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Presidential Documents

Title 3—

The President

Executive Order 13534 of March 11, 2010

National Export Initiative

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Export Enhancement Act of 1992, Public Law 102–429, 106 Stat. 2186, and section 301 of title 3, United States Code, in order to enhance and coordinate Federal efforts to facilitate the creation of jobs in the United States through the promotion of exports, and to ensure the effective use of Federal resources in support of these goals, it is hereby ordered as follows:

Section 1. *Policy.* The economic and financial crisis has led to the loss of millions of U.S. jobs, and while the economy is beginning to show signs of recovery, millions of Americans remain unemployed or underemployed. Creating jobs in the United States and ensuring a return to sustainable economic growth is the top priority for my Administration. A critical component of stimulating economic growth in the United States is ensuring that U.S. businesses can actively participate in international markets by increasing their exports of goods, services, and agricultural products. Improved export performance will, in turn, create good high-paying jobs.

The National Export Initiative (NEI) shall be an Administration initiative to improve conditions that directly affect the private sector's ability to export. The NEI will help meet my Administration's goal of doubling exports over the next 5 years by working to remove trade barriers abroad, by helping firms—especially small businesses—overcome the hurdles to entering new export markets, by assisting with financing, and in general by pursuing a Government-wide approach to export advocacy abroad, among other steps.

Sec. 2. *Export Promotion Cabinet.* There is established an Export Promotion Cabinet to develop and coordinate the implementation of the NEI. The Export Promotion Cabinet shall consist of:

(a) the Secretary of State;

(b) the Secretary of the Treasury;

(c) the Secretary of Agriculture;

(d) the Secretary of Commerce;

(e) the Secretary of Labor;

(f) the Director of the Office of Management and Budget;

(g) the United States Trade Representative;

(h) the Assistant to the President for Economic Policy;

(i) the National Security Advisor;

(j) the Chair of the Council of Economic Advisers;

(k) the President of the Export-Import Bank of the United States;

(l) the Administrator of the Small Business Administration;

(m) the President of the Overseas Private Investment Corporation;

(n) the Director of the United States Trade and Development Agency; and

(o) the heads of other executive branch departments, agencies, and offices as the President may, from time to time, designate.

The Export Promotion Cabinet shall meet periodically and report to the President on the progress of the NEI. A member of the Export Promotion Cabinet may designate, to perform the NEI-related functions of that member, a senior official from the member's department or agency who is a full-time officer or employee. The Export Promotion Cabinet may also establish subgroups consisting of its members or their designees, and, as appropriate, representatives of other departments and agencies. The Export Promotion Cabinet shall coordinate with the Trade Promotion Coordinating Committee (TPCC), established by Executive Order 12870 of September 30, 1993.

Sec. 3. *National Export Initiative.* The NEI shall address the following:

(a) *Exports by Small and Medium-Sized Enterprises (SMEs).* Members of the Export Promotion Cabinet shall develop programs, in consultation with the TPCC, designed to enhance export assistance to SMEs, including programs that improve information and other technical assistance to first-time exporters and assist current exporters in identifying new export opportunities in international markets.

(b) *Federal Export Assistance.* Members of the Export Promotion Cabinet, in consultation with the TPCC, shall promote Federal resources currently available to assist exports by U.S. companies.

(c) *Trade Missions.* The Secretary of Commerce, in consultation with the TPCC and, to the extent possible, with State and local government officials and the private sector, shall ensure that U.S. Government-led trade missions effectively promote exports by U.S. companies.

(d) *Commercial Advocacy.* Members of the Export Promotion Cabinet, in consultation with other departments and agencies and in coordination with the Advocacy Center at the Department of Commerce, shall take steps to ensure that the Federal Government's commercial advocacy effectively promotes exports by U.S. companies.

(e) *Increasing Export Credit.* The President of the Export-Import Bank, in consultation with other members of the Export Promotion Cabinet, shall take steps to increase the availability of credit to SMEs.

(f) *Macroeconomic Rebalancing.* The Secretary of the Treasury, in consultation with other members of the Export Promotion Cabinet, shall promote balanced and strong growth in the global economy through the G20 Financial Ministers' process or other appropriate mechanisms.

(g) *Reducing Barriers to Trade.* The United States Trade Representative, in consultation with other members of the Export Promotion Cabinet, shall take steps to improve market access overseas for our manufacturers, farmers, and service providers by actively opening new markets, reducing significant trade barriers, and robustly enforcing our trade agreements.

(h) *Export Promotion of Services.* Members of the Export Promotion Cabinet shall develop a framework for promoting services trade, including the necessary policy and export promotion tools.

Sec. 4. *Report to the President.* Not later than 180 days after the date of this order, the Export Promotion Cabinet, through the TPCC, shall provide the President a comprehensive plan to carry out the goals of the NEI. The Chairman of the TPCC shall set forth the steps taken to implement this plan in the annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives required by the Export Enhancement Act of 1992, Public Law 102–249, 106 Stat. 2186, and Executive Order 12870, as amended.

Sec. 5. *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 order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) 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.

THE WHITE HOUSE,
March 11, 2010.

[FR Doc. 2010–5837
Filed 3–15–10; 8:45 am]
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Rules and Regulations

Federal Register
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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0070]

Privacy Act of 1974: Implementation of Exemptions; U.S. Immigration and Customs Enforcement—006 Intelligence Records System

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a U.S. Immigration and Customs Enforcement system of records entitled the "U.S. Immigration and Customs Enforcement—006 Intelligence Records System" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Immigration and Customs Enforcement Intelligence Records System from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective March 16, 2010.

FOR FURTHER INFORMATION CONTACT: For general questions please contact Lyn Rahilly (202–732–3300), Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20536, *e-mail: ICEPrivacy@dhs.gov.* For privacy issues please contact Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register,** 73 FR 74633, December 9, 2008, proposing to exempt portions of U.S. Immigration and Customs Enforcement—006 Intelligence Records system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The Immigration and Customs Enforcement Intelligence Records system of records notice was published concurrently in the **Federal Register,** 73 FR 74735, December 9, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. The notice of proposed rulemaking did not receive public comments. The system of records notice received one public comment.

Public Comments

The notice of proposed rulemaking did not receive public comments. The system of records notice received one public comment. The public comment was an expression of an individual's personal opinions and unrelated to the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135; (6 U.S.C. 101 *et seq.*); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. At the end of Appendix C to Part 5, add the following new paragraph 50 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

50. The Immigration and Customs Enforcement (ICE)—006 Intelligence Records System (IIRS) consists of electronic and paper records and will be used by the Department of Homeland Security (DHS). IIRS is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. IIRS contains information that is collected by other federal and foreign government agencies and may contain personally identifiable information. Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or

necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–5618 Filed 3–15–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1090; Directorate Identifier 2009–SW–31–AD; Amendment 39–16227; AD 2010–06–03]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that a metallurgical non-conformity was discovered on a flange of the forward shaft section of the tail rotor drive shaft (drive shaft). The MCAI AD also states that stress analysis has shown that this non-conformity can significantly reduce the strength of the drive shaft and thereby its service life. The AD actions are intended to remove non-conforming drive shafts from service and prevent failure of the drive shaft and subsequent loss of control of the helicopter.

DATES: This AD becomes effective on April 20, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://regulations.gov* or in person at the Docket Operations office, U.S. Department of Transportation, M–30, 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.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com*.

EXAMINING THE AD DOCKET: The AD docket contains the Notice of proposed rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647–5527) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5123; fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

We issued an NPRM on November 23, 2009 to amend 14 CFR part 39 to include an AD that would apply to the Eurocopter Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. That NPRM was published in the **Federal Register** on December 10, 2009 (74 FR 65492). That NPRM proposed to remove non-conforming drive shafts from service to prevent failure of the drive shaft and subsequent loss of control of the helicopter. You may obtain further information by examining the MCAI AD and any related service information in the AD docket.

Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

Relevant Service Information

Eurocopter has issued Alert Service Bulletin No. 01.00.51, Revision 1, dated February 9, 2006. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.

Differences Between This AD and the MCAI AD

This AD differs from the MCAI AD as follows:

• We refer to the compliance time as "hours time-in-service" rather than "flying hours" and

• We do not require returning spares to the manufacturer.

Costs of Compliance

We estimate that this AD will affect about 96 helicopters of U.S. registry. We also estimate that it will take about 2 work-hours per helicopter to complete the compliance actions. The average labor rate is $85 per work-hour. Required parts will cost about $8,335 per helicopter. Based on these figures, we estimate that the cost of this AD on U.S. operators is $816,480, or $8,505 per helicopter assuming that the drive shaft is replaced on each helicopter.

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 product(s) identified in this rulemaking action.

Regulatory Findings

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

Therefore, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–06–03 EUROCOPTER FRANCE: Amendment 39–16227; Docket No. FAA–2009–1090; Directorate Identifier 2009–SW–31–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on April 20, 2010.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters with tail rotor drive shaft forward shaft section, part number 355A 34–1090–00, serial number 858 through 873 (inclusive) with a prefix "M," certificated in any category. This AD does not apply to helicopters manufactured after January 1, 2005.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states that a metallurgical non-conformity was discovered on a flange of the forward shaft section of the tail rotor drive shaft (drive shaft). The MCAI AD also states that stress analysis has shown that this non-conformity can significantly reduce the strength of the drive shaft and thereby its service life. This AD is intended to remove non-conforming drive shafts from service and prevent failure of the drive shaft and subsequent loss of control of the helicopter.

Actions and Compliance

(e) Unless already accomplished, do the following:

(1) For any drive shaft that has less than 2,400 hours time-in-service (TIS), on or before reaching 2,500 hours TIS, remove the drive shaft and replace it with an airworthy drive shaft that is not included in the applicability of this AD.

(2) For any drive shaft with 2,400 or more hours TIS, within the next 100 hours TIS, remove the drive shaft and replace it with an airworthy drive shaft that is not included in the applicability of this AD.

Differences Between This AD and the MCAI AD

(f) This AD differs from the MCAI AD as follows:

(1) We refer to the compliance time as "hours time-in-service" rather than "flying hours" and

(2) We do not require returning spares to the manufacturer.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, ATTN: Uday Garadi, Aviation Safety Engineer, Regulations and Policy Group, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

Related Information

(h) European Aviation Safety Agency (EASA) AD No. 2006–0100, dated April 24, 2006, and Eurocopter Alert Service Bulletin No. 01.00.51, Revision 1, dated February 9, 2006, contain related information.

Joint Aircraft System/Component (JASC) Code

(i) The JASC Code is 6510: Tail rotor drive shaft.

Issued in Fort Worth, Texas, on February 22, 2010.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–5328 Filed 3–15–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0948; Directorate Identifier 2009–NE–30–AD; Amendment 39–16236; AD 2010–06–12]

RIN 2120–AA64

Airworthiness Directives; Thielert Aircraft Engines GmbH (TAE) Models TAE 125–02–99 and TAE 125–01 Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of

another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> As a consequence of occurrences and service experience, Thielert Aircraft Engines GmbH has introduced a new rail pressure control valve part number (P/N) 05–7320–E000702 and P/N 02–7320–04100R3 and has amended the Airworthiness Limitation Section (ALS) of the Operation & Maintenance Manual OM–02–02 to include a replacement of the rail pressure control valve. Failure of this part could result in in-flight shutdowns of the engine(s).

We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

DATES: This AD becomes effective April 20, 2010.

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

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 19, 2009 (74 FR 53438). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> As a consequence of occurrences and service experience, Thielert Aircraft Engines GmbH has introduced a new rail pressure control valve P/N 05–7320–E000702 and 02–7320–04100R3 and has amended the ALS of the Operation & Maintenance Manual OM–02–02 to include a replacement of the rail pressure control valve. Failure of this part could result in in-flight shutdowns of the engine(s).

Comments

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

Conclusion

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

Differences Between This AD and the MCAIs or Service Information

We have reviewed the MCAIs and related service information and, in general, agree with their substance. But we have found it necessary to reduce the initial compliance time for TAE 125–02–99 engines from within 110 flight hours to within 100 flight hours, and for TAE 125–01 engines from within the next 3 months to within 100 flight hours. We also have found it necessary to specify the repetitive replacement compliance time for the rail pressure control valve of within every 600 flight hours. The MCAIs instruct the operators to follow Thielert Maintenance Manual, Chapter 5, Airworthiness Limitations, for the repetitive compliance time, which requires replacement of the rail pressure control valve within every 600 flight hours. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 370 TAE 125–01 and TAE 125–02–99 reciprocating engines installed on products of U.S. registry. We also estimate that it will take about 1.5 work-hours per engine to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $500 per engine. Based on these figures, we estimate the cost of the AD for initial replacement, on U.S. operators to be $229,400.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–06–12 Thielert Aircraft Engines GmbH: Amendment 39–16236. Docket No. FAA–2009–0948; Directorate Identifier 2009–NE–30–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 20, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Thielert Aircraft Engines GmbH (TAE) models TAE 125–01 and TAE 125–02–99 reciprocating engines installed in, but not limited to, Cessna 172 and (Reims-built) F172 series (EASA STC No. EASA.A.S.01527); Piper PA–28 series (EASA STC No. EASA.A.S. 01632); APEX (Robin) DR 400 series (EASA STC No. A.S.01380); and Diamond Aircraft Industries Models DA40 and DA42 airplanes.

Reason

(d) As a consequence of occurrences and service experience, Thielert Aircraft Engines GmbH has introduced a new rail pressure control valve part number (P/N) 05–7320–E000702 and P/N 02–7320–04100R3 and has amended the Airworthiness Limitation Section (ALS) of the Operation & Maintenance Manual OM–02–02 to include a replacement of the rail pressure control valve. Failure of this part could result in in-flight shutdowns of the engine(s).

This AD results from mandatory continuing airworthiness information (MCAIs) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

Actions and Compliance

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

TAE 125–02–99 Reciprocating Engines

(1) For TAE 125–02–99 reciprocating engines, within 100 flight hours after the effective date of this AD, replace the existing rail pressure control valve with a rail pressure control valve P/N 05–7320–E000702, and modify the Vrail plug to make it compatible with the replacement rail pressure control valve.

