supporting rationale and analysis, and, if the Regional Administrator concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Administrator rejects the Council's proposed action, the Regional Administrator will provide a written explanation for the denial within 2 weeks of the decision.

(B) The Council may appeal a denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(C) The Regional Administrator and the Assistant Administrator will make their decisions in accordance with the Magnuson-Stevens Act, other applicable laws, and the FEPs.

(D) To minimize conflicts between the Federal and State/territorial/commonwealth management systems, the Council will use the procedures in this paragraph (e)(2)(ii) to respond to State/territorial/commonwealth management actions. The Council's consideration of action would normally begin with a representative of the State, territorial or commonwealth government bringing a potential or actual management conflict or need to the Council's attention.

(3) Annual report. By July 31 of each year, a Council-appointed coral reef ecosystem monitoring team will prepare an annual report on coral reef fisheries of the western Pacific region. The report will contain, among other things:

(i) Fishery performance data, summaries of new information and assessments of need for Council action.

(ii) Recommendation for Council action. The Council will evaluate the annual report and advisory body recommendations and may recommend management action by either the State/territorial/commonwealth governments or by Federal regulation.

(iii) If the Council believes that management action should be considered, it will make specific recommendations to the Regional Administrator after considering the views of its advisory bodies.

§ 665.19 Vessel monitoring system.

(a) *Applicability.* The holder of any of the following permits is subject to the vessel monitoring system requirements in this part:

(1) Hawaii longline limited access permit issued pursuant to § 665.801(b);

(2) American Samoa longline limited entry permit, for vessel size Class C or D, issued pursuant to § 665.801(c);

(3) Vessels permitted to fish in Crustacean Permit Area 1 VMS Subarea; or

(4) CNMI commercial bottomfish permit, if the vessel is a medium or large bottomfish vessel, issued pursuant to § 665.404(a)(2).

(b) VMS unit. Only a VMS unit owned by NMFS and installed by NMFS complies with the requirement of this subpart.

(c) Notification. After a permit holder subject to § 665.19(a) has been notified by the SAC of a specific date for installation of a VMS unit on the permit holder's vessel, the vessel must carry and operate the VMS unit after the date scheduled for installation.

(d) Fees and charges. During the experimental VMS program, the holder of a permit subject to § 665.19(a) shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directed to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(e) Permit holder duties. The holder of a permit subject to § 665.19(a) and master of the vessel must:

(1) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(2) Carry and continuously operate the VMS unit on board whenever the vessel is at sea.

(3) Not remove, relocate, or make non-operational the VMS unit without prior approval from the SAC.

(f) Authorization by the SAC. The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

Subpart B—American Samoa Fisheries

§ 665.98 Management area.

The American Samoa fishery management area is the EEZ seaward of the Territory of American Samoa with the inner boundary coterminous with the seaward boundaries of the Territory of American Samoa and the outer boundary designated as a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries.

§ 665.99 Area restrictions.

Fishing is prohibited in all no-take MPAs. The following U.S. EEZ waters around American Samoa are no-take MPAs: Landward of the 50 fm (91.5 m) curve around Rose Atoll, as depicted on National Ocean Survey Chart Number 83484.

§ 665.100 American Samoa bottomfish fisheries. [Reserved]

§ 665.101 Definitions.

As used in §§ 665.100 through 665.119:

American Samoa bottomfish management unit species (American Samoa bottomfish MUS) means the following fish:

Samoan name	English common name	Scientific name
palu-gutusiliva	red snapper, silvermouth	*Aphareus rutilans*
asoama	gray snapper, jobfish	*Aprion virescens*
sapoanae	giant trevally, jack	*Caranx ignobilis*
tafauli	black trevally, jack	*Caranx lugubris*
fausi	blacktip grouper	*Epinephelus fasciatus*
papa, velo	lunartail grouper	*Variola louti*
palu malau	red snapper	*Etelis carbunculus*
palu-loa	red snapper	*Etelis coruscans*

Samoan name	English common name	Scientific name
filoa-gutumumu	ambon emperor	*Lethrinus amboinensis*
filoa-paomumu	redgill emperor	*Lethrinus rubrioperculatus*
savane	blueline snapper	*Lutjanus kasmira*
palu-i'usama	yellowtail snapper	*Pristipomoides auricilla*
palu-'ena'ena	pink snapper	*Pristipomoides filamentosus*
palu-sina	yelloweye snapper	*Pristipomoides flavipinnis*
palu	pink snapper	*Pristipomoides seiboldii*
palu-ula, palu-sega	snapper	*Pristipomoides zonatus*
malauli	amberjack	*Seriola dumerili*

§ 665.102 [Reserved]

§ 665.103 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to fish for American Samoa bottomfish MUS using gear prohibited under § 665.104.

§ 665.104 Gear restrictions.

(a) Bottom trawls and bottom set gillnets. Fishing for American Samoa bottomfish MUS with bottom trawls and bottom set gillnets is prohibited.

(b) Possession of gear. The possession of a bottom trawl or bottom set gillnet within the American Samoa fishery management area is prohibited.

(c) Poisons and explosives. The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish is prohibited.

§ 665.105 At-sea observer coverage.

All fishing vessels subject to §§ 665.100 through 665.105 must carry an observer when directed to do so by the Regional Administrator.

§§ 665.106–665.119 [Reserved]

§ 665.120 American Samoa coral reef ecosystem fisheries. [Reserved]

§ 665.121 Definitions.

As used in §§ 665.120 through 665.139:

American Samoa coral reef ecosystem management unit species (American Samoa coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

American Samoa Currently Harvested Coral Reef Taxa:

Family name	Samoan name	English common name	Scientific name
Acanthuridae (Surgeonfishes)	afinamea	orange-spot surgeonfish	*Acanthurus olivaceus.*
		yellowfin surgeonfish	*Acanthurus xanthopterus.*
	aanini	convict tang	*Acanthurus triostegus.*
		eye-striped surgeonfish	*Acanthurus dussumieri.*
	ponepone, gaitolama	blue-lined surgeon	*Acanthurus nigroris.*
	alogo	blue-banded surgeonfish	*Acanthurus lineatus.*
	pone-i'usama	blackstreak surgeonfish	*Acanthurus nigricauda.*
	laulama,	whitecheek surgeonfish	*Acanthurus nigricans.*
	maogo	white-spotted surgeonfish	*Acanthurus guttatus.*
		ringtail surgeonfish	*Acanthurus blochii.*
	ponepone	brown surgeonfish	*Acanthurus nigrofuscus.*
		elongate surgeonfish	*Acanthurus mata.*
		mimic surgeonfish	*Acanthurus pyroferus.*
	pone	yellow-eyed surgeonfish	*Ctenochaetus strigosus.*
	pone, pala'ia, logoulia	striped bristletooth	*Ctenochaetus striatus.*
		two-spot bristletooth	*Ctenochaetus binotatus.*
	ume-isu	bluespine unicornfish	*Naso unicornus.*
	ili'ilia, umelei	orangespine unicornfish	*Naso lituratus.*
		black tongue unicornfish	*Naso hexacanthus.*
	ume-masimasi	bignose unicornfish	*Naso vlamingii.*
		whitemargin unicornfish	*Naso annulatus.*
	ume-ulutao	spotted unicornfish	*Naso brevirostris.*
		barred unicornfish	*Naso thynnoides.*
Balistidae (Triggerfishes)	sumu, sumu-laulau	titan triggerfish	*Balistoides viridescens.*
		orangestriped triggerfish	*Balistapus undulatus.*
	sumu-'apa'apasina, sumu-si'umumu	pinktail triggerfish	*Melichthys vidua.*
	sumu-uli	black triggerfish	*Melichthys niger.*
	sumu-laulau	blue triggerfish	*Pseudobalistes fuscus.*
	sumu-uo'uo, sumu-aloalo	picassofish	*Rhinecanthus aculeatus.*
	sumu-gase'ele'ele	bridled triggerfish	*Sufflamen fraenatum.*
	atule	bigeye scad	*Selar crumenophthalmus.*
	atuleau, namuauli	mackerel scad	*Decapterus macarellus.*
Carcharhinidae (Sharks)	malie-aloalo	grey reef shark	*Carcharhinus amblyrhynchos.*
	aso	silvertip shark	*Carcharhinus albimarginatus.*
	malie	Galapagos shark	*Carcharhinus galapagensis.*
	apeape, malie-alamata	blacktip reef shark	*Carcharhinus melanopterus.*

Family name	Samoan name	English common name	Scientific name
	malu	whitetip reef shark	*Triaenodon obesus*.
Holocentridae (Soldierfish, squirrelfish).	malau-ugatele, malau-va'ava'a	bigscale soldierfish	*Myripristis berndti*.
	malau-tui	bronze soldierfish	*Myripristis adusta*.
		blotcheye soldierfish	*Myripristis murdjan*.
		brick soldierfish	*Myripristis amaena*.
	malau-mamo, malau-va'ava'a.	scarlet soldierfish	*Myripristis pralinia*.
	malau-tuauli	violet soldierfish	*Myripristis violacea*.
		whitetip soldierfish	*Myripristis vittata*.
		yellowfin soldierfish	*Myripristis chryseres*.
	malau-pu'u	pearly soldierfish	*Myripristis kuntee*.
		double tooth squirrelfish	*Myripristis hexagona*.
		blackspot squirrelfish	*Sargocentron melanospilos*.
	malau-tianiu	file-lined squirrelfish	*Sargocentron microstoma*.
		pink squirrelfish	*Sargocentron tiereoides*.
	malau-tui, malau-talapu'u, malau-tusitusi, malau-pauli.	crown squirrelfish	*Sargocentron diadema*.
		peppered squirrelfish	*Sargocentron punctatissimum*.
		blue-lined squirrelfish	*Sargocentron tiere*.
	tamalu, mu-malau, malau-toa	saber or long jaw squirrelfish	*Sargocentron spiniferum*.
		spotfin squirrelfish	*Neoniphon* spp..
Kuhliidae (Flagtails)	safole, inato	barred flag-tail	*Kuhlia mugil*.
Kyphosidae (Rudderfish)	nanue, mata-mutu, mutumutu.	rudderfish	*Kyphosus cinerascens Kyphosus biggibus*.
	nanue	rudderfish	*Kyphosus vaigienses*.
Labridae (Wrasses)	lalafi, tagafa. malakea	napoleon wrasse	*Cheilinus undulatus*.
	lalafi-matamumu	triple-tail wrasse	*Cheilinus trilobatus*.
	lalafi-matapua'a	floral wrasse	*Cheilinus chlorourus*.
	lalafi-pulepule	harlequin tuskfish	*Cheilinus fasciatus*.
	sugale	bandcheek wrasse	*Oxycheilinus diagrammus*.
	sugale	arenatus wrasse	*Oxycheilinus arenatus*.
	sugale-tatanu	whitepatch wrasse	*Xyrichtys aneitensis*.
	sugale-mo'o	cigar wrasse	*Cheilio inermis*.
	sugale-laugutu, sugale-uli, sugale-aloa, sugale-lupe.	blackeye thicklip	*Hemigymnus melapterus*.
	sugale-gutumafia	barred thicklip	*Hemigymnus fasciatus*.
	lape, sugale-pagota	three-spot wrasse	*Halichoeres trimaculatus*.
	sugale-a'au, sugale-pagota, ifigi	checkerboard wrasse	*Halichoeres hortulanus*.
	sugale-uluvela	weedy surge wrasse	*Halichoeres margaritaceus*.
	uloulo-gatala, patagaloa	surge wrasse	*Thalassoma purpureum*.
	lape-moana	red ribbon wrasse	*Thalassoma quinquevittatum*.
	sugale-samasama	sunset wrasse	*Thalassoma lutescens*.
	sugale-la'o, sugale-taili, sugale-gasufi.	rockmover wrasse	*Novaculichthys taeniourus*.
Mullidae (Goatfishes)	i'asina, vete, afulu	yellow goatfish	*Mulloidichthys* spp.
	Vete	yellowfin goatfish	*Mulloidichthys vanicolensis*.
	afolu, afulu	yellowstripe goatfish	*Mulloidichthys flavolineatus*.
	afoul, afulu	banded goatfish	*Parupeneus* spp.
	tusia, tulausaena, ta'uleia	dash-dot goatfish	*Parupeneus barberinus*.
	matulau-moana	doublebar goatfish	*Parupeneus bifasciatus*.
	moana-ula	redspot goatfish	*Parupeneus heptacanthus*.
	i'asina, vete, afulu, moana	yellowsaddle goatfish	*Parupeneus cyclostomas*.
	matulau-ilamutu	side-spot goatfish	*Parupeneus pleurostigma*.
	i'asina, vete, afulu	multi-barred goatfish	*Parupeneus multifaciatus*.
Mugilidae (Mullets)	anae, aua. fuafua	fringelip mullet	*Crenimugil crenilabis*.
	moi, poi	false mullet	*Neomyxus leuciscus*.
Muraenidae (Moray eels)	pusi	yellowmargin moray eel	*Gymnothorax flavimarginatus*.
	maoa'e	giant moray eel	*Gymnothorax javanicus*.
	pusi-pulepule	undulated moray eel	*Gymnothorax undulatus*.
Octopodidae (Octopus)	fe'e	octopus	*Octopus cyanea*.
	fe'e	octopus	*Octopus ornatus*.
Polynemidae	umiumia, i'ausi	threadfin	*Polydactylus sexfilis*.
Pricanthidae (Bigeye)	matapula	glasseye	*Heteropriacanthus cruentatus*.
	matapula	bigeye	*Priacanthus hamrur*.
Scaridae (Parrotfishes)	fuga	stareye parrotfish	*Calotomus carolinus*.
	fuga, galo-uluto'i, fuga-valea, laea-mamanu.	parrotfish	*Scarus* spp.
	ulapokea, laea-ulapokea	Pacific longnose parrotfish	*Hipposcarus longiceps*.
Scombridae	tagi	dogtooth tuna	*Gymnosarda unicolor*.
Siganidae (Rabbitfish)	loloa, lo	forktail rabbitfish	*Siganus aregenteus*.

Family name	Samoan name	English common name	Scientific name
Sphyraenidae (Barracuda)	sapatu	heller's barracuda	*Sphyraena helleri*.
	saosao	great barracuda	*Sphyraena barracuda*.
Turbinidae (turban shells, green snails).	alili	green snails	*Turbo* spp.

American Samoa Potentially Harvested Reef Taxa:

Samoan name	English common name	Scientific name
sugale, sugale-vaolo, sugale-a'a, lalafi, lape-a'au, la'ofia	wrasses (Those species not listed as CHCRT)	Labridae
malie, apoapo, moemoeao	sharks (Those species not listed as CHCRT)	Carcharhinidae, Sphyrnidae
fai	rays and skates	Dasyatididae, Myliobatidae
pe'ape'a	batfishes	Ephippidae
mutumutu, misimisi, ava'ava-moana	sweetlips	Haemulidae
talitaliuli	remoras	Echeneidae
mo'o, mo'otai	tilefishes	Malacanthidae
tiva	dottybacks	Pseudochromidae
aneanea, tafuti	prettyfins	Plesiopidae
tapua	coral crouchers	Caracanthidae
	flashlightfishes	Anomalopidae
gatala, ataata, vaolo, gatala-uli, gatala-sega, gatala-aleva, ateate, apoua, susami, gatala-sina, gatala-mumu.	groupers (Those species not listed as CHCRT or BMUS).	Serrandiae
lupo, lupota, mamalusi, ulua, sapoanae, taupapa, nato, filu, atuleau, malauli-apamoana, malauli-sinasama, malauli-matalapo'a, lai.	jacks and scads (Those species not listed as CHCRT or BMUS).	Carangidae
malau	soldierfishes and squirrelfishes (Those species not listed as CHCRT).	Holocentridae
i'asina, vete, afulu, afoul, ulula'oa	goatfishes (Those species not listed as CHCRT)	Mullidae
pone, palagi	surgeonfishes (Those species not listed as CHCRT)	Acanthuridae
pelupelu, nefu	herrings	Clupeidae
nefu, file	anchovies	Engraulidae
mano'o, mano'o-popo, mano'o-fugafuga, mano'o-apofusami, mano'o-a'au.	gobies	Gobiidae
mu, mu-taiva, tamala, malai, feloitega, mu-mafalaugutu, savane-ulusama, matala'oa.	snappers (Those species not listed as CHCRT or BMUS).	Lutjanidae
sumu, sumu-papa, sumu-taulau	trigger fishes (Those species not listed as CHCRT)	Balistidae
lo	rabbitfishes (Those species not listed as CHCRT)	Siganidae
nanue, matamutu, mutumutu	rudderfishes (Those species not listed as CHCRT)	Kyphosidae
ulisega, atule-toto	fusiliers	Caesionidae
filoa, mata'ele'ele, ulamalosi	emperors (Those species not listed as CHCRT or BMUS).	Lethrinidae
pusi, maoa'e, atapanoa, u'aulu, apeape, fafa, gatamea, pusi-solasulu.	eels (Those species not listed as CHCRT)	Muraenidae, Chlopsidae, Congridae, Moringuidae, Ophichthidae
fo, fo-tusiloloa, fo-si'umu, fo-loloa, fo-tala, fo-manifi, fo-aialo, fo-tuauli.	cardinalfishes	Apogonidae
pe'ape'a, laulaufau	moorish idols	Zanclidae
tifitifi, si'u, i'usamasama, tifitifi-segaula, laulafau-laumea, alosina.	butterfly fishes	Chaetodontidae
tu'u'u, tu'u'u-sama, tu'u'u-lega, tu'u'u-ulavapua, tu'u'u-matamalu, tu'u'u-alomu, tu'u'u-uluvela, tu'u'u-atugauli, tu'u'u-tusiuli, tu'u'u-manini.	angelfishes	Pomacanthidae
tu'u'u, mutu, mamo, tu'u'u-lumane	damselfishes	Pomacentridae
i'atala, la'otele, nofu	scorpionfishes	Scorpaenidae
mano'o, mano'o-mo'o, mano'o-palea, mano'o-la'o.	blennies	Blenniidae
sapatu	barracudas (Those species not listed as CHCRT)	Sphyraenidae
la'o, ulutu'i, lausiva	hawkfishes (Those species not listed as CHCRT)	Cirrhitidae
la'otale, nofu	frogfishes	Antennariidae
	pipefishes and seahorses	Syngnathidae
ta'oto	sandperches	Pinguipedidae
tagi	dog tooth tuna	*Gymnosarda unicolor*
taoto-ena, taoto-sama, 'au'aulauti, taotito	trumpetfish	*Aulostomus chinensis*
taotao, taoto-ama	cornetfish	*Fistularia commersoni*
sue, sue-vaolo, sue-va'a, sue-lega, sue-mu, sue-uli, sue-lape, sue-afa, sue-sugale.	puffer fishes and porcupine fishes	Tetradontidae
ali	flounders and soles	Bothidae, Soleidae
moamoa	trunkfishes	Ostraciidae
fugafuga, tuitui, sava'e	sea cucumbers and sea urchins	Echinoderms
amu	blue corals	Heliopora
amu	organpipe corals	Tubipora

Samoan name	English common name	Scientific name
	ahermatypic corals	Azooxanthellates
amu	mushroom corals	Fungiidae
amu	small and large coral polyps	
amu	fire corals	Millepora
amu	soft corals and gorgonians	
lumane, matalelei	anemones	Actinaria
	soft zoanthid corals	Zoanthinaria
	(Those species not listed as CHCRT)	Mollusca
sisi-sami	sea snails	Gastropoda
aliao, alili		*Trochus* spp.
sea	sea slugs	Opistobranches
	black lipped pearl oyster	*Pinctada margaritifera*
faisua	giant clam	Tridacnidae
pipi, asi, fatuaua, tio, pae, fole	other clams	Other Bivalves
ula, pa'a, kuku, papata	lobsters, shrimps, mantis shrimps, true crabs and hermit crabs (Those species not listed as Crustacean MUS).	Crustaceans
	sea squirts	Tunicates
	sponges	Porifera
amu	lace corals	Stylasteridae
amu	hydroid corals	Solanderidae
	segmented worms (Those species not listed as CHCRT).	Annelids
limu	seaweed	Algae
	Live rock	

All other American Samoa coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the American Samoa CHCRT table or are not American Samoa bottomfish, crustacean, precious coral, or western Pacific pelagic MUS.

§ 665.122 [Reserved]

§ 665.123 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the American Samoa fishery management area, fishing for American Samoa coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.124 Permits and fees.

(a) Applicability. Unless otherwise specified in this subpart, § 665.13 applies to coral reef ecosystem permits.

(1) Special permit. Any person of the United States fishing for, taking or retaining American Samoa coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) American Samoa coral reef ecosystem MUS in low-use MPAs as defined in § 665.99;

(ii) American Samoa Potentially Harvested Coral Reef Taxa in the coral reef ecosystem management area; or

(iii) American Samoa coral reef ecosystem MUS in the coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) Transshipment permit. A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the American Samoa coral reef ecosystem management area to land or transship PHCRT, or any American Samoa coral reef ecosystem MUS harvested within low-use MPAs.

(3) Exceptions. The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches American Samoa coral reef ecosystem MUS while fishing for bottomfish management unit species, crustacean management unit species, western Pacific pelagic management unit species, precious coral, or seamount groundfish.

(ii) Any person fishing for American Samoa CHCRT outside of an MPA, who does not retain any incidentally caught American Samoa PHCRT; and

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) Validity. Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) Special permit. The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) Application. An applicant for a special or transshipment permit issued under this section must complete and submit to the Regional Administrator, a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to, a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.,* stored live, fresh, frozen, preserved; sold for food, ornamental, research, or other use; and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) Incomplete applications. The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected and completed in writing.

(3) Issuance.

(i) If an application contains all of the required information, the Regional

Administrator will forward copies of the application within 30 days to the Council, the U.S. Coast Guard (USCG), the fishery management agency of the affected State, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected State fishery management agency concerning the permit application and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to issues related to, spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including, but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) Appeals of permit actions.

(i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder, as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/or be represented by counsel at the hearing and may submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) The Regional Administrator may, for good cause, extend any time limit prescribed in this section for a period not to exceed 30 days either upon his

or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 665.125 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15 of this part, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any American Samoa coral reef ecosystem MUS in any low-use MPA as defined in § 665.99 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.124; or

(3) The American Samoa coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any American Samoa coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator;

(2) By means of gear or methods prohibited under § 665.127;

(3) In a low-use MPA without a valid special permit; or

(4) In violation of any permit issued under §§ 665.13, 665.123, or 665.124.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.126 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.127 Allowable gear and gear restrictions.

(a) American Samoa coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;
(2) Spear;
(3) Slurp gun;
(4) Hand net/dip net;
(5) Hoop net for Kona crab;
(6) Throw net;
(7) Barrier net;
(8) Surround/purse net that is attended at all times;
(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);
(10) Crab and fish traps with vessel ID number affixed; and
(11) Remote-operating vehicles/submersibles.

(b) American Samoa coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for coral reef ecosystem MUS in the management area is prohibited.

(c) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(d) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected State fishery management agency.

§ 665.128 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.124 or that is otherwise established to be fishing for American Samoa coral reef ecosystem MUS in the management area.

(b) Enforcement action.

(1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.129–665.139 [Reserved]

§ 665.140 American Samoa Crustacean Fisheries. [Reserved]

§ 665.141 Definitions.

As used in §§ 665.140 through 665.159:

American Samoa crustacean management unit species means the following crustaceans:

Samoan name	English common name	Scientific name
ula	spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*
papata	slipper lobster	Scyllaridae.
pa'a	Kona crab	*Ranina ranina.*
	deepwater shrimp	*Heterocarpus* spp.

Crustacean Permit Area 3 (Permit Area 3) includes the EEZ around American Samoa.

§ 665.142 Permits.

(a) Applicability.

(1) The owner of any vessel used to fish for lobster in Permit Area 3 must have a permit issued for that vessel.

(2) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Area 3 must have a permit issued for that vessel.

(b) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) Application. An application for a permit required under this section will be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

§ 665.143 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, in Crustacean Permit Area 3, it is unlawful for any person to fish

for, take, or retain deepwater shrimp without a permit issued under § 665.142.

§ 665.144 Notifications.

(a) The operator of any vessel fishing subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (a)(2) of this section at least 30 days prior to the opening of the fishing season.

§ 665.145 At-sea observer coverage.

All fishing vessels subject to §§ 665.140 through 665.145 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§§ 665.146 665.159 [Reserved]

§ 665.160 American samoa precious coral fisheries. [Reserved]

§ 665.161 Definitions.

As used in §§ 665.160 through 665.169:

American Samoa precious coral management unit species (American Samoa precious coral MUS) means any coral of the genus *Corallium* in addition to the following species of corals:

Local name	English common name	Scientific name
Amu piniki-mumu	Pink coral (also known as red coral).	*Corallium secundum, Corallium regale, Corallium laauense.*
Amu auro	Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.
Amu ofe	Bamboo coral	*Lepidisis olapa, Acanella* spp.
Amu ofe	Black coral	*Antipathes dichotoma, Antipathes grandis, Antipathes ulex.*

American Samoa precious coral permit area means the area encompassing the precious coral beds within the U.S. EEZ around American Samoa. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds. [*Reserved*]

(2) Conditional beds. [*Reserved*]

(3) Refugia. [*Reserved*]

(4) Exploratory Area. Permit Area X–P–AS includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of American Samoa.

§ 665.162 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining American Samoa precious coral MUS in any American Samoa precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.161.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.163 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land precious coral in any precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of American Samoa precious coral MUS in any precious coral permit area:

(1) By means of gear or methods prohibited by § 665.164.

(2) In refugia specified in § 665.161.

(3) In a bed for which the quota specified in § 665.167 has been attained.

(4) In violation of any permit issued under § 665.13 or § 665.17.

(5) In a bed that has been closed pursuant to §§ 665.166 or 665.169.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.165 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.164 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.165 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Black coral. Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.166 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.167 Quotas.

(a) General. The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.167(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) Conditional bed closure. A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) Reserves and reserve release. The quotas for exploratory area X–P–AS will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the American Samoa exploratory area will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) The American Samoa exploratory permit area X–P–AS has an annual quota of 1,000 kg for all American Samoa precious coral MUS combined with the exception of black corals.

§ 665.168 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

§ 665.169 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

Subpart C—Hawaii Fisheries

§ 665.198 Management area.

The Hawaii fishery management area is the EEZ seaward of the State of Hawaii, including the Main Hawaiian Islands (MHI) and Northwestern Hawaiian Islands (NWHI), with the inner boundary a line coterminous with the seaward boundaries of the State of Hawaii and the outer boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

§ 665.199 Area restrictions. [Reserved]

§ 665.200 Hawaii bottomfish and seamount groundfish fisheries. [Reserved]

§ 665.201 Definitions.

As used in §§ 665.200 through 665.219:

Hawaii bottomfish management unit species (Hawaii bottomfish MUS) means the following species:

Local name	English common name	Scientific name
lehi	silver jaw jobfish	*Aphareus rutilans.*
uku	gray jobfish	*Aprion virescens.*
white papio, ulua au kea	giant trevally	*Caranx ignobilis.*
ulua laʻuli	black jack	*Caranx lugubris.*
hāpuʻupuʻu	sea bass	*Epinephalus quernus.*
ehu	red snapper	*Etelis carbunculus.*
onaga, ʻulaʻula koaʻe	longtail snapper	*Etelis coruscans.*
taʻape	blue stripe snapper	*Lutjanus kasmira.*
kalekale	yellowtail snapper	*Pristipomoides auricilla.*
ʻōpakapaka	pink snapper	*Pristipomoides filamentosus.*
kalekale	pink snapper	*Pristipomoides seiboldii.*
gindai	snapper	*Pristipomoides zonatus.*
pig ulua, butaguchi	thicklip trevally	*Pseudocaranx dentex.*
kahala	amberjack	*Seriola dumerili.*

Hawaii restricted bottomfish species fishing year means the year beginning at 0001 HST on September 1 and ending at 2400 HST on August 31 of the next calendar year.

Main Hawaiian Islands non-commercial bottomfish permit means the permit required by § 665.203(a)(2) to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any Hawaii bottomfish MUS in the MHI Management Subarea.

Protected species study zone means the waters within 50 nm, as designated by the Regional Administrator pursuant to § 665.208, around the following islands of the NWHI and as measured from the following coordinates:

Name	N. lat.	W. long.
Nihoa Island	23°05′	161°55′
Necker Island	23°35′	164°40′
French Frigate Shoals	23°45′	166°15′
Gardner Pinnacles	25°00′	168°00′
Maro Reef	25°25′	170°35′
Laysan Island	25°45′	171°45′
Lisianski Island	26°00′	173°55′
Pearl and Hermes Reef	27°50′	175°50′
Midway Island	28°14′	177°22′
Kure Island	28°25′	178°20′

Seamount Groundfish means the following species:

Common name	Scientific name
Armorhead	*Pseudopentaceros wheeleri.*
Alfonsin	*Beryx splendens.*
Raftfish	*Hyperoglyphe japonica.*

§ 665.202 Management subareas.

(a) The Hawaii fishery management area is divided into subareas with the following designations and boundaries:

(1) Main Hawaiian Islands means the U.S. EEZ around the Hawaiian Archipelago lying to the east of 161°20′ W. long.

(2) Northwestern Hawaiian Islands means the EEZ around the Hawaiian Archipelago lying to the west of 161°20′ W. long. For the purposes of regulations issued under this subpart, Midway Island is treated as part of the NWHI Subarea.

(i) Ho'omalu Zone means that portion of the EEZ around the NWHI west of 165° W. long.

(ii) Mau Zone means that portion of the EEZ around the NWHI between 161°20' W. long. and 165° W. long.

(3) Hancock Seamount means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180°00′ W. long. and north of 28°00′ N. lat.

(b) The inner boundary of each management subarea is a line coterminous with the seaward boundaries of the State of Hawaii.

(c) The outer boundary of each management subarea is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

§ 665.203 Permits.

(a) Applicability.

(1) Northwestern Hawaiian Islands. The owner of any vessel used to fish for, land, or transship Hawaii bottomfish MUS shoreward of the outer boundary of the NWHI subarea must have a permit issued under this section, and the permit must be registered for use with that vessel. PIRO will not register a single vessel for use with a Ho'omalu Zone permit and a Mau Zone permit at the same time. Mau Zone permits issued before June 14, 1999, became invalid June 14, 1999, except that a permit issued to a person who submitted a timely application under paragraph (b)(3) of this section is valid until the permit holder either receives a Mau Zone limited entry permit or until final agency action is taken on the permit holder's application. The Ho'omalu Zone and the Mau Zone limited entry systems described in this section are subject to abolition, modification, or additional effort limitation programs.

(2) MHI non-commercial. The owner of a vessel that is used for and any person who participates in non-commercial, vessel-based fishing, landing, or transshipment of Hawaii bottomfish MUS in the MHI management subarea is required to obtain an MHI non-commercial bottomfish permit or a State of Hawaii Commercial Marine License. If one or more persons on a vessel-based bottomfish fishing trip holds an MHI non-commercial permit, then the entire trip is considered non-commercial, and not commercial. However, if any commercial fishing occurs during or as a result of a vessel-based fishing trip, then the fishing trip is considered commercial, and not non-commercial. Charter boat customers are not subject to the requirements of the section.

(b) Submission.

(1) An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(2) Ho'omalu Zone limited access permit. In addition to an application under § 665.13(c), each applicant for a Ho'omalu Zone permit must also submit a supplementary information sheet provided by PIRO, which must be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;

(ii) A copy of landings receipts or other documentation, with a certification from a State or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; and

(iii) If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentages of ownership of the partnership or corporation.

(3) Mau Zone limited access permit. PIRO will not accept applications for a new Mau Zone permit after June 14, 1999. In addition to an application under § 665.13(c), each applicant for a Mau Zone permit must also submit a supplementary information sheet provided by PIRO, which must be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit;

(ii) Copy of State of Hawaii catch report(s) to demonstrate that the permitted vessel had made qualifying landings of bottomfish from the Mau Zone; and

(iii) If the application is filed by a partnership or corporation, the names of each of the individual partners or shareholders and their respective percentage of ownership of the partnership or corporation.

(c) Sale or transfer of Ho'omalu limited access permits to new vessel owners.

(1) A Ho'omalu zone permit may not be sold or otherwise transferred to a new owner.

(2) A Ho'omalu zone permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Administrator.

(d) Transfer of Ho'omalu Zone limited access permits to replacement vessels.

(1) Upon application by the owner of a permitted vessel, the Regional Administrator will transfer that owner's permit to a replacement vessel owned by that owner, provided that the replacement vessel does not exceed 60 ft (18.3 m) LOA. The replacement vessel must be put into service no later than 12 months after the owner applies for the transfer, or the transfer shall be void.

(2) An owner of a permitted vessel may apply to the Regional Administrator for transfer of that owner's permit to a replacement vessel greater than 60 ft (18.3 m) LOA. The Regional Administrator may transfer the permit upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, or has catching power that does not exceed that of the original vessel, and that the transfer is not inconsistent with the objectives of the program. The Regional Administrator shall consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(e) Ho'omalu Zone limited access permit renewal.

(1) A qualifying landing for Ho'omalu Zone permit renewal is a landing of at least 2,500 lb (1,134 kg) of Hawaii bottomfish MUS from the Ho'omalu Zone or a landing of at least 2,500 lb (1,134 kg) of fish from the Ho'omalu Zone, of which at least 50 percent by weight was Hawaii bottomfish MUS. A permit is eligible for renewal for the

next calendar year if the vessel covered by the permit made three or more qualifying landings during the current calendar year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Administrator for a waiver of the landing requirement. If the Regional Administrator finds that failure to make three landings was due to circumstances beyond the owner's control, the Regional Administrator may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions, such that the vessel operations would not be profitable.

(f) Issuance of new Ho'omalu Zone limited access permits. The Regional Administrator may issue new Ho'omalu Zone limited access permits under § 665.13 if the Regional Administrator determines, in consultation with the Council, that bottomfish stocks in the Ho'omalu Zone are able to support additional fishing effort.

(g) Eligibility for new Ho'omalu Zone limited access permits. When the Regional Administrator has determined that new permits may be issued, they shall be issued to applicants based upon eligibility, determined as follows:

(1) Point system.

(i) Two points will be assigned for each year in which the applicant was owner or captain of a vessel that made three or more of any of the following types of landings in the NWHI:

(A) Any amount of Hawaii bottomfish MUS, regardless of weight, if made on or before August 7, 1985;

(B) At least 2,500 lb (1,134 kg) of Hawaii bottomfish MUS, if made after August 7, 1985; or

(C) At least 2,500 lb (1,134 kg) of any fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

(ii) One point will be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 lb (2,722 kg) of bottomfish from the MHI.

(iii) For any one year, points will be assigned under either paragraph (g)(1)(i) or (g)(1)(ii) of this section, but not under both paragraphs.

(iv) Before the Regional Administrator issues a Ho'omalu zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) Restrictions. An applicant must own at least a 25 percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) Order of issuance. New permits shall be awarded to applicants in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits shall be awarded by the Regional Administrator through a lottery.

(4) Notification. The Regional Administrator shall place a notice in the **Federal Register** and shall use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

(h) Eligibility for new Mau Zone limited access permits. (1) PIRO will issue an initial Mau Zone permit to a vessel owner who qualifies for at least three points under the following point system:

(i) An owner who held a Mau Zone permit on or before December 17, 1991, and whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS on or before December 17, 1991, shall be assigned 1.5 points.

(ii) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1991, shall be assigned 0.5 point.

(iii) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1992, shall be assigned 1.0 point.

(iv) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1993, shall be assigned 1.5 points.

(v) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1994, shall be assigned 2.0 points.

(vi) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1995, shall be assigned 2.5 points.

(vii) An owner whose permitted vessel made at least one qualifying landing of Hawaii bottomfish MUS during 1996, shall be assigned 3.0 points.

(viii) Before PIRO issues a Mau Zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(2) For purposes of this paragraph (h), a ''qualifying landing'' means any amount of Hawaii bottomfish MUS lawfully harvested from the Mau Zone and offloaded for sale. No points shall be assigned to an owner for any qualifying landings reported to the State of Hawaii more than 1 year after the landing.

(3) More than one Mau Zone permit may be issued to an owner of two or more vessels, provided each of the owner's vessels for which a permit will be registered for use has made the required qualifying landings for the owner to be assigned at least three eligibility points.

(4) A Mau Zone permit holder who does not own a vessel at the time initial permits are issued must register the permit for use with a vessel owned by the permit holder within 12 months from the date the permit was issued. In the interim, the permit holder may register the permit for use with a leased or chartered vessel. If within 12 months of initial permit issuance, the permit holder fails to apply to PIRO to register the permit for use with a vessel owned by the permit holder, then the permit shall expire.

(5) For each of paragraphs (h)(1)(i) through (h)(1)(viii) of this section, PIRO shall assign points based on the landings of one permitted vessel to only one owner if the vessel did not have multiple owners during the time frame covered by the subordinate paragraphs. If a vessel had multiple owners during a time frame covered by any of paragraphs (h)(1)(i) through (h)(1)(viii) of this section (including joint owners, partners, or shareholders of a corporate owner), PIRO will assign the points for that subordinate paragraph to a single owner if only one owner submits an application with respect to the landings of that vessel during that time frame. If multiple owners submit separate applications with respect to the same landings of the same vessel during the same time frame, then PIRO shall:

(i) Adhere to any written agreement between the applicants with respect to who among them shall be assigned the aggregate point(s) generated by landings during such time frame(s), or

(ii) If there is no agreement:

(A) Shall issue the applicants a joint permit provided the vessel's landings during such time frames generated at least three points, or

(B) In the event the vessel's landings during such time frame(s) generated less than three points, shall not assign any points generated by the vessel's landings during such time frame(s).

(i) Ownership requirements and registration of Mau Zone limited access permits for use with other vessels.

(1) A Mau Zone permit may be held by an individual, partnership, or corporation. No more than 49 percent of the underlying ownership interest in a Mau Zone permit may be sold, leased, chartered, or otherwise transferred to

another person or entity. If more than 49 percent of the underlying ownership of the permit passes to persons or entities other than those listed in the original permit application supplemental information sheet, then the permit expires and must be surrendered to PIRO.

(2) A Mau Zone permit holder may apply under § 665.13 to PIRO to register the permit for use with another vessel if that vessel is owned by the permit holder, and is no longer than 60 ft (18.3 m).

(3) If a Mau Zone permit holder sells the vessel for which the permit is registered for use, the permit holder must, within 12 months of the date of sale, apply to PIRO to register the permit for use with a vessel owned by the permit holder. If the permit holder has not applied to register a replacement vessel within 12 months, then the permit expires.

(4) If a permitted vessel owned by the permit holder is sold or becomes unseaworthy, the Mau Zone permit with which the vessel was registered may be registered for use with a leased or chartered vessel for a period not to exceed 12 months from the date of registration of the leased or chartered vessel. If by the end of that 12 month period the permit holder fails to apply to PIRO to register the permit for use with a vessel owned by the permit holder, then the permit expires.

(j) Mau Zone limited access permit renewal.

(1) A Mau Zone permit will be eligible for renewal if the vessel for which the permit is registered for use made at least five separate fishing trips with landings of at least 500 lb (227 kg) of Hawaii bottomfish MUS per trip during the calendar year. Only one landing of bottomfish MUS per fishing trip to the Mau Zone will be counted toward the landing requirement.

(2) If the vessel for which the permit is registered for use fails to meet the landing requirement of paragraph (j)(1) of this section, the owner may apply to the Regional Administrator for a waiver of the landing requirement. Grounds for a waiver are limited to captain incapacitation, vessel breakdowns, and the loss of the vessel at sea if the event prevented the vessel from meeting the landing requirement. Unprofitability is not sufficient for waiver of the landing requirement.

(3) Failure of the permit holder to register a vessel for use under the permit does not exempt a permit holder from the requirements specified in this paragraph.

(k) Appeals of permit actions.

(1) Except as provided in subpart A of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, or revocation of his or her permit to the Regional Administrator.

(2) In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action appealed, and the reasons therefore, and must be submitted within 30 days of the appealed action. The appellant may request an informal hearing on the appeal.

(3) The Regional Administrator, in consultation with the Council, will decide the appeal in accordance with the FEP and implementing regulations and based upon information relative to the application on file at NMFS and the Council, the summary record kept of any hearing, the hearing officer's recommended decision, if any, and any other relevant information.

(4) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose. The applicant or permit holder may appear personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(5) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. The Regional Administrator's decision on the application is the final administrative decision of the Department of Commerce, and is effective on the date the Administrator signs the decision.

§ 665.204 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for Hawaii bottomfish or seamount groundfish management unit species using gear prohibited under § 665.206.

(b) Fish for, or retain on board a vessel, Hawaii bottomfish MUS in the Ho'omalu Zone or the Mau Zone without the appropriate permit registered for use with that vessel issued under § 665.13.

(c) Serve as primary operator or relief operator on a vessel with a Mau or Ho'omalu Zone permit without completing a protected species workshop conducted by NMFS, as required by § 665.203.

(d) Fail to notify the USCG at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalu Zone, as required by § 665.205.

(e) Fish within any protected species study zone in the NWHI without notifying the Regional Administrator of the intent to fish in these zones, as required under § 664.205.

(f) Falsify or fail to make or file reports of all fishing activities shoreward of the outer boundary of the MHI management subarea, in violation of § 665.14(a) or (b).

(g) Own a vessel or fish from a vessel that is used to fish non-commercially for any Hawaii bottomfish MUS in the MHI management subarea without either a MHI non-commercial bottomfish permit or a State of Hawaii Commercial Marine License, in violation of §§ 665.2 or 665.203(a)(2).

(h) Fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.210, in the MHI management subarea after a closure of the fishery, in violation of § 665.211.

(i) Sell or offer for sale any Hawaii Restricted Bottomfish Species, as specified in § 665.210, after a closure of the fishery, in violation of § 665.211.

(j) Harvest, possess, or land more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species in § 665.210 from a vessel in the MHI management subarea, while holding a MHI non-commercial bottomfish permit, or while participating as a charter boat customer, in violation of § 665.212.

§ 665.205 Notification.

(a) The owner or operator of a fishing vessel subject to § 665.203(a)(1) must inform PIRO at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species study zones defined in § 665.201. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) The operator of a fishing vessel that has taken Hawaii bottomfish MUS in the Ho'omalu Zone must contact the USCG, by radio or otherwise, at the 14th District, Honolulu, HI; Pacific Area, San Francisco, CA; or 17th District, Juneau, AK, at least 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

§ 665.206 Gear restrictions.

(a) Bottom trawls and bottom set gillnets. Fishing for Hawaii bottomfish and seamount groundfish management unit species with bottom trawls and bottom set gillnets is prohibited.

(b) Possession of gear. Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 665.203 or otherwise established to be fishing for Hawaii bottomfish or seamount groundfish management unit species in the management subareas is prohibited.

(c) Poisons and explosives. The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting Hawaii bottomfish and seamount groundfish management unit species is prohibited.

§ 665.207 At-sea observer coverage.

(a) All fishing vessels subject to §§ 665.200 though 665.212 must carry an observer when directed to do so by the Regional Administrator.

(b) PIRO will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice provided pursuant to § 665.205(a). If an observer is required, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.

(c) All observers must be provided with sleeping, toilet, and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor, or a cot, is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(d) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Administrator prior to the vessel's departure from port.

§ 665.208 Protected species conservation.

The Regional Administrator may change the size of the protected species study zones defined in § 665.201 of this subpart:

(a) If the Regional Administrator determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the ESA.

(b) After consulting with the Council.

(c) Through notification in the **Federal Register** published at least 30 days prior to the effective date or through actual notice to the permit holders.

§ 665.209 Fishing moratorium on Hancock Seamount.

Fishing for Hawaii bottomfish and seamount groundfish management unit species on the Hancock Seamount is prohibited through August 31, 2010.

§ 665.210 Hawaii restricted bottomfish species.

Hawaii restricted bottomfish species means the following species:

Local name	English common name	Scientific name
lehi	silver jaw jobfish	*Aphareus rutilans.*
ehu	squirrelfish snapper	*Etelis carbunculus.*
onaga	longtail snapper	*Etelis coruscans.*
opakapaka	pink snapper	*Pristipomoides filamentosus.*
kalekale	snapper	*Pristipomoides sieboldii.*
gindai	snapper	*Pristipomoides zonatus.*
hapu'upu'u	sea bass	*Epinephelus quernus.*

§ 665.211 Total Allowable Catch (TAC) limit.

(a) TAC limits will be set annually for the fishing year by NMFS, as recommended by the Council, based on the best available scientific, commercial, and other information, and taking into account the associated risk of overfishing.

(b) The Regional Administrator shall publish a notice indicating the annual TAC limit in the **Federal Register** by August 31 of each year, and shall use other means to notify permit holders of the TAC limit for the year.

(c) When the TAC limit specified in this section is projected to be reached based on analyses of available information, the Regional Administrator shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. The notice will include an advisement that the fishery will be closed beginning at a specified date, which is not earlier than 14 days after the date of filing the closure notice for public inspection at the Office of the **Federal Register,** until the end of the fishing year in which the TAC is reached.

(d) On and after the date specified in § 665.211(c), no person may fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.210 in the MHI management subarea, except as otherwise allowed in this section.

(e) On and after the date specified in § 665.211(c), no person may sell or offer for sale Hawaii Restricted Bottomfish Species as specified in § 665.210, except as otherwise authorized by law.

(f) Fishing for, and the resultant possession or sale of, Hawaii Restricted Bottomfish Species by vessels legally registered to Mau Zone, Ho'omalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from this section.

§ 665.212 Non-commercial bag limits.

No more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species as specified in § 665.210, may be harvested, possessed, or landed by any individual participating in a non-commercial vessel-based fishing trip in the MHI management subarea. Charter boat customers are also subject to the bag limit.

§§ 665.213–665.219 [Reserved]

§ 665.220 Hawaii coral reef ecosystem fisheries. [Reserved]

§ 665.221 Definitions.

As used in §§ 665.220 through 665.239:

Hawaii coral reef ecosystem management unit species (Hawaii coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic

(post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

HAWAII—CURRENTLY HARVESTED CORAL REEF TAXA

Family name	Local name	English common name	Scientific name
Acanthuridae (Surgeonfishes)	na'ena'e	orange-spot surgeonfish	*Acanthurus olivaceus.*
	pualu	yellowfin surgeonfish	*Acanthurus xanthopterus.*
	manini	convict tang	*Acanthurus triostegus.*
	palani	eye-striped surgeonfish	*Acanthurus dussumieri.*
	maiko	blue-lined surgeon	*Acanthurus nigroris.*
	maiko, maikoiko	whitebar surgeonfish	*Acanthurus leucopareius.*
		whitecheek surgeonfish	*Acanthurus nigricans.*
	'api	white-spotted surgeonfish	*Acanthurus guttatus.*
	Pualu	ringtail surgeonfish	*Acanthurus blochii.*
	mai'i'i	brown surgeonfish	*Acanthurus nigrofuscus.*
	kole	yellow-eyed surgeonfish	*Ctenochaetus strigosus.*
	NA	striped bristletooth	*Ctenochaetus striatus.*
	kala	bluespine unicornfish	*Naso unicornus.*
	kalalei, umaumalei	orangespine unicornfish	*Naso lituratus.*
Acanthuridae (Surgeonfishes)	kala holo	black tongue unicornfish	*Naso hexacanthus.*
	kala	whitemargin unicornfish	*Naso annulatus.*
	kala lolo	spotted unicornfish	*Naso brevirostris.*
		gray unicornfish	*Naso caesius.*
	lau'ipala	yellow tang	*Zebrasoma flavescens.*
Balistidae (Triggerfish)	humuhumu hi'ukole	pinktail triggerfish	*Melichthys vidua.*
	humuhumu 'ele'ele	black triggerfish	*Melichthys niger.*
	humuhumu nukunuku apua'a	picassofish	*Rhinecanthus aculeatus.*
		bridled triggerfish	*Sufflamen fraenatum.*
Carangidae (Jacks)	akule, hahalu	bigeye scad	*Selar crumenophthalmus.*
	'opelu, 'opelu mama	mackerel scad	*Decapterus macarellus.*
Carcharhinidae (Sharks)	manō	grey reef shark	*Carcharhinus amblyrhynchos.*
	manō	galapagos shark	*Carcharhinus galapagensis.*
	manō	blacktip reef shark	*Carcharhinus melanopterus.*
	manō lalakea	whitetip reef shark	*Triaenodon obesus.*
Holocentridae (Solderfish/Squirrelfish.	menpachi, 'u'u	bigscale soldierfish	*Myripristis berndti.*
	menpachi, 'u'u	brick soldierfish	*Myripristis amaena.*
	menpachi, 'u'u	yellowfin soldierfish	*Myripristis chryseres.*
	menpachi, 'u'u	pearly soldierfish	*Myripristis kuntee.*
	'ala'ihi	file-lined squirrelfish	*Sargocentron microstoma.*
	'ala'ihi	crown squirrelfish	*Sargocentron diadema.*
	'ala'ihi	peppered squirrelfish	*Sargocentron punctatissimum.*
	'ala'ihi	blue-lined squirrelfish	*Sargocentron tiere.*
	'ala'ihi	hawaiian squirrelfish	*Sargocentron xantherythrum.*
	'ala'ihi	saber or long jaw squirrelfish	*Sargocentron spiniferum.*
	'ala'ihi	spotfin squirrelfish	*Neoniphon* spp.
Kuhliidae (Flagtails)	'aholehole	Hawaiian flag-tail	*Kuhlia sandvicensis.*
Kyphosidae (Rudderfish)	nenue	rudderfish	*Kyphosus biggibus.*
	nenue	rudderfish	*Kyphosus cinerascens.*
	nenue	rudderfish	*Kyphosus vaigiensis.*
Labridae (Wrasses)	'a'awa	saddleback hogfish	*Bodianus bilunulatus.*
	po'ou	ring-tailed wrasse	*Oxycheilinus unifasciatus.*
	laenihi, nabeta	razor wrasse	*Xyrichtys pavo.*
	kupoupou	cigar wrasse	*Cheilio inermis.*
	ho'u	surge wrasse	*Thalassoma purpureum.*
		red ribbon wrasse	*Thalassoma quinquevittatum.*
		sunset wrasse	*Thalassoma lutescens.*
		rockmover wrasse	*Novaculichthys taeniourus.*
Mullidae (Goatfishes)	weke	yellow goatfish	*Mulloidichthys* spp.
	weke nono	orange goatfish	*Mulloidichthys pfleugeri.*
	weke'ula	yellowfin goatfish	*Mulloidichthys vanicolensis.*
	weke'a or weke a'a	yellowstripe goatfish	*Mulloidichthys flavolineatus.*
	kumu, moano	banded goatfish	*Parupeneus* spp.
	munu	doublebar goatfish	*Parupeneus bifasciatus.*
	moano kea, moano kale	yellowsaddle goatfish	*Parupeneus cyclostomas.*
	malu	side-spot goatfish	*Parupeneus pleurostigma.*
	moano	multi-barred goatfish	*Parupeneus multifaciatus.*
	weke pueo	bandtail goatfish	*Upeneus arge.*
Mugilidae (Mullets)	'ama'ama	stripped mullet	*Mugil cephalus.*
	uouoa	false mullet	*Neomyxus leuciscus.*
Muraenidae (Moray eels)	puhi paka	yellowmargin moray eel	*Gymnothorax flavimarginatus.*
	puhi	giant moray eel	*Gymnothorax javanicus.*

HAWAII—CURRENTLY HARVESTED CORAL REEF TAXA—Continued

Family name	Local name	English common name	Scientific name
	puhi laumilo	undulated moray eel	*Gymnothorax undulatus.*
	puhi	dragon eel	*Enchelycore pardalis.*
Octopodidae (Octopus)	he‘e	octopus	*Octopus cyanea.*
	mauli, tako he‘e, tako	octopus	*Octopus ornatus.*
Polynemidae	moi	threadfin	*Polydactylus sexfilis.*
Priacanthidae (Big-eyes)	‘aweoweo	glasseye	*Heteropriacanthus cruentatus.*
	‘aweoweo	bigeye	*Priacanthus hamrur.*
Scaridae (Parrotfish)	uhu, palukaluka	parrotfish	*Scarus* spp.
	panuhunuhu	stareye parrotfish	*Calotomus carolinus.*
Sphyraenidae (Barracuda)	kawele‘a, kaku	Heller’s barracuda	*Sphyraena helleri.*
	kaku	great barracuda	*Sphyraena barracuda.*
Turbinidae		green snails turban shells	*Turbo* spp.
Zanclidae	kihikihi	moorish idol	*Zanclus cornutus.*
Chaetodontidae	kikakapu	butterflyfish	*Chaetodon auriga.*
	kikakapu	raccoon butterflyfish	*Chaetodon lunula.*
	kikakapu	saddleback butterflyfish	*Chaetodon ephippium.*
Sabellidae		featherduster worm	