(2) Guidance on the valve replacement and rail modification specified in paragraph (e)(1) of this AD can be found in Thielert Repair Manual RM–02–02, Chapter 73–10.08, and Chapter 39–40.08, respectively.

TAE 125–01 Reciprocating Engines

(3) For TAE 125–01 reciprocating engines, within 100 flight hours after the effective date of this AD, replace the existing rail pressure control valve with a rail pressure control valve, P/N 02–7320–04100R3.

(4) Guidance on the valve replacement specified in paragraph (e)(3) of this AD can be found in Thielert Repair Manual RM–02–01, Chapter 29.0.

TAE 125–02–99 and TAE 125–01 Engines, Repetitive Replacements of Rail Pressure Control Valves

(5) Thereafter, for affected TAE 125–02–99 and TAE 125–01 engines, replace the rail pressure control valve with the same P/N valve within every 600 flight hours.

FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) and/or service information as follows:

(1) For the TAE 125–02–99 reciprocating engines, we reduced the initial compliance time from within 110 flight hours to within 100 flight hours after the effective date of this AD.

(2) For the TAE 125–01 reciprocating engines, we changed initial compliance time from within the next 3 months to within 100 flight hours after the effective date of this AD.

(3) The MCAIs instruct the operators to follow Thielert Maintenance Manual, Chapter 5, Airworthiness Limitations, for the repetitive replacement compliance time for the rail pressure control valve, which, in the manual, is 600 flight hours. We found it necessary to specify the repetitive replacement compliance time in this AD, of within every 600 flight hours.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD 2008–0128, dated July 9, 2008, EASA AD 2008–0215, dated December 5, 2008, Thielert Service Bulletin No. TAE 125–1008 P1, Revision 1, dated September 29, 2008, and Thielert Repair Manual RM–02–02, for related information. Contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–55; e-mail: *info@centurion-engines.com,* for a copy of this service information.

(i) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on March 8, 2010.

Peter A. White,

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

[FR Doc. 2010–5548 Filed 3–15–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0953; Directorate Identifier 2009–SW–45–AD; Amendment 39–16230; AD 2010–06–06]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD–900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) model MD–900 helicopters that currently requires applying serial numbers to certain parts, increasing the life limit for various parts, maintaining a previously established life limit for a certain vertical stabilizer control system (VSCS) bellcrank assembly and bellcrank arm, and correcting the part number for the VSCS bellcrank arm. This amendment requires the same actions as the existing AD, except it reduces the life limit of the swashplate spherical slider bearing (slider bearing). It further corrects what was described as a "bellcrank arm" life limit in the current AD and correctly describes it as another "bellcrank assembly" life limit. This amendment is prompted by two reports of cracks in the slider bearing that occurred well before the previously increased retirement life of 2,030 hours time-in-service (TIS) was reached. The actions specified by this AD are intended to establish appropriate life limits for various parts, and to prevent fatigue failure of those parts and subsequent loss of control of the helicopter.

DATES: Effective April 20, 2010.

ADDRESSES: You may get the service information identified in this AD from MD Helicopters Inc., *Attn:* Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at *http://www.mdhelicopters.com.*

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aviation Safety Engineer,

FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5233, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by superseding AD 99–16–13, Amendment 39–11248 (64 FR 42824, August 6, 1999), Docket No. 98–SW–42–AD, for the MDHI Model MD–900 helicopters was published in the **Federal Register** on October 22, 2009 (74 FR 54495). The action proposed to decrease the life limit of the slider bearing from 2,030 hours TIS to 700 hours time-in-service (TIS). Additionally, changing the nomenclature for part number 900F2341712–101 from bellcrank arm to bellcrank assembly was proposed. The action also proposed to retain the requirements of the existing AD to apply serial numbers to various parts, and to retain the life limits of various other parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 27 helicopters of U.S. registry, and that it will take approximately 2.5 work hours per helicopter to accomplish the serialization of the affected parts at an average labor rate of $85 per work hour. Additionally, it is estimated that 8 of those aircraft will require replacement of the slider bearing, which will require approximately 7 work hours to accomplish at an average labor rate of $85 per work hour. Required parts will cost approximately $11,080 per helicopter for the slider bearing. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $99,137.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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 an economic evaluation of the estimated costs to comply with this AD. *See* the AD docket to examine the economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–11248 (64 FR 42824, August 6, 1999), and by adding a new airworthiness directive (AD), Amendment 39–16230, to read as follows:

2010–06–06 MD Helicopters, Inc.: Amendment 39–16230. Docket No. FAA–2009–0953; Directorate Identifier 2009–SW–45–AD. Supersedes AD 99–16–13, Amendment 39–11248, Docket No. 98–SW–42–AD.

Applicability: MD–900 helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To establish appropriate life limits for various parts, and to prevent fatigue failure of those parts and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove from service as follows:

(1) The nonrotating swashplate assembly, part number (P/N) 900C2010192–105, –107, –109, or –111, on or before 1,800 hours time-in-service (TIS).

(2) The collective drive link assembly, P/N 900C2010207–101, on or before 3,307 hours TIS.

(3) The swashplate spherical slider bearing, P/N 900C3010042–103, on or before 700 hours TIS.

(4) The vertical stabilizer control system (VSCS) bellcrank assembly, P/N 900FP341712–103, and bellcrank assembly, P/N 900F2341712–101, on or before 2,700 hours TIS.

(b) Within 100 hours TIS:

(1) For Model MD–900 helicopters with serial numbers (S/N) 900–00002 through 900–00012, apply the appropriate S/N to the mid-forward truss assembly, P/N 900F2401200–102, and the forward and aft deck-fitting assemblies, P/N 900F2401500–103 and P/N 900F2401600–103.

(2) For Model MD–900 helicopters with S/N 900–00002 through 900–00048, apply S/N to the left and right VSCS bellcrank assemblies, P/N 900F2341712–101 and P/N 900FP341712–103, and the mid-aft truss strut assembly, P/N 900F2401300–103.

(3) Apply the S/N, as specified in paragraphs (b)(1) and (b)(2) of this AD, adjacent to the existing P/N, as listed in Appendix A of this AD, using permanent ink or paint. When dry, apply a clear coat over the S/N.

(c) This AD revises the Airworthiness Limitations Section of the MD–900 Maintenance Manual by increasing the life limits for certain parts and reducing the life limit of the slider bearing.

Note: The Airworthiness Limitations Section of the MD–900 Rotorcraft Maintenance Manual, Reissue 1, Revision 25, dated April 16, 2006, and MD Helicopters Service Bulletin SB900–096, dated February 28, 2005, pertain to the subject of this AD.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, FAA, for information about previously approved alternative methods of compliance.

BILLING CODE 4910–13–P

Appendix A
VSCS Bellcrank, Mid-Aft Strut and Deck Fitting Serialization

Serial Number To Be Applied			
Aircraft Ser. No.	VSCS Bellcrank Assembly 900F2341712-101 and 900FP341712-103		Strut Assy, Mid-Aft 900F2401300-103
	LH VSCS	RH VSCS	
0002	009999-0001	009999-0002	Previously serialized
0008	009999-0003	009999-0004	Previously serialized
0010	009999-0005	009999-0006	Previously serialized
0011	009999-0007	009999-0008	Previously serialized
0012	009999-0009	009999-0010	Previously serialized
0013	009999-0011	009999-0012	009999-0006
0014	009999-0013	009999-0014	009999-0007
0015	009999-0015	009999-0016	009999-0008
0016	009999-0017	009999-0018	009999-0009
0017	009999-0019	009999-0020	009999-0010
0018	009999-0021	009999-0022	009999-0011
0019	009999-0023	009999-0024	009999-0012
0020	009999-0025	009999-0026	009999-0013
0021	009999-0027	009999-0028	009999-0014
0022	009999-0029	009999-0030	009999-0015
0023	009999-0031	009999-0032	009999-0016
0024	009999-0033	009999-0034	009999-0017
0025	009999-0035	009999-0036	009999-0018
0026	009999-0037	009999-0038	009999-0019
0027	009999-0039	009999-0040	009999-0020
0028	009999-0041	009999-0042	009999-0021
0029	009999-0043	009999-0044	009999-0022
0030	009999-0045	009999-0046	009999-0023

Appendix A (continued)

Serial Number To Be Applied (Cont.)			
Aircraft Ser. No.	VSCS Bellcrank Assembly 900F2341712-101 and 900FP341712-103		Strut Assy, Mid-Aft 900F2401300-103
	LH VSCS	RH VSCS	
0031	009999-0047	009999-0048	009999-0024
0032	009999-0049	009999-0050	009999-0025
0033	009999-0051	009999-0052	009999-0026
0034	009999-0053	009999-0054	009999-0027
0035	009999-0055	009999-0056	009999-0028
0036	009999-0057	009999-0058	009999-0029
0037	009999-0059	009999-0060	009999-0030
0038	009999-0061	009999-0062	009999-0031
0039	009999-0063	009999-0064	009999-0032
0040	009999-0065	009999-0066	009999-0033
0041	009999-0067	009999-0068	009999-0034
0042	009999-0069	009999-0070	009999-0035
0043	009999-0071	009999-0072	009999-0036
0044	009999-0073	009999-0074	009999-0037
0045	009999-0075	009999-0076	009999-0038
0046	009999-0077	009999-0078	009999-0039
0047	009999-0079	009999-0080	009999-0040
0048	009999-0081	009999-0082	009999-0041

NOTE - Aircraft 00002 thru 00012 are equipped with 900F2401300-101 Mid-Aft Strut Assemblies. These strut assemblies were previously serialized, therefore, no action is required. Refer to CSP-900RMM-2, Section 04-00-00, for retirement time of this part.

Serial Number To Be Applied			
Aircraft Serial No.	Strut Assembly, Mid-Fwd Truss (900F2401200-102)	Deck Fitting Assembly, Fwd (900F2401500-103)	Deck Fitting Assembly, Aft (900F2401600-103)
0002	009999-0001	009999-0001	009999-0001
0008	009999-0002	009999-0002	009999-0002
0010	009999-0003	009999-0003	009999-0003
0011	009999-0004	009999-0004	009999-0004
0012	009999-0005	009999-0005	009999-0005

(e) This amendment becomes effective on April 20, 2010.

Issued in Fort Worth, Texas, on February 18, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–5325 Filed 3–15–10; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

U.S. Immigration and Customs Enforcement

DEPARTMENT OF THE TREASURY

19 CFR Chapters I and IV

[CBP Dec. 10–03]

Name Change of Two DHS Components

AGENCY: U.S. Customs and Border Protection, DHS; U.S. Immigration and Customs Enforcement, DHS; Department of the Treasury.

ACTION: Final rule.

SUMMARY: On March 31, 2007, the name of the Bureau of Customs and Border Protection changed to U.S. Customs and Border Protection (CBP) and the name of the Bureau of Immigration and Customs Enforcement changed to U.S. Immigration and Customs Enforcement (ICE). This final rule revises two chapter headings in title 19 of the Code of Federal Regulations to reflect the name changes for those two Department of Homeland Security (DHS) components.

DATES: *Effective Date:* March 16, 2010.

FOR FURTHER INFORMATION CONTACT: For CBP: Harold Singer, Director, Regulations and Disclosure Law Division, Office of International Trade, U.S. Customs and Border Protection, (202) 325–0101. For ICE: Jason J. Johnsen, Writer/Editor, Office of Policy, U.S. Immigration and Customs Enforcement, (202) 732–4245.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, Public Law 107–296, (the "HSA"), establishing the Department of Homeland Security (DHS). Pursuant to section 403(1) of the HSA (6 U.S.C. 203(1)), the U.S. Customs Service was transferred from the Department of the Treasury to DHS effective March 1, 2003. In addition, the Customs Service was renamed as the "Bureau of Customs and Border Protection" pursuant to section 1502 of the HSA. Section 442 of the HSA (6 U.S.C. 252) established the "Bureau of Border Security." Under section 1502 of the HSA, the Bureau of Border Security was renamed as the "Bureau of Immigration and Customs Enforcement," effective March 1, 2003. The President's "Reorganization Plan Modification for the Department of Homeland Security," dated January 30, 2003, memorializes these name changes.

On January 18, 2007, DHS notified Congress that it was changing the name of the Bureau of Customs and Border Protection to "U.S. Customs and Border Protection (CBP)" and the name of the Bureau of Immigration and Customs Enforcement to "U.S. Immigration and Customs Enforcement (ICE)." Pursuant to section 872(a)(2) of the HSA (6 U.S.C. 452(a)(2), notice of the name change was provided to Congress no later than 60 days before the change could become effective. On April 23, 2007, a notice was published in the **Federal Register** to inform the public that DHS had changed the names of the two components effective March 31, 2007. 72 FR 20131.

This document revises the headings of chapters I and IV of title 19 of the Code of Federal Regulations (19 CFR) to reflect the agency name changes as set forth in the **Federal Register** notice of April 23, 2007.

Inapplicability of Prior Public Notice and Delayed Effective Date Requirements

This regulation involves matters relating to agency management and involves a technical change regarding the name of the two DHS components. For this reason, pursuant to 5 U.S.C. 553(a)(2), prior notice and comment is not required. Because this is not a substantive rule, publication and service of the rule thirty days before its effective date, pursuant to 5 U.S.C. 553(d), is likewise not required.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, this amendment does not meet the criteria for a "significant regulatory action" for purposes of Executive Order 12866.

Amendments to the Regulations

■ For the reasons set forth above in the preamble, under the authority of 6 U.S.C. 452, and the April 23, 2007, DHS **Federal Register** notice announcing the name change for CBP and ICE, the headings of chapters I and IV of title 19 of the Code of Federal Regulations are amended as set forth below:

■ 1. Revise the chapter I heading to title 19 to read as follows.

Chapter I—U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury

■ 2. Revise the chapter IV heading to title 19 to read as follows.

Chapter IV—U.S. Immigration and Customs Enforcement; Department of Homeland Security

Dated: March 10, 2010.