HAWAII—POTENTIALLY HARVESTED CORAL REEF TAXA

Local name	English common name	Scientific name
hinalea	wrasses (Those species not listed as CHCRT)	*Labridae.*
manō	sharks (Those species not listed as CHCRT)	*Carcharhinidae, Sphyrnidae.*
hihimanu	rays and skates	*Dasyatididae, Myliobatidae.*
roi, hapu‘upu ‘u	groupers, seabass (Those species not listed as CHCRT or in BMUS).	*Serrandiae.*
	tilefishes	*Malacanthidae.*
dobe, kagami, pa‘opa‘o, papa, omaka, ulua.	jacks and scads (Those species not listed as CHCRT or in BMUS).	*Carangidae.*
‘u‘u	solderfishes and squirrelfishes (Those species not listed as CHCRT).	*Holocentridae.*
weke, moano, kumu	goatfishes (Those species not listed as CHCRT)	*Mullidae.*
na‘ena ‘e, maikoiko	surgeonfishes (Those species not listed as CHCRT)	*Acanthuridae.*
	remoras	*Echeneidae.*
puhi	eels (Those species not listed as CHCRT)	*Muraenidae, Congridae, Ophichthidae.*
‘upapalu	cardinalfishes	*Apogonidae.*
	herrings	*Clupeidae.*
nehu	anchovies	*Engraulidae.*
	coral crouchers	*Caracanthidae.*
‘o‘opu	gobies	*Gobiidae.*
to‘au	snappers (Those species not listed as CHCRT or in BMUS).	*Lutjanidae.*
nunu	trumpetfish	*Aulostomus chinensis.*
nunu peke	cornetfish	*Fistularia commersoni.*
kihikihi	moorish Idols	*Zanclidae.*
kikakapu	butterflyfishes	*Chaetodontidae.*
	angelfishes	*Pomacanthidae.*
mamo	damselfishes	*Pomacentridae.*
nohu, okoze	scorpionfishes, lionfishes	*Scorpaenidae.*
pa o’o	blennies	*Blenniidae.*
kaku	barracudas (Those species not listed as CHCRT)	*Sphyraenidae.*
	sandperches	*Pinguipedidae.*
paki‘i	flounders and soles	*Bothidae, Soleidae, Pleurnectidae.*
makukana	trunkfishes	*Ostraciidae.*
humu humu	trigger fishes (Those species not listed as CHCRT)	*Balistidae.*
nenue	rudderfishes (Those species not listed as CHCRT)	*Kyphosidae.*
po‘opa‘a	hawkfishes (Those species not listed as CHCRT)	*Cirrhitidae.*
‘o‘opu hue, fugu	puffer fishes and porcupine fishes	*Tetradontidae.*
	frogfishes	*Antennariidae.*
	pipefishes and seahorses	*Syngnathidae.*
namako, lole, wana	sea cucumbers and sea urchins	*Echinoderms.*
	(Those species not listed as CHCRT)	*Mollusca.*
ko‘a	ahermatypic corals	*Azooxanthellates.*
ko‘a	mushroom corals	*Fungiidae.*
ko‘a	small and large coral polyps	
	soft corals and gorgonians.	
	anemones	*Actinaria.*
	soft zoanthid corals	*Zoanthinaria.*
	hydroid corals	*Solanderidae.*
ko‘a	lace corals	*Stylasteridae.*

HAWAII—POTENTIALLY HARVESTED CORAL REEF TAXA—Continued

Local name	English common name	Scientific name
ula, a'ama, mo'ala, 'alakuma	lobsters, shrimps, mantis shrimps, true crabs and hermit crabs (Those species not listed as CMUS).	*Crustaceans.*
		Hydrozoans, Bryzoans.
	black-lip pearl oyster	*Pinctada margaritifera.*
	other clams	*Other Bivalves.*
	sea squirts	*Tunicates.*
	sponges	*Porifera.*
tako, he'e	octopi	*Cephalopods.*
	sea snails	*Gastropoda.*
	sea slugs	*Opistobranchs.*
limu	seaweed	*Algae.*
		Live rock.
	segmented worms (Those species not listed as CHCRT).	*Annelids.*

All other Hawaii coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the Hawaii CHCRT table or are not Hawaii bottomfish, crustacean, precious coral, seamount groundfish or western Pacific pelagic MUS.

§ 665.222 Management area.

The Hawaii coral reef ecosystem management area is as follows:

(a) The U.S. EEZ around the Hawaiian Archipelago lying to the east of 160°50′ W. long.

(b) The inner boundary of the management area is the seaward boundary of the State of Hawaii.

(c) The outer boundary of the management area is the outer boundary of the U.S. EEZ.

§ 665.223 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Hawaii coral reef ecosystem management area, fishing for Hawaii coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.224 Permits and fees.

(a) Applicability. Unless otherwise specified in this subpart, § 665.13 applies to Hawaii coral reef ecosystem permits.

(1) Special permit. Any person of the United States fishing for, taking or retaining Hawaii coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) Hawaii coral reef ecosystem MUS in low-use MPAs as defined in § 665.199;

(ii) Hawaii Potentially Harvested Coral Reef Taxa in the coral reef ecosystem management area; or

(iii) Hawaii coral reef ecosystem MUS in the coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) Transshipment permit. A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the Hawaii coral reef ecosystem management area to land or transship PHCRT, or any Hawaii coral reef ecosystem MUS harvested within low-use MPAs.

(3) Exceptions. The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches Hawaii coral reef ecosystem MUS while fishing for bottomfish management unit species, crustacean management unit species, western Pacific pelagic management unit species, precious coral, or seamount groundfish.

(ii) Any person fishing for Hawaii CHCRT outside of an MPA, who does not retain any incidentally caught Hawaii PHCRT; and

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) Validity. Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) Special permit. The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) Application. An applicant for a special or transshipment permit issued under this section must complete and submit to the Regional Administrator a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.,* stored live, fresh, frozen, preserved, sold for food, ornamental, research, or other use, and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) Incomplete applications. The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(3) Issuance.

(i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the U.S. Coast Guard, the fishery management agency of the affected State, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected State fishery management agency concerning the permit application and will receive their recommendations for

approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to, issues related to spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including, but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) Appeals of permit actions.

(i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based on information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) Any time limit prescribed in this section may be extended for good cause, for a period not to exceed 30 days, by the Regional Administrator, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 665.225 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15 of this part, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any Hawaii coral reef ecosystem MUS in any low-use MPA as defined in § 665.199 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.224; or

(3) The Hawaii coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any Hawaii coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator.

(2) By means of gear or methods prohibited under § 665.227.

(3) In a low-use MPA without a valid special permit.

(4) In violation of any permit issued under §§ 665.13 or 665.224.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.226 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any Hawaii coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.227 Allowable gear and gear restrictions.

(a) Hawaii coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;
(2) Spear;
(3) Slurp gun;
(4) Hand net/dip net;
(5) Hoop net for Kona crab;
(6) Throw net;
(7) Barrier net;
(8) Surround/purse net that is attended at all times;
(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);
(10) Crab and fish traps with vessel ID number affixed; and
(11) Remote-operating vehicles/submersibles.

(b) Hawaii coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for Hawaii coral reef ecosystem MUS in the Hawaii management area is prohibited.

(c) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(d) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected State fishery management agency.

§ 665.228 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.224 or that is otherwise established to be fishing for Hawaii coral reef ecosystem MUS in the Hawaii management area.

(b) Enforcement action.

(1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the Hawaii coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the Hawaii coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.229–665.239 [Reserved]

§ 665.240 Hawaii crustacean fisheries. [Reserved]

§ 665.241 Definitions.

As used in §§ 665.240 through 665.259:

Hawaii crustacean management area is divided into the following areas:

(1) *Crustacean Permit Area 1 (Permit Area 1)* means the EEZ around the NWHI.

(2) *Crustacean Permit Area 2 (Permit Area 2)* means the EEZ around the MHI.

(3) *Crustacean Permit Area 1 VMS Subarea* means an area within the EEZ around the NWHI 50 nm from the center geographical positions of the islands and reefs in the NWHI as follows:

Name	N. lat.	W. long.
Nihoa Island	23°05′	161°55′
Necker Island	23°35′	164°40′
French Frigate Shoals	23°45′	166°15′
Gardner Pinnacles	25°00′	168°00′
Maro Reef	25°25′	170°35′
Laysan Island	25°45′	171°45′
Lisianski Island	26°00′	173°55′
Pearl and Hermes Reef	27°50′	175°50′
Midway Island	28°14′	177°22′
Kure Island	28°25′	178°20′

The remainder of the VMS subarea is delimited by parallel lines tangent to and connecting the 50-nm areas around the following: From Nihoa Island to Necker Island; from French Frigate Shoals to Gardner Pinnacles; from Gardner Pinnacles to Maro Reef; from Laysan Island to Lisianski Island; and from Lisianski Island to Pearl and Hermes Reef.

Hawaii crustacean management unit species (Hawaii crustacean MUS) means the following crustaceans:

Local name	English common name	Scientific name
ula	spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*

Local name	English common name	Scientific name
ula papapa	slipper lobster	Scyllaridae.
papa'i kua loa	Kona crab	*Ranina ranina.*
	deepwater shrimp	*Heterocarpus* spp.

Interested parties means the State of Hawaii Department of Land and Natural Resources, the Council, holders of permits issued under § 665.242, and any person who has notified the Regional Administrator of his or her interest in the procedures and decisions described in § 665.248, and who has specifically requested to be considered an ''interested party.''

Lobster grounds refers, singularly or collectively, to the following four areas in Crustacean Permit Area 1 that shall be used to manage the lobster fishery:

(1) Necker Island Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 24°00′ N. lat., 165°00′ W. long.; 24°00′ N. lat., 164°00′ W. long.; 23°00′ N. lat., 164°00′ W. long.; and 23°00′ N. lat., 165°00′ W. long.

(2) Gardner Pinnacles Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 25°20′ N. lat., 168°20′ W. long.; 25°20′ N. lat., 167°40′ W. long.; 24°20′ N. lat., 167°40′ W. long.; and 24°20′ N. lat., 168°20′ W. long.

(3) Maro Reef Lobster Grounds—waters bounded by straight lines connecting the following coordinates in the order presented: 25°40′ N. lat., 171°00′ W. long.; 25°40′ N. lat., 170°20′ W. long.; 25°00′ N. lat., 170°20′ W. long.; and 25°00′ N. lat., 171°00′ W. long.

(4) General NWHI Lobster Grounds—all waters within Crustacean Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

§ 665.242 Permits.

(a) Applicability.

(1) The owner of any vessel used to fish for lobster in Permit Area 1 must have a limited access permit issued for such vessel.

(2) The owner of any vessel used to fish for lobster in Permit Area 2 must have a permit issued for such a vessel.

(3) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Areas 1 or 2 must have a permit issued for that vessel.

(4) Harvest of Hawaii crustacean MUS within the Northwestern Hawaiian Islands Marine National Monument is subject to the requirements of 50 CFR part 404.

(b) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) Application. An application for a permit required under this section will be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

(d) Lobster Limited Access Permit Requirements.

(1) A lobster limited access permit is valid for fishing only in Crustacean Permit Area 1.

(2) Only one permit will be assigned to any vessel.

(3) No vessel owner will have permits for a single vessel to harvest lobsters in Permit Areas 1 and 2 at the same time.

(4) A maximum of 15 limited access permits can be valid at any time.

(e) Transfer or sale of limited access permits.

(1) Permits may be transferred or sold, but no one individual, partnership, or corporation will be allowed to hold a whole or partial interest in more than one permit, except that an owner who qualifies initially for more than one permit may maintain those permits, but may not obtain additional permits. Layering of partnerships or corporations shall not insulate a permit holder from this requirement.

(2) If 50 percent or more of the ownership of a limited access permit is passed to persons other than those listed on the permit application, PIRO must be notified of the change in writing and provided copies of the appropriate documents confirming the changes within 30 days.

(3) Upon the transfer or sale of a limited access permit, a new application must be submitted by the new permit owner according to the requirements of § 665.13. The transferred permit is not valid until this process is completed.

(f) Replacement of a vessel covered by a limited access permit. A limited access permit issued under this section may, without limitation as to frequency, be transferred by the permit holder to a replacement vessel owned by that person.

(g) Issuance of limited access permits to future applicants.

(1) The Regional Administrator may issue limited access permits under this section when fewer than 15 vessel owners hold active permits.

(2) When the Regional Administrator has determined that limited access permits may be issued to new persons, a notice shall be placed in the **Federal Register**, and other means will be used to notify prospective applicants of the opportunity to obtain permits under the limited access management program.

(3) A period of 90 days will be provided after publication of the **Federal Register** notice for submission of new applications for a limited access permit.

(4) Limited access permits issued under this paragraph (g) will be issued first to applicants qualifying under paragraph (g)(4)(i) of this section. If the number of limited access permits available is greater than the number of applicants that qualify under paragraph (g)(4)(i) of this section, then limited access permits will be issued to applicants under paragraph (g)(4)(ii) of this section.

(i) First priority to receive limited access permits under this paragraph (g) goes to owners of vessels that were used to land lobster from Permit Area 1 during the period 1983 through 1990, and who were excluded from the fishery by implementation of the limited access system. If there are insufficient permits for all such applicants, the new permits shall be issued by the Regional Administrator through a lottery.

(ii) Second priority to receive limited access permits under paragraph (g) goes to owners with the most points, based upon a point system. If two or more owners have the same number of points and there are insufficient permits for all such owners, the Regional Administrator shall issue the permits through a lottery. Under the point system, limited access permits will be issued, in descending order, beginning with owners who have the most points and proceeding to owners who have the least points, based on the following:

(A) Three points shall be assigned for each calendar year after August 8, 1985, that the applicant was the operator of a vessel that was used to land lobster from Permit Area 1.

(B) Two points shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in either commercial fishing in Permit Area 2 for lobster, or fishing in Permit Area 1 for fish other than lobster with an intention to sell all or part of the catch.

(C) One point shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in any other commercial fishing in the EEZ surrounding Hawaii.

(5) A holder of a new limited access permit must own at least a 50 percent share in the vessel that the permit would cover.

§ 665.243 Prohibitions.

In addition to the general prohibitions specified in 50 CFR 600.725 and § 665.15, it is unlawful for any person to do any of the following:

(a) In Permit Area 1, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) Without a limited access permit issued under § 665.242.

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 665.245.

(iii) From closed areas for lobsters, as specified in § 665.251.

(iv) During a closed season, as specified in § 665.250.

(v) After the closure date, as specified in § 665.252, and until the fishery opens again in the following calendar year.

(vi) In a lobster grounds after closure of that grounds as specified in § 665.252(b).

(2) Fail to report before landing or offloading as specified in § 665.244.

(3) Fail to comply with any protective measures implemented under § 665.248.

(4) Leave a trap unattended in the Hawaii crustacean management area except as provided in § 665.245.

(5) Maintain on board the vessel or in the water more than 1,200 traps per fishing vessel, of which no more than 1,100 can be assembled traps, as specified in § 665.245.

(6) Land lobsters taken in Permit Area 1 after the closure date, as specified in § 665.252, until the fishery opens again the following year.

(7) Refuse to make available to an authorized officer and employee of NMFS designated by the Regional Administrator for inspection and copying any records that must be made available in accordance with § 665.14(g)(2).

(8) Possess on a fishing vessel that has a limited access permit issued under § 665.242 any lobster trap in Crustacean Permit Area 1 when fishing for lobster is prohibited as specified in §§ 665.248, 665.250(a), or 665.252, or except as allowed under § 665.245(a)(7).

(9) Possess on a fishing vessel that has a limited access permit issued under this subpart any lobster trap in Crustacean Permit Area 1 VMS Subarea when fishing for lobsters is prohibited as specified in §§ 665.248, 665.250(a), or 665.252, except as allowed under § 665.245(a)(8).

(10) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same while engaged in the Permit Area 1 fishery; or to move or remove a VMS unit while engaged in the Permit Area 1 fishery without first notifying the Regional Administrator.

(11) Make a false statement, oral or written, to the Regional Administrator or an authorized officer, regarding the certification, use, operation, or maintenance of a VMS unit used in the fishery.

(12) Fail to allow an authorized officer to inspect and certify a VMS unit used in the fishery.

(13) Possess, on a fishing vessel that has a limited access permit issued under this subpart, any lobster trap in a lobster grounds that is closed under § 665.252(b), unless the vessel has an operational VMS unit, certified by NMFS, on board.

(b) In Permit Area 2, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) By methods other than lobster traps or by hand, as specified in § 665.245; or

(ii) During a closed season, as specified in § 665.250(b).

(2) Retain or possess on a fishing vessel any lobster taken in Permit Area 2 that is less than the minimum size specified in § 665.249.

(3) Possess on a fishing vessel any lobster or lobster part taken in Permit Area 2 in a condition where the lobster is not whole and undamaged as specified in § 665.249.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 665.249.

(5) Possess on a fishing vessel that has a permit for Permit Area 2 issued under this subpart any lobster trap in Permit Area 2 when fishing for lobster in the MHI is prohibited during the months of May, June, July, and August.

(c) In Crustacean Permit Areas 1 and 2, it is unlawful for any person to fish for, take, or retain deepwater shrimp without a permit issued under § 665.242.

§ 665.244 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraph (a) of this section at least 30 days prior to the opening of the fishing season.

§ 665.245 Gear restrictions.

(a) Permit Area 1.

(1) Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hook, or explosives.

(2) The smallest opening of an entry way of any lobster trap may not allow any sphere or cylinder greater than 6.5 inches (16.5 cm) in diameter to pass from outside the trap to inside the trap.

(3) Each lobster trap must have a minimum of two escape vent panels that meet the following requirements:

(i) Panels must have at least four unobstructed circular holes no smaller than 67 mm in diameter, with centers at least 82 mm apart.

(ii) The lowest part of any opening in an escape vent panel must not be more than 85 mm above the floor of the trap.

(iii) Panels must be placed opposite one another in each trap.

(4) A vessel fishing for or in possession of lobster in any permit area may not have on board the vessel any trap that does not meet the requirements of paragraphs (a)(1), (2), and (3) of this section.

(5) A maximum of 1,200 traps per vessel may be maintained on board or in the water, provided that no more than 1,100 assembled traps are maintained on board or in the water. If more than 1,100 traps are maintained, the unassembled traps may be carried as spares only, in order to replace assembled traps that may be lost or become unusable.

(6) Traps shall not be left unattended in any permit area, except in the event of an emergency, in which case the vessel operator must notify the SAC of the emergency that necessitated leaving the traps on the grounds, and the location and number of the traps, within 24 hours after the vessel reaches port.

(7) A vessel whose owner has a limited access permit issued under this

subpart and has an operating VMS unit certified by NMFS may enter Crustacean Permit Area 1 with lobster traps on board on or after June 25, but must remain outside the Crustacean Permit Area 1 VMS Subarea until the NWHI lobster season opens on July 1.

(8) A vessel whose owner has a limited access permit issued under this subpart and has on board an operational VMS unit certified by NMFS may transit Crustacean Permit Area 1, including Crustacean Permit Area 1 VMS Subarea, with lobster traps on board for the purpose of moving to another lobster grounds or returning to port following the closure date, as specified in § 665.252, providing the vessel does not stop or fish and is making steady progress to another lobster grounds or back to port as determined by NMFS.

(9) The operator of a permitted vessel must notify the Regional Administrator or an authorized officer no later than June 15 of each year if the vessel will use a VMS unit in the fishery and allow for inspection and certification of the unit.

(b) Permit Area 2. Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hooks, or explosives.

§ 665.246 Gear identification.

In Permit Area 1, the vessel's official number must be marked legibly on all traps and floats maintained on board the vessel or in the water by that vessel.

§ 665.247 At-sea observer coverage.

All fishing vessels subject to §§ 665.240 though 665.252 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§ 665.248 Monk seal protective measures.

(a) General. This section establishes a procedure that will be followed if the Regional Administrator receives a report of a monk seal death that appears to be related to the lobster fishery in Permit Area 1.

(b) Notification. Upon receipt of a report of a monk seal death that appears to be related to the lobster fishery, the Regional Administrator will notify all interested parties of the facts known about the incident. The Regional Administrator will also notify them that an investigation is in progress, and that, if the investigation reveals a threat of harm to the monk seal population, protective measures may be implemented.

(c) Investigation.

(1) The Regional Administrator will investigate the incident reported and will attempt to:

(i) Verify that the incident occurred.

(ii) Determine the extent of the harm to the monk seal population.

(iii) Determine the probability of a similar incident recurring.

(iv) Determine details of the incident such as:

(A) The number of animals involved.

(B) The cause of the mortality.

(C) The age and sex of the dead animal(s).

(D) The relationship of the incident to the reproductive cycle, for example, breeding season (March–September), non-breeding season (October–February).

(E) The population estimates or counts of animals at the island where the incident occurred.

(F) Any other relevant information.

(v) Discover and evaluate any extenuating circumstances.

(vi) Evaluate any other relevant factors.

(2) The Regional Administrator will make the results of the investigation available to the interested parties and request their advice and comments.

(d) Determination of relationship. The Regional Administrator will review and evaluate the results of the investigation and any comments received from interested parties. If there is substantial evidence that the death of the monk seal was related to the lobster fishery, the Regional Administrator will:

(1) Advise the interested parties of his or her conclusion and the facts upon which it is based.

(2) Request from the interested parties their advice on the necessity of protective measures and suggestions for appropriate protective measures.

(e) Determination of response. The Regional Administrator will consider all relevant information discovered during the investigation or submitted by interested parties in deciding on the appropriate response. Protective measures may include, but are not limited to, changes in trap design, changes in gear, closures of specific areas, or closures for specific periods of time.

(f) Action by the Regional Administrator. If the Regional Administrator decides that protective measures are necessary and appropriate, the Regional Administrator will prepare a document that describes the incident, the protective measures proposed, and the reasons for the protective measures; provide it to the interested parties; and request their comments.

(g) Implementation of protective measures.

(1) If, after completing the steps described in paragraph (f) of this section, the Regional Administrator concludes that protective measures are necessary and appropriate, the Regional Administrator will recommend the protective measures to the Assistant Administrator and provide notice of this recommendation to the Chairman of the Council and the Director of the Division of Aquatic Resources, Department of Land and Natural Resources, State of Hawaii.

(2) If the Assistant Administrator concurs with the Regional Administrator's recommendation, NMFS will publish an action in the **Federal Register** that includes a description of the incident that triggered the procedure described in this section, the protective measures, and the reasons for the protective measures.

(h) Notification of ''no action.'' If, at any point in the process described in this section, the Regional Administrator or Assistant Administrator decides that no further action is required, the interested parties will be notified of this decision.

(i) Effective dates.

(1) The protective measures will take effect 10 days after the date of publication in the **Federal Register**.

(2) The protective measures will remain in effect for the shortest of the following time periods:

(i) Until the Hawaii FEP and this section are amended to respond to the problem;

(ii) Until other action that will respond to the problem is taken under the ESA;

(iii) Until the Assistant Administrator, following the procedures set forth in paragraph (j) of this section, decides that the protective measures are no longer required and repeals the measures; or

(iv) For the period of time set forth in the **Federal Register** notification, not to exceed 3 months. The measures may be renewed for 3 months after again following procedures in paragraphs (b) through (g) of this section.

(j) Repeal.

(1) If the Assistant Administrator decides that protective measures may no longer be necessary for the protection of monk seals, the Assistant Administrator will notify the interested parties of this preliminary decision and the facts upon which it is based. The Assistant Administrator will request advice on the proposed repeal of the protective measures.

(2) The Assistant Administrator will consider all relevant information obtained by the Regional Administrator or submitted by interested parties in deciding whether to repeal the protective measures.

(3) If the Assistant Administrator decides to repeal the protective measures—

(i) Interested parties will be notified of the decision; and

(ii) Notification of repeal and the reasons for the repeal will be published in the **Federal Register**.

(k) Monk seal emergency protective measures.

(1) Determination of emergency. If, at any time during the process described in paragraphs (a) through (j) of this section, the Regional Administrator determines that an emergency exists involving monk seal mortality related to the lobster fishery and that measures are needed immediately to protect the monk seal population, the Regional Administrator will—

(i) Notify the interested parties of this determination and request their immediate advice and comments.

(ii) Forward a recommendation for emergency action and any advice and comments received from interested parties to the Assistant Administrator.

(2) Implementation of emergency measures. If the Assistant Administrator agrees with the recommendation for emergency action—

(i) The Regional Administrator will determine the appropriate emergency protective measures.

(ii) NMFS will publish the emergency protective measures in the **Federal Register**.

(iii) The Regional Administrator will notify the interested parties of the emergency protective measures. Holders of permits to fish in Permit Area I will be notified by certified mail. Permit holders that the Regional Administrator knows are on the fishing grounds also will be notified by radio.

(3) Effective dates.

(i) Emergency protective measures are effective against a permit holder at 12:01 a.m., local time, of the day following the day the permit holder receives actual notice of the measures.

(ii) Emergency protective measures are effective for 10 days from the day following the day the first permit holder is notified of the protective measures.

(iii) Emergency protective measures may be extended for an additional 10 days, if necessary, to allow the completion of the procedures set out in § 665.252.

§ 665.249 Lobster size and condition restrictions in Permit Area 2.

(a) Only spiny lobsters with a carapace length of 8.26 cm or greater may be retained (see Figure 1 to this part).

(b) Any lobster with a punctured or mutilated body, or a separated carapace and tail, may not be retained.

(c) A female lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female lobsters.

§ 665.250 Closed seasons.

(a) Lobster fishing is prohibited in Permit Area 1 during the months of January through June, inclusive.