Janet Napolitano,

Secretary, Department of Homeland Security.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Tariff, and Trade Policy, Department of the Treasury.

[FR Doc. 2010–5639 Filed 3–15–10; 8:45 am]

BILLING CODE 9111–14–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–18, CP2010–21 and CP2010–22; Order No. 414]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding International Business Reply Service Competitive Contract 2 to the Competitive Product List. This action is consistent with a postal reform law. Republication of the Market Dominant and Competitive Product Lists is also consistent with new statutory provisions.

DATES: Effective March 16, 2010 and is applicable beginning February 26, 2010.

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

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 49823 (September 29, 2009).

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I. Introduction
II. Background
III. Comments
IV. Commission Analysis
V. Ordering Paragraphs

I. Introduction

The Postal Service seeks to add a new product identified as International Business Reply Service Competitive Contract 2 to the Competitive Product

List. For the reasons discussed below, the Commission approves the Request.

II. Background

On February 9, 2010, the Postal Service filed a notice announcing that it has entered into two additional International Business Reply Service (IBRS) contracts.[1] Additionally, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add International Business Reply Service Competitive Contract 2 to the Competitive Product List.[2] The Postal Service asserts that the new International Business Reply Service Competitive Contract 2 product is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). *Id.* The Request has been assigned Docket No. MC2010–18.

The Postal Service contemporaneously filed two contracts related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contracts have been assigned Docket Nos. CP2010–21 and CP2010–22, respectively.

The Postal Service uses IBRS contracts for customers that sell lightweight articles to foreign consumers and desires to offer their customers a way to return the articles to the United States for recycling, refurbishment, repair, or value-added processing. *Id.* at 3.

The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contracts are in accordance with Order No. 290.[3] The term of each contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. The Postal Service states the instant contracts are to replace the expiring contracts in Docket Nos. CP2009–20 and CP2009–22.[4] *Id.* at 3–4. The Postal Service notes that the current contracts expire on February 28, 2010.[5]

In support of its Request, the Postal Service filed the following attachments: Attachment 1–a statement of supporting justification as required by 39 CFR 3020.32; Attachments 2–A and 2–B-redacted copies of the contracts; Attachments 3–A and 3–B-redacted copies of the certified statements required by 39 CFR 3015.5(c)(2); Attachment 4–Governors' Decision No. 08–24 which establishes prices and classifications for the IBRS Contracts product; and includes Mail Classification Schedule language for IBRS contracts, formulas for pricing along with an analysis, certification of the Governors vote, and certification of compliance with 39 U.S.C. 3633(a); and Attachment 5–an application for non-public treatment of materials to maintain the contracts and supporting documents under seal.

Substantively, the Request seeks to add International Business Reply Service Competitive Contract 2 to the Competitive Product List. *Id.* at 1.

The Postal Service asserts that the two contracts have generally similar cost and market characteristics as previous IBRS contracts. However, because it requests that the instant contracts be deemed the new baseline contracts for the International Business Reply Service Competitive Contract 2 product, the Postal Service considers the appropriate analysis to be the comparison of the new contracts' cost attributes and market characteristics with one another. *Id.* at 4. The Postal Service indicates that the instant contracts differ from one another basically only in the customer identity. *Id.* The Postal Service represents that prices and classifications "not of general applicability" for IBRS contracts were established by Governors' Decision No. 08–24 filed in Docket Nos. MC2009–14 and CP2009–20. *Id.* at 1, n.1. It also identifies the instant contracts as fitting within the Mail Classification Schedule language for IBRS contracts as included as an attachment to Governors' Decision No. 08–24. *Id.* at 1.

The Request advances reasons why International Business Reply Service Competitive Contract 2 should be added to the Competitive Product List and fits within the Mail Classification Schedule language for IBRS contracts. *Id.* at 5. The Postal Service also explains that a redacted version of the supporting financial documentation is included with this filing as a separate Excel file. *Id.* at 3.

The Postal Service asserts that the instant contracts are in compliance with 39 U.S.C. 3633, are functionally equivalent to one another, fit within the IBRS Mail Classification Schedule language, will serve as the new baseline contracts for the proposed product, and should be grouped together under a single product. *Id.* at 5–6. It requests that the instant contracts be included within the International Business Reply Service Competitive Contract 2 product. *Id.*

In Order No. 407, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.[6]

III. Comments

Comments were filed by the Public Representative.[7] No filings were submitted by other interested parties. The Public Representative states that each element of 39 U.S.C. 3633(a) appears to be met by the proposed International Business Reply Service Competitive Contract 2 product. *Id.* at 2. He observes that the contracts' pricing terms comport with Governors' Decision No. 08–24. *Id.* The Public Representative relates that the addition of the proposed product to the Competitive Product List is consistent with the statutory requirements of 39 U.S.C. 3632, 3633, and 3642. *Id.* at 2–3.

He also states that the Postal Service has provided sufficient justification for confidentiality of the matters filed under seal. *Id.* at 3. The Public Representative notes that the IBRS product improves the efficiency of the mail, provides convenience to the mailers, and serves the public interest. *Id.* at 3–5. He concludes that the contracts comport with all applicable elements of title 39 because it appears they will generate sufficient revenue to cover attributable costs, should not cause market dominant products to subsidize competitive products, and will contribute to the recovery of the Postal Service's total institutional costs. *Id.* at 6.

IV. Commission Analysis

The Postal Service's filing presents several issues for the Commission to consider: (1) the addition of a new

[1] Notice of the United States Postal Service of Filing Two Functionally Equivalent IBRS Competitive Contracts and Request to Establish Successor Instruments as Baseline International Business Reply Service Competitive Contract 2, February 9, 2010 (Request).

[2] *Id.* at 2. The Postal Service states that it is not currently proposing to remove IBRS Contract 1 from the Competitive Product List because the agreement in Docket No. CP2009–17 remains in place. *Id.,* n. 5.

[3] *See* Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

[4] Docket Nos. MC2009–14 and CP2009–20, Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice of Filing (Under Seal) Contract and Enabling Governors' Decision, December 24, 2008.

[5] The Postal Service indicates an intent to begin the new contracts on March 1, 2010. *Id.* at 4.

[6] Notice and Order Concerning Filing of International Business Reply Service Competitive Contract 2 Negotiated Service Agreement, February 12, 2010 (Order No. 407).

[7] Public Representative Comments in Response to United States Postal Service Notice Concerning Filing of Additional International Business Reply Service Contract 2 Negotiated Service Agreements, February 22, 2010 (Public Representative Comments).

product to the Mail Classification Schedule in accordance with 39 U.S.C. 3642; (2) whether the contracts satisfy 39 U.S.C. 3633; and (3) the treatment of these contracts as the baseline agreements for any future International Business Reply Service Competitive Contract 2 contracts. In reaching its conclusions, the Commission has reviewed the Request, the contracts, the financial analyses provided under seal, and the Public Representative's comments.

Product classification. The Postal Service notes that the Commission has had the opportunity to review the IBRS competitive contracts product in Order No. 178 and found that those contracts were properly classified as competitive. In support of its proposal, the Postal Service includes the Statement of Supporting Justification (Statement) required by 39 CFR 3020.32 originally filed in Docket No. MC2009–14 concerning International Business Reply Service Contracts 1. Among other things, the Statement provides support for classifying IBRS as a competitive product. Use of the prior Statement is acceptable to support the conclusion that International Business Reply Service Contract 2 is appropriately classified as competitive, in particular, because the instant contracts are the successors to those in Docket Nos. CP2009–20 and CP2009–22. *Id.* at 5.

Cost considerations. The Postal Service contends that the instant contracts and supporting documents filed in these dockets establish compliance with the statutory provisions applicable to rates for competitive products (39 U.S.C. 3633). *Id.* at 3. It asserts that Governors' Decision No. 08–24 supports these contracts and establishes a pricing formula and classification that ensures each contract meets the criteria of 39 U.S.C. 3633 and the regulations promulgated thereunder. *Id.*, Attachment 4, Attachment D.

Based on the data submitted, the Commission finds that these contracts should cover their attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed contracts indicates that they comport with the provisions applicable to rates for competitive products.

Baseline agreement. The Postal Service seeks to add a new product, International Business Reply Service Competitive Contract 2, to the Competitive Product List. It contends that the instant contracts are functionally equivalent to previously filed IBRS contracts. At the same time, it asks that the instant contracts be considered the new baseline for future International Business Reply Service Competitive Contract 2 contracts. *Id.* at 2. The Postal Service notes that the instant contracts are the direct successors to the contracts that the Commission found to be eligible for inclusion in the International Business Reply Service Competitive Contracts 1 product. *Id.* Because International Business Reply Service Competitive Contract 2 is being added as a new product, the Commission finds it unnecessary to address the issue of functional equivalency with previous contracts. Instead, the Commission will review the instant contracts to determine if they are functionally equivalent with one another.

The Commission reviewed each contract and finds that, with the exception of customer-specific information, they are essentially identical and, therefore, are functionally equivalent. Accordingly, the Commission finds that International Business Reply Service Competitive Contract 2 is properly added to the Competitive Product List as a new product.

The instant contracts, similar to the previous IBRS competitive contracts, contain price contingency clauses which allow the Postal Service flexibility to change rates without entering a new agreement. The Commission initially reviewed a similar provision when it was filed in response to the Commission's request in Docket No. CP2009–20.[8] In Order No. 178, the Commission addressed the implications of the contingency clause in the contract in Docket No. CP2010–20, and determined that those conclusions apply to other contracts (including the instant contracts) with similar provisions.[9]

Following the current practice, the Postal Service shall identify all significant differences between any new IBRS contract and the International Business Reply Service Competitive Contract 2 product. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. The docket referenced in the caption should be Docket No. MC2010–18. In conformity with the current practice, a redacted copy of Governors' Decision No. 08–24 should be included in the new filing along with an electronic link to it.

Other considerations. The Postal Service shall inform the Commission of the effective dates of the contract and promptly notify the Commission if the contract terminates earlier than scheduled.

In conclusion, the Commission adds International Business Reply Service Competitive Contract 2 to the Competitive Product List and finds the negotiated service agreements submitted in Docket Nos. CP2010–21 and CP2010–22 are appropriately included within the International Business Reply Service Competitive Contract 2 product.

V. Ordering Paragraphs

It is ordered:

1. International Business Reply Service Competitive Contract 2 (MC2010-18), CP2010-21 and CP2010-22) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Inbound International.

2. The Postal Service shall notify the Commission of the effective dates of the contract and update the Commission if the termination date changes as discussed in this order.

3. The Postal Service shall file any modifications of price based on cost increases or contingency price provisions in these contracts with the Commission as discussed in the body of this order.

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

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

[8] *See* Docket Nos. MC2009–14 and CP2009–20, Response of the United States Postal Service to Order No. 164, and Notice of Filing Redacted Contract and Other Requested Materials, January 12, 2009.

[9] The Commission explained that the Postal Service must file the changed rates under 39 CFR 3015.5 and give a minimum of 15 days' notice. However, unless the changed rates raise new issues, the Commission found that it would not anticipate a need to act further. *See* Docket Nos. MC2009–14 and CP2009–20, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, February 5, 2009, at 9 (Order No. 178).

Authority: Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020–Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address Management Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- Customized Postage
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
  - Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services (MC2010-12 and R2010-2)

Market Dominant Product Descriptions
First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- Address Correction Service
- Applications and Mailing Permits
- Business Reply Mail
- Bulk Parcel Return Service
- Certified Mail
- Certificate of Mailing
- Collect on Delivery
- Delivery Confirmation
- Insurance
- Merchandise Return Service
- Parcel Airlift (PAL)
- Registered Mail
- Return Receipt
- Return Receipt for Merchandise
- Restricted Delivery
- Shipper-Paid Forward
- Signature Confirmation
- Special Handling
- Stamped Envelopes
- Stamped Cards
- Premium Stamped Stationery
- Premium Stamped Cards
- International Ancillary Services
- International Certificate of Mailing
- International Registered Mail
- International Return Receipt
- International Restricted Delivery
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Part B—Competitive Products
2000 Competitive Product List
Express Mail
- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
  - Inbound International Expedited Services 1 (CP2008–7)
  - Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
  - Inbound International Expedited Services 3 (MC2010–13 and CP2010–12)

Priority Mail
- Priority Mail
- Outbound Priority Mail International
- Inbound Air Parcel Post (at non-UPU rates)
  - Royal Mail Group Inbound Air Parcel Post Agreement
- Inbound Air Parcel Post (at UPU rates)

Parcel Select
Parcel Return Service
International
- International Priority Airlift (IPA)
- International Surface Airlift (ISAL)
- International Direct Sacks—M—Bags
- Global Customized Shipping Services
- Inbound Surface Parcel Post (at non-UPU rates)
  - Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2010–14 and CP2010–13—Inbound Surface Parcel post at Non-UPU Rates and Xpresspost-USA)
- International Money Transfer Service—Outbound
- International Money Transfer Service—Inbound
- International Ancillary Services

Special Services
- Address Enhancement Service
- Greeting Cards and Stationery
- Premium Forwarding Service
- Shipping and Mailing Services

Negotiated Service Agreements
- Domestic
  - Express Mail Contract 1 (MC2008–5)
  - Express Mail Contract 2 (MC2009–3 and CP2009–4)
  - Express Mail Contract 3 (MC2009–15 and CP2009–21)
  - Express Mail Contract 4 (MC2009–34 and CP2009–45)
  - Express Mail Contract 5 (MC2010–5 and CP2010–5)
  - Express Mail Contract 6 (MC2010–6 and CP2010–6)
  - Express Mail Contract 7 (MC2010–7 and CP2010–7)
  - Express Mail Contract 8 (MC2010–16 and CP2010–16)
  - Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
  - Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
  - Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
  - Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
  - Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)

- Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
- Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
- Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
- Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
- Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
- Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
- Priority Mail Contract 1 (MC2008–8 and CP2008–26)
- Priority Mail Contract 2 (MC2009–2 and CP2009–3)
- Priority Mail Contract 3 (MC2009–4 and CP2009–5)
- Priority Mail Contract 4 (MC2009–5 and CP2009–6)
- Priority Mail Contract 5 (MC2009–21 and CP2009–26)
- Priority Mail Contract 6 (MC2009–25 and CP2009–30)
- Priority Mail Contract 7 (MC2009–25 and CP2009–31)
- Priority Mail Contract 8 (MC2009–25 and CP2009–32)
- Priority Mail Contract 9 (MC2009–25 and CP2009–33)
- Priority Mail Contract 10 (MC2009–25 and CP2009–34)
- Priority Mail Contract 11 (MC2009–27 and CP2009–37)
- Priority Mail Contract 12 (MC2009–28 and CP2009–38)
- Priority Mail Contract 13 (MC2009–29 and CP2009–39)
- Priority Mail Contract 14 (MC2009–30 and CP2009–40)
- Priority Mail Contract 15 (MC2009–35 and CP2009–54)
- Priority Mail Contract 16 (MC2009–36 and CP2009–55)
- Priority Mail Contract 17 (MC2009–37 and CP2009–56)
- Priority Mail Contract 18 (MC2009–42 and CP2009–63)
- Priority Mail Contract 19 (MC2010–1 and CP2010–1)
- Priority Mail Contract 20 (MC2010–2 and CP2010–2)
- Priority Mail Contract 21 (MC2010–3 and CP2010–3)
- Priority Mail Contract 22 (MC2010–4 and CP2010–4)
- Priority Mail Contract 23 (MC2010–9 and CP2010–9)
- Priority Mail Contract 24 (MC2010–15 and CP2010–15)

Outbound International
- Direct Entry Parcels Contracts
  - Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
- Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
- Global Direct Contracts 1 (MC2010–17 and CP2010–18)
- Global Expedited Package Services (GEPS) Contracts
  - GEPS 1 (CP2008–5, CP2008–11, CP2008–12, CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
  - Global Expedited Package Services 2 (CP2009–50)
- Global Plus Contracts
  - Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
  - Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)

Inbound International
- Inbound Direct Entry Contracts with Foreign Postal Administrations
  - Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
  - Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
- International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
- International Business Reply Service Competitive Contract 2 (MC2010–18, CP2010–21 and CP2010–22)

Competitive Product Descriptions
- Express Mail
- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
- Priority
- Priority Mail
- Outbound Priority Mail International
- Inbound Air Parcel Post
- Parcel Select
- Parcel Return Service
- International
- International Priority Airlift (IPA)
- International Surface Airlift (ISAL)
- International Direct Sacks—M–Bags
- Global Customized Shipping Services
- International Money Transfer Service
- Inbound Surface Parcel Post (at non-UPU rates)
- International Ancillary Services
- International Certificate of Mailing
- International Registered Mail
- International Return Receipt
- International Restricted Delivery
- International Insurance
- Negotiated Service Agreements
- Domestic
- Outbound International

Part C—Glossary of Terms and Conditions [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. 2010–5636 Filed 3–15–10; 8:45 am]

BILLING CODE 7710–FW–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0804; FRL–9127–2]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Amendment to Electric Generating Unit Multi-Pollutant Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. The revision is an amendment to the Electric Generating Unit Multi-Pollutant Regulation of Delaware's Administrative Code, and it modifies the sulfur dioxide (SO_2) mass emissions limit associated with Conectiv Edge Moor Unit 5 beginning in calendar year 2009. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: *Effective Date:* This final rule is effective on April 15, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2009–0804. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 5, 2010 (75 FR 2), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of Delaware's SIP revision pertaining to

Regulation No. 1146—Electric Generating Unit (EGU) Multi-Pollutant Regulation. The regulation was adopted in order to impose lower emissions limits of nitrogen oxides (NO_X) and SO_2 in order to help Delaware attain and maintain the national ambient air quality standards (NAAQS) for ozone and fine particulate matter ($PM_{2.5}$), as well as to assist Delaware in achieving the emissions reductions needed to support the State's 8-hour ozone reasonable further progress plan (RFP). The formal SIP revision was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) November 16, 2006. No comments were received on the NPR.

II. Summary of SIP Revision

On October 7, 2009, EPA received a SIP revision to amend Regulation No. 1146. This SIP revision was the result of a settlement agreement between Conectiv Delmarva Generating, Inc. and DNREC in December 2008. Conectiv had filed an appeal challenging the regulation for their Edge Moor 5 facility. The emissions limit of 2,427 tons per year limited the facility from operating in extreme circumstances in the event that failure at other production units would require them to exceed that limit in order to supply the needed electricity. The limit of 4,600 tons per year was determined to be an adequate limit after an analysis of the facility's history of operation and the estimate of future operations using the low sulfur (0.5%) residual fuel to generate electricity at the 446 megawatt oil-fired steam generating unit. Currently, the facility operates at a 10% capacity factor. If so required, the new emissions limit would allow the facility to operate at a 45% capacity factor.

The Delaware Department of Natural Resources and Environmental Control requested that a revision to the State's SIP concerning an amendment, which modifies the SO_2 mass emissions limit associated with Conectiv Edge Moor Unit 5, be approved.

III. Final Action

Delaware has met the requirements concerning an amendment to the Electric Generating Unit Multi-Pollutant Regulation of Delaware's Administrative Code, which modifies the SO_2 mass emissions limit associated with Conectiv Edge Moor Unit 5. The purpose of this revision is to assist Delaware in achieving the emissions reductions needed to support the State's 8-hour ozone RFP, and therefore, EPA is approving it.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; 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.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 17, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Delaware's SIP revision pertaining to an amendment to the Electric Generating Unit Multi-Pollutant Regulation of Delaware's Administrative Code, which modifies the SO_2 mass emissions limit associated with Conectiv Edge Moor Unit 5, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, and Sulfur oxides.

Dated: *February 25, 2010.*

W.C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended under Regulation No. 1146 by removing the entry for Table II and adding the entry for Table 5–1 to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Regulation No. 1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation NO				
*	*	*	*	*
Table 5–1 (Formerly Table II)	Annual SO_2 Mass Emissions Limit.	9/11/08 10/10/09	March 16, 2010 [Insert page number where the document begins].	Modified emissions limit for Conectiv Edge Moor Unit 5.
*	*	*	*	*

* * * * *

[FR Doc. 2010–5581 Filed 3–15–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2008–0508; FRL–9127–6]

RIN 2060–AQ15

Mandatory Reporting of Greenhouse Gases: Minor Harmonizing Changes to the General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the general provisions for the Mandatory Greenhouse Gas (GHG) Reporting Rule. The amendments do not change the requirements of the regulation for facilities and suppliers covered by the 2009 final rule. Rather, the amendments are minor changes to the format of several sections of the general provisions to accommodate the addition of new subparts in the future in a simple and clear manner. These changes include updating the language for the schedule for submitting reports and calibrating equipment to recognize that subparts that may be added in the future would have later deadlines. These revisions do not change the requirements for subparts included in the 2009 final rule.

DATES: This direct final rule is effective May 17, 2010 without further notice, unless EPA receives adverse comments by April 15, 2010, or by April 30, 2010 if a public hearing is held (see below). If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the relevant section of this rule, will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0508, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2008–0508, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0508. 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 CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding

legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; *telephone number:* (202) 343–9263; *fax number:* (202) 343–2342; *e-mail address: GHGReportingRule@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. These amendments simply reformat parts of one section of subpart A and make other harmonizing changes to allow additional subparts to be added in the future in a clear manner. These revisions do not alter the requirements for sources covered by the final rule. Any additional subparts will be added in separate rulemakings and are not included in this rule. However, in the "Proposed Rules" section of this **Federal Register,** we are publishing a separate document that will serve as the proposed rule for these amendments if adverse comments are received on this direct final rule. If EPA receives adverse comment on all or a distinct portion of this direct final rule, we will publish a timely withdrawal in the **Federal Register** to inform the public that the direct final rule or some portion of the direct final rule will not take effect. EPA will not consider a comment to be adverse if a comment pertains to an aspect of 40 CFR part 98 that is not addressed in this direct final rule.

The rule provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on any other provision, unless we determine that it would not be appropriate to promulgate those provisions due to their being affected by the provision for which we receive adverse comments. We would address all public comments in any subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on the specific changes being made in this rule must do so at this time. For further information about commenting on this rule, *see* the **ADDRESSES** section of this document.

Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Regulated Entities. The amendments to the Mandatory Greenhouse Gas Reporting Rule affect owners and operators of fuel and chemicals suppliers and direct emitters of GHGs who are already subject to the rule. Regulated categories and entities include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
General Stationary Fuel Combustion Sources.	.....	Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines:
	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries, and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
Electricity Generation	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production	325199	Adipic acid manufacturing facilities.
Aluminum Production	331312	Primary Aluminum production facilities.
Ammonia Manufacturing	325311	Anhydrous and aqueous ammonia manufacturing facilities.
Cement Production	327310	Portland Cement manufacturing plants.
Ferroalloy Production	331112	Ferroalloys manufacturing facilities.
Glass Production	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC–22 Production and HFC–23 Destruction.	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production	325120	Hydrogen manufacturing facilities.
Iron and Steel Production	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Lime Production	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Nitric Acid Production	325311	Nitric acid manufacturing facilities.
Petrochemical Production	32511	Ethylene dichloride manufacturing facilities.
	325199	Acrylonitrile, ethylene oxide, methanol manufacturing facilities.
	325110	Ethylene manufacturing facilities.
	325182	Carbon black manufacturing facilities.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
Petroleum Refineries	324110	Petroleum refineries.
Phosphoric Acid Production	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing	322110	Pulp mills.
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining and/or beneficiation.
Titanium Dioxide Production	325188	Titanium dioxide manufacturing facilities.
Zinc Production	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Municipal Solid Waste Landfills	562212	Solid waste landfills.
Manure Management [1]	112111	Beef cattle feedlots.
	112120	Dairy cattle and milk production facilities.
	112210	Hog and pig farms.
	112310	Chicken egg production facilities.
	112330	Turkey production.
	112320	Broilers and other meat type chicken production.
Suppliers of Coal Based Liquids Fuels	211111	Coal liquefaction at mine sites.
Suppliers of Petroleum Products	324110	Petroleum refineries.
Suppliers of Natural Gas and NGLs	221210	Natural gas distribution facilities.
	211112	Natural gas liquid extraction facilities.
Suppliers of Industrial GHGs	325120	Industrial gas manufacturing facilities.
Suppliers of Carbon Dioxide (CO2)	325120	Industrial gas manufacturing facilities.

[1] EPA will not be implementing subpart JJ of the Mandatory GHG Reporting Rule using funds provided in its FY2010 appropriations due to a Congressional restriction prohibiting the expenditure of funds for this purpose.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Table 1 of this preamble lists the types of facilities that EPA is now aware could be potentially affected by this action. Other types of facilities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A, and other subparts as necessary. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Public Hearing. EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section by March 23, 2010. If requested, the public hearing will be conducted on March 31, 2010 at 1310 L St., NW., Washington, DC 20005 starting at 9 a.m., local time. EPA will provide further information about the hearing on its webpage if a hearing is requested.

Outline. The information presented in this preamble is organized as follows:

Table of Contents

I. Background of Final Rule
II. Overview of the Amendments
III. Rationale for the Amendments
IV. Economic Impacts of the Amendments
V. Statutory and Executive Order Reviews

I. Background of Final Rule

The Mandatory Greenhouse Gas Reporting Rule, published on October 30, 2009 (74 FR 56260), requires reporting by certain facilities that emit GHGs and by suppliers of fuels and industrial gases. Facilities and suppliers that meet the applicability criteria in the rule must comply with the general provisions (subpart A) and any other applicable subpart(s). Subpart A specifies rule applicability and the general monitoring, reporting, recordkeeping, verification, schedule, and calibration requirements that apply to all facilities and suppliers that are subject to the final rule. Some subparts of the final rule address direct emitters, who generally must report emissions from general stationary fuel combustion sources and any manufacturing processes that are specified in the rule. Other subparts address suppliers, who must report quantities of fuel products or industrial gases they supply into the economy and the GHG emissions that could ultimately be released when the fuels they supply are combusted or the industrial gases they supply are used and released.

As specified in subpart A of the 2009 final rule, facilities and suppliers covered by the 2009 rule must begin monitoring emissions data on January 1, 2010, and the first reports are due to EPA on March 31, 2011. EPA is currently in the process of conducting additional rulemaking actions that would add subparts to the reporting rule. If adopted, the new subparts would require reporting of emissions by additional source and supply categories. Compliance with the requirements of any new subparts would begin in future calendar years (*e.g.*, 2011) rather than 2010. Any comments about the actual reporting date (*e.g*, March 31) for those additional source categories should be directed to those separate rulemaking. We will not consider comments on the reporting date as adverse comments in this rulemaking. Today's minor revisions do not change the requirements of the final rule, but rather reformat the regulatory text to allow for the addition of subparts in the future in a simple and clear manner.

II. Overview of the Amendments

The direct final rule amendment converts into a tabular format the lists of source categories and supply categories that are affected by the rule. The lists, which currently are embedded in three paragraphs of subpart A (40 CFR 98.2(a)), are being moved to three new tables in subpart A. Each table also indicates the applicable first reporting year for each source and supply category. For source and supply categories included in the 2009 final rule, the first reporting year remains 2010.

As a concurrent harmonizing change, all references to applicable subparts (*e.g.*, "subparts C through JJ") are being replaced by references to the appropriate source or supply category table. EPA is neither adding any new source categories in this direct final rule nor making any changes to the applicability, schedule, or general requirements for sources covered by the 2009 final rule. Any comments about the applicability requirements reflected in the final rule will not be considered adverse comment in this rulemaking. This rule is merely reformatting those applicability requirements, not changing them; therefore, they are not subject to comment in this rule. For more information about applicability, *please see* the final GHG Mandatory Reporting Rule (74 FR 56260) and corresponding Response to Comment documents.