(b) Lobster fishing is prohibited in Permit Area 2 during the months of May, June, July, and August.

§ 665.251 Closed areas.

All lobster fishing is prohibited:

(a) Within 20 nm of Laysan Island.

(b) Within the EEZ landward of the 10-fathom curve as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

§ 665.252 Harvest limitation program.

(a) General. Harvest guidelines for the Necker Island Lobster Grounds, Gardner Pinnacles Lobster Grounds, Maro Reef Lobster Grounds, and General NWHI Lobster Grounds for Permit Area 1 will be set annually for the calendar year and shall:

(1) Apply to the total catch of spiny and slipper lobsters.

(2) Be expressed in terms of numbers of lobsters.

(b) Harvest guideline.

(1) The Regional Administrator shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources to establish the annual harvest guideline in accordance with the FEP after consultation with the Council.

(2) NMFS shall publish a document indicating the annual harvest guideline in the **Federal Register** by February 28 of each year and shall use other means to notify permit holders of the harvest guideline for the year.

(3) The Regional Administrator shall determine, on the basis of the information reported to NMFS by the operator of each vessel fishing, when the harvest guideline for each lobster ground will be reached.

(4) Notice of the date when the harvest guideline for a lobster ground is expected to be reached and specification of the closure date of the lobster grounds will be provided to each permit holder and/or operator of each permitted vessel at least 24 hours in advance of the closure. After a closure, the harvest of lobster in that lobster ground is prohibited, and the possession of lobster traps on board the vessel in that lobster ground is prohibited unless allowed under § 665.245(a)(8).

(5) With respect to the notification in paragraph (b)(4) of this section, NMFS shall provide each permit holder and operator of each permitted vessel with the following information, as appropriate:

(i) Determination of when the overall harvest guideline for Crustacean Permit Area 1 will be reached;

(ii) Closure date after which harvest of lobster or possession of lobster traps on board the vessel in a lobster grounds is prohibited;

(iii) Closure date after which the possession of lobster traps on board the vessel in Crustacean Permit Area 1 is prohibited by any permitted vessel that is not operating a VMS unit certified by NMFS; and

(iv) Specification of when further landings of lobster will be prohibited by permitted vessels not carrying an operational VMS unit, certified by NMFS, on board.

(c) Monitoring and adjustment. The operator of each vessel fishing during the open season shall report lobster catch (by species) and effort (number of trap hauls) data while at sea to NMFS in Honolulu. The Regional Administrator shall notify permit holders of the reporting method, schedule, and logistics at least 30 days prior to the opening of the fishing season.

§§ 665.253–665.259 [Reserved]

§ 665.260 Hawaii precious coral fisheries. [Reserved]

§ 665.261 Definitions.

As used in §§ 665.260 through 665.270:

Hawaii precious coral management unit species (Hawaii precious coral MUS) means any coral of the genus *Corallium* in addition to the following species of corals:

English common name	Scientific name
Pink coral (also known as red coral)	*Corallium secundum, Corallium regale, Corallium laauense.*
Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.
Bamboo coral	*Lepidisis olapa, Acanella* spp.

English common name	Scientific name
Black coral	*Antipathes griggi, Antipathes grandis, Antipathes ulex.*

Hawaii precious coral permit area means the area encompassing the precious coral beds within the EEZ around Hawaii. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds.

(i) Makapu'u (Oahu), Permit Area E–B–1, includes the area within a radius of 2.0 nm of a point at 21°18.0′ N. lat., 157°32.5′ W. long.

(ii) Au'au Channel (Maui), Permit Area E–B–2, includes the area west and south of a point at 21°10′ N. lat., 156°40′ W. long., and east of a point at 21° N. lat., 157° W. long., and west and north of a point at 20°45′ N. lat., 156°40′ W. long.

(2) Conditional beds.

(i) Keahole Point (Hawaii), Permit Area C–B–1, includes the area within a radius of 0.5 nm of a point at 19°46.0′ N. lat., 156°06.0′ W. long.

(ii) Kaena Point (Oahu), Permit Area C–B–2, includes the area within a radius of 0.5 nm of a point at 21°35.4′ N. lat., 158°22.9′ W. long.

(iii) Brooks Bank, Permit Area C–B–3, includes the area within a radius of 2.0 nm of a point at 24°06.0′ N. lat., 166°48.0′ W. long.

(iv) 180 Fathom Bank, Permit Area C–B–4, N.W. of Kure Atoll, includes the area within a radius of 2.0 nm of a point at 28°50.2′ N. lat., 178°53.4′ W. long.

(3) Refugia. Westpac Bed, Permit Area R–1, includes the area within a radius of 2.0 nm of a point at 23°18′ N. lat., 162°35′ W. long.

(4) Exploratory areas. Permit Area X–P–H includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the State of Hawaii.

§ 665.262 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining Hawaii precious coral MUS in any Hawaiian Archipelago precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.261.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.263 Prohibitions.

In addition to the general prohibitions specified in 50 CFR § 600.725 and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land precious coral in any Hawaii precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of Hawaii precious coral MUS in any precious coral permit area:

(1) By means of gear or methods prohibited by § 665.264.

(2) In refugia specified in § 665.261.

(3) In a bed for which the quota specified in § 665.269 has been attained.

(4) In violation of any permit issued under §§ 665.13 or 665.17.

(5) In a bed that has been closed pursuant to §§ 665.268 or 665.270.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.265 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.264 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.265 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Black coral. Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.266 Area restrictions.

Fishing for coral on the WestPac Bed is not allowed. The specific area closed to fishing is all waters within a 2-nm radius of the midpoint of 23°18.0′ N. lat., 162°35.0′ W. long.

§ 665.267 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year, except at the Makapu'u and Au'au Channel Beds, which have a two-year fishing period that begins July 1 and ends June 30, two years later.

§ 665.268 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or the end of the 2-year fishing period at Makapu'u Bed or Au'au Channel Bed, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.269 Quotas.

(a) General. The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.269(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) Conditional bed closure. A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) Reserves and reserve release. The quotas for exploratory area X–P–H will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the Hawaii exploratory areas will equal the quota minus the

estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of Hawaii precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) Quotas for precious coral permit areas.

Type of coral bed	Name of coral bed	Harvest quota in kilograms	Number of years
Established beds	Au'au Channel	Black: 5,000	2
	Makapu'u	Pink: 2,000	2
		Gold: 0 (zero)	
		Bamboo: 500	2
Conditional Beds	180 Fathom Bank	Pink: 222	1
		Gold: 67	1
		Bamboo: 56	1
	Brooks Bank	Pink: 444	1
		Gold: 133	1
		Bamboo: 111	1
	Kaena Point	Pink: 67	1
		Gold: 20	1
		Bamboo: 17	1
	Keahole Point	Pink: 67	1
		Gold: 20	1
		Bamboo: 17	1
Refugia	Westpac	All: 0 (zero)	
Exploratory Area	Hawaii	1,000 per area (all species combined except black corals)	1

Notes:
1. No fishing for coral is authorized in refugia.
2. A moratorium on gold coral harvesting is in effect through June 30, 2013.

§ 665.270 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

Subpart D—Mariana Archipelago Fisheries

§ 665.398 Management area.

The Mariana fishery management area is the EEZ seaward of Guam and CNMI with the inner boundary a line coterminous with the seaward boundaries of Guam and CNMI and the outer boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries.

§ 665.399 Area restrictions.

Anchoring by all fishing vessels over 50 ft (15.25 m) LOA is prohibited in the U.S. EEZ seaward of Guam west of 144°30′ E. long. except in the event of an emergency caused by ocean conditions or by a vessel malfunction that can be documented.

§ 665.400 Mariana bottomfish fisheries. [Reserved]

§ 665.401 Definitions.

As used in §§ 665.400 through 665.419:

CNMI commercial bottomfish permit means the permit required by § 665.404(a)(2) to engage in commercial fishing for Mariana bottomfish MUS in the CNMI management subarea.

Guam bottomfish permit means the permit required by § 665.404(a)(1) to use a large vessel to fish for, land, or transship Mariana bottomfish MUS shoreward of the outer boundary of the Guam subarea of the Mariana fishery management area.

Mariana bottomfish management unit species (Mariana bottomfish MUS) means the following fish:

Local name Chamorro/Carolinian	English common name	Scientific name
lehi/maroobw	red snapper, silvermouth	*Aphareus rutilans.*
gogunafon/aiwe	gray snapper, jobfish	*Aprion virescens.*
tarakitu/etam	Giant trevally, jack	*Caranx ignobilis.*
tarakiton attelong/orong	Black trevally, jack	*Caranx lugubris.*
gadao/meteyil	blacktip grouper	*Epinephelus fasciatus.*
bueli/bwele	lunartail grouper	*Variola louti.*
buninas agaga'/falaghal moroobw	red snapper	*Etelis carbunculus.*
abuninas/taighulupegh	red snapper	*Etelis coruscans.*
mafuti/atigh	redgill emperor	*Lethrinus rubrioperculatus.*
mafuti/loot	Ambon emperor	*Lethrinus amboinensis.*
funai/saas	blueline snapper	*Lutjanus kasmira.*
buninas/falaghal-maroobw	yellowtail snapper	*Pristipomoides auricilla.*
buninas or pakapaka/falaghal-maroobw	pink snapper	*Pristipomoides filamentosus.*
buninas/falaghal-maroobw	yelloweye snapper	*Pristipomoides flavipinnis.*
	pink snapper	*Pristipomoides seiboldii.*
buninas rayao amariyu/falaghal-maroobw	snapper	*Pristipomoides zonatus.*

Local name Chamorro/Carolinian	English common name	Scientific name
tarakiton tadong/meseyugh	amberjack	*Seriola dumerili.*

§ 665.402 Management subareas.

The Mariana fishery management area is divided into bottomfish management subareas with the following designations and boundaries:

(a) *Guam Management Subarea* means the EEZ seaward of the Territory of Guam, with the inner boundary defined as a line coterminous with the seaward boundary of the Territory of Guam.

(b) *CNMI Management Subarea* means the EEZ seaward of the CNMI. The CNMI Management Subarea is further divided into subareas with the following designations and boundaries:

(1) *CNMI Inshore Area* means that portion of the EEZ within 3 nautical miles from the shoreline of the CNMI.

(2) *CNMI Offshore Area* means that portion of the EEZ seaward of 3 nautical miles from the shoreline of the CNMI.

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries, except that the outer boundary of the CNMI Inshore Area is 3 nautical miles from the shoreline. The boundary between the fishery management areas of Guam and CNMI extends to those points which are equidistant between Guam and the island of Rota in the CNMI. CNMI and Guam management subareas are divided by a line intersecting these two points: 148° E. long., 12° N. lat., and 142° E. long., 16° N. lat.

§ 665.403 Bottomfish fishery area management.

(a) *Guam large vessel bottomfish prohibited area (Area GU–1).* A large vessel of the United States, as defined in § 665.12, may not be used to fish for Mariana bottomfish MUS in the Guam large vessel bottomfish prohibited area, defined as the U.S. EEZ waters surrounding Guam that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
GU–1–A	14°16′	144°17′.
GU–1–B	13°50′	143°52′.
GU–1–C	13°17′	143°46′.
GU–1–D	12°50′	143°54′.
GU–1–E	12°30′	144°14′.
GU–1–F	12°25′	144°51′.
GU–1–G	12°57′	145°33′.
GU–1–H	13°12′	145°43′.
GU–1–I	13°29′44″	145°48′27″.
GU–1–A	14°16′	144°17′.

(b) *CNMI medium and large vessel bottomfish prohibited areas.* A medium or large vessel of the United States, as defined in § 665.12, may not be used to fish commercially for Mariana bottomfish MUS in the following areas:

(1) *CNMI Southern Islands (Area NM–1).* The CNMI Southern Islands prohibited area is defined as the waters of the U.S. EEZ surrounding CNMI that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
NM–1–A	14°9′	144°15′
NM–1–B	16°10′47″	145°12′
NM–1–C	16°10′47″	146°53′
NM–1–D	14°48′	146°33′
NM–1–E	13°27′	145°43′
NM–1–A	14°9′	144°15′

(2) *CNMI Alamagan Island (Area NM–2).* The CNMI Alamagan Island prohibited area is defined as the waters of the U.S. EEZ surrounding CNMI that are enclosed by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
NM–2–A	17°26′	145°40′
NM–2–B	17°46′	145°40′
NM–2–C	17°46′	146°00′
NM–2–D	17°26′	146°00′
NM–2–A	17°26′	145°40′

§ 665.404 Permits.

(a) Applicability.

(1) Guam large vessel. The owner of any large vessel used to fish for, land, or transship Mariana bottomfish MUS shoreward of the outer boundary of the Guam subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(2) Commonwealth of the Northern Mariana Islands (CNMI) commercial. The owner of any vessel used to commercially fish for, transship, receive, or land Mariana bottomfish MUS shoreward of the outer boundary of the CNMI management subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(b) Submission. An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

§ 665.405 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for Mariana bottomfish MUS using gear prohibited under § 665.406.

(b) Use a large vessel that does not have a valid Guam bottomfish permit registered for use with that vessel to fish for, land, or transship Mariana bottomfish management unit species shoreward of the outer boundary of the Guam management subarea of the bottomfish fishery management area in violation of § 665.404(a).

(c) Use a large vessel to fish for Mariana bottomfish MUS within the Guam large vessel bottomfish prohibited area, as defined in § 665.403(a).

(d) Land or transship, shoreward of the outer boundary of the Guam management subarea of the bottomfish fishery management area, Mariana bottomfish MUS that were harvested in violation of § 665.405(c).

(e) Use a vessel to fish commercially for Mariana bottomfish MUS shoreward of the outer boundary of the CNMI management subarea without a valid CNMI commercial bottomfish permit registered for use with that vessel, in violation of § 665.404(a)(2).

(f) Use a medium or large vessel, as defined in § 665.12, to fish for Mariana bottomfish MUS within the CNMI medium and large vessel bottomfish prohibited areas, as defined in § 665.403(b).

(g) Retain, land, possess, sell, or offer for sale, shoreward of the outer boundary of the CNMI management subarea, Mariana bottomfish MUS that were harvested in violation of § 665.405(f), except that Mariana bottomfish MUS that are harvested legally may be transferred to a receiving vessel shoreward of the outer boundary of the CNMI medium and large vessel bottomfish prohibited area as defined in § 665.403(b).

(h) Falsify or fail to make, keep, maintain, or submit a Federal logbook as required under § 665.14(b) when using a vessel to engage in commercial fishing for Mariana bottomfish MUS shoreward

of the outer boundary of the CNMI management subarea in violation of § 665.14(b).

§ 665.406 Gear restrictions.

(a) Bottom trawls and bottom set gillnets. Fishing for bottomfish with bottom trawls and bottom set gillnets is prohibited.

(b) Possession of gear. Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 665.404 or otherwise established to be fishing for bottomfish in the management subareas is prohibited.

(c) Poisons and explosives. The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish is prohibited.

§ 665.407 At-sea observer coverage.

All fishing vessels subject to §§ 665.400 through 665.407 must carry an observer when directed to do so by the Regional Administrator.

§§ 665.408–665.419 [Reserved]

§ 665.420 Mariana coral reef ecosystem fisheries. [Reserved]

§ 665.421 Definitions.

As used in §§ 665.420 through 665.439:

Mariana coral reef ecosystem management unit species (Mariana coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

Mariana Currently Harvested Coral Reef Taxa:

Family name	Local name (Chamorro/Carolinian)	English common name	Scientific name
Acanthuridae (Surgeonfishes)		orange-spot surgeonfish	*Acanthurus olivaceus.*
	hugupao dangulo/mowagh	yellowfin surgeonfish	*Acanthurus xanthopterus.*
	kichu/limell	convict tang	*Acanthurus triostegus.*
		eye-striped surgeonfish	*Acanthurus dussumieri.*
		blue-lined surgeon	*Acanthurus nigroris.*
		whitebar surgeonfish	*Acanthurus leucopareius.*
		whitebar surgeonfish	*Acanthurus leucopareius.*
	hiyok/filaang	blue-banded surgeonfish	*Acanthurus lineatus.*
		blackstreak surgeonfish	*Acanthurus nigricauda.*
		whitecheek surgeonfish	*Acanthurus nigricans.*
		white-spotted surgeonfish	*Acanthurus guttatus.*
		ringtail surgeonfish	*Acanthurus blochii.*
		brown surgeonfish	*Acanthurus nigrofuscus.*
		mimic surgeonfish	*Acanthurus pyroferus.*
		Yellow tang	*Zebrasoma flavescens.*
		striped bristletooth	*Ctenochaetus striatus.*
		twospot bristletooth	*Ctenochaetus binotatus.*
	tataga/igh-falafal	bluespine unicornfish	*Naso unicornus.*
	hangon/bwulaalay	orangespine unicornfish	*Naso lituratus.*
		humpnose unicornfish	*Naso tuberosus.*
		black tongue unicornfish	*Naso hexacanthus.*
		bignose unicornfish	*Naso vlamingii.*
		whitemargin unicornfish	*Naso annulatus.*
		spotted unicornfish	*Naso brevirostris.*
		humpback unicornfish	*Naso brachycentron.*
		gray unicornfish	*Naso caesius.*
Balistidae (Triggerfishes)		titan triggerfish	*Balistoides viridescens.*
		clown triggerfish	*Balistoides conspicillum.*
		orange striped triggerfish	*Balistapus undulatus.*
		pinktail triggerfish	*Melichthys vidua.*
		black triggerfish	*Melichthys niger.*
		blue triggerfish	*Pseudobalistes fuscus.*
		Picassofish	*Rhinecanthus aculeatus.*
		wedged Picassofish	*Balistoides rectangulus.*
		bridled triggerfish	*Sufflamen fraenatus.*
Carangidae (Jacks)	atulai/peti	Bigeye scad	*Selar crumenophthalmus.*
		mackerel scad	*Decapterus macarellus.*
Carcharhinidae (Sharks)		grey reef shark	*Carcharhinus amblyrhynchos.*
		silvertip shark	*Carcharhinus albimarginatus.*
		Galapagos shark	*Carcharhinus galapagensis.*
		blacktip reef shark	*Carcharhinus melanopterus.*
		whitetip reef shark	*Triaenodon obesus.*
Holocentridae (Solderfish/Squirrelfish).	saksak/mweel	bigscale soldierfish	*Myripristis berndti.*
	sagamelon	bronze soldierfish	*Myripristis adusta.*
	sagamelon	blotcheye soldierfish	*Myripristis murdjan.*
	sagamelon	brick soldierfish	*Myripristis amaena.*
	sagamelon	scarlet soldierfish	*Myripristis pralinia.*
	sagamelon	violet soldierfish	*Myripristis violacea.*
	sagamelon	whitetip soldierfish	*Myripristis vittata.*
	sagamelon	yellowfin soldierfish	*Myripristis chryseres.*
	sagamelon	pearly soldierfish	*Myripristis kuntee.*
	sagamelon	tailspot squirrelfish	*Sargocentron caudimaculatum.*
		file-lined squirrelfish	*Sargocentron microstoma.*
	chalak	crown squirrelfish	*Sargocentron diadema.*

Family name	Local name (Chamorro/Carolinian)	English common name	Scientific name
	sagsag/leet	blue-lined squirrelfish	*Sargocentron tiere.*
	sisiok	saber or long jaw squirrelfish	*Sargocentron spiniferum.*
	sagsag/leet	spotfin squirrelfish	*Neoniphon* spp.
Kuhliidae (Flagtails)		barred flag-tail	*Kuhlia mugil.*
Kyphosidae (Rudderfish)	guili	rudderfish	*Kyphosus biggibus.*
	guili/schpwul	rudderfish	*Kyphosus cinerascens.*
	guilen puengi/reel	rudderfish	*Kyphosus vaigienses.*
Labridae (Wrasses)	tangison/maam	floral wrasse	*Cheilinus chlorourus.*
	tangison/maam	napoleon wrasse	*Cheilinus undulatus.*
	lalacha mamate/ porou	triple-tail wrasse	*Cheilinus trilobatus.*
		harlequin tuskfish, red-breasted wrasse.	*Cheilinus fasciatus.*
		ring-tailed wrasse	*Oxycheilinus unifasciatus.*
		razor wrasse	*Xyrichtys pavo.*
		whitepatch wrasse	*Xyrichtys aneitensis.*
		cigar wrasse	*Cheilio inermis.*
		blackeye thicklip	*Hemigymnus melapterus.*
		barred thicklip	*Hemigymnus fasciatus.*
		three-spot wrasse	*Halichoeres trimaculatus.*
		checkerboard wrasse	*Halichoeres hortulanus.*
		weedy surge wrasse	*Halichoeres margaritacous.*
		three-spot wrasse	*Halichoeres trimaculatus.*
		surge wrasse	*Thalassoma purpureum.*
		red ribbon wrasse	*Thalassoma quinquevittatum.*
		sunset wrasse	*Thalassoma lutescens.*
		longface wrasse	*Hologynmosus doliatus.*
		rockmover wrasse	*Novaculichthys taeniourus.*
Mullidae (Goatfishes)		yellow goatfish	*Mulloidichthys* spp.
	satmoneti/wichigh	yellowfin goatfish	*Mulloidichthys vanicolensis.*
	satmoneti (adult) ti´ao (juvenile)	yellowstripe goatfish	*Mulloidichthys flaviolineatus.*
		banded goatfish	*Parupeneus* spp.
	satmonetiyo/failighi	dash-dot goatfish	*Parupeneus barberinus.*
	satmoneti acho/ sungoongo	doublebar goatfish	*Parupeneus bifasciatus.*
		redspot goatfish	*Parupeneus heptacanthus.*
	satmoneti (adult) ti´ao (juvenile)	white-lined goatfish	*Parupeneus ciliatus.*
	satmoneti (adult) ti´ao (juvenile)	yellowsaddle goatfish	*Parupeneus cyclostomas.*
	satmoneti (adult) ti´ao (juvenile)	side-spot goatfish	*Parupeneus pleurostigma.*
	satmoneti (adult) ti´ao (juvenile)	multi-barred goatfish	*Parupeneus multifaciatus.*
		band tail goatfish	*Upeneus arge.*
Mugilidae (Mullets)	laiguan (adult) agues (juvenile)	striped mullet	*Mugil cephalus.*
	laiguan (adult) agues (juvenile)	Engel's mullet	*Moolgarda engeli.*
	laiguan (adult) agues (juvenile)	fringelip mullet	*Crenimugil crenilabis.*
Muraenidae (Moray eels)		yellowmargin moray eel	*Gymnothorax flavimarginatus.*
		giant moray eel	*Gymnothorax javanicus.*
		undulated moray eel	*Gymnothorax undulatus.*
Octopodidae (Octopus)	gamsun	octopus	*Octopus cyanea.*
	gamsun	octopus	*Octopus ornatus.*
Polynemidae		threadfin	*Polydactylus sexfilis.*
Pricanthidae (Bigeye)		glasseye	*Heteropriacanthus cruentatus.*
		Bigeye	*Priacanthus hamrur.*
Scaridae (Parrotfishes)	atuhong/roow	humphead parrotfish	*Bolbometopon muricatum.*
	palakse (sm.) laggua (lg.)	parrotfish	*Scarus* spp.
	gualafi/oscha	Pacific longnose parrotfish	*Hipposcarus longiceps.*
	palaksin chaguan	stareye parrotfish	*Calotomus carolinus.*
Scombridae	white tuna/ayul	dogtooth tuna	*Gymnosarda unicolor.*
Siganidae (Rabbitfish)	hiting/manahok/llegh	forktail rabbitfish	*Siganus aregentus.*
	hiting	golden rabbitfish	*Siganus guttatus.*
	hiting galagu	gold-spot rabbitfish	*Siganus punctatissimus.*
		Randall's rabbitfish	*Siganus randalli.*
	hiting/sesyon/palawa	scribbled rabbitfish	*Siganus spinus.*
	hiting	vermiculate rabbitfish	*Siganus vermiculatus.*
Sphyraenidae (Barracuda)		Heller's barracuda	*Sphyraena helleri.*
		great barracuda	*Sphyraena barracuda.*
Turbinidae (turban/green snails)	aliling pulan/aliling tulompu	green snails	*Turbo* spp.
		turban shells	

Mariana Potentially Harvested Coral Reef Taxa:

English common name	Scientific name
Wrasses (Those species not listed as Currently Harvested Coral Reef Taxa or CHCRT)	Labridae.
Sharks	Carcharhinidae, Sphyrnidae.
Rays and skates	Dasyatididae, Myliobatidae.
Groupers (Those species not listed as CHCRT or Bottomfish Management Unit Species or BMUS)	Serrandiae.
Jacks and Scads (Those species not listed as CHCRT or BMUS)	Carangidae.
Solderfishes and Squirrelfishes (Those species not listed as CHCRT)	Holocentridae.
Goatfishes (Those species not listed as CHCRT)	Mullidae.
Surgeonfishes (Those species not listed as CHCRT)	Acanthuridae.
Batfishes	Ephippidae.
Monos	Monodactylidae.
Sweetlips	Haemulidae.
Remoras	Echeneidae.
Tilefishes	Malacanthidae.
Emperors (Those species not listed as CHCRT)	Lethrinidae.
Dottybacks	Pseudochromidae.
Prettyfins	Plesiopidae.
Eels (Those species not listed as CHCRT)	Muraenidae, Chlopsidae, Congridae, Ophichthidae.
Cardinalfishes	Apogonidae.
Moorish Idols	Zanclidae.
Trumpetfish	*Aulostomus chinensis*.
Cornetfish	*Fistularia commersoni*.
Butterfly fishes	Chaetodontidae.
Angelfishes	Pomacanthidae.
Damselfishes	Pomacentridae.
Scorpionfishes	Scorpaenidae.
Coral crouchers	Caracanthidae.
Flashlightfishes	Anomalopidae.
Herrings	Clupeidae.
Anchovies	Engraulidae.
Gobies	Gobiidae.
Blennies	Blenniidae.
Barracudas (Those species not listed as CHCRT)	Sphyraenidae.
Snappers (Those species not listed as CHCRT or BMUS)	Lutjanidae.
Trigger fishes (Those species not listed as CHCRT)	Balistidae.
Rabbitfishes (Those species not listed as CHCRT)	Siganidae.
Sandperches	Pinguipedidae.
Dog tooth tuna	*Gymnosarda unicolor*.
Rudderfishes (Those species not listed as CHCRT)	Kyphosidae.
Flounders, Soles	Bothidae Soleidae.
Trunkfishes	Ostraciidae.
Fusiliers	Caesionidae.
Hawkfishes	Cirrhitidae.
Frogfishes	Antennariidae.
Pipefishes, Seahorses	Syngnathidae.
Puffer fishes, Porcupine fishes	Tetradontidae.
Blue corals	Heliopora.
Organpipe corals	Tubipora.
Ahermatypic corals	Azooxanthellates.
Sea cucumbers, Sea urchins (Those species not listed as CHCRT)	Echinoderms.
	Mollusca.
Sea snails	Gastropoda.
Turban shells	*Trochus* spp.
Sea slugs	Opistobranchs.
Black lipped pearl oyster	*Pinctada margaritifera*.
Giant clam	Tridacnidae.
Other Clams	Other Bivalves.
Mushroom corals	Fungiidae.
Small and large coral polyps.	
Fire corals	Millepora.
Soft corals, Gorgonians.	
Anemones	Actinaria.
Soft zoanthid corals	Zoanthinaria.
	Hydrozoans, Bryzoans.
Sea squirts	Tunicates.
Sponges	Porifera.
	Cephalopods.
Lobsters, Shrimps/Mantis shrimps, true crabs and hermit crabs (Those species not listed as CMUS)	Crustacea.
Lace corals	Stylasteridae.
Hydroid corals	Solanderidae.
Seaweed	Algae.