Finally, EPA is also amending 40 CFR 98.3 in order to recognize that the compliance year for any new subparts would be different than for subparts covered by the 2009 final rule. Again, these revisions would not change any requirements for sources covered by the 2009 final rule. As stated above, the actual schedule for complying with new subparts is not a subject for this rulemaking. Any comments about the schedule for any new source categories added should be directed to those rulemakings. For more information about the March 31, 2011 reporting date, please see the final GHG Mandatory Reporting Rule (74 FR 56260) and corresponding Response to Comment documents.

III. Rationale for the Amendments

EPA is changing the framework of 40 CFR 98.2(a) to make it clear which source categories are to be considered for determining applicability and reporting requirements for calendar year 2010, and which are to be considered for future years if and when new subparts are added to the rule. In 40 CFR 98.3, EPA is modifying references to calendar year 2010 as being the sole initial compliance year for all rule requirements. The table format improves clarity and facilitates the addition of subparts that were not included in the 2009 final rule. Tables A–3 through A–5 replace the list of source categories in 40 CFR 98.2(a)(1), (a)(2), and (a)(4), respectively. Each table lists the source categories subject to the rule in calendar year 2010 and also includes a place to list applicable source categories in calendar year 2011 and future years.

If new source and supply source categories are added to the rule, this reformatting will simplify updates to the applicability provisions of subpart A. If new subparts are adopted, a new row would simply be added to the appropriate table for the appropriate starting year. To carry these revisions through the rest of the regulatory text, the introductory text of 40 CFR 98.2(a)(2) and a few other paragraphs throughout 40 CFR part 98, subpart A that currently reference "subparts C through JJ" or "subparts KK through PP" are reworded to refer to the appropriate tables. References to tables are an easy way to clearly indicate which categories are to be considered for determining the applicability threshold and reporting requirements for calendar years 2010, 2011, and future years, without having to update the list citations throughout the regulatory text every time a new subpart is added to the rule.

We are also revising 40 CFR 98.3(b), which establishes the schedule for annual reporting. The text in 40 CFR 98.3(b)(1) and (b)(2) currently indicates that existing facilities subject to the rule must report emissions for calendar year 2010 by submitting an annual report no later than March 31, 2011. The revisions to 40 CFR 98.3(b) do not change the 2010 and 2011 dates for facilities and suppliers covered by the 2009 final rule, but provide that as new subparts are added, they will have later compliance years. Therefore, we are modifying the text of 40 CFR 98.3(b) to allow reporting to start in different years, as specified in the new source category tables. Any future rules adding subparts would indicate the exact starting year for reporting for that source category. This direct final rule merely removes the presumption that all categories, existing and future, would report starting with 2010 emissions. Any comments about the reporting schedule for any new source categories should be made in those separate rulemakings, rather than here. We will not consider them adverse comments for the purposes of this rulemaking.

We also are removing and reserving 40 CFR 98.3(b)(1). This section is not needed because the tables will indicate the first reporting year for source categories added to the rule and the requirement for facilities to report in each subsequent year is already contained in 40 CFR 98.2(i).

We are also modifing the text of 40 CFR 98.3(i)(1) to allow facilities that must report under any additional subparts to conduct any intial calibrations that are required by the newly published subparts during the first year that the subpart applies rather than in the year 2010.

As discussed throughout this rule, we are not changing any requirements for facilities or suppliers covered by subparts included in the 2009 final rule. Rather, we are merely reformatting the presentation of certain requirements, and clarifying deadlines that may apply to future subparts added in later rulemakings. Thus, as indicated in the concurrent proposal, we are not requesting or entertaining comments on decisions made in the 2009 final rule. Comments received on issues resolved in the 2009 final rule will not be considered adverse comments on this direct final rule because they are outside the scope of the changes being made by this rule.

IV. Economic Impacts of the Amendments

The amendments do not introduce any changes to the requirements of the rule. Therefore, there are no economic or cost impacts associated with this direct final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The amendments in this direct final rule simply reformat parts of subpart A and make other harmonizing changes to allow additional subparts to be added into the final rule in a clear manner. This direct final rule does not change any reporting requirements in the general provisions. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing subparts of 40 CFR part 98 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0629. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. Subparts that will be added through separate rulemakings will document the respective information collection requirements in their own ICR documents.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act

or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The direct final rule simply reformats parts of one section of subpart A and makes other harmonizing changes to allow additional subparts to be added into the final rule in a clear manner. The direct final rule does not itself add any additional subparts or requirements. The direct final rule will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The amendments in this final rule reformat parts of one section of Subpart A and make other harmonizing changes to allow additional subparts to be added into the final rule in a clear manner.

E. Executive Order 13132: Federalism

EO 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the EO to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. However, for a more detailed discussion about how the Mandatory GHG Reporting Rule relates to existing State programs, *please see* Section II of the preamble to the final Mandatory GHG Reporting Rule (74 FR 56266).

These amendments apply directly to facilities that supply fuel or chemicals that when used emit greenhouse gases or facilities that directly emit greenhouses gases. They do not apply to governmental entities unless the government entity owns a facility that directly emits greenhouse gases above threshold levels (such as a landfill or large stationary combustion source), so relatively few government facilities would be affected. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, EO 13132 does not apply to this final rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The changes in this direct final rule do not result in any changes to the requirements of the 2009 rule. Thus, Executive Order 13175 does not apply to this action.

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

This direct final rule is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The changes in this direct final rule do not result in any changes to the requirements applicable to facilities and suppliers covered by the subparts included in the 2009 final rule.

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

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

I. National Technology Transfer and Advancement Act

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that the direct final amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the amendments do not affect the level of protection provided to human health or the environment. The amendments do not affect the level of protection provided to human health or the environment because they simply reformat parts of one section of subpart A and make other harmonizing changes to allow additional subparts to be added into the final rule in a clear manner.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 17, 2010.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Suppliers, Reporting and recordkeeping requirements.

Dated: March 10, 2010.

Lisa P. Jackson,

Administrator.

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

PART 98—[AMENDED]

■ 1. The authority citation for part 98 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 98.1 is amended by revising paragraph (b) to read as follows:

§ 98.1 Purpose and scope.

* * * * *

(b) Owners and operators of facilities and suppliers that are subject to this part must follow the requirements this subpart and all applicable subparts of this part. If a conflict exists between a provision in subpart A and any other applicable subpart, the requirements of the applicable subpart shall take precedence.

■ 3. Section 98.2 is amended by revising paragraphs (a)(1), (2), and (4) to read as follows:

§ 98.2 Who must report?

(a) * * *

(1) *A facility that contains any source category that is listed in Table A–3 of this subpart in any calendar year starting in 2010.* For these facilities, the annual GHG report must cover stationary fuel combustion sources (subpart C of this part), miscellaneous use of carbonates (subpart U of this part), and all applicable source categories listed in Table A–3 and Table A–4 of this subpart.

(2) *A facility that contains any source category that is listed in Table A–4 of this subpart that emits 25,000 metric tons CO_2e or more per year in combined emissions from stationary fuel combustion units, miscellaneous uses of carbonate, and all applicable source categories that are listed in Table A–3 and Table A–4 of this subpart.* For these facilities, the annual GHG report must cover stationary fuel combustion sources (subpart C of this part), miscellaneous use of carbonates (subpart U of this part), and all applicable source categories listed in Table A–3 and Table A–4 of this subpart.

* * * * *

(4) *A supplier that is listed in Table A–5 of this subpart.* For these suppliers, the annual GHG report must cover all applicable products for which calculation methodologies are provided in the subparts listed in Table A–5 of this subpart.

* * * * *

■ 4. Section 98.3 is amended as follows:
■ a. By revising paragraph (b) introductory text.
■ b. By removing and reserving paragraph (b)(1).
■ c. By revising paragraph (b)(2).
■ d. By revising paragraph (c)(4)(i).
■ e. By revising paragraph (c)(4)(ii).
■ f. By revising paragraph (c)(4)(iii) introductory text.
■ g. By revising paragraph (i)(1).

§ 98.3 What are the general monitoring, reporting, recordkeeping and verification requirements of this part?

* * * * *

(b) *Schedule.* The annual GHG report must be submitted no later than March 31 of each calendar year for GHG emissions in the previous calendar year. As an example, for a facility that is subject to the rule in calendar year 2010, the first report must be submitted on March 31, 2011.

(1) [Reserved]

(2) For a new facility or supplier that begins operation on or after January 1, 2010 and becomes subject to the rule in the year that it becomes operational, report emissions beginning with the first operating month and ending on December 31 of that year. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1 and ending on December 31.

* * * * *

(c) * * *

(4) * * *

(i) Annual emissions (excluding biogenic CO_2) aggregated for all GHG from all applicable source categories listed in Tables A–3 and Table A–4 of this subpart and expressed in metric tons of CO_2e calculated using Equation A–1 of this subpart.

(ii) Annual emissions of biogenic CO_2 aggregated for all applicable source categories in listed in Tables A–3 and Table A–4 of this subpart.

(iii) Annual emissions from each applicable source category listed in Tables A–3 and Table A–4 of this subpart, expressed in metric tons of each GHG listed in paragraphs (c)(4)(iii)(A) through (E) of this section.

* * * * *

(i) * * *

(1) Except as provided paragraphs (i)(4) through (6) of this section, flow meters and other devices (*e.g.*, belt scales) that measure data used to calculate GHG emissions shall be calibrated using the procedures specified in this paragraph and each relevant subpart of this part. All measurement devices must be calibrated according to the manufacturer's recommended procedures, an appropriate industry consensus standard, or a method specified in a relevant subpart of this part. All measurement devices shall be calibrated to an accuracy of 5 percent. For facilities and suppliers that are subject to this part on January 1, 2010, the initial calibration shall be conducted by April 1, 2010. For facilities and suppliers that become subject to this part after April 1, 2010, the initial calibration shall be conducted by the date that data collection is required to begin. Subsequent calibrations shall be performed at the frequency specified in each applicable subpart.

* * * * *

■ 5. Subpart A is amended by adding Tables A–3, A–4, and A–5 to read as follows:

TABLE A–3 OF SUBPART A—SOURCE CATEGORY LIST FOR § 98.2(a)(1)

Source Categories [1] Applicable in 2010 and Future Years
Electricity generation units that report CO_2 mass emissions year round through 40 CFR part 75 (subpart D).
Adipic acid production (subpart E).
Aluminum production (subpart F).
Ammonia manufacturing (subpart G).
Cement production (subpart H).
HCFC–22 production (subpart O).
HFC–23 destruction processes that are not collected with a HCFC–22 production facility and that destroy more than 2.14 metric tons of HFC–23 per year (subpart O).
Lime manufacturing (subpart S).
Nitric acid production (subpart V).
Petrochemical production (subpart X).
Petroleum refineries (subpart Y).
Phosphoric acid production (subpart Z).
Silicon carbide production (subpart BB).
Soda ash production (subpart CC).
Titanium dioxide production (subpart EE).
Municipal solid waste landfills that generate CH_4 in amounts equivalent to 25,000 metric tons CO_2e or more per year, as determined according to subpart HH of this part.
Manure management systems with combined CH_4 amd N_2O emissions in amounts equivalent to 25,000 metric tons CO_2e or more per year, as determined according to subpart JJ of this part.
Additional Source Categories [1] Applicable in 2011 and Future Years
Source Categories [1] Applicable in 2010 and Future Years (reserved)
Source categories are defined in each applicable subpart.

TABLE A–4 OF SUBPART A—SOURCE CATEGORY LIST FOR § 98.2(a)(2)

Source Categories [1] Applicable in 2010 and Future Years
Ferroalloy production (subpart K).
Glass production (subpart N).
Hydrogen production (subpart P).
Iron and steel production (subpart Q).
Lead production (subpart R).
Pulp and paper manufacturing (subpart AA).
Zinc production (subpart GG).
Additional Source Categories [1] Applicable in 2011 and Future Years (Reserved)
Source categories aer defined in each applicable subpart.

TABLE A–5 OF SUBPART A—SUPPLIER CATEGORY LIST FOR § 98.2(a)(4)

Supplier Categories [1] Applicable in 2010 and Future Years
Coal-to-liquids suppliers (subpart LL):
(A) All producers of coal-to-liquid products.
(B) Importers of an annual quantity of coal-to-liquid products that is equivalent to 25,000 metric tons CO_2e or more.
(C) Exports of an annual quantity of coal-to-liquid products that is equivalent to 25,000 metric tons CO_2e or more.
Petroleum product suppliers (subpart MM):
(A) All petroleum refineries that distill crude oil.
(B) Importers of an annual quantity of petroleum products that is equivalent to 25,000 metric tons CO_2e or more.
(C) Exporters of an annual quantity of petroleum products that is equivalent to 25,000 metric tons CO_2e or more.
Natural gas and natural gas liquids suppliers (subpart NN):
(A) All fractionators.
(B) All local natural gas distribution companies.
Supplier Categories [1] Applicable in 2010 and Future Years
Industrial greenhouse gas suppliers (subpart OO):
(A) All producers of industrial greenhouse gases.
(B) Importers of industrial greenhouse gases with annual bulk imports of N_2O, fluorinated GHG, and CO_2 that in combination are equivalent to 25,000 metric tons CO_2e or more.
(C) Exporters of industrial greenhouse gases with annual bulk exports of N_2O, fluorinated GHG, and CO_2 that in combination are equivalent to 25,000 metric tons CO_2e or more.
Carbon dioxide suppliers (subpart PP):
(A) All producers of CO_2.
(B) Importers of CO_2 with annual bulk imports of N_2O, fluorinated GHG, and CO_2 that in combination are equivalent to 25,000 metric tons CO_2e or more.

TABLE A–5 OF SUBPART A—SUPPLIER CATEGORY LIST FOR § 98.2(a)(4)—Continued

(C) Exporters of CO_2 with annual bulk exports of N_2O, fluorinated GHG, and CO_2 that in combination are equivalent to 25,000 metric tons CO_2e or more.
Additional Supplier Categories Applicable [1] in 2011 and Future Years (Reserved)

[1] Suppliers are defined in each applicable subpart.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 07–51; FCC 10–35]

Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments

AGENCY: Federal Communications Commission.