English common name	Scientific name
Segmented worms ..... Live rock.	Annelids.

All other Mariana coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the Mariana CHCRT table or are not Mariana bottomfish, crustacean, precious coral or western Pacific pelagic MUS.

§ 665.422 Management area.

The Mariana coral reef management area consists of the U.S. EEZ around Guam and the offshore area of the CNMI or that portion of the U.S. EEZ around CNMI between three nautical miles offshore and the outer boundary of the U.S. EEZ. The inner boundary of the management area is the seaward boundaries of the Territory of Guam, and a line three nautical miles seaward from the shoreline of CNMI. The outer boundary of the management area is the outer boundary of the U.S. EEZ or adjacent international maritime boundaries. The CNMI and Guam management area is divided by a line intersecting these two points: 148° E. long., 12° N. lat., and 142° E. long., 16° N. lat.

§ 665.423 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Mariana coral reef ecosystem management area, fishing for Mariana coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.424 Permits and fees.

(a) Applicability. Unless otherwise specified in this subpart, § 665.13 applies to coral reef ecosystem permits.

(1) Special permit. Any person of the United States fishing for, taking or retaining Mariana coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) Mariana coral reef ecosystem MUS in low-use MPAs as defined in § 665.399;

(ii) Mariana Potentially Harvested Coral Reef Taxa in the coral reef ecosystem management area; or

(iii) Mariana Coral reef ecosystem MUS in the Mariana coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) Transshipment permit. A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the Mariana coral reef ecosystem management area to land or transship Mariana PHCRT, or any Mariana coral reef ecosystem MUS harvested within low-use MPAs.

(3) Exceptions. The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches Mariana coral reef ecosystem MUS while fishing for bottomfish management unit species, crustacean management unit species, western Pacific pelagic management unit species, precious coral, or seamount groundfish.

(ii) Any person fishing for Mariana CHCRT outside of an MPA, who does not retain any incidentally caught Mariana PHCRT.

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) Validity. Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) Special permit. The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) Application. An applicant for a special or transshipment permit issued under this section must complete, and submit to the Regional Administrator, a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to, a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.,* stored live, fresh, frozen, preserved; sold for food, ornamental, research, or other use; and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) Incomplete applications. The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected and completed in writing.

(3) Issuance.

(i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the U.S. Coast Guard, the fishery management agency of the affected State, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected State fishery management agency concerning the permit application, and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to, issues related to spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including, but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) Appeals of permit actions.

(i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) The Regional Administrator may extend, for good cause, any time limit prescribed in this section for a period not to exceed 30 days, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 665.425 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15 of this part, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any Mariana coral reef ecosystem MUS in any low-use MPA as defined in § 665.399 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.424 of this part; or

(3) The Mariana coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any Mariana coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator.

(2) By means of gear or methods prohibited under § 665.427.

(3) In a low-use MPA without a valid special permit.

(4) In violation of any permit issued under §§ 665.13 or 665.424.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.426 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any Mariana coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.427 Allowable gear and gear restrictions.

(a) Mariana coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;

(2) Spear;

(3) Slurp gun;

(4) Hand net/dip net;

(5) Hoop net for Kona crab;

(6) Throw net;

(7) Barrier net;

(8) Surround/purse net that is attended at all times;

(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);

(10) Crab and fish traps with vessel ID number affixed; and

(11) Remote-operating vehicles/submersibles.

(b) Mariana coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for Mariana coral reef ecosystem MUS in the management area is prohibited.

(c) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(d) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected State fishery management agency.

§ 665.428 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.424 or that is otherwise established to be fishing for Mariana coral reef ecosystem MUS in the management area.

(b) Enforcement action.

(1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.429–665.439 [Reserved]

§ 665.440 Mariana crustacean fisheries. [Reserved]

§ 665.441 Definitions.

As used in §§ 665.440 through 665.459:

Crustacean Permit Area 5 (Permit Area 5) means the EEZ around Guam and the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

Mariana crustacean management unit species means the following crustaceans:

Local name	English common name	Scientific name
Mahonggang	spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*
pa'pangpang	slipper lobster	Scyllaridae.
	Kona crab	*Ranina ranina.*
	deepwater shrimp	*Heterocarpus* spp.

§ 665.442 Permits.

(a) Applicability.

(1) The owner of any vessel used to fish for lobster in Permit Area 3, must have a permit issued for such a vessel.

(2) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Area 5 must have a permit issued for that vessel.

(b) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) Application. An application for a permit required under this section shall be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

§ 665.443 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person in Crustacean Permit Area 5 to fish for, take, or retain deepwater shrimp without a permit issued under § 665.442.

§ 665.444 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (2) of this section at least 30 days prior to the opening of the fishing season.

§ 665.445 At-sea observer coverage.

All fishing vessels subject to §§ 665.440 through 665.445 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§§ 665.446–665.459 [Reserved]

§ 665.460 Mariana precious coral fisheries. [Reserved]

§ 665.461 Definitions.

Mariana precious coral management unit species means any coral of the genus *Corallium* in addition to the following species of corals:

English common name	Scientific name
Pink coral (also known as red coral).	*Corallium secundum, Corallium regale, Corallium laauense.*

English common name	Scientific name
Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.
Bamboo coral	*Lepidisis olapa, Acanella* spp.
Black coral	*Antipathes dichotoma, Antipathes grandis, Antipathes ulex.*

Mariana precious coral permit area means the area encompassing the precious coral beds within the EEZ around the Mariana Archipelago. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds. [*Reserved*]

(2) Conditional beds. [*Reserved*]

(3) Refugia. [*Reserved*]

(4) Exploratory Area.

(i) Permit Area X–P–G includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of Guam.

(ii) Permit Area X–P–CNMI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

§ 665.462 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining Mariana precious coral MUS in any Mariana Archipelago precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.461.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.463 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land Mariana precious coral MUS in any Mariana precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of Mariana precious coral MUS in any Mariana precious coral permit area:

(1) By means of gear or methods prohibited by § 665.464.

(2) In refugia specified in § 665.461.

(3) In a bed for which the quota specified in § 665.467 has been attained.

(4) In violation of any permit issued under §§ 665.13 or 665.17.

(5) In a bed that has been closed pursuant to §§ 665.466 or 665.469.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.465 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.464 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.465 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Black coral. Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.466 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.467 Quotas.

(a) General. The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.467(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) Conditional bed closure. A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) Reserves and reserve release. The quotas for exploratory areas X–P–G and X–P–CNMI will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the Guam and CNMI exploratory areas will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) The Guam and CNMI exploratory permit areas, X–P–GU and X–P–CNMI, each have annual quotas of 1,000 kg for all precious coral management unit species combined with the exception of black corals.

§ 665.468 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

§ 665.469 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

Subpart E—Pacific Remote Island Area Fisheries

§ 665.598 Management area.

The PRIA fishery management area is the EEZ seaward of Palmyra Atoll,

Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island, Pacific Remote Island Areas with the inner boundary a line coterminous with the seaward boundaries of the above atolls, reefs and islands PRIA and the outer boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries.

§ 665.599 Area restrictions.

(a) Fishing is prohibited in all no-take MPAs. The following U.S. EEZ waters are no-take MPAs: Landward of the 50 fathom (fm) (91.5 m) curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153.

(b) Low-use MPAs. The following U.S. EEZ waters in the Western Pacific Region are low-use MPAs: All waters between the shoreline and the 50 fm (91.5 m) curve around Johnston Atoll, Palmyra Atoll, and Wake Island as depicted on National Ocean Survey Chart Numbers 83637, 83157 and 81664.

§ 665.600 PRIA bottomfish fisheries. [Reserved]

§ 665.601 Definitions.

As used in §§ 665.600 through 665.619:

PRIA bottomfish fishing permit means the permit required by § 665.603 to use a vessel to fish for PRIA bottomfish management unit species in the EEZ around the PRIA, or to land bottomfish MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

PRIA bottomfish management unit species (PRIA bottomfish MUS) means the following fish:

English common name	Scientific name
Silver jaw jobfish	*Aphareus rutilans*
Giant trevally	*Caranx ignobilis*
Black jack	*Caranx lugubris*
Blacktip grouper	*Epinephelus fasciatus*
Sea bass	*Epinephelus quernus*
Red snapper	*Etelis carbunculus*
Longtail snapper	*Etelis coruscans*
Redgill emperor	*Lethrinus rubrioperculatus*
Yellowtail snapper	*Pristipomoides auricilla*
Pink snapper	*Pristipomoides filamentosus*
Pink snapper	*Pristipomoides seiboldii*
Lunartail, lyretail grouper	*Variola louti*

§ 665.602 [Reserved]

§ 665.603 Permits.

(a) Applicability. PRIA. The owner of any vessel used to fish for, land, or transship PRIA bottomfish MUS shoreward of the outer boundary of the PRIA subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(b) Submission. An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

§ 665.604 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.16, it is unlawful for any person to do any of the following:

(a) Fish for PRIA bottomfish MUS using gear prohibited under § 665.605.

(b) Fish for, or retain on board a vessel, PRIA bottomfish MUS in the PRIA without the appropriate permit registered for use with that vessel issued under § 665.13.

(c) Falsify or fail to make or file all reports of PRIA bottomfish MUS landings taken in the PRIA, containing all data in the exact manner, as specified in § 665.14(b).

§ 665.605 Gear restrictions.

(a) Bottom trawls and bottom set gillnets. Fishing for PRIA bottomfish MUS with bottom trawls and bottom set gillnets is prohibited.

(b) Possession of gear. Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 665.603 or otherwise established to be fishing for PRIA bottomfish MUS in the PRIA fishery management area is prohibited.

(c) Poisons and explosives. The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting PRIA bottomfish is prohibited.

§ 665.606 At-sea observer coverage.

All fishing vessels subject to §§ 665.600 through 665.606 must carry an observer when directed to do so by the Regional Administrator.

§§ 665.607–665.619 [Reserved]

§ 665.620 PRIA coral reef ecosystem fisheries. [Reserved]

§ 665.621 Definitions.

As used in §§ 665.620 through 665.639:

PRIA coral reef ecosystem management unit species (PRIA coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

PRIA Currently Harvested Coral Reef Taxa:

Family name	English common name	Scientific name
Acanthuridae (Surgeonfishes)	orange-spot surgeonfish	*Acanthurus olivaceus.*
	yellowfin surgeonfish	*Acanthurus xanthopterus.*
	convict tang	*Acanthurus triostegus.*
	eye-striped surgeonfish	*Acanthurus dussumieri.*
	blue-lined surgeon	*Acanthurus nigroris.*
	Whitebar surgeonfish	*Acanthurus leucopareius.*
	blue-banded surgeonfish	*Acanthurus lineatus.*

Family name	English common name	Scientific name
	blackstreak surgeonfish	*Acanthurus nigricauda.*
	whitecheek surgeonfish	*Acanthurus nigricans.*
	white-spotted surgeonfish	*Acanthurus guttatus.*
	Ringtail surgeonfish	*Acanthurus blochii.*
	brown surgeonfish	*Acanthurus nigrofuscus.*
	yellow-eyed surgeonfish	*Ctenochaetus strigosus.*
	striped bristletooth	*Ctenochaetus striatus.*
	twospot bristletooth	*Ctenochaetus binotatus.*
	yellow tang	*Zebrasoma flavescens.*
	bluespine unicornfish	*Naso unicornus.*
	orangespine unicornfish	*Naso lituratus.*
	black tongue unicornfish	*Naso hexacanthus.*
	bignose unicornfish	*Naso vlamingii.*
	whitemargin unicornfish	*Naso annulatus.*
	spotted unicornfish	*Naso brevirostris.*
Labridae (Wrasses)	Napoleon wrasse	*Cheilinus undulatus.*
	triple-tail wrasse	*Cheilinus trilobatus.*
	floral wrasse	*Cheilinus chlorourus.*
	ring-tailed wrasse	*Oxycheilinus unifasciatus.*
	bandcheek wrasse	*Oxycheilinus diagrammus.*
	barred thicklip	*Hemigymnus fasciatus.*
	three-spot wrasse	*Halichoeres trimaculatus.*
	red ribbon wrasse	*Thalassoma quinquevittatum.*
	sunset wrasse	*Thalassoma lutescens.*
Mullidae (Goatfishes)	yellow goatfish	*Mulloidichthys* spp.
	orange goatfish	*Mulloidichthys pfleugeri.*
	yellowstripe goatfish	*Mulloidichthys flavolineatus.*
	banded goatfish	*Parupeneus* spp.
Mullidae (Goatfishes)	dash-dot goatfish	*Parupeneus barberinus.*
	yellowsaddle goatfish	*Parupeneus cyclostomas.*
	multi-barred goatfish	*Parupeneus multifaciatus.*
	bantail goatfish	*Upeneus arge.*
Mugilidae (Mullets)	fringelip mullet	*Crenimugil crenilabis.*
	engel's mullet	*Moolgarda engeli.*
	false mullet	*Neomyxus leuciscus.*
Muraenidae (Moray eels)	yellowmargin moray eel	*Gymnothorax flavimarginatus.*
	giant moray eel	*Gymnothorax javanicus.*
	undulated moray eel	*Gymnothorax undulatus.*
Octopodidae	Octopus	*Octopus cyanea.*
	Octopus	*Octopus ornatus.*
Pricanthidae (Bigeye)	Glasseye	*Heteropriacanthus cruentatus.*
Scaridae (Parrotfishes)	Humphead parrotfish	*Bolbometopon muricatum.*
	parrotfish	*Scarus* spp.
	pacific longnose parrotfish	*Hipposcarus longiceps.*
	stareye parrotfish	*Calotomus carolinus.*
Scombridae	Dogtooth tuna	*Gymnosarda unicolor.*
Sphyraenidae (Barracuda)	great barracuda	*Sphyraena barracuda.*

PRIA Potentially Harvested Coral Reef Taxa:

English common name	Scientific name
wrasses (Those species not listed as CHCRT)	Labridae.
sharks (Those species not listed as CHCRT)	Carcharhinidae, Sphyrnidae.
rays and skates	Myliobatidae, Mobulidae.
groupers (Those species not listed as CHCRT or as BMUS)	Serrandiae.
jacks and scads (Those species not listed as CHCRT or as BMUS)	Carangidae.
solderfishes and squirrelfishes (Those species not listed as CHCRT)	Holocentridae.
goatfishes (Those species not listed as CHCRT)	Mullidae.
Batfishes	Ephippidae.
Sweetlips	Haemulidae.
Remoras	Echeneidae.
Tilefishes	Malacanthidae.
Dottybacks	Pseudochromidae.
Prettyfins	Plesiopidae.
surgeonfishes (Those species not listed as CHCRT)	Acanthuridae.
emperors (Those species not listed as CHCRT or as BMUS)	Lethrinidae.
Herrings	Clupeidae.
Gobies	Gobiidae.
snappers (Those species not listed as CHCRT or as BMUS)	Lutjanidae.
trigger fishes (Those species not listed as CHCRT)	Balistidae.

English common name	Scientific name
rabbitfishes (Those species not listed as CHCRT)	Siganidae.
eels (Those species not listed as CHCRT)	Muraenidae, Chlopsidae, Congridae, Ophichthidae.
Cardinalfishes	Apogonidae.
moorish idols	Zanclidae.
butterfly fishes	Chaetodontidae.
Angelfishes	Pomacanthidae.
Damselfishes	Pomacentridae.
Scorpionfishes	Scorpaenidae.
Blennies	Blenniidae.
barracudas (Those species not listed as CHCRT)	Sphyraenidae.
Sandperches	Pinguipedidae.
rudderfishes (Those species not listed as CHCRT)	Kyphosidae.
Fusiliers	Caesionidae.
hawkfishes (Those species not listed as CHCRT)	Cirrhitidae.
Frogfishes	Antennariidae.
pipefishes, seahorses	Syngnathidae.
flounders, soles	Bothidae.
Trunkfishes	Ostraciidae.
puffer fishes, porcupine fishes	Tetradontidae.
Trumpetfish	*Aulostomus chinensis*.
Cornetfish	*Fistularia commersoni*.
blue corals	Heliopora.
organpipe corals	Tubipora.
ahermatypic corals	Azooxanthellates.
mushroom corals	Fungiidae.
small and large coral polyps	
fire corals	Millepora.
soft corals, gorgonians	
Anemones	Actinaria.
soft zoanthid corals	Zoanthinaria.
	Hydrozoans, Bryzoans.
sea squirts	Tunicates.
sea cucumbers and sea urchins	Echinoderms.
Those species not listed as CHCRT	Mollusca.
sea snails	Gastropoda.
	Trochus.
sea slugs	Opistobranchs.
black lipped pearl oyster	*Pinctada margaritifera*.
giant clam	Tridacnidae.
other clams	Other Bivalves.
	Cephalopods.
lobsters, shrimps/mantis shrimps, true crabs and hermit crabs (Those species not listed as CMUS).	Crustaceans.
Sponges	Porifera.
lace corals	Stylasteridae.
hydroid corals	Solanderidae.
segmented worms	Annelids.
Seaweed	Algae.
Live rock	
All other PRIA coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the PRIA CHCRT table or are not PRIA bottomfish, crustacean, precious coral, or western Pacific pelagic MUS.	

§ 665.622 [Reserved]

§ 665.623 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the PRIA fishery management area, fishing for PRIA coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.624 Permits and fees.

(a) Applicability. Unless otherwise specified in this subpart, § 665.13 applies to coral reef ecosystem permits.

(1) Special permit. Any person of the United States fishing for, taking or retaining PRIA coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) PRIA Coral reef ecosystem MUS in low-use MPAs as defined in § 665.599;

(ii) PRIA Potentially Harvested Coral Reef Taxa in the PRIA coral reef ecosystem management area; or

(iii) PRIA Coral reef ecosystem MUS in the PRIA coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) Transshipment permit. A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the PRIA coral reef ecosystem management area to land or transship PRIA PHCRT, or any PRIA coral reef ecosystem MUS harvested within low-use MPAs.

(3) Exceptions. The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches PRIA coral reef ecosystem MUS while fishing for bottomfish management unit

species, crustacean management unit species, western Pacific pelagic management unit species, precious coral, or seamount groundfish.

(ii) Any person fishing for PRIA CHCRT outside of an MPA, who does not retain any incidentally caught PRIA PHCRT.

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) Validity. Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) Special permit. The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) Application. An applicant for a special or transshipment permit issued under this section must complete and submit to the Regional Administrator a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to, a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.,* stored live, fresh, frozen, preserved; sold for food, ornamental, research, or other use; and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) Incomplete applications. The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected and completed in writing.

(3) Issuance.

(i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the U.S. Coast Guard, the fishery management agency of the affected State, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected State fishery management agency concerning the permit application and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to issues related to, spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) Appeals of permit actions.

(i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form

as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator shall notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) The Regional Administrator may, for good cause, extend any time limit prescribed in this section for a period not to exceed 30 days, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

§ 665.625 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any PRIA coral reef ecosystem MUS in any low-use MPA as defined in § 665.599 unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in § 665.624;

(3) The PRIA coral reef ecosystem MUS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any PRIA coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator.

(2) By means of gear or methods prohibited under § 665.627.

(3) In a low-use MPA without a valid special permit.

(4) In violation of any permit issued under §§ 665.13 or 665.624.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

§ 665.626 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any PRIA coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.627 Allowable gear and gear restrictions.

(a) Coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;

(2) Spear;

(3) Slurp gun;

(4) Hand net/dip net;

(5) Hoop net for Kona crab;

(6) Throw net;

(7) Barrier net;

(8) Surround/purse net that is attended at all times;

(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);

(10) Crab and fish traps with vessel ID number affixed; and

(11) Remote-operating vehicles/submersibles.

(b) PRIA coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for coral reef ecosystem MUS in the management area is prohibited.

(c) PRIA coral reef ecosystem MUS may not be taken by means of spearfishing with SCUBA at night (from 6 p.m. to 6 a.m.) in the U.S. EEZ waters around Howland Island, Baker Island, Jarvis Island, Wake Island, Kingman Reef, Johnston Atoll and Palmyra Atoll.

(d) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(e) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected State fishery management agency.

§ 665.628 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.624 or that is otherwise established to be fishing for PRIA coral reef ecosystem MUS in the PRIA fishery management area.

(b) Enforcement action.

(1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the PRIA fishery management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

(2) Unattended surround nets or bait seine nets found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§§ 665.629–665.639 [Reserved]

§ 665.640 PRIA crustacean fisheries. [Reserved]

§ 665.641 Definitions.

As used in §§ 665.640 through 665.659:

Crustacean Permit Area 4 (Permit Area 4) means the EEZ around Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island.

PRIA crustacean fishing permit means the permit required by § 665.642 to use

a vessel to fish for PRIA crustacean management unit species in the PRIA fishery management area, or to land crustacean MUS shoreward of the outer boundary of the PRIA fishery management area.

PRIA crustacean management unit species means the following crustaceans:

English common name	Scientific name
Spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*
Slipper lobster	Scyllaridae.
Kona crab	*Ranina ranina.*
Deepwater shrimp	*Heterocarpus* spp.

§ 665.642 Permits.

(a) Applicability.

(1) The owner of any vessel used to fish for lobster in Permit Area 4 must have a permit issued for that vessel.

(2) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Area 4 must have a permit issued for that vessel.

(b) General requirements. General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) Application. An application for a permit required under this section will be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

§ 665.643 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person in Crustacean Permit Area 4 to fish for, take, or retain deepwater shrimp without a permit issued under § 665.642.

§ 665.644 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (2) of this section at least 30 days prior to the opening of the fishing season.

§ 665.645 At-sea observer coverage.

All fishing vessels subject to §§ 665.640 through 665.645 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§§ 665.646–665.659 [Reserved]

§ 665.660 PRIA precious coral fisheries. [Reserved]

§ 665.661 Definitions.

As used in §§ 665.660 through 665.669:

PRIA precious coral management unit species (PRIA precious coral MUS) means any coral of the genus *Corallium* in addition to the following species of corals:

English common name	Scientific name
Pink coral (also known as red coral)	*Corallium secundum, Corallium regale, Corallium laauense.*
Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.
Bamboo coral	*Lepidisis olapa, Acanella* spp.
Black coral	*Antipathes dichotoma, Antipathes grandis, Antipathes ulex.*

PRIA precious coral permit area means the area encompassing the precious coral beds within the EEZ around the PRIA. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds. [Reserved]

(2) Conditional beds. [Reserved]

(3) Refugia. [Reserved]

(4) Exploratory Area. Permit Area X–P–PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll and Wake Island.

§ 665.662 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining PRIA precious coral MUS in any PRIA precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.661.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.663 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land PRIA precious coral MUS in any precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of PRIA precious coral MUS in any precious coral permit area:

(1) By means of gear or methods prohibited by § 665.664.

(2) In refugia specified in § 665.661.

(3) In a bed for which the quota specified in § 665.667 has been attained.

(4) In violation of any permit issued under §§ 665.13 or 665.17.

(5) In a bed that has been closed pursuant to §§ 665.666 or 665.669.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.665 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.664 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.665 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Black coral. Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.666 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.667 Quotas.

(a) General. The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.667(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) Conditional bed closure. A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) Reserves and reserve release. The quotas for exploratory area, X–P–PI, will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the PRIA exploratory area will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1–December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) PRIA exploratory permit area, X–P–PI, has an annual quota of 1,000 kg for all precious coral MUS combined with the exception of black corals.

§ 665.668 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

§ 665.669 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

Subpart F—Western Pacific Pelagic Fisheries

§ 665.798 Management area.

The western Pacific Pelagic fishery management area includes all areas of fishing operations in the EEZ or on the high seas for any vessels of the United States or persons that:

(a) Fish for, possess, or transship western Pacific pelagic fishery management unit species (MUS) within the EEZ waters around American Samoa, CNMI, Guam, Hawaii, or PRIA; or

(b) Land western Pacific pelagic fishery MUS in American Samoa, CNMI, Guam, Hawaii, or PRIA.

§ 665.799 Area restrictions.

(a) Fishing is prohibited in all no-take MPAs designated in this section.

(b) No-take MPAs. The following U.S. EEZ waters are no-take MPAs:

(1) Landward of the 50-fathom (fm) (91.5-m) curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153;

(2) Landward of the 50-fm (91.5-m) curve around Rose Atoll, as depicted on National Ocean Survey Chart Number 83484.

§ 665.800 Definitions.

As used in §§ 665.798 through 665.818:

American Samoa longline limited access permit means the permit required by § 665.801 to use a vessel shoreward of the outer boundary of the EEZ around American Samoa to fish for western Pacific pelagic MUS using longline gear or to land or transship western Pacific pelagic MUS that were caught in the EEZ around American Samoa using longline gear.

American Samoa pelagics mailing list means the list maintained by PIRO of names and mailing addresses of parties interested in receiving notices of availability for American Samoa longline limited access permits.