ACTION: Final rule; policy statement.

SUMMARY: This document is the Commission's Second Report and Order concerning video services in multiple dwelling units ("MDUs"), which are apartment and condominium buildings and centrally managed residential real estate developments. The Second Report and Order resolves some issues the Commission left undecided in its First Report and Order, concerning two practices called "bulk billing" and "marketing exclusivity." The Second Report and Order concludes that bulk billing and marketing exclusivity, at present, create more benefits than harms for MDU residents. The Commission therefore allows both practices to continue.

DATES: Effective April 15, 2010.

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

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact John W. Berresford, (202) 418–1886, or Holly Saurer, (202) 418–7283, both of the Policy Division, Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Second Report and Order in MB Docket No. 07–51, FCC 10–35, adopted March 1, 2010, and released March 2, 2010. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (The document will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Second Report and Order

1. The Second Report and Order is an outgrowth of the Commission's first Report and Order in the same proceeding, which was released on October 31, 2007. Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units & Other Real Estate Developments, Report & Order & Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235 (2007), affirmed, National Cable & Telecommun. Ass'n v. FCC, 567 F.3d 659 (DC Cir. 2009). The first Report and Order prohibited certain multichannel video programming distributors ("MVPDs," specifically cable operators and common carriers) from engaging in so-called "building exclusivity" with MDUs—arrangements whereby only one such MVPD was allowed to provide MVPD service in an MDU. The first Report and Order ended with a Further Notice of Proposed Rulemaking that raised issues about the similar practices of bulk billing and marketing exclusivity. The Second Report and Order resolves those issues.[1]

I. Background

2. Much of the history of this proceeding, definitions of key terms, factual descriptions of MDUs and their residents, and descriptions of pertinent statutes (especially 47 U.S.C. 548(b)) are set forth in the **Federal Register** description of the first Report and Order, 73 FR 1080–01 (Jan. 7, 2008). Bulk billing is an arrangement in which one MVPD provides video service to every resident of an MDU, usually at a significant discount from the retail rate that each resident would pay if he or she contracted with the MVPD individually. Marketing exclusivity is a practice by which an MDU owner grants one MVPD certain specific marketing advantages on an exclusive basis (such as the exclusive right to have its brand on the MDU's Web page and to market its services in common areas). The issues resolved in the Second Report and Order were whether to allow any kind of MVPD to engage in bulk billing or marketing exclusivity.

3. In response to the Further Notice of Proposed Rulemaking, the Commission received filings from major cable operators, their trade association, and incumbent common carriers (also called local exchange carriers or "LECs"), the two major Direct Broadcast Satellite ("DBS") providers (DIRECTV and DISH Network), nine private cable operators ("PCOs"), PCOs' national trade association, their financiers, operators of new wire- or fiber-based systems that do not use public rights of way, approximately 20 real estate interests (MDU developers, builders, owners, and managers and their trade associations and consultants), several individual homeowners' associations and educational institutions that subscribe to PCOs' services, municipal governments, the National Governors Association, and hundreds of individual consumers.

II. Discussion

A. Bulk Billing Arrangements

1. Use of Bulk Billing Arrangements

4. In a typical bulk billing arrangement, the MDU building subscribes to the MVPD provider's service, agreeing to pay the MVPD a monthly fee. The MVPD provider then connects its service to every unit in the MDU. The MVPD typically bills its fee every month to the MDU building, which factors each unit's pro rata charge into the unit's rent, condominium fee,

[1] The Second Report and Order does not resolve another issue raised in the Further Notice of Proposed Rulemaking, which is whether the First Report and Order's ban of building exclusivity should be expanded to apply to MVPDs other than cable operators and common carriers, specifically DBS service providers and so-called "private cable operators." That issue will be resolved in a future decision.

or homeowners' association dues. The MDU building owner must pay the monthly fee to the MVPD provider.

5. Bulk billing arrangements vary in duration and grounds for termination. They may or may not be coupled with some form of explicit exclusivity, where allowed under our rules.[2] They usually provide each MDU with the chosen MVPD's Basic or Expanded Basic video service, and sometimes also with voice, Internet access, and/or alarm service. In most bulk billing arrangements, the MDU's residents receive a significant discount from the bulk billing MVPD's standard retail rate. Residents may also purchase additional services, such as premium channels, directly from the MVPD provider at the regular retail rate. The record indicates that bulk billing arrangements occur in a significant number of MDUs, but not in most.

6. It appears that one of the factors that makes bulk billing at discounted rates practical for the bulk billing MVPD is that it authorizes uninterrupted service to every residential unit in the MDU building or suburban development. The MVPD provider is spared the significant expenses of selling to each resident, making credit checks and collecting deposits, managing bad debt and theft of service, and frequently sending personnel and vehicles to the building to place and remove boxes and turn service on and off in different units.

7. A bulk billing agreement does not prevent MDU residents from obtaining services from another MVPD, assuming that another has wired or will wire the MDU, if necessary. Some residents may also place satellite dishes on their premises, depending on the physical configuration of their units.[3] Any such residents, however, must pay for both the bulk billing MVPD and the services of the other MVPD.

8. As already noted, bulk billing does not physically or legally prevent a second MVPD from providing service to an MDU resident and does not prevent such an MVPD from wiring an MDU for its service, subject to the permission of the MDU owner. The arrangement may deter a second MVPD in some cases, however, because it limits the entrant's patronage to residents in the MDU who are willing to pay for the services of two MVPDs or who simply insist on receiving the services of the second MVPD for the characteristics of that service (e.g., high-speed broadband for a home business).

2. Benefits and Harms of Bulk Billing Arrangements

9. The chief benefits that bulk billing brings to MDU residents in most cases are lower prices, packages of programming tailored to the particular interests and needs of the MDU's residents, and avoidance of the inconvenience of establishing or disconnecting MVPD service. The chief harms that bulk billing causes to MDU residents are that it may discourage a second MVPD from entering an MDU and, even if it does not, MDU residents who want service from the second MVPD must pay for two MVPD services. After weighing these considerations carefully and examining current marketplace conditions, we conclude that the benefits of bulk billing are greater than its harms in the majority of cases. Accordingly, we will not prohibit bulk billing at this time.

10. *Benefits of Bulk Billing Arrangements.* PCOs and some new cable operators claim that bulk billing is essential to their health or survival, that bulk billing is necessary if they are to secure financing, continue to grow, and deploy broadband in MDUs. PCOs in particular state that, if their existing bulk billing arrangements were invalidated, they would be automatically in default of many loan agreements, endangering their existing businesses and making future financing for expansion very difficult. They fear that without bulk billing many of them will go out of business and the few survivors will find it difficult to expand. This harm to them, they emphasize, will harm consumers, because consumers will lose the benefits of competition, choice, and innovation (including broadband deployment) that bulk billing MVPDs can bring to MDU residents.

11. MVPDs, real estate interests, and some consumers also claim that bulk billing is satisfactory to most MDU residents and is even a major attraction to some MDU residents. They point out that bulk billing enables lower income tenants to avoid cable rate increases (if it provides for steady prices for several years); these tenants also avoid high deposits and the limitations imposed by their own imperfect credit histories. In these ways, bulk billing can make MVPD services available to some MDU residents who otherwise would not be able to afford them. Real estate interests and some others defend bulk billing, as they do building and marketing exclusivity, as a "bargaining chip" that they can give to a favored MVPD in exchange for the MVPD's paying to wire their buildings.

12. Bulk billing's supporters claim that it is often awarded to the "best" MVPD in the area and is sometimes coupled with enforceable standards ensuring that the bulk billing MVPD establishes prices for its services below its ordinary retail rates (and below those charged by new entrants), keeps those prices steady in contrast to major MVPDs' periodically raising rates, provides high quality service, tailors its set of channels and programs to fit the MDU residents' particular interests, and continually improves its offerings with new technology. Discounts of 30% from the bulk billing MVPD's retail rates are common, and can be as high as 75%. Century of Boca Raton Umbrella Association, for example, describes a community where bulk billed MDU residents pay $28 monthly for basic cable and the neighboring incumbent cable operator charges $48, or 70% more, for its basic service; and Camden Property Trust states that each of its bulk billed MDU residents, in addition to enjoying a significant discount from the retail rates charged by competing MVPDs, also saves up to $200 on deposits and service establishment fees. Bulk billers' low prices for video services enable them to charge low prices for the "triple play" (a combined offering of voice service, video service, and Internet access). The low prices are made possible, MVPDs and real estate interests say, by the savings in their costs that bulk billing makes possible. They argue that prices for the vast majority of MDU residents subject to bulk billing will rise if bulk billing ends.

13. In addition to lower-than-retail rates, supporters of bulk billing state that it often makes possible specialized services for MDU residents. The Independent Multifamily Communications Council lists security channels, closed circuit monitoring, community channels (that have educated residents about, among other matters, the recent conversion of broadcast television to digital-only transmission), WiFi, and free broadband access in MDUs' common areas; the National Association of Home Builders mentions free cable service provided to club houses, recreation areas, and meeting rooms in MDUs; and Verizon mentions "concierge service with a dedicated customer service representative from the video service provider."

14. Commenters defending bulk billing also state that, by sparing individual MDU residents the decision about their MVPD service provider, they avoid placing an unwanted burden on

[2] Any such building exclusivity, if executed by a cable operator or common carrier, is prohibited by the First Report and Order.

[3] The Commission's Over-the-Air Reception Devices rules, 47 CFR 1.4000, permit MDU residents to place DBS receiving antennas on their premises under some circumstances.

the residents who are satisfied with the bulk billing MVPD. These residents are spared costs and inconveniences they would incur—the time to decide among competing MVPDs, the cost of deposits, the taking of a vacation day to let the installer in, and charges for installation and the establishment and disconnection of service. These savings are particularly important to lower income households and persons who are transient and value freedom from the inconvenience of establishing and terminating service repeatedly.

15. Supporters of bulk billing also emphasize that, unlike building exclusivity, bulk billing does not prevent a second or third MVPD from entering and wiring an MDU building or an MDU resident from subscribing to that MVPD's service. One bulk billing cable operator estimates that DBS has a 30% market share in its MDU, approximately DBS's national average. They also claim that residents of MDU buildings that have bulk billing chose to live there and should not be heard to complain and seek to deprive the majority of residents who are satisfied with it.

16. Defenders of bulk billing emphasize how competitive the residential real estate market is. They characterize MVPD service as just another amenity of an MDU building that the owner can provide, such as a swimming pool, a fitness center, or valet services; with those amenities, some benefit from them, some do not, but all pay for them whether the assessment is itemized or not.

17. *Harms of Bulk Billing Arrangements.* Opponents of bulk billing claim that bulk billing arrangements reduce a second MVPD's incentive to wire a building for its services (including broadband) and frustrate the ability of residents of an MDU to receive the service of the second MVPD they want (by forcing such residents to pay for two MVPDs' services). They argue that bulk billing saddles MDU residents with a *de facto* exclusive provider with no incentive to offer or maintain pricing and programming at market levels. Some MDU residents subject to bulk billing arrangements object strongly to being forced to pay twice if they want to obtain service from an MVPD other than the bulk billing one. The need to pay twice in order to receive the preferred service falls especially heavily on persons with limited incomes.

18. Individual commenters have brought to our attention instances—suburban real estate developments of owned homes, not rentals—in which they allege that bulk billing arrangements have been entered into not by MDU residents or their elected representatives (*e.g.,* homeowners associations or "HOAs"), but by builders and developers of the developments. These commenters claim that developers make bulk billing arrangements with MVPDs in which they have financial interests or from which they receive a stream of revenue. There are allegations that some of these "sweetheart" arrangements last long periods, up to 75 years in one case; that the arrangements were entered into before any association of actual homeowners came into existence and cannot be nullified by the actual homeowners; and that the bulk billing MVPD is held to no performance standards, installs inferior facilities, charges high prices, and fails to innovate by deploying the triple play. One City government in Florida (Weston) states that most of their residents are subject to some of these practices.

3. Conclusion

19. The Commission concludes that the benefits of bulk billing outweigh its harms. A key consideration is that bulk billing, unlike building exclusivity, does not hinder significantly the entry into an MDU by a second MVPD and does not prevent consumers from choosing the new entrant. Indeed, many commenters indicate that second MVPD providers wire MDUs for video service even in the presence of bulk billing arrangements and that many consumers choose to subscribe to those second video services. Especially significant is that that Verizon, which more than any other commenter in the earlier proceedings argued that building exclusivity clauses deterred competition and other pro-consumer effects, makes no claim in its filings herein that bulk billing hinders significantly or, as a practical matter, prevents it from introducing its service into MDUs. Bulk billing, accordingly, does not have nearly the harmful entry-barring or -hindering effect on consumers that exists in the case of building exclusivity.

20. The incidents of consumers being subjected either to prices that they believed were not discounted or to inferior service under certain bulk billing deals are troublesome. Based on a review of the record, however, they appear to be few, isolated, and atypical of bulk billing as a whole. And even in some of these cases, a second video provider is present in the MDU and large numbers of residents subscribe to its video service. Also, nearly all of these cases involve owner premises such as condominiums or suburban developments rather than rental properties. A significant number of states have statutes that, if certain requirements are satisfied, may provide some relief to such homeowners by allowing them, once they have taken control of an HOA from the developer, to void contracts that the developer has entered into. Two of these states are Florida and Virginia, in which reside most of the MDU residents who have filed comments in this proceeding objecting to bulk billing. We note that legal action is not the only possible relief for MDU residents subject to bulk billed service that they find unsatisfactory. Most of the consumers' complaints in this proceeding came from a particular MDU where the video service provider being complained of was effectively replaced by another cable operator.

21. Finally, it would be a disservice to the public interest if, in order to benefit a few residents, the Commission prohibited bulk billing, because so doing would result in higher MVPD service charges for the vast majority of MDU residents who are content with such arrangements. Based on the evidence in the record before us, we choose not to take action that would raise prices for most MDU residents who are subject to bulk billing. Accordingly, we will allow bulk billing by all MVPDs to continue because, under current marketplace conditions, it is clear that it has significant pro-consumer effects.[4] The Commission may re-examine the issue if marketplace conditions change.