Basket-style longline gear means a type of longline gear that is divided into units called ''baskets'' each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

Deep-set or Deep-setting means the deployment of, or deploying, respectively, longline gear in a manner consistent with all the following criteria: with all float lines at least 20 meters in length; with a minimum of 15 branch lines between any two floats (except basket-style longline gear which may have as few as 10 branch lines between any two floats); without the use of light sticks; and resulting in the possession or landing of no more than 10 swordfish (*Xiphias gladius*) at any time during a given trip. As used in this definition ''float line'' means a line used to suspend the main longline beneath a float and ''light stick'' means any type of light emitting device, including any fluorescent ''glow bead,'' chemical, or electrically powered light that is affixed underwater to the longline gear.

Fish dealer means any person who:

(1) Obtains, with the intention to resell, western Pacific pelagic MUS, or portions thereof, that were harvested or received by a vessel that holds a permit

or is otherwise regulated under bottomfish fisheries in this subpart; or

(2) Provides recordkeeping, purchase, or sales assistance in obtaining or selling such MUS (such as the services provided by a wholesale auction facility).

Hawaii longline limited access permit means the permit required by § 665.801 to use a vessel to fish for western Pacific pelagic MUS with longline gear in the EEZ around Hawaii or to land or transship longline-caught western Pacific pelagic MUS shoreward of the outer boundary of the EEZ around Hawaii.

Longline fishing prohibited area means the portions of the EEZ in which longline fishing is prohibited as specified in § 665.806.

Longline fishing vessel means a vessel that has longline gear on board the vessel.

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nm in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone as defined in § 665.806, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

Pelagic handline fishing means fishing for western Pacific pelagic MUS from a stationary or drifting vessel using hook and line gear other than longline gear.

Pelagic troll fishing (trolling) means fishing for western Pacific pelagic MUS from a moving vessel using hook and line gear.

PRIA pelagic troll and handline fishing permit means the permit required by § 665.801 to use a vessel shoreward of the outer boundary of the EEZ around the PRIA to fish for western Pacific pelagic MUS using pelagic handline or troll fishing methods.

Receiving vessel permit means a permit required by § 665.801(c) for a receiving vessel to transship or land western Pacific pelagic MUS taken by other vessels using longline gear.

Shallow-set or shallow-setting means the deployment of, or deploying, respectively, longline gear in a manner that does not meet the definition of deep-set or deep-setting as defined in this section.

Shallow-set certificate means an original paper certificate that is issued by NMFS and valid for one shallow-set of longline gear (more than one nautical mile of deployed longline gear is a complete set) for sets that start during the period of validity indicated on the certificate.

Squid jig fishing means fishing for squid that are western Pacific pelagic MUS using a hook or hooks attached to a line that is raised and lowered in the water column by manual or mechanical means.

Western Pacific general longline permit means the permit authorized under § 665.801 to use a vessel shoreward of the outer boundary of the EEZ around Guam, CNMI, Johnston or Palmyra Atolls, Kingman Reef, or Wake, Jarvis, Baker or Howland Islands to fish for western Pacific pelagic MUS using longline gear or to land or to transship western Pacific pelagic MUS that were caught using longline gear.

Western Pacific pelagic management unit species means the following species:

English common name	Scientific name
Tunas:	
Albacore	*Thunnus alalunga*
bigeye tuna	*Thunnus obesus*
yellowfin tuna	*Thunnus albacares*
northern bluefin tuna	*Thunnus thynnus*
skipjack tuna	*Katsuwonus pelamis*
Kawakawa	*Euthynnus affinis*
other tuna relatives	*Auxis* spp., *Scomber* spp., *Allothunnus* spp.
Billfishes:	
Indo-Pacific blue marlin	*Makaira mazara*
black marlin	*Makaira indica*
striped marlin	*Tetrapturus audax*
shortbill spearfish	*Tetrapturus angustirostris*
Swordfish	*Xiphias gladius*
Sailfish	*Istiophorus platypterus*
Sharks:	
pelagic thresher shark	*Alopias pelagicus*
bigeye thresher shark	*Alopias superciliosus*
common thresher shark	*Alopias vulpinus*
silky shark	*Carcharhinus falciformis*
oceanic whitetip shark	*Carcharhinus longimanus*
blue shark	*Prionace glauca*
shortfin mako shark	*Isurus oxyrinchus*
longfin mako shark	*Isurus paucus*
salmon shark	*Lamna ditropis*
Other pelagic fishes:	
mahimahi (dolphinfish)	*Coryphaena* spp.
Wahoo	*Acanthocybium solandri*
Moonfish	*Lampris* spp.
Oilfish	*Gempylidae*
Pomfret	*Bramidae*
Squid:	
diamondback squid	*Thysanoteuthis rhombus*
neon flying squid	*Ommastrephes bartramii*
purpleback flying squid	*Sthenoteuthis oualaniensis*

§ 665.801 Permits.

(a) A vessel of the United States must be registered for use with a valid permit under the High Seas Fishing Compliance Act if that vessel is used to fish on the high seas, as required under § 300.15 of this title.

(b) A vessel of the United States must be registered for use under a valid Hawaii longline limited access permit if that vessel is used:

(1) To fish for western Pacific pelagic MUS using longline gear in the EEZ around the Hawaiian Archipelago; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around the Hawaiian Archipelago, western Pacific pelagic MUS that were harvested using longline gear.

(c) A vessel of the United States must be registered for use under a valid American Samoa longline limited access permit, in accordance with § 665.816, if that vessel is used to:

(1) Fish for western Pacific pelagic MUS using longline gear in the EEZ around American Samoa;

(2) Land shoreward of the outer boundary of the EEZ around American Samoa western Pacific pelagic MUS that were harvested using longline gear in the EEZ around American Samoa; or

(3) Transship shoreward of the outer boundary of the EEZ around American Samoa western Pacific pelagic MUS that were harvested using longline gear in the EEZ around American Samoa or on the high seas.

(d) A vessel of the United States must be registered for use under a valid western Pacific general longline permit, American Samoa longline limited access permit, or Hawaii longline limited access permit if that vessel is used to:

(1) Fish for western Pacific pelagic MUS using longline gear in the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll); or

(2) Land or transship shoreward of the outer boundary of the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll), western Pacific pelagic MUS that were harvested using longline gear.

(e) A receiving vessel of the United States must be registered for use with a valid receiving vessel permit if that vessel is used to land or transship, shoreward of the outer boundary of the EEZ around American Samoa, Hawaii, Guam, CNMI, or PRIA, western Pacific pelagic MUS that were harvested using longline gear.

(f) A vessel of the United States must be registered for use with a valid PRIA pelagic troll and handline fishing permit if that vessel is used to fish for western Pacific pelagic MUS using pelagic handline or trolling fishing methods in the EEZ around the PRIA (with the exception of Midway Atoll).

(g) A vessel of the United States must be registered for use under a Western Pacific squid jig fishing permit, if that vessel is more than 50 ft (15.4 m) LOA and is used to squid jig fish in EEZ waters around American Samoa, CNMI, Guam, Hawaii, or PRIA.

(h) Any required permit must be valid and on board the vessel and available for inspection by an authorized agent, except that, if the permit was issued (or registered to the vessel) during the fishing trip in question, this requirement applies only after the start of any subsequent fishing trip.

(i) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(j) An application for a permit required under this section will be submitted to PIRO as described in § 665.13.

(k) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, and sanctions for permits issued under this section, as applicable, are contained in § 665.13.

(l) A Hawaii longline limited access permit may be transferred as follows:

(1) The owner of a Hawaii longline limited access permit may apply to transfer the permit:

(i) To a different person for registration for use with the same or another vessel; or

(ii) For registration for use with another U.S. vessel under the same ownership.

(2) [Reserved]

(m) A Hawaii longline limited access permit will not be registered for use with a vessel that has a LOA greater than 101 ft (30.8 m).

(n) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a Hawaii longline limited access permit.

(o) Permit appeals. Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal to the Regional Administrator the granting, denial, conditioning, suspension, or transfer of a permit or requested permit under this section. To be considered by the Regional Administrator, the appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(1) Upon receipt of an appeal authorized by this section, the Regional Administrator may request additional information. Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the criteria set out in this part for qualifying for, or renewing, limited access permits. In making such decision, the Administrator will review relevant portions of the Western Pacific Pelagic FEP, to the extent such review would clarify the criteria in this part. Such decision will be based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (o)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefore, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(2) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose. Such a hearing normally shall be held no later than 30 days following receipt of the appeal, unless the hearing officer extends the time. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend, in writing, a decision to the Regional Administrator.

(3) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify the appellant, and interested persons, if any, of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action shall constitute final Agency action for purposes of the Administrative Procedure Act.

(4) In the case of a timely appeal from an American Samoa longline limited access permit initial permit decision, the Regional Administrator will issue the appellant a temporary American Samoa longline limited access permit. A temporary permit will expire 20 days after the Regional Administrator's final decision on the appeal. In no event will

a temporary permit be effective for longer than 60 days.

(5) With the exception of temporary permits issued under paragraph (o)(4) of this section, the Regional Administrator, for good cause, may extend any time limit prescribed in this section for a period not to exceed 30 days, either upon his/her own motion or upon written request from the appellant stating the reason(s) therefore.

§ 665.802 Prohibitions.

In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to make and/or file all reports of western Pacific pelagic MUS landings, containing all data and in the exact manner, as required by applicable State law or regulation, as specified in § 665.14(a), provided that the person is required to do so by applicable State law or regulation.

(b) Use a vessel without a valid permit issued under the High Seas Fishing Compliance Act to fish for western Pacific pelagic MUS using longline gear, on the high seas, in violation of §§ 665.801(a), and 300.15 of this title.

(c) Use a vessel in the EEZ around the Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to fish for western Pacific pelagic MUS using longline gear, in violation of § 665.801(b)(1).

(d) Use a vessel shoreward of the outer boundary of the EEZ around the Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to land or transship western Pacific pelagic MUS that were harvested with longline gear, in violation of § 665.801(b)(2).

(e) Use a vessel in the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to fish for western Pacific pelagic MUS using longline gear, in violation of § 665.801(c)(1).

(f) Use a vessel shoreward of the outer boundary of the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to land western Pacific pelagic MUS that were caught with longline gear within the EEZ around American Samoa, in violation of § 665.801(c)(2).

(g) Use a vessel within the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to transship western Pacific pelagic MUS that were caught with longline gear, in violation of § 665.801(c)(3).

(h) Use a vessel in the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll) without either a valid Western Pacific general longline permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to fish for western Pacific pelagic MUS using longline gear, in violation of § 665.801(d)(1).

(i) Use a vessel shoreward of the outer boundary of the EEZ around Guam, CNMI, or PRIA (with the exception of Midway Atoll) without either a valid Western Pacific general longline permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to land or transship western Pacific pelagic MUS that were harvested using longline gear, in violation of § 665.801(d)(2).

(j) Use a vessel shoreward of the outer boundary of the EEZ around American Samoa, CNMI, Guam, Hawaii, or PRIA, to land or transship western Pacific pelagic MUS caught by other vessels using longline gear, without a valid receiving vessel permit registered for use with that vessel, in violation of § 665.801(e).

(k) Use a vessel in the EEZ around the PRIA employing handline or trolling methods to fish for western Pacific pelagic MUS without a valid PRIA pelagic troll and handline fishing permit registered for use for that vessel, in violation of § 665.801(f).

(l) Fish in the fishery after failing to comply with the notification requirements in § 665.803.

(m) Fail to comply with notification requirements set forth in § 665.803 or in any EFP issued under § 665.17.

(n)–(u) [Reserved]

(v) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under §§ 665.17 or 665.807, in violation of § 665.806.

(w) Fish for western Pacific pelagic MUS with longline gear within the protected species zone, in violation of § 665.806(b).

(x) Fail to comply with a term or condition governing the observer program established in § 665.808, if using a vessel registered for use with a Hawaii longline limited access permit, or a vessel registered for use with a size Class B, C or D American Samoa longline limited access permit, to fish for western Pacific pelagic MUS using longline gear.

(y) Fail to comply with other terms and conditions that the Regional Administrator imposes by written notice to either the permit holder or the designated agent of the permit holder to facilitate the details of observer placement.

(z) Fail to fish in accordance with the seabird take mitigation techniques set forth at §§ 665.815(a)(1) or 665.815(a)(2) when operating a vessel registered for use under a Hawaii longline limited access permit.

(aa) [Reserved]

(bb) Engage in shallow-setting without a valid shallow-set certificate for each shallow set made, in violation of § 665.813(c).

(cc) Own or operate a vessel registered for use under any longline permit issued under § 665.801 while engaged in longline fishing for western Pacific pelagic MUS and fail to be certified for completion of a NMFS protected species workshop, in violation of § 665.814(a).

(dd) Own or operate a vessel registered for use under any longline permit issued under § 665.801 while engaged in longline fishing for western Pacific pelagic MUS without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof, in violation of § 665.814(d).

(ee) Possess light sticks on board a vessel registered for use under a Hawaii longline limited access permit at any time during a trip for which notification to NMFS under § 665.803(a) indicated that deep-setting would be done, in violation of § 665.813(d).

(ff) Fail to carry, or fail to use, a line clipper, dip net, or dehooker on a vessel registered for use under any longline permit issued under § 665.801, in violation of § 665.812.

(gg)–(hh) [Reserved]

(ii) When operating a vessel registered for use under any longline limited access permit issued under § 665.801, fail to comply with the sea turtle handling, resuscitation, and release requirements, in violation of § 665.812(b).

(jj) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 665.801 north of the Equator (0° lat.) with hooks other than offset circle hooks sized 18/0 or larger, with a 10° offset, in violation of § 665.813(f).

(kk) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 665.801 north of the Equator (0° lat.) with bait other than mackerel-type bait, in violation of § 665.813(g).

(ll) [Reserved]

(mm) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline

when operating a vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep sets north of 23° N. lat., in violation of § 665.815(a)(1) or (a)(2).

(nn) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access north of 23° N. lat., in violation of § 665.815(a)(2)(v).

(oo) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 665.815(a)(2)(vi) through (viii).

(pp) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 665.815(a)(2)(i) through (iv).

(qq) Fail to be begin the deployment of longline gear at least 1 hour after local sunset or fail to complete the setting process before local sunrise from a vessel registered for use under a Hawaii longline limited access permit while shallow-setting north of 23° N. lat., in violation of § 665.815(a)(4).

(rr) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 665.815(b).

(ss) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set component of the longline fishery has been closed pursuant to § 665.813(b), in violation of § 665.813(i).

(tt) Fail to immediately retrieve longline fishing gear upon receipt of actual notice that the shallow-set component of the longline fishery has been closed pursuant to § 665.813(b), in violation of § 665.813(i).

(uu)–(vv) [Reserved]

(ww) Fail to handle seabirds other than short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 665.815(c).

(xx) Use a large vessel to fish for western Pacific Pelagic MUS within an American Samoa large vessel prohibited area except as allowed pursuant to an exemption issued under § 665.818.

(yy) Fish for western Pacific pelagic MUS using gear prohibited under § 665.810 or not permitted by an EFP issued under § 665.17.

(zz) Use a vessel that is greater than 50 ft (15.4 m) LOA to squid jig fish in EEZ waters around American Samoa, CNMI, Guam, Hawaii, or PRIA, without a Western Pacific squid jig fishing permit registered for use with that vessel, in violation of § 665.801(g).

§ 665.803 Notifications.

(a) The permit holder, or designated agent, for any vessel registered for use under a Hawaii longline limited access permit, or for any vessel greater than 40 ft (12.2 m) LOA that is registered for use under an American Samoa longline limited access permit, shall provide a notice to the Regional Administrator at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around the Hawaiian Archipelago or American Samoa. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The permit holder or designated agent for a vessel registered for use under Hawaii longline limited access permits must also provide notification of the trip type (either deep-setting or shallow-setting).

(b) The permit holder, or designated agent, for any vessel registered for use under a Western Pacific squid jig fishing permit that is greater than 50 ft (15.4 m) LOA, shall provide a notice to the Regional Administrator at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in western Pacific EEZ waters. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder.

(c) For purposes of this section, the notice must be provided to the office or telephone number designated by the Regional Administrator. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the permit holder or designated agent to be available between 8 a.m. and 5 p.m. (local time) on weekdays for NMFS to contact to arrange observer placement.

(d) The operator of any vessel subject to the requirements of this subpart who does not have on board a VMS unit while transiting the protected species zone as defined in § 665.806, must notify the NMFS Special-Agent-In-Charge immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of access or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

(e) The permit holder for any American Samoa longline limited access permit, or an agent designated by the permit holder, must notify the Regional Administrator in writing within 30 days of any change to the permit holder's contact information or any change to the vessel documentation associated with a permit registered to an American Samoa longline limited access permit. Complete changes in the ownership of the vessel registered to an American Samoa longline limited access permit must also be reported to PIRO in writing within 30 days of the change. Failure to report such changes may result in a delay in processing an application, permit holders failing to receive important notifications, or sanctions pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1858(g) or 15 CFR part 904, subpart D.

§ 665.804 Gear identification.

(a) Identification. The operator of each permitted vessel in the fishery management area must ensure that the official number of the vessel be affixed to every longline buoy and float, including each buoy and float that is attached to a radar reflector, radio antenna, or flag marker, whether attached to a deployed longline or possessed on board the vessel. Markings must be legible and permanent, and must be of a color that contrasts with the background material.

(b) Enforcement action. Longline gear not marked in compliance with paragraph (a) of this section and found deployed in the EEZ will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§ 665.805 [Reserved]

§ 665.806 Longline fishing prohibited area management.

(a) Prohibited areas. Longline fishing shall be prohibited in the longline fishing prohibited areas as defined in paragraphs (b), (c), and (d) of this section.

(b) Longline protected species zone. (1) The protected species zone is 50 nm from the center geographical positions of certain islands and reefs in the NWHI, as follows:

Name	N. lat.	W. long.
Nihoa Island	23°05′	161°55′
Necker Island	23°35′	164°40′
French Frigate Shoals	23°45′	166°15′
Gardner Pinnacles	25°00′	168°00′
Maro Reef	25°25′	170°35′
Laysan Island	25°45′	171°45′
Lisianski Island	26°00′	173°55′
Pearl and Hermes Reef	27°50′	175°50′
Midway Island	28°14′	177°22′
Kure Island	28°25′	178°20′

(2) Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semicircles of the 50-nm areas that lie between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, shall delimit the remainder of the protected species zone.

(c) Main Hawaiian Islands (MHI).

(1) From February 1–September 30 each year, the longline fishing prohibited area around the MHI is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
A	18°05′	155°40′
B	18°20′	156°25′
C	20°00′	157°30′
D	20°40′	161°40′
E	21°40′	161°55′
F	23°00′	161°30′
G	23°05′	159°30′
H	22°55′	157°30′
I	21°30′	155°30′
J	19°50′	153°50′
K	19°00′	154°05′
A	18°05′	155°40′

(2) From October 1 through the following January 31 each year, the longline fishing prohibited area around the MHI is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
A	18°05′	155°40′
L	18°25′	155°40′
M	19°00′	154°45′
N	19°15′	154°25′
O	19°40′	154°20′
P	20°20′	154°55′
Q	20°35′	155°30′
R	21°00′	155°35′
S	22°30′	157°35′
T	22°40′	159°35′
U	22°25′	160°20′
V	21°55′	160°55′
W	21°40′	161°00′
E	21°40′	161°55′
D	20°40′	161°40′
C	20°00′	157°30′
B	18°20′	156°25′
A	18°05′	155°40′

(d) Guam. The longline fishing prohibited area around Guam is the waters seaward of Guam bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
A	14°25′	144°00′
B	14°00′	143°38′
C	13°41′	143°33′33″
D	13°00′	143°25′30″
E	12°20′	143°37′
F	11°40′	144°09′
G	12°00′	145°00′
H	13°00′	145°42′
I	13°27′	145°51′

§ 665.807 Exemptions for longline fishing prohibited areas; procedures.

(a) An exemption permitting a person to use longline gear to fish in a portion(s) of the Hawaii longline fishing prohibited area will be issued to a person who can document that he or she:

(1) Currently owns a Hawaii longline limited access permit issued under this part and registered for use with his or her vessel;

(2) Before 1970, was the owner or operator of a vessel when that vessel landed western Pacific pelagic MUS taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area;

(3) Was the owner or operator of a vessel that landed western Pacific pelagic MUS taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area, in at least 5 calendar years after 1969, which need not be consecutive; and

(4) In any one of the 5 calendar years, was the owner or operator of a vessel that harvested at least 80 percent of its total landings, by weight, of longline-caught western Pacific pelagic MUS in an area that is now in the Hawaii longline fishing prohibited area.

(b) Each exemption shall specify the portion(s) of the Hawaii longline fishing prohibited area, bounded by longitudinal and latitudinal lines drawn to include each statistical area, as appearing on Hawaii State Commercial Fisheries Charts, in which the exemption holder made the harvest documented for the exemption application under paragraph (a)(4) of this section.

(c) Each exemption is valid only within the portion(s) of the Hawaii longline fishing prohibited area specified on the exemption.

(d) A person seeking an exemption under this section must submit an application and supporting documentation to PIRO at least 15 days before the desired effective date of the exemption.

(e) If the Regional Administrator determines that a gear conflict has occurred and is likely to occur again in the Hawaii longline fishing prohibited area between a vessel used by a person holding an exemption under this section and a non-longline vessel, the Regional Administrator may prohibit all longline fishing in the Hawaii longline fishing prohibited area around the island where the conflict occurred, or in portions thereof, upon notice to each holder of an exemption who would be affected by such a prohibition.

(f) The Council will consider information provided by persons with Hawaii longline limited access permits issued under this part who believe they have experienced extreme financial hardship resulting from the Hawaii longline area closure, and will consider recommendations of the Pelagic Advisory Review Board to assess whether exemptions under this section should continue to be allowed, and, if appropriate, revise the qualifying criteria in paragraph (a) of this section to permit additional exemptions.

(1) If additional exemptions are needed, the Council will advise the Regional Administrator in writing of its recommendation, including criteria by which financial hardships will be mitigated, while retaining the

effectiveness of the longline fishing prohibited area.

(2) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(i) Reject the Council's recommendation, in which case written reasons will be provided by the Regional Administrator to the Council for the rejection; or

(ii) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the Pelagics FEP, the national standards, and other applicable law, initiate rulemaking to implement the Council's recommendations.

§ 665.808 Conditions for at-sea observer coverage.

(a) NMFS shall advise the permit holder or the designated agent of any observer requirement at least 24 hours (not including weekends and Federal holidays) before any trip for which NMFS received timely notice in compliance with these regulations.

(b) The ''Notice Prior to Fishing Trip'' requirements in this subpart commit the permit holder to the representations in the notice. The notice can be modified by the permit holder or designated agent because of changed circumstance, if the Regional Administrator is promptly provided a modification to the notice that complies with the notice requirements. The notice will also be considered modified if the Regional Administrator and the permit holder or designated agent agrees to placement changes.

(c) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer in response to a notification under this subpart, or as a condition of an EFP issued under § 665.17, the vessel may not engage in the fishery without taking the observer.

(d) A NMFS observer shall arrive at the observer's assigned vessel 30 minutes before the time designated for departure in the notice or the notice as modified, and will wait 1 hour for departure.

(e) A permit holder must accommodate a NMFS observer assigned under these regulations. The Regional Administrator's office, and not the observer, will address any concerns raised over accommodations.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(1) Allowing for the embarking and debarking of the observer.

(2) Allowing the observer access to all areas of the vessel necessary to conduct observer duties.

(3) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties.

(4) Allowing the observer access to VMS units to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(5) Providing accurate vessel locations by latitude and longitude or loran coordinates, upon request by the observer.

(6) Providing sea turtle, marine mammal, or seabird specimens as requested.

(7) Notifying the observer in a timely fashion when commercial fishing operations are to begin and end.

(g) The permit holder, operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Administrator imposes by written notice.

(h) The permit holder must ensure that assigned observers are provided living quarters comparable to crew members and are provided the same meals, snacks, and amenities as are normally provided to other vessel personnel. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator.

(i) Reimbursement requirements are as follows:

(1) Upon observer verification of vessel accommodations and the number of assigned days on board, NMFS will reimburse vessel owners a reasonable amount for observer subsistence as determined by the Regional Administrator.

(2) If requested and properly documented, NMFS will reimburse the vessel owner for the following:

(i) Communications charges incurred by the observer.

(ii) Lost fishing time arising from a seriously injured or seriously ill observer, provided that notification of the nature of the emergency is transmitted to the Observer Program, NMFS (see address for PIRO Regional Administrator) at the earliest practical time. NMFS will reimburse the owner only for those days during which the vessel is unable to fish as a direct result of helping the NMFS employee who is seriously injured or seriously ill. Lost fishing time is based on time travelling to and from the fishing grounds and any documented out-of-pocket expenses for medical services. Payment will be based on the current target fish market prices and that vessel's average target fish catch retained per day at sea for the previous 2 years, but shall not exceed $5,000 per day or $20,000 per claim. Detailed billing with receipts and supporting records are required for allowable communication and lost fishing time claims. The claim must be completed in ink, showing the claimant's printed name, address, vessel name, observer name, trip dates, days observer was on board, an explanation of the charges, and claimant's dated signature with a statement verifying the claim to be true and correct. Requested reimbursement claims must be submitted to the Fisheries Observer Branch, Pacific Islands Region, NMFS. NMFS will not process reimbursement invoices and documentation submitted more than 120 days after the occurrence.

(j) If a vessel normally has cabins for crew members, female observers on a vessel with an all-male crew must be accommodated either in a single person cabin or, if NMFS concludes that adequate privacy can be ensured by installing a curtain or other temporary divider, in a two-person shared cabin. If the vessel normally does not have cabins for crew members, alternative accommodations must be approved by NMFS. If a cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, or if no cabin is assigned, then arrangements for sharing common facilities must be established and approved in advance by NMFS.

§ 665.809 Port privileges and transiting for unpermitted U.S. longline vessels.

A U.S. longline fishing vessel that does not have a permit under subpart A of this part may enter waters of the fishery management area with western Pacific pelagic MUS on board, but may not land or transship any western Pacific pelagic MUS on board the vessel. The vessel's longline gear must be stowed or secured so it is rendered unusable during the time the vessel is in those waters.

§ 665.810 Prohibition of drift gillnetting.

Fishing with drift gillnets in the fishery management area is prohibited, except where authorized by an EFP issued under § 665.17.

§ 665.811 [Reserved]

§ 665.812 Sea turtle take mitigation measures.

(a) Possession and use of required mitigation gear. The gear required in paragraph (a) of this section must be

used according to the sea turtle handling requirements set forth in paragraph (b) of this section.

(1) Hawaii longline limited access permits. Any owner or operator of a vessel registered for use under a Hawaii longline limited access permit must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting the minimum design and performance standards specified in paragraph (a)(7) of this section.

(2) Other longline vessels with freeboards of more than 3 ft (0.91m). Any owner or operator of a longline vessel with a permit issued under § 665.801 other than a Hawaii limited access longline permit and that has a freeboard of more than 3 ft (0.91 m) must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting this minimum design and performance standards specified in paragraph (a)(7) of this section.

(3) Other longline vessels with freeboards of 3 ft (0.91 m) or less. Any owner or operator of a longline vessel with a permit issued under § 665.801 other than a Hawaii limited access longline permit and that has a freeboard of 3 ft (0.91 m) or less must carry aboard their vessels line clippers capable of cutting the vessels fishing line or leader within approximately 1 ft (0.3 m) of the eye of an embedded hook, as well as wire or bolt cutters capable of cutting through the vessel's hooks.

(4) Handline, troll, pole-and-line, and other vessels using hooks other than longline vessels. Any owner or operator of a vessel fishing under the Pelagics FEP with hooks other than longline gear are not required to carry specific mitigation gear, but must comply with the handling requirements set forth in paragraph (b) of this section.

(5) Line clippers. Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (see Figure 3 to this part). The minimum design standards are as follows:

(i) A protected cutting blade. The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) Cutting blade edge. The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) An extended reach holder for the cutting blade. The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) Secure fastener. The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(6) Dip nets. Dip nets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that minimizes injury and trauma to sea turtles. The minimum design standards for dip nets that meet the requirements of this section nets are:

(i) An extended reach handle. The dip net must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion.

(ii) Size of dip net. The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches by 3 inches (7.62 cm by 7.62 cm).

(7) Dehookers.

(i) Long-handled dehooker for ingested hooks. This item is intended to be used to remove ingested hooks from sea turtles that cannot be boated, and to engage a loose hook when a turtle is entangled but not hooked and line is being removed. One long-handled dehooker for ingested hooks is required on board. The minimum design and performance standards are as follows:

(A) Hook removal device. The hook removal device must be constructed of 5/16 inch (7.94 mm) 316 L stainless steel and have a dehooking end no larger than 1 7/8 inches (4.76 cm) outside diameter. The device must be capable of securely engaging and controlling the leader while shielding the barb of the hook to prevent the hook from re-engaging during removal. It must not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size capable of securing the range of hook sizes and styles used by the vessel.

(B) Extended reach handle. The hook removal device must be securely fastened to an extended reach handle or pole with a length equal to or greater than 150 percent of the vessel's freeboard or 6 ft (1.83 m), whichever is greater. It is recommended that the handle be designed so that it breaks down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

(ii) Long-handled dehooker for external hooks. This item is intended to be used to remove externally-hooked hooks from sea turtles that cannot be boated. The long-handled dehooker for ingested hooks described in paragraph (a)(7)(i) of this section meets this requirement. The minimum design and performance standards are as follows:

(A) Construction. The device must be constructed of 5/16 inch (7.94 mm) 316 L stainless steel rod. A 5 inch (12.70 cm) tube T-handle of 1 inch (2.54 cm) outside diameter is recommended, but not required. The dehooking end must be blunt with all edges rounded. The device must be of a size capable of securing the range of hook sizes and styles used by the vessel.

(B) Handle. The handle must have a length equal to or greater than the vessel's freeboard or 3 ft (0.91 m), whichever is greater.

(iii) Long-handled device to pull an ''inverted V.'' This item is intended to be used to pull an ''inverted V'' in the fishing line when disentangling and dehooking entangled sea turtles. One long-handled device to pull an ''inverted V'' is required on board. The long-handled dehooker for external hooks described in paragraph (a)(7)(ii) of this section meets this requirement. The minimum design and performance standards are as follows:

(A) Hook end. It must have a hook-shaped end, like that of a standard boat hook or gaff, which must be constructed of stainless steel or aluminum.

(B) Handle. The handle must have a length equal to or greater than 150 percent of the vessel's freeboard or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to allow the hook end to be effectively used to engage and pull an ''inverted V'' in the line.

(iv) Tire. This item is intended to be used for supporting a turtle in an upright orientation while it is on board. One tire is required on board, but an assortment of sizes is recommended to accommodate a range of turtle sizes. The tire must be a standard passenger vehicle tire and must be free of exposed steel belts.

(v) Short-handled dehooker for ingested hooks. This item is intended to be used to remove ingested hooks,

externally hooked hooks, and hooks in the front of the mouth of sea turtles that can be boated. One short-handled dehooker for ingested hooks is required on board. The minimum design and performance standards are as follows:

(A) Hook removal device. The hook removal device must be constructed of ¼ inch (6.35 mm) 316 L stainless steel, and the design of the dehooking end must be such to allow the hook to be secured and the barb shielded without re-engaging during the hook removal process. The dehooking end must be no larger than 1 5/16 inch (3.33 cm) outside diameter. It must not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. The dehooking end must be of a size appropriate to secure the range of hook sizes and styles used by the vessel.

(B) Sliding plastic bite block. The dehooker must have a sliding plastic bite block, which is intended to be used to protect the sea turtle's beak and facilitate hook removal if the turtle bites down on the dehooker. The bite block must be constructed of a ¾ inch (1.91 cm) inside diameter high impact plastic cylinder (for example, Schedule 80 PVC) that is 10 inches (25.40 cm) long. The dehooker and bite block must be configured to allow for 5 inches (12.70 cm) of slide of the bite block along the shaft of the dehooker.

(C) Shaft and handle. The shaft must be 16 to 24 inches (40.64 to 60.69 cm) in length, and must have a T-handle 4 to 6 inches (10.16 to 15.24 cm) in length and ¾ to 1¼ inches (1.90 to 3.18 cm) in diameter.

(vi) Short-handled dehooker for external hooks. This item is intended to be used to remove externally hooked hooks from sea turtles that can be boated. One short-handled dehooker for external hooks is required on board. The short-handled dehooker for ingested hooks required to comply with paragraph (a)(7)(v) of this section meets this requirement. The minimum design and performance standards are as follows:

(A) Hook removal device. The hook removal device must be constructed of 5/16 inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used by the vessel.

(B) Shaft and handle. The shaft must be 16 to 24 inches (40.64 to 60.69 cm) in length, and must have a T-handle 4 to 6 inches (10.16 to 15.24 cm) in length and ¾ to 1¼ inches (1.90 to 3.18 cm) in diameter.

(vii) Long-nose or needle-nose pliers. This item is intended to be used to remove deeply embedded hooks from the turtle's flesh that must be twisted in order to be removed, and also to hold in place PVC splice couplings when used as mouth openers. One pair of long-nose or needle-nose pliers is required on board. The minimum design standards are as follows: The pliers must be 8 to 14 inches (20.32 to 35.56 cm) in length. It is recommended that they be constructed of stainless steel material.

(viii) Wire or bolt cutters. This item is intended to be used to cut through hooks in order to remove all or part of the hook. One pair of wire or bolt cutters is required on board. The minimum design and performance standards are as follows: The wire or bolt cutters must be capable of cutting hard metals, such as stainless or carbon steel hooks, and they must be capable of cutting through the hooks used by the vessel.

(ix) Monofilament line cutters. This item is intended to be used to cut and remove fishing line as close to the eye of the hook as possible if the hook is swallowed or cannot be removed. One pair of monofilament line cutters is required on board. The minimum design standards are as follows: Monofilament line cutters must be 6 to 9 inches (15.24 to 22.86 cm) in length. The blades must be 1¾ (4.45 cm) in length and ⅝ inches (1.59 cm) wide when closed.

(x) Mouth openers and gags. These items are intended to be used to open the mouths of boated sea turtles, and to keep them open when removing ingested hooks in a way that allows the hook or line to be removed without causing further injury to the turtle. At least two of the seven different types of mouth openers and gags described below are required on board. The seven types and their minimum design standards are as follows.

(A) A block of hard wood. A block of hard wood is intended to be used to gag open a turtle's mouth by placing it in the corner of the jaw. It must be made of hard wood of a type that does not splinter (for example, maple), and it must have rounded and smoothed edges. The dimensions must be 10 to 12 inches (24.50 to 30.48 cm) by ¾ to 1¼ inches (1.90 to 3.18 cm) by ¾ to 1¼ inches (1.90 to 3.18 cm).

(B) A set of three canine mouth gags. A canine mouth gag is intended to be used to gag open a turtle's mouth while allowing hands-free operation after it is in place. A set of canine mouth gags must include one of each of the following sizes: small (5 inches, 12.7 cm), medium (6 inches, 15.2 cm), and large (7 inches, 17.8 cm). They must be constructed of stainless steel. A 1¾ inch (4.45 cm) long piece of vinyl tubing (¾ inch, 1.91 cm) outside diameter and ⅝ inch (1.59 cm) inside diameter) must be placed over the ends of the gags to protect the turtle's beak.

(C) A set of two sturdy canine chew bones. A canine chew bone is intended to be used to gag open a turtle's mouth by placing it in the corner of the jaw. They must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5½ to 8 inches (13.97 to 20.32 cm) in length) and one small (3½ to 4½ inches (8.89 to 11.43 cm) in length) canine chew bones.

(D) A set of two rope loops covered with hose. A set of two rope loops covered with a piece of hose is intended to be used as a mouth opener and to keep a turtle's mouth open during hook and/or line removal. A set consists of two 3-foot (0.91 m) lengths of poly braid rope, each covered with an 8 inch (20.32 cm) section of ½ inch (1.27 cm) or ¾ inch (1.91 cm) light-duty garden hose, and each tied into a loop.

(E) A hank of rope. A hank of rope is intended to be used to gag open a sea turtle's mouth by placing it in the corner of the jaw. A hank of rope is made from a 6 foot (1.83 m) lanyard of braided nylon rope that is folded to create a hank, or looped bundle, of rope. The hank must be 2 to 4 inches (5.08 to 10.16 cm) in thickness.

(F) A set of four PVC splice couplings. PVC splice couplings are intended to be used to allow access to the back of the mouth of a turtle for hook and line removal by positioning them inside a turtle's mouth and holding them in place with long-nose or needle-nose pliers. The set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1¼ inches (3.18 cm), 1½ inches (3.81 cm), and 2 inches (5.08 cm).

(G) A large avian oral speculum. A large avian oral speculum is intended to be used to hold a turtle's mouth open and control the head with one hand while removing a hook with the other hand. It must be 9 inches (22.86 cm) in length and constructed of 3/16 inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing 5/16 inch (7.94 mm) outside diameter, 3/16 inch (4.76 mm) inside diameter.

(b) Handling requirements. If a sea turtle is observed to be hooked or entangled in fishing gear from any vessel fishing under the Pelagics FEP, vessel owners and operators must use the required mitigation gear set forth in paragraph (a) of this section to comply with these handling requirements. Any hooked or entangled sea turtle must be handled in a manner to minimize injury and promote survival.

(1) Sea turtles that cannot be brought aboard. In instances where a sea turtle is too large to be brought aboard or the sea turtle cannot be brought aboard without causing further injury to the sea turtle, the vessel owner or operator must disentangle and remove the gear, or cut the line as close as possible to the hook or entanglement, to remove the maximum amount of the gear from the sea turtle.

(2) Sea turtles that can be brought aboard. In instances where a sea turtle is not too large to be brought aboard, or the sea turtle can be brought aboard without causing further injury to the turtle, the vessel owner or operator must take the following actions:

(i) Immediately bring the sea turtle aboard;

(ii) Handle the sea turtle in accordance with the procedures in paragraphs (b)(3) and (b)(4) of this section; and

(iii) Disentangle and remove the gear, or cut the line as close as possible to the hook or entanglement, to remove the maximum amount of the gear from the sea turtle.

(3) Sea turtle resuscitation. If a sea turtle appears dead or comatose, the following actions must be taken:

(i) Place the sea turtle on its belly (on the bottom shell or plastron) so that the sea turtle is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation varies with the size of the sea turtle; greater elevations are needed for larger sea turtles;

(ii) Administer a reflex test at least once every 3 hours. The test is to be performed by gently touching the eye and pinching the tail of a sea turtle to determine if the sea turtle is responsive;

(iii) Keep the sea turtle shaded and damp or moist (but under no circumstances place the sea turtle into a container holding water). A water-soaked towel placed over the eyes, carapace and flippers is the most effective method of keeping a sea turtle moist; and

(iv) Return to the sea any sea turtle that revives and becomes active in the manner described in paragraph (b)(4) of this section. Sea turtles that fail to revive within the 24-hour period must also be returned to the sea in the manner described in paragraph (b)(4) of this section.

(4) Sea turtle release. After handling a sea turtle in accordance with the requirements of paragraphs (b)(2) and (b)(3) of this section, the sea turtle must be returned to the ocean after identification unless NMFS requests the retention of a dead sea turtle for research. In releasing a sea turtle the vessel owner or operator must:

(i) Place the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped, and release the sea turtle away from deployed gear; and

(ii) Observe that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

(5) Other sea turtle requirements. No sea turtle, including a dead turtle, may be consumed or sold. A sea turtle may be landed, offloaded, transshipped or kept below deck only if NMFS requests the retention of a dead sea turtle for research.

§ 665.813 Western Pacific longline fishing restrictions.

(a) Annual effort limit on shallow-setting by Hawaii longline vessels.

(1) A maximum annual limit of 2,120 is established on the number of shallow-set certificates that will be made available each calendar year to vessels registered for use under Hawaii longline limited access permits.

(2) The Regional Administrator will divide the 2,120-set annual effort limit each calendar year into equal shares such that each holder of a Hawaii longline limited access permit who provides notice of interest to the Regional Administrator no later than November 1 prior to the start of the calendar year, pursuant to paragraph (a)(3) of this section, receives one share for each permit held. If such division would result in shares containing a fraction of a set, the annual effort limit will be adjusted downward such that each share consists of a whole number of sets.

(3) Any permit holder who provides notice according to this paragraph (a) is eligible to receive shallow-set certificates. In order to be eligible to receive shallow-set certificates for a given calendar year, holders of Hawaii longline limited access permits must provide written notice to the Regional Administrator of their interest in receiving such certificates no later than November 1 prior to the start of the calendar year, except for 2004, the notification deadline for which is May 1, 2004.

(4) No later than December 1 of each year, the Regional Administrator will send shallow-set certificates valid for the upcoming calendar year to all holders of Hawaii longline limited access permits, as of the just previous November 1, that provided notice of interest to the Regional Administrator pursuant to paragraph (a)(3) of this section.

(b) Limits on sea turtle interactions.

(1) Maximum annual limits are established on the numbers of physical interactions that occur each calendar year between leatherback and loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-setting. The limits are based on the annual numbers of the two turtle species expected to be captured in the shallow-set component of the Hawaii-based fishery, as indicated in the incidental take statement of the biological opinion issued by NMFS pursuant to section 7 of the Endangered Species Act. If the numbers in the incidental take statement are modified or if a new biological opinion is issued, new rulemaking will be undertaken to change the interaction limits accordingly. The limits are as follows:

(i) The annual limit for leatherback sea turtles (*Dermochelys coriacea*) is sixteen (16).

(ii) The annual limit for loggerhead sea turtles (*Caretta caretta*) is seventeen (17).

(2) Upon determination by the Regional Administrator that, based on data from NMFS observers, either of the two sea turtle interaction limits has been reached during a given calendar year:

(i) As soon as practicable, the Regional Administrator will file for publication at the Office of the Federal Register a notification of the sea turtle interaction limit having been reached. The notification will include an advisement that the shallow-set component of the longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, until the end of the calendar year in which the sea turtle interaction limit was reached. Coincidental with the filing of the notification, the Regional Administrator will also provide actual notice that the shallow-set component of the longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date,

to all holders of Hawaii longline limited access permits via telephone, satellite telephone, radio, electronic mail, facsimile transmission, or post.

(ii) Beginning on the fishery closure date indicated by the Regional Administrator in the notification provided to vessel operators and permit holders and published in the **Federal Register** under paragraph (b)(2)(i) of this section, until the end of the calendar year in which the sea turtle interaction limit was reached, the Hawaii-based shallow-set component of the longline fishery shall be closed.

(c) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may engage in shallow-setting north of the Equator (0° lat.) providing that there is on board one valid shallow-set certificate for every shallow-set that is made north of the Equator (0° lat.) during the trip. For each shallow-set made north of the Equator (0° lat.) vessel operators must submit one valid shallow-set certificate to the Regional Administrator. The certificate must be attached to the original logbook form that corresponds to the shallow-set and that is submitted to the Regional Administrator within 72 hours of each landing of MUS as required under § 665.14.

(d) Vessels registered for use under a Hawaii longline limited access permit may not have on board at any time during a trip for which notification to NMFS under § 665.803(a) indicated that deep-setting would be done any float lines less than 20 meters in length or light sticks. As used in this paragraph ''float line'' means a line used to suspend the main longline beneath a float and ''light stick'' means any type of light emitting device, including any fluorescent ''glow bead,'' chemical, or electrically powered light that is affixed underwater to the longline gear.

(e) Shallow-set certificates may be transferred only to holders of Hawaii longline limited access permits.

(f) Any owner or operator of a vessel registered for use under any longline permit issued under § 665.801 must use only offset circle hooks sized 18/0 or larger, with a 10° offset, when shallow-setting north of the Equator (0° lat.). As used in this paragraph, an offset circle hook sized 18/0 or larger is one with an outer diameter at its widest point no smaller than 1.97 inches (50 mm) when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). As used in this paragraph, a 10° offset is measured from the barbed end of the hook and is relative to the parallel plane of the eyed end, or shank, of the hook when laid on its side.

(g) Any owner or operator of a vessel registered for use under any longline permit issued under § 665.801 must use only mackerel-type bait when shallow-setting north of the Equator (0° lat.). As used in this paragraph, mackerel-type bait means a whole fusiform fish with a predominantly blue, green or gray back and predominantly gray, silver or white lower sides and belly.

(h) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may make sets only of the type (shallow-setting or deep-setting) indicated in the notification to NMFS pursuant to § 665.803(a).

(i) Vessels registered for use under Hawaii longline limited access permits may not be used to engage in shallow-setting north of the Equator (0° lat.) any time during which the shallow-set component of the longline fishery is closed pursuant to paragraph (b)(2)(ii) of this section.

(j) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may land or possess no more than 10 swordfish from a fishing trip for which the permit holder notified NMFS under § 665.803(a) that the vessel would engage in a deep-setting trip.

§ 665.814 Protected species workshop.

(a) Each year, both the owner and the operator of a vessel registered for use under any longline permit issued under § 665.801 must attend and be certified for completion of a workshop conducted by NMFS on interaction mitigation techniques for sea turtles, seabirds and other protected species.

(b) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(c) An owner of a vessel registered for use under any longline permit issued under § 665.801 must have a valid protected species workshop certificate issued by NMFS to the owner of the vessel, in order to maintain or renew their vessel registration.

(d) An owner and an operator of a vessel registered for use under any longline permit issued under § 665.801 must have on board the vessel a valid protected species workshop certificate issued by NMFS to the operator of the vessel, or a legible copy thereof.

§ 665.815 Pelagic longline seabird mitigation measures.

(a) Seabird mitigation techniques. When deep-setting or shallow-setting north of 23° N. lat. or shallow-setting south of 23° N. lat., owners and operators of vessels registered for use under a Hawaii longline limited access permit, must either side-set according to paragraph (a)(1) of this section, or fish in accordance with paragraph (a)(2) of this section.

(1) Side-setting. Owners and operators of vessels opting to side-set under this section must fish according to the following specifications:

(i) The mainline must be deployed as far forward on the vessel as practicable, and at least 1 m (3.3 ft) forward from the stern of the vessel;

(ii) The mainline and branch lines must be set from the port or the starboard side of the vessel;

(iii) If a mainline shooter is used, the mainline shooter must be mounted as far forward on the vessel as practicable, and at least 1 m (3.3 ft) forward from the stern of the vessel;

(iv) Branch lines must have weights with a minimum weight of 45 g (1.6 oz);

(v) One weight must be connected to each branch line within 1 m (3.3 ft) of each hook;

(vi) When seabirds are present, the longline gear must be deployed so that baited hooks remain submerged and do not rise to the sea surface; and

(vii) A bird curtain must be deployed. Each bird curtain must consist of the following three components: a pole that is fixed to the side of the vessel aft of the line shooter and which is at least 3 m (9.8 ft) long; at least three main streamers that are attached at regular intervals to the upper 2 m (6.6 ft) of the pole and each of which has a minimum diameter of 20 mm (0.8 in); and branch streamers attached to each main streamer at the end opposite from the pole, each of which is long enough to drag on the sea surface in the absence of wind, and each of which has a minimum diameter of 10 mm (0.4 in).

(2) Alternative to side-setting. Owners and operators of vessels that do not side-set must do the following:

(i) Discharge fish, fish parts (offal), or spent bait while setting or hauling longline gear, on the opposite side of the vessel from where the longline gear is being set or hauled, when seabirds are present;

(ii) Retain sufficient quantities of fish, fish parts, or spent bait between the setting of longline gear for the purpose of strategically discharging it in accordance with paragraph (a)(2)(i) of this section;

(iii) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (a)(2)(i) of this section;

(iv) Remove the bill and liver of any swordfish that is caught, sever its head

from the trunk and cut it in half vertically and periodically discharge the butchered heads and livers in accordance with paragraph (a)(2)(i) of this section;

(v) When using basket-style longline gear north of 23° N. lat., ensure that the main longline is deployed slack to maximize its sink rate;

(vi) Use completely thawed bait that has been dyed blue to an intensity level specified by a color quality control card issued by NMFS;

(vii) Maintain a minimum of two cans (each sold as 0.45 kg or 1 lb size) containing blue dye on board the vessel; and

(viii) Follow the requirements in paragraphs (a)(3) and (a)(4) of this section, as applicable.

(3) Deep-setting requirements. The following additional requirements apply to vessels engaged in deep-setting using a monofilament main longline north of 23° N. lat. that do not side-set. Owners and operators of these vessels must do the following:

(i) Employ a line shooter; and

(ii) Attach a weight of at least 45 g (1.6 oz) to each branch line within 1 m (3.3 ft) of the hook.

(4) Shallow-setting requirement. In addition to the requirements set forth in paragraphs (a)(1) and (a)(2) of this section, owners and operators of vessels engaged in shallow-setting that do not side-set must begin the deployment of longline gear at least 1 hour after local sunset and complete the deployment no later than local sunrise, using only the minimum vessel lights to conform with navigation rules and best safety practices.

(b) Short-tailed albatross handling techniques. If a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit, owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the bird on board the vessel using a dip net;

(2) Cover the bird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the bird; and

(4) Determine if the bird is alive or dead.

(i) If dead, freeze the bird immediately with an identification tag attached directly to the specimen listing the species, location and date of mortality, and band number if the bird has a leg band. Attach a duplicate identification tag to the bag or container holding the bird. Any leg bands present must remain on the bird. Contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop, inform them that you have a dead short-tailed albatross on board, and submit the bird to NMFS within 72 hours following completion of the fishing trip.

(ii) If alive, handle the bird in accordance with paragraphs (b)(5) through (11) of this section.

(5) Place the bird in a safe enclosed place;

(6) Immediately contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop and request veterinary guidance;

(7) Follow the veterinary guidance regarding the handling and release of the bird;

(8) If the bird is externally hooked and no veterinary guidance is received within 24–48 hours, handle the bird in accordance with paragraphs (c)(4) and (c)(5) of this section, and release the bird only if it meets the following criteria:

(i) Able to hold its head erect and respond to noise and motion stimuli;

(ii) Able to breathe without noise;

(iii) Capable of flapping and retracting both wings to normal folded position on its back;

(iv) Able to stand on both feet with toes pointed forward; and

(v) Feathers are dry.

(9) Any seabird that is released in accordance with paragraph (b)(8) of this section or under the guidance of a veterinarian must be placed on the sea surface;

(10) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS immediately upon the vessel's return to port. Do not give the bird food or water; and

(11) Complete the short-tailed albatross recovery data form issued by NMFS.

(c) Non-short-tailed albatross seabird handling techniques. If a seabird other than a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net;

(2) Cover the seabird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the seabird;

(4) Remove any external hooks by cutting the line as close as possible to the hook, pushing the hook barb out point first, cutting off the hook barb using bolt cutters, and then removing the hook shank;

(5) Cut the fishing line as close as possible to ingested or inaccessible hooks;

(6) Leave the bird in a safe enclosed space to recover until its feathers are dry; and

(7) After recovered, release seabirds by placing them on the sea surface.

§ 665.816 American Samoa longline limited entry program.

(a) General. Under § 665.801(c), certain U.S. vessels are required to be registered for use under a valid American Samoa longline limited access permit. With the exception of reductions in permits in vessel size Class A under paragraph (c)(1) of this section, the maximum number of permits will be capped at the number of initial permits actually issued under paragraph (f) of this section.

(b) *Terminology.* For purposes of this section, the following terms have these meanings:

(1) *Documented participation* means participation proved by, but not necessarily limited to, a properly submitted NMFS or American Samoa logbook, an American Samoa creel survey record, a delivery or payment record from an American Samoa-based cannery, retailer or wholesaler, an American Samoa tax record, an individual wage record, ownership title, vessel registration, or other official documents showing:

(i) Ownership of a vessel that was used to fish in the EEZ around American Samoa, or

(ii) Evidence of work on a fishing trip during which longline gear was used to harvest western Pacific pelagic MUS in the EEZ around American Samoa. If the applicant does not possess the necessary documentation of evidence of work on a fishing trip based on records available only from NMFS or the Government of American Samoa (*e.g.,* creel survey record or logbook), the applicant may issue a request to PIRO to obtain such records from the appropriate agencies, if available. The applicant should provide sufficient information on the fishing trip to allow PIRO to retrieve the records.