B. Exclusive Marketing Arrangements

1. Use of Exclusive Marketing Arrangements

22. We define an exclusive marketing arrangement as an arrangement between an MDU owner and an MVPD, in a written agreement or in practice, that gives the MVPD, usually in exchange for some consideration, the exclusive right to certain means of marketing its service to residents in the MDU. Typically, this includes advertising in the MDU's common areas, placement of the MVPD's brand on the MDU building's web page, placement of the MVPD's brochures in "welcome packs" for new

[4] We also decline to create a system in which we would adjudicate specific bulk billing arrangements. As the Commission stated in the first Report and Order about such proposals for MDU exclusivity clauses, such adjudications—each potentially involving individual measurements of prices, quality and quantity of channels, competition, the MDU's characteristics, and other matters—are essentially local issues that would be difficult to deal with on a Commission level.

residents, sponsoring events on the premises of the MDU, and slipping brochures under residents' doors.

23. The comments indicate that marketing exclusivity arrangements occur in a significant number of MDUs, but not in most of them. It appears that all types of MVPDs use marketing exclusivity; one industry association states that such arrangements are more common in real estate developments than multi-tenant structures. The typical marketing exclusivity arrangement lasts for a few years. Some MVPDs and real estate interests make widespread use of marketing exclusivity. No MVPD, however, claims that marketing exclusivity is necessary for its entry into an MDU or its financial survival, or that any MVPD has failed to enter an MDU or gone out of business because another MVPD had a marketing exclusivity arrangement.

2. Benefits and Harms of Exclusive Marketing Arrangements

24. The record clearly shows that marketing exclusivity arrangements have some modest beneficial effects for consumers and no significantly harmful ones. The balance of these considerations favors allowing the continued use of marketing exclusivity arrangements.

25. *Benefits of Exclusive Marketing Arrangements.* Proponents of marketing exclusivity arrangements state that the arrangements provide readily accessible information to MDU residents about an MVPD provider and allow their residents to make more informed decisions. In exchange for receiving marketing exclusivity, an MVPD provider may afford the MDU and its residents lower rates and other benefits. The added revenue stream that can result from marketing exclusivity may also help the MDU owner or MVPD provider obtain financing to fund the expensive wiring of an MDU building. Marketing exclusivity does not explicitly or in practical effect bar, or significantly hinder, other MVPD providers from wiring an MDU or prevent any residents from choosing another MVPD if they do not want service from the provider that has the exclusive marketing arrangement. Real estate interests, in defense of marketing exclusivity arrangements, make the same "bargaining chip" point they made in favor of building exclusivity and bulk billing, namely that marketing exclusivity is something they can give to an MVPD in exchange for which the MVPD may pay a greater share of the wiring costs or may agree to provide better service, thus benefiting MDU residents.

26. Finally, one PCO that concentrates on smaller markets in which it is a new entrant, states that exclusive marketing arrangements are an especially valuable means of advertising for small new entrants who cannot afford high-priced mass media advertising that large incumbent cable operators and LECs regularly use. In the same vein, Verizon states that such one-building-at-a-time arrangements help a new entrant to overcome the greater name recognition of the entrenched incumbent cable operator.

27. *Harms of Exclusive Marketing Arrangements.* Lafayette Utilities System, Marco Island Cable, and the City of Reedsburg, Wisconsin, claim that marketing exclusivity arrangements make it difficult or costly for competitors other than the one with marketing exclusivity to communicate with MDU residents and hurt MDU residents by making it more difficult for them to find out about the other competitors. None of these commenters cites any instance where marketing exclusivity has, in practical effect, excluded or hindered a competitor from entering an MDU. Residents may still subscribe to the other MVPDs' services, and MVPDs are still able to reach residents through many other channels such as television, mail, newspapers, billboards, and sponsorship of public events.

3. Conclusion

28. The record does not support prohibiting or regulating exclusive marketing arrangements in order to protect competition or consumers. Although marketing exclusivity confers an advantage on the MVPD in whose favor the arrangement runs, it appears to be a slight one and there is no indication that it prevents or significantly hinders other MVPDs from providing video services in MDUs with such arrangements. Neither does marketing exclusivity prevent or significantly hinder other MVPDs from reaching MDU residents via television, radio, and other media; deter MDU residents from subscribing to other MVPDs' services; slow the evolution of competing wireless technologies; raise prices to consumers; or, by unfair methods, acts, or practices, have the purpose or effect of hindering significantly or preventing other MVPDs from providing programming to consumers, especially programming ordinarily found on broadcast and cable video systems.

29. On the other hand, marketing exclusivity appears to have the efficiencies listed above, the benefits of which appear to flow through to MDU residents. The balance of consumer harms and benefits for marketing exclusivity is thus significantly pro-consumer. Accordingly, we find that the record does not support a prohibition or any limitation on marketing exclusivity arrangements in MDUs.

C. Petition of Shenandoah Telecommunications Company

30. An affiliate of Shenandoah Telecommunications Company ("Shentel") is a common carrier in some areas and, in other areas, is a PCO (through an affiliate named Shentel Converged). Shentel petitioned for clarification or reconsideration of the first Report and Order, seeking a ruling that that decision's prohibition of MDU building exclusivity clauses does not apply to the PCO operations of Shentel Converged. The Commission denies the petition on the grounds that the express language of Section 628(j) of the Communications Act, 47 U.S.C. 548(j), requires that the prohibition apply to all common carriers and their affiliates that provide video service, including the PCO operations of Shentel Converged.

31. Shentel also asked the Commission to forbear, under Section 10 of the Act, 47 U.S.C. 160, from applying the prohibition of MDU building exclusivity to Shentel Converged. The Commission declines that forbearance on the grounds that Shentel has not satisfied the requirements for forbearance set forth in Section 10. Shentel may submit another, fully supported, request for forbearance in the future.

D. Miscellaneous

32. The Second Report and Order also denies other requests that amounted to unsupported petitions for reconsideration of the first Report and Order and to petitions to address extraneous matters.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

33. The Second Report and Order does not contain new or modified information collection requirements subject to the paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection burdens 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).

B. Regulatory Flexibility Act

34. Because the Second Report and Order neither promulgates nor adopts

any new or revised rules or regulations that affect small businesses, it is not necessary to write a Final Regulatory Flexibility Analysis for it.

C. Congressional Review Act

35. The Commission will not send a copy of this Second Report and Order pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the Second Report and Order adopts no rules of any kind.

D. Additional Information

36. For additional information on this proceeding, please contact John W. Berresford, (202) 418–1886, or Holly Saurer, (202) 418–7283, both of the Policy Division, Media Bureau.

IV. Ordering Clauses

37. Accordingly, *it is ordered* that, pursuant to the authority contained in Sections 1, 2 (a), 4(i) 157 nt., 201(b), 303(r),307–10, 335(a), 601(4, 6), and 628(b, c) of the Communications Act of 1934, as amended; 47 U.S.C. 151, 152(a), 154(i), 157 nt., 201(b), 303(r), 307–10, 335(a), 521(4, 6), and 548(b, c), this Second Report and Order *is adopted.*

38. *It is further ordered* that, pursuant to the authority contained in Section 10 of the Communications Act of 1934, as amended, 47 U.S.C. 160, the Petition for Clarification, or, in the Alternative, Reconsideration filed by Shenandoah Telecommunications Company concerning 47 CFR 76.2000 *is denied without prejudice* to its submission of a petition for forbearance pursuant to 47 U.S.C. 160.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–5718 Filed 3–15–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080521698–9067–02]

RIN 0648–XU84

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Removal of 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; removal of gear restrictions.

SUMMARY: This action removes temporary gear restrictions in both the Eastern and Western U.S./Canada Areas for limited access Northeast (NE) multispecies vessels fishing on a NE multispecies Category A day-at-sea (DAS) for the remainder of the 2009 fishing year (FY) (i.e., through April 30, 2010). This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) to optimize the harvest of transboundary stocks of Georges Bank (GB) yellowtail flounder, haddock, and cod under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Removal of the temporary gear restriction in the Western U.S./Canada Area is effective March 11, 2010, through April 30, 2010.

Removal of the temporary gear restriction in the Eastern U.S./Canada Area is effective April 13, 2010, through April 30, 2010.

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

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the U.S./Canada Management Area are found at § 648.85. These regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the Eastern U.S./Canada Area under specific conditions. The Eastern U.S./Canada Area GB cod TAC for FY 2009 was specified at 527 mt, and the TAC for the entire U.S./Canada Management Area for GB yellowtail flounder was specified at 1,617 mt, by the 2009 interim final rule (72 FR 25709). The regulations at § 648.85(a)(3)(iv) authorize the Administrator, Northeast Region, NMFS (Regional Administrator) to modify gear requirements, modify or close access to the area, modify trip limits, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or to facilitate achieving the U.S./Canada Management Area TACs.

Pursuant to § 648.85(a)(3)(iv)(E), once the available TAC for GB yellowtail flounder is projected to be caught, the 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.

Based upon Vessel Monitoring System (VMS) reports and other available information, the catch of GB yellowtail flounder was at 81 percent of the FY 2009 TAC as of March 5, 2010, and was projected to not be fully harvested by April 30, 2010, potentially resulting in the under-harvest of the available TAC for GB yellowtail flounder during FY 2009. Based on this information, the Regional Administrator is removing the current temporary prohibition on the use of trawl gear, other than the haddock separator trawl and the Ruhle trawl, as specified at § 648.85(a)(3)(ix) and § 648.85 (b)(10)(iv)(J)(*3*), respectively, by any limited access NE multispecies vessel fishing in the Western U.S./Canada Area south of 41° 40′ N. lat. Therefore, effective March 11, 2010, through April 30, 2010, unless modified by a subsequent action, a NE multispecies vessel fishing under a Category A DAS may fish with any legal trawl gear throughout the Western U.S./Canada Area.

In addition, as of March 5, 2010, the catch of Eastern GB cod was 72 percent of the FY 2009 TAC and was projected to not be fully harvested by April 30, 2010. Projected catch rates indicate that lifting the current prohibition on the use of flounder trawl gear in the Eastern U.S./Canada Area on April 13, 2010, will allow vessels to harvest the Eastern GB cod TAC without exceeding it. Based on this information, the Regional Administrator is removing the temporary prohibition on the use of flounder trawl gear in the Eastern U.S./Canada Area effective April 13, 2010. Therefore, effective April 13, 2010, through April 30, 2010, unless modified by a subsequent action, a NE multispecies vessel fishing with trawl gear under a Category A DAS in the Eastern U.S./Canada Area may fish with any one of the gears specified for this area at § 648.85(a)(3)(ix), i.e., a flounder trawl, haddock separator trawl, or a Ruhle trawl.

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) 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 remove

gear restrictions in the U.S./Canada Management Area. Such a delay would allow the current slow catch rates of GB yellowtail flounder and Eastern GB cod to continue and could result in under-harvest of the GB yellowtail flounder and Eastern GB cod TACs. Thus, delayed implementation could undermine the conservation objectives of the FMP and the Magnuson-Stevens Act. Under-harvesting of the GB yellowtail TAC would result in increased negative economic impacts to the industry and social impacts beyond those analyzed for Amendment 13 as the full potential revenue from the fishery 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 and Framework Adjustment 42. 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: March 11, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–5720 Filed 3–11–10; 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–XV21

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl 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 vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2010 Pacific cod allowable catch (TAC) specified for catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 12, 2010, though 1200 hrs, A.l.t., April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

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

The A season allowance of the 2010 Pacific cod TAC allocated to catcher vessels using trawl gear in the BSAI is 24,647 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 inseason adjustment (74 FR 68717, December 29, 2009).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the A season allowance of the 2010 Pacific cod TAC allocated to catcher vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 24,497 mt, and is setting aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl 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 Pacific cod by catcher vessels using trawl 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 March 10, 2010.

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

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

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

Dated: March 10, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–5693 Filed 3–11–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 50
Tuesday, March 16, 2010

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0228; Directorate Identifier 2009–NM–252–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model MD–11 and MD–11F airplanes. This proposed AD would require a one-time inspection to detect damage of the wire assemblies of the tail tank fuel system, a wiring change, and corrective actions if necessary. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to detect and correct a potential of ignition sources inside fuel tanks, which, in combination with flammable vapors, could result in a fuel tank fire or explosion, and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 30, 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.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

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–2010–0228; Directorate Identifier 2009–NM–252–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 FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

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

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

that may mitigate the need for further action.

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

An investigation conducted by the airplane manufacturer has revealed that wire assemblies of the tail tank fuel system that are routed together and are in close proximity to the upper surface of the tail tank are a potential ignition source if wire damage occurs. Also, during normal maintenance, wire damage may be caused when maintenance personnel working in the tail tank area inadvertently step on the wire assemblies. These conditions, if not corrected, could result in burn-through on the upper surface of the tail tank, which could result in a fuel tank explosion, and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin MD11–28A124, dated June 17, 2009. The service bulletin describes procedures for doing a general visual inspection of the wire assembly installation of the tail tank fuel system to detect damage of the wire assembly, changing the wiring, and doing corrective actions. Corrective actions include repairing or replacing damaged wire assemblies.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 110 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection	1	$85	None	$85	110	$9,350.
Wiring Change	Up to 16	85	$11,536	Up to $12,896	Up to 110	Up to $1,418,560.

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.

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

List of Subjects in 14 CFR Part 39

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

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:

McDonnell Douglas Corporation: Docket No. FAA–2010–0228; Directorate Identifier 2009–NM–252–AD.

Comments Due Date

(a) We must receive comments by April 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Corporation Model MD–11 and MD–11F airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin MD11–28A124, dated June 17, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to detect and correct a potential of ignition sources inside fuel tanks, which, in combination with flammable vapors, could result in a fuel tank fire or explosion, and consequent loss of the airplane.

Compliance

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

Action

(g) Within 60 months after the effective date of this AD, perform a general visual inspection to detect damage of wire assemblies of the tail tank fuel system, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A124, dated June 17, 2009.