(2) *Family* means those people related by blood, marriage, and formal or informal adoption.

(c) Vessel size classes. The Regional Administrator shall issue American Samoa longline limited access permits in the following size classes:

(1) Class A: Vessels less than or equal to 40 ft (12.2 m) LOA. The maximum number will be reduced as Class B–1, C–1, and D–1 permits are issued under paragraph (f)(5) of this section.

(2) Class B: Vessels over 40 ft (12.2 m) to 50 ft (15.2 m) LOA.

(3) Class B–1: Maximum number of 14 permits for vessels over 40 ft (12.2 m) to 50 ft (15.2 m) LOA, to be made available according to the following schedule:

(i) Four permits in the first calendar year after the Regional Administrator has issued all initial permits in Classes A, B, C, and D (initial issuance);

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus four additional permits;

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first eight, plus four additional permits; and

(iv) In the fourth calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first 12, plus two additional permits.

(4) Class C: Vessels over 50 ft (15.2 m) to 70 ft (21.3 m) LOA.

(5) Class C–1: Maximum number of six permits for vessels over 50 ft (15.2) to 70 ft (21.3 m) LOA, to be made available according to the following schedule:

(i) Two permits in the first calendar year after initial issuance;

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first two, plus two additional permits; and

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus two additional permits.

(6) Class D: Vessels over 70 ft (21.3 m) LOA.

(7) Class D–1: Maximum number of 6 permits for vessels over 70 ft (21.3 m) LOA, to be made available according to the following schedule:

(i) Two permits in the first calendar year after initial issuance;

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first two, plus two additional permits; and

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus two additional permits.

(d) A vessel subject to this section may only be registered with an American Samoa longline limited access permit of a size class equal to or larger than the vessel's LOA.

(e) Initial permit qualification. Any U.S. national or U.S. citizen or company, partnership, or corporation qualifies for an initial American Samoa longline limited access permit if the person, company, partnership, or corporation, on or prior to March 21, 2002, owned a vessel that was used during the time of their ownership to harvest western Pacific pelagic MUS with longline gear in the EEZ around American Samoa, and that fish was landed in American Samoa:

(1) Prior to March 22, 2002; or

(2) Prior to June 28, 2002, provided that the person or business provided to NMFS or the Council, prior to March 22, 2002, a written notice of intent to participate in the pelagic longline fishery in the EEZ around American Samoa.

(f) Initial permit issuance.

(1) Any application for issuance of an initial permit must be submitted to PIRO no later than 120 days after the effective date of this final rule. The Regional Administrator shall publish a notice in the **Federal Register**, send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of the availability of permits. Applications for initial permits must be made, and application fees paid, in accordance with §§ 665.13(c)(1), 665.13(d), and 665.13(f)(2). A complete application must include documented participation in the fishery in accordance with § 665.816(b)(1). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers.

(2) Only permits of Class A, B, C, and D will be made available for initial issuance. Permits of Class B–1, C–1, and D–1, will be made available in subsequent calendar years.

(3) Within 30 days of receipt of a completed application, the Assistant Regional Administrator for Sustainable Fisheries, PIRO, shall make a decision on whether the applicant qualifies for an initial permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel, of the equivalent size class or smaller to which the qualifying vessel would have belonged, to the permit within 120 days of the date of the letter of notification, and maintain this vessel registration to the permit for at least 120 days. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included.

(4) An appeal of a denial of an application for an initial permit shall be processed in accordance with § 665.801(o) of this subpart.

(5) After all appeals on initial permits are concluded in any vessel size class, the maximum number of permits in that class shall be the number of permits issued during the initial issuance process (including appeals). The maximum number of permits will not change, except that the maximum number of Class A permits will be reduced if Class A permits are replaced by B–1, C–1, or D–1 permits under paragraph (h) of this section. Thereafter, if any Class A, B, C, or D permit becomes available, the Regional Administrator shall re-issue that permit according to the process set forth in paragraph (g) of this section.

(g) Additional permit issuance.

(1) If the number of permits issued in Class A, B, C, or D, falls below the maximum number of permits, the Regional Administrator shall publish a notice in the **Federal Register**, send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of any available permit(s) in that class. Any application for issuance of an additional permit must be submitted to PIRO no later than 120 days after the date of publication of the notice on the availability of additional permits in the **Federal Register**. A complete application must include documented participation in the fishery in accordance with § 665.816(b)(1). The Regional Administrator shall issue permits to persons according the following priority standard:

(i) First priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa on a Class A sized vessel.

(ii) The next priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa on a Class B size, Class C size, or Class D size vessel, in that order.

(iii) In the event of a tie in the priority ranking between two or more applicants, the applicant whose second documented participation in the pelagic longline fishery in the EEZ around American Samoa is first in time will be ranked first in priority. If there is still a tie between two or more applicants,

the Regional Administrator will select the successful applicant by an impartial lottery.

(2) Applications must be made, and application fees paid, in accordance with §§ 665.13(c)(1), 665.13(d), and 665.13(f)(2). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers that comprise ownership of the vessel for which the permit application is prepared.

(3) Within 30 days of receipt of a completed application, the Assistant Regional Administrator for Sustainable Fisheries shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included. If the successful applicant fails to register a vessel to the permit within 120 days of the date of the letter of notification, the Assistant Regional Administrator for Sustainable Fisheries shall issue a letter of notification to the next person on the priority list or, in the event that there are no more prospective applicants on the priority list, re-start the issuance process pursuant to paragraph (g)(1) of this section. Any person who fails to register the permit to a vessel under this paragraph (g)(3) within 120 days shall not be eligible to apply for a permit for 6 months from the date those 120 days expired.

(4) An appeal of a denial of an application for a permit shall be processed in accordance with § 665.801(o).

(h) Class B–1, C–1, and D–1 Permits.

(1) Permits of Class B–1, C–1, and D–1 will be initially issued only to persons who hold a Class A permit and who, prior to March 22, 2002, participated in the pelagic longline fishery around American Samoa.

(2) The Regional Administrator shall issue permits to persons for Class B–1, C–1, and D–1 permits based on each person's earliest documented participation, with the highest priority given to that person with the earliest date of documented participation.

(3) A permit holder who receives a Class B–1, C–1, or D–1 permit must relinquish his or her Class A permit and that permit will no longer be valid. The maximum number of Class A permits will be reduced accordingly.

(4) Within 30 days of receipt of a completed application for a Class B–1, C–1, and D–1 permit, the Regional Administrator shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included.

(5) An appeal of a denial of an application for a Class B–1, C–1, or D–1 permit shall be processed in accordance with § 665.801(o).

(6) If a Class B–1, C–1, or D–1 permit is relinquished, revoked, or not renewed pursuant to paragraph (j)(1) of this section, the Regional Administrator shall make that permit available according to the procedure described in paragraph (g) of this section.

(i) Permit transfer. The holder of an American Samoa longline limited access permit may transfer the permit to another individual, partnership, corporation, or other entity as described in this section. Applications for permit transfers must be submitted to the Regional Administrator within 30 days of the transfer date. If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers. After such an application has been made, the permit is not valid for use by the new permit holder until the Regional Administrator has issued the permit in the new permit holder's name under § 665.13(c).

(1) Permits of all size classes except Class A. An American Samoa longline limited access permit of any size class except Class A may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to the following persons only:

(i) A Western Pacific community located in American Samoa that meets the criteria set forth in section 305(I)(2) of the Magnuson-Stevens Act, 16 U.S.C. 1855(I)(2), and its implementing regulations, or

(ii) Any person with documented participation in the pelagic longline fishery in the EEZ around American Samoa.

(2) Class A Permits. An American Samoa longline limited access permit of Class A may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to the following persons only:

(i) A family member of the permit holder,

(ii) A Western Pacific community located in American Samoa that meets the criteria set forth in section 305(i)(2) of the Magnuson-Stevens Act, 16 U.S.C. § 1855, and its implementing regulations, or

(iii) Any person with documented participation in the pelagic longline fishery on a Class A size vessel in the EEZ around American Samoa prior to March 22, 2002.

(3) Class B–1, C–1, and D–1 Permits. Class B–1, C–1, and D–1 permits may not be transferred to a different owner for 3 years from the date of initial issuance, except by bequest or intestate succession if the permit holder dies during those 3 years. After the initial 3 years, Class B–1, C–1, and D–1 permits may be transferred only in accordance with the restrictions in paragraph (i)(1) of this section.

(j) Permit renewal and registration of vessels.

(1) Use requirements. An American Samoa longline limited access permit will not be renewed following 3 consecutive calendar years (beginning with the year after the permit was issued in the name of the current permit holder) in which the vessel(s) to which it is registered landed less than:

(i) For permit size Classes A or B: a total of 1,000 lb (455 kg) of western Pacific pelagic MUS harvested in the EEZ around American Samoa using longline gear, or

(ii) For permit size Classes C or D: a total of 5,000 lb (2,273 kg) of western Pacific pelagic MUS harvested in the EEZ around American Samoa using longline gear.

(2) [Reserved]

(k) Concentration of ownership of permits. No more than 10 percent of the maximum number of permits, of all size classes combined, may be held by the same permit holder. Fractional interest will be counted as a full permit for the

purpose of calculating whether the 10-percent standard has been reached.

(l) Three year review. Within 3 years of the effective date of this final rule, the Council shall consider appropriate revisions to the American Samoa limited entry program after reviewing the effectiveness of the program with respect to its biological and socioeconomic objectives, concerning gear conflict, overfishing, enforceability, compliance, and other issues.

§ 665.817 American Samoa pelagic fishery area management.

(a) Large vessel prohibited areas. A large vessel of the United States may not be used to fish for western Pacific pelagic MUS in the American Samoa large vessel prohibited areas as defined in paragraphs (b) and (c) of this section, except as allowed pursuant to an exemption issued under § 665.818.

(b) Tutuila Island, Manu'a Islands, and Rose Atoll (AS–1). The large vessel prohibited area around Tutuila Island, the Manu'a Islands, and Rose Atoll consists of the waters of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

Point	S. lat.	W. long.
AS–1–A	13°30′	167°25′
AS–1–B	15°13′	167°25′

and from Point AS–1–A westward along the latitude 13°30′ S. until intersecting the U.S. EEZ boundary with Samoa, and from Point AS–1–B westward along the latitude 15°13′ S. until intersecting the U.S. EEZ boundary with Samoa.

(c) Swains Island (AS–2). The large vessel prohibited area around Swains Island consists of the waters of the EEZ around American Samoa enclosed by straight lines connecting the following coordinates:

Point	S. lat.	W. long
AS–2–A	11°48′	171°50′
AS–2–B	11°48′	171°20′

and from Point AS–2–A northward along the longitude 171°50′ W. until intersecting the U.S. EEZ boundary with Tokelau, and from Point AS–2–B northward along the longitude 170°20′ W. until intersecting the U.S. EEZ boundary with Tokelau.

§ 665.818 Exemptions for American Samoa large vessel prohibited areas.

(a) An exemption will be issued to a person who currently owns a large vessel to use that vessel to fish for western Pacific pelagic MUS in the American Samoa large vessel prohibited management areas, if the person seeking the exemption had been the owner of that vessel when it was registered for use with a Western Pacific general longline permit, and has made at least one landing of western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997.

(b) A landing of western Pacific pelagic MUS for the purpose of this section must have been properly recorded on a NMFS Western Pacific Federal daily longline form that was submitted to NMFS, as required in § 665.14.

(c) An exemption is valid only for a vessel that was registered for use with a Western Pacific general longline permit and landed western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997, or for a replacement vessel of equal or smaller LOA than the vessel that was initially registered for use with a Western Pacific general longline permit on or prior to November 13, 1997.

(d) An exemption is valid only for the vessel for which it is registered. An exemption not registered for use with a particular vessel may not be used.

(e) An exemption may not be transferred to another person.

(f) If more than one person, *e.g.,* a partnership or corporation, owned a large vessel when it was registered for use with a Western Pacific general longline permit and made at least one landing of western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997, an exemption issued under this section will be issued to only one person.

BILLING CODE 3510–22–P

FIGURE 1 TO PART 665. CARAPACE LENGTH OF LOBSTERS

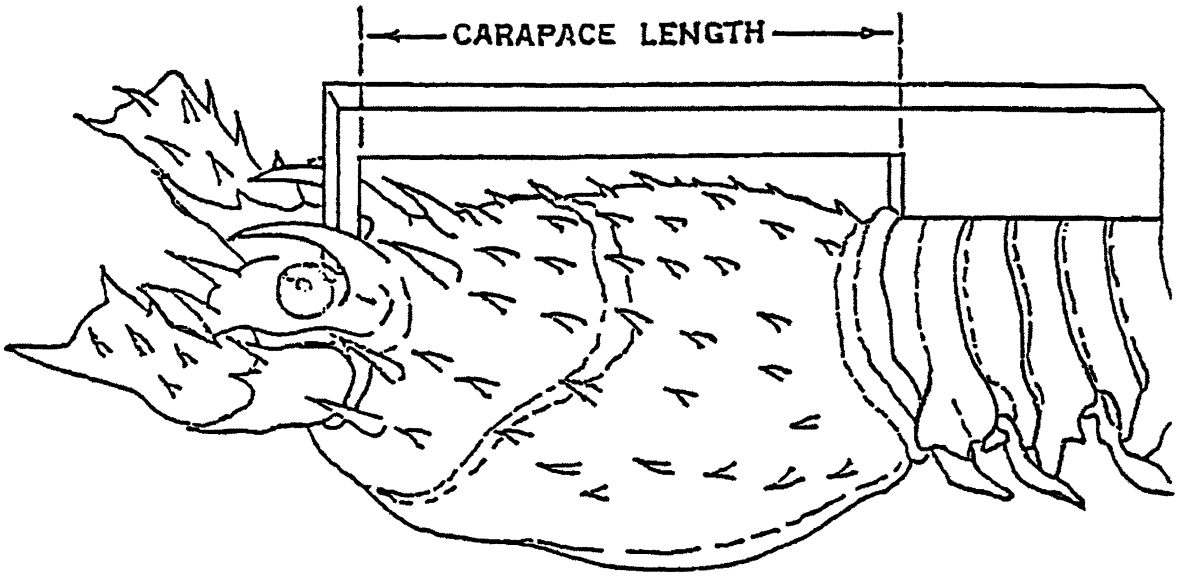


FIGURE 2 TO PART 665. LENGTH OF FISHING VESSELS

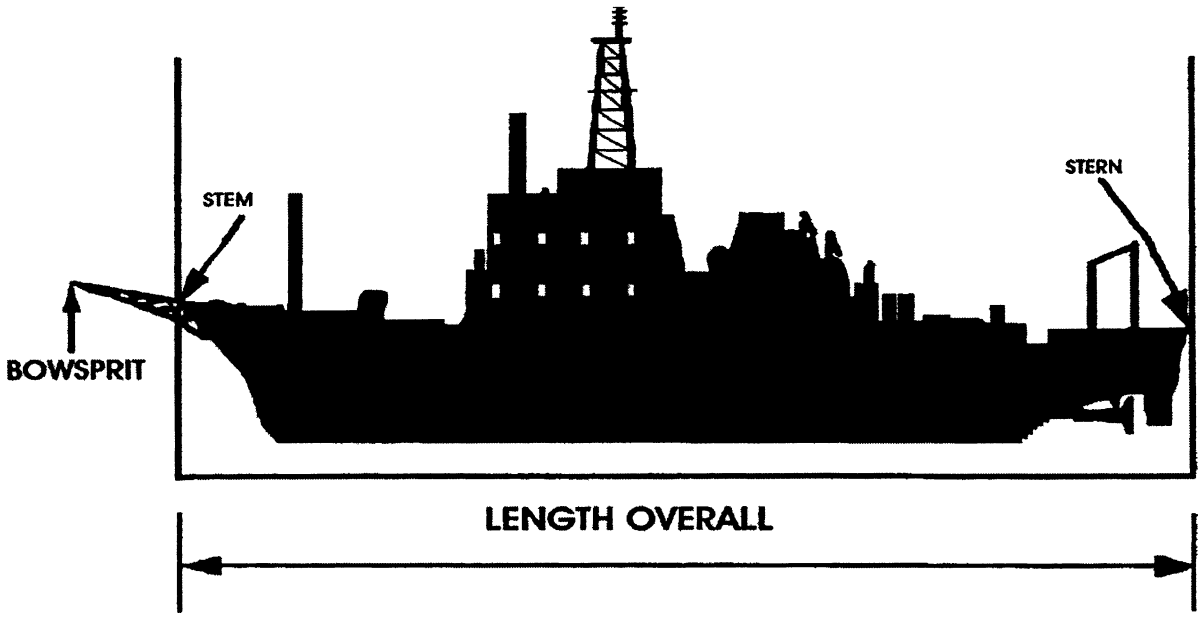
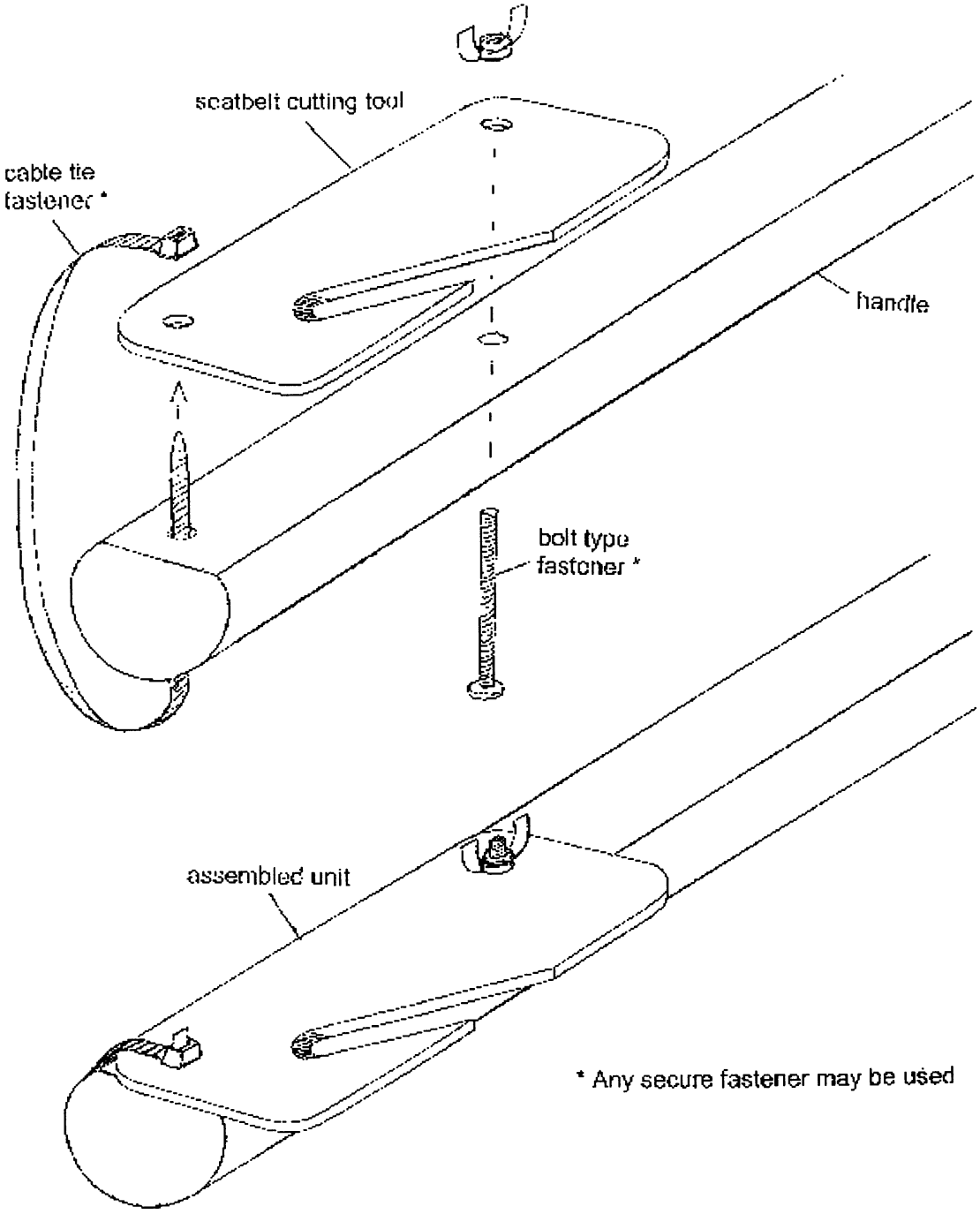


FIGURE 3 TO PART 665. SAMPLE FABRICATED ARCENEAUX LINE CLIPPER



[FR Doc. E9–26557 Filed 11–18–09; 8:45 am]
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Federal Register

Thursday,
November 19, 2009

Part III

The President

Executive Order 13519—Establishment of the Financial Fraud Enforcement Task Force

Federal Register
Vol. 74, No. 222
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Presidential Documents

Title 3—

The President

Executive Order 13519 of November 17, 2009

Establishment of the Financial Fraud Enforcement Task Force

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to strengthen the efforts of the Department of Justice, in conjunction with Federal, State, tribal, territorial, and local agencies, to investigate and prosecute significant financial crimes and other violations relating to the current financial crisis and economic recovery efforts, recover the proceeds of such crimes and violations, and ensure just and effective punishment of those who perpetrate financial crimes and violations, it is hereby ordered as follows:

Section 1. *Establishment.* There is hereby established an interagency Financial Fraud Enforcement Task Force (Task Force) led by the Department of Justice.

Sec. 2. *Membership and Operation.* The Task Force shall be chaired by the Attorney General and consist of senior-level officials from the following departments, agencies, and offices, selected by the heads of the respective departments, agencies, and offices in consultation with the Attorney General:

(a) the Department of Justice;

(b) the Department of the Treasury;

(c) the Department of Commerce;

(d) the Department of Labor;

(e) the Department of Housing and Urban Development;

(f) the Department of Education;

(g) the Department of Homeland Security;

(h) the Securities and Exchange Commission;

(i) the Commodity Futures Trading Commission;

(j) the Federal Trade Commission;

(k) the Federal Deposit Insurance Corporation;

(l) the Board of Governors of the Federal Reserve System;

(m) the Federal Housing Finance Agency;

(n) the Office of Thrift Supervision;

(o) the Office of the Comptroller of the Currency;

(p) the Small Business Administration;

(q) the Federal Bureau of Investigation;

(r) the Social Security Administration;

(s) the Internal Revenue Service, Criminal Investigations;

(t) the Financial Crimes Enforcement Network;

(u) the United States Postal Inspection Service;

(v) the United States Secret Service;

(w) the United States Immigration and Customs Enforcement;

(x) relevant Offices of Inspectors General and related Federal entities, including without limitation the Office of the Inspector General for the

Department of Housing and Urban Development, the Recovery Accountability and Transparency Board, and the Office of the Special Inspector General for the Troubled Asset Relief Program; and

(y) such other executive branch departments, agencies, or offices as the President may, from time to time, designate or that the Attorney General may invite.

The Attorney General shall convene and, through the Deputy Attorney General, direct the work of the Task Force in fulfilling all its functions under this order. The Attorney General shall convene the first meeting of the Task Force within 30 days of the date of this order and shall thereafter convene the Task Force at such times as he deems appropriate. At the direction of the Attorney General, the Task Force may establish subgroups consisting exclusively of Task Force members or their designees under this section, including but not limited to a Steering Committee chaired by the Deputy Attorney General, and subcommittees addressing enforcement efforts, training and information sharing, and victims' rights, as the Attorney General deems appropriate.

Sec. 3. *Mission and Functions.* Consistent with the authorities assigned to the Attorney General by law, and other applicable law, the Task Force shall:

(a) provide advice to the Attorney General for the investigation and prosecution of cases of bank, mortgage, loan, and lending fraud; securities and commodities fraud; retirement plan fraud; mail and wire fraud; tax crimes; money laundering; False Claims Act violations; unfair competition; discrimination; and other financial crimes and violations (hereinafter financial crimes and violations), when such cases are determined by the Attorney General, for purposes of this order, to be significant;

(b) make recommendations to the Attorney General, from time to time, for action to enhance cooperation among Federal, State, local, tribal, and territorial authorities responsible for the investigation and prosecution of significant financial crimes and violations; and

(c) coordinate law enforcement operations with representatives of State, local, tribal, and territorial law enforcement.

Sec. 4. *Coordination with State, Local, Tribal, and Territorial Law Enforcement.* Consistent with the objectives set out in this order, and to the extent permitted by law, the Attorney General is encouraged to invite the following representatives of State, local, tribal, and territorial law enforcement to participate in the Task Force's subcommittee addressing enforcement efforts in the subcommittee's performance of the functions set forth in section 3(c) of this order relating to the coordination of Federal, State, local, tribal, and territorial law enforcement operations involving financial crimes and violations:

(a) the National Association of Attorneys General;

(b) the National District Attorneys Association; and

(c) such other representatives of State, local, tribal, and territorial law enforcement as the Attorney General deems appropriate.

Sec. 5. *Outreach.* Consistent with the law enforcement objectives set out in this order, the Task Force, in accordance with applicable law, in addition to regular meetings, shall conduct outreach with representatives of financial institutions, corporate entities, nonprofit organizations, State, local, tribal, and territorial governments and agencies, and other interested persons to foster greater coordination and participation in the detection and prosecution of financial fraud and financial crimes, and in the enforcement of antitrust and antidiscrimination laws.

Sec. 6. *Administration.* The Department of Justice, to the extent permitted by law and subject to the availability of appropriations, shall provide administrative support and funding for the Task Force.

Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This Task Force shall replace, and continue the work of, the Corporate Fraud Task Force created by Executive Order 13271 of July 9, 2002. Executive Order 13271 is hereby terminated pursuant to section 6 of that order.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 8. *Termination.* The Task Force shall terminate when directed by the President or, with the approval of the President, by the Attorney General.

THE WHITE HOUSE,
November 17, 2009.

[FR Doc. E9–28022
Filed 11–18–09; 11:15 am]
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S. 475/P.L. 111–97
Military Spouses Residency Relief Act (Nov. 11, 2009; 123 Stat. 3007)

S. 509/P.L. 111–98
To authorize a major medical facility project at the Department of Veterans Affairs Medical Center, Walla Walla, Washington, and for other purposes. (Nov. 11, 2009; 123 Stat. 3010)

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