(1) If no damage is found, before further flight do the wiring change, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A124, dated June 17, 2009.

(2) If damage is found, before further flight repair or replace the wire assemblies, and do the wiring changes, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A124, dated June 17, 2009.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

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

Issued in Renton, Washington, on March 9, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–5667 Filed 3–15–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0260; Directorate Identifier 2010–CE–015–AD]

RIN 2120–AA64

Airworthiness Directives; GROB–WERKE (Type Certificate Previously Held by BURKHART GROB Luft- und Raumfahrt) Models G115C, G115D and G115D2 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: The manufacturer has received a report of a failed canopy jettison test, during a regular maintenance check. The investigation revealed that a cable shroud of the jettison system protruded the canopy structure, which probably caused the malfunction. Inability to jettison the canopy in flight would prevent evacuation of the aeroplane in case of need.

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 April 30, 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: Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

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–2010–0260; Directorate Identifier 2010–CE–015–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 AD No. 2009–0279, dated December 23, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> The manufacturer has received a report of a failed canopy jettison test, during a regular maintenance check. The investigation revealed that a cable shroud of the jettison system protruded the canopy structure, which probably caused the malfunction. Inability to jettison the canopy in flight would prevent evacuation of the aeroplane in case of need.
>
> For the reason stated above, this AD mandates an additional one time canopy jettison test and repair if necessary.
>
> You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Grob Aircraft AG has issued Service Bulletin No. MSB1078–164, dated July 21, 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 3 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 $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $510 or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $68, for a cost of $323 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:

GROB-WERKE (Type Certificate Previously Held by BURKHART GROB Luft- und Raumfahrt): Docket No. FAA–2010–0260; Directorate Identifier 2010–CE–015–AD.

Comments Due Date

(a) We must receive comments by April 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models G115C, G115D, and G115D2 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 52: Doors.

Reason

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

The manufacturer has received a report of a failed canopy jettison test, during a regular maintenance check. The investigation revealed that a cable shroud of the jettison system protruded the canopy structure, which probably caused the malfunction. Inability to jettison the canopy in flight would prevent evacuation of the aeroplane in case of need.

For the reason stated above, this AD mandates an additional one-time canopy jettison test and repair if necessary.

Actions and Compliance

(f) Unless already done, do the following actions in accordance with Grob Aircraft AG Service Bulletin No. MSB1078–164, dated July 21, 2009:

(1) Before the next aerobatic flight after the effective date of this AD, do a canopy jettison test.

(2) If the canopy jettison fails the test required in paragraph (f)(1) of this AD, before further aerobatic flight:

(i) Contact Grob Aircraft AG, Customer Service, 86874 Tussenhausen-Mattsies, Germany, telephone: + 49 (0) 8268–998–105; fax: + 49 (0) 8268–998–200; e-mail: *productsupport@grob-aircraft.com,* for an FAA-approved repair scheme and incorporate the repair scheme; or

(ii) Replace the canopy handle.

(3) Within 7 days after doing the canopy jettison test required in paragraph (f)(1) of this AD or within 7 days after the effective date of this AD, whichever occurs later, submit a report of the test results using Appendix 1 of Grob Aircraft AG Service Bulletin No. MSB1078–164, dated July 21, 2009, to Grob Aircraft AG at the address specified in paragraph (f)(2)(i) of this AD.

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: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2009–0279, dated December 23, 2009; and Grob Aircraft AG Service Bulletin No. MSB1078–164, dated July 21, 2009, for related information.

Issued in Kansas City, Missouri, on March 8, 2010.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–5627 Filed 3–15–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0261; Directorate Identifier 2010–CE–008–AD]

RIN 2120–AA64

Airworthiness Directives; Quartz Mountain Aerospace, Inc. Model 11E 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 all Quartz Mountain Aerospace, Inc. Model 11E airplanes. This proposed AD would require you to clean and lubricate the aileron pushrod bearings. This proposed AD results from reports of the aileron control stick force increasing and of the controls being very noisy. We are proposing this AD to detect and correct insufficient lubrication and residual metallic paint particles in the pushrod end ball joints, which could result in difficulty actuating aileron controls sometime during flight after takeoff. This condition could lead to difficulty controlling the airplane in flight.

DATES: We must receive comments on this proposed AD by April 30, 2010.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

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

Quartz Mountain Aerospace, Inc. is in liquidation. For service/or continued airworthiness information identified in this proposed AD, contact Manager, Fort Worth Aircraft Certification Office, FAA, ATTN: Garry D. Sills, Aerospace Engineer, Rotorcraft Directorate—Airplane Certification Office, ASW–150, 2601 Meacham Blvd., Fort Worth, Texas 76193; telephone: (817) 222–5154; facsimile: (817) 222–5960.

FOR FURTHER INFORMATION CONTACT: Garry D. Sills, Aerospace Engineer, Rotorcraft Directorate—Airplane Certification Office, ASW–150, 2601 Meacham Blvd., Fort Worth, Texas 76193; telephone: (817) 222–5154; fax: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA–2010–0261; Directorate Identifier 2010–CE–008–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

We have received reports of the aileron control stick force increasing and of the controls being very noisy on Quartz Mountain Aerospace, Inc. Model 11E airplanes. This condition may not be detectable before takeoff. In one actual instance, the condition occurred during flight. The stick force increased after preflight inspection and after takeoff. The airplane was operated by a student pilot, who had trouble flying the airplane when this occurred, and the certified flight instructor (CFI) had to take control and land the airplane. Lubricating the rod end removed the condition.

Inspection revealed the left and right aileron push rod forward ends at the bellcrank were dry due to no lubrication.

Further examination of the pushrod end ball joint hardware by the manufacturer found that the ball joint surfaces were additionally contaminated with specks of metallic paint as well as not being lubricated. A review of manufacturer build procedures found airplane painting with the rod ends exposed. Production procedures were changed to prevent further contamination.

This condition, if not corrected, could lead to difficulty controlling the airplane in flight.

Relevant Service Information

We have reviewed Quartz Mountain Aerospace Service Bulletin No. SB 09–02, dated May 5, 2009.

The service information describes procedures for cleaning and lubricating the aileron pushrod bearings.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require you to clean and lubricate the aileron pushrod bearings.

Costs of Compliance

We estimate that this proposed AD would affect 12 airplanes in the U.S. registry.

We estimate the following costs to do the proposed cleaning and lubrication:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $85 per hour = $85	$10	$95	$1,140

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed 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.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

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:

Quartz Mountain Aerospace, Inc.: Docket No. FAA–2010–0261; Directorate Identifier 2010–CE–008–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by April 30, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 11E airplanes, all serial numbers, that are certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Unsafe Condition

(e) This AD results from reports of the aileron control stick force increasing and of the controls being very noisy. We are issuing this AD to detect and correct insufficient lubrication and residual metallic paint particles in the rod end ball joints, which could result in difficulty actuating aileron controls sometime during flight after takeoff. This failure could lead to difficulty controlling the airplane in flight.

Compliance

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

Actions	Compliance	Procedures
(1) Clean and lubricate the aileron pushrod bearings.	With the next 10 hours time-in-service (TIS) after the effective date of this AD.	Follow Quartz Mountain Aerospace Service Bulletin No. SB 09–02, dated May 5, 2009.
(2) Lubricate the aileron pushrod bearings	Within 50 hours TIS after the cleaning and lubrication required by paragraph (f)(1) of this AD. Thereafter, repetitively at intervals not to exceed 50 hours TIS.	Follow Quartz Mountain Aerospace Service Bulletin No. SB 09–02, dated May 5, 2009.

Special Flight Permit

(g) Under 14 CFR part 39.23, a special flight is not permitted for this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Fort Worth Aircraft Certification 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: Garry D. Sills, Aerospace Engineer, Rotorcraft Directorate—Airplane Certification Office, ASW–150, 2601 Meacham Blvd., Fort Worth, Texas 76193; telephone: (817) 222–5154; facsimile: (817) 222–5960. 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.

Related Information

(i) Quartz Mountain Aerospace, Inc. is in liquidation. To get copies of the service/continued airworthiness information referenced in this AD, contact Manager, Fort Worth Aircraft Certification Office, FAA, ATTN: Garry D. Sills, Aerospace Engineer, Rotorcraft Directorate—Airplane Certification Office, ASW–150, 2601 Meacham Blvd., Fort Worth, Texas 76193; telephone: (817) 222–5154; fax: (817) 222–5960. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Issued in Kansas City, Missouri, on March 9, 2010.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–5631 Filed 3–15–10; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 306

Automotive Fuel Ratings, Certification and Posting

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: The FTC proposes to amend its Rule for Automotive Fuel Ratings, Certification and Posting ("Fuel Rating Rule" or "Rule") by adopting rating, certification, and labeling requirements for certain ethanol fuels, revising the labeling requirements for fuels with at least 70 percent ethanol, allowing the use of an alternative octane rating method, and making certain other miscellaneous Rule revisions, based on comments received as part of its periodic regulatory review of the Rule. The proposed amendments are intended to further the Rule's goal of helping purchasers identify the correct fuel for their vehicles.

DATES: Comments on the proposed information requests must be received on or before May 21, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/fuelratingreview*) (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex M), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Matthew Wilshire, (202) 326-2976, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

In March 2009, as part of a systematic review of the FTC's rules and guides, the Commission solicited comment on the Fuel Rating Rule, including comments on the economic impact of, and continuing need for, the Rule; the benefits of the Rule to purchasers of automotive fuels; the burdens the Rule places on firms subject to its requirements; and any modifications to increase the Rule's benefits or reduce its burdens. Commenters generally supported the Rule but recommended various amendments. Specifically, many comments supported amending the Rule to provide specific rating, certification, and labeling requirements for fuels with more than 10 percent and less than 70 percent ethanol,[1] and to allow octane rating through the On-Line Direct Comparison Technique ("On-Line Method") specified in ASTM International ("ASTM") Standard D2885. In addition, some commenters recommended altering the Rule's requirements for biodiesel, biomass-based diesel, and blends thereof (collectively, "biodiesel fuels").[2]

As explained below, the Commission agrees that the Rule should provide explicit requirements for ethanol fuels that contain more than 10 percent ethanol and less than 70 percent ethanol (hereinafter, "Mid-Level Ethanol blends"). Furthermore, the Commission proposes amending the Rule to require that fuels with at least 70 percent ethanol have labels with disclosures more consistent with those in the proposed Mid-Level Ethanol blend labels. In addition, the Commission proposes allowing the On-Line Method because it produces the same fuel rating as methods currently prescribed in the Rule. However, the Commission does not propose amending the Rule's biodiesel fuel provisions because they already appropriately carry out the biodiesel labeling mandate of the Energy Independence and Security Act of 2007 ("EISA") while minimizing the burden to covered entities.

This notice of proposed rulemaking responds to comments and announces proposed amendments to the Rule. Specifically, it provides background on the Fuel Rating Rule, a discussion of the comments submitted, and the Commission's response to those comments with a detailed description of the proposed amendments.

II. Background

The Commission first promulgated the Fuel Rating Rule, 16 CFR Part 306, (then titled the "Octane Certification and Posting Rule") in 1979 in accordance with the Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. 2801 *et seq.*[3] The Rule originally only applied to gasoline. In 1993, in response to amendments to PMPA, the Commission expanded the Rule to cover liquid alternative fuels.[4] In 2008, the Commission again amended the Rule to incorporate the specific labeling requirements for biodiesel fuels required by Section 205 of EISA, 42 U.S.C. 17021.[5] Currently, the Rule's definition of "alternative fuels" does not specifically include either biodiesel fuels at concentrations of 5 percent or less or Mid-Level Ethanol blends.

The Fuel Rating Rule designates methods for rating and certifying fuels, as well as posting the ratings at the point of sale. The Rule also requires refiners, importers, and producers of any liquid automotive fuel to determine that fuel's "automotive fuel rating" before transferring it to a distributor or retailer. For gasoline, the fuel rating is the octane rating, which covered entities must determine by deriving research octane and motor octane numbers using the procedures in ASTM D2699 and D2700, respectively, and then averaging them. For alternative fuels, the rating is the minimum percentage of the principal component of the fuel, with the exception of biodiesel fuels, for which the rating is the percentage of biodiesel or biomass-based diesel in the fuel. In addition, any covered entity, including a distributor, that transfers a fuel must provide a certification of the fuel's rating to the transferee either by including it in papers accompanying the transfer or by letter. Finally, the Rule requires retailers to post the fuel rating by adhering a label to the retail fuel pump and sets forth precise specifications regarding the content, size, color, and font of the labels.

On March, 2, 2009, the Commission solicited comment on the Fuel Rating Rule as part of its periodic review of its rules and guides.[6] The Commission sought comments on: the economic impact of, and the continuing need for,

[1] The Fuel Rating Rule already provides requirements for ethanol fuels of at least 70 percent concentration, including E85. That fuel generally contains 85 percent ethanol mixed with 15 percent gasoline. 16 CFR 306.0(i)(2)(ii). The U.S. Department of Energy ("DOE"), however, allows retailers to reduce the ethanol component of E85 to as little as 70 percent by volume to allow proper starting and performance in colder climates. *See* (*http://www.afdc.energy.gov/afdc/ethanol/e85_specs.html*). Other ethanol blends currently qualify as alternative fuels under the Rule. *See* 16 CFR 306.0(i)(2) (providing that alternative fuels are "not limited to" those explicitly listed in the Rule). The Rule does not provide any specific requirements for those fuel blends. However, covered entities must generally rate alternative fuels by "the commonly used name of the fuel . . . [and the] minimum percentage . . . of the principal component of the fuel." 16 CFR 306.0(j)(2). In addition, retailers must label these fuels "consistent with" that rating. 16 CFR 306.10(d).

[2] For further background on biodiesel fuels, *see* the Commission's announcement of amendments expanding the Fuel Rating Rule to cover those fuels. 73 FR 40154 (Jul. 11, 2008).

[3] 44 FR 19160 (Mar. 30, 1979).

[4] 58 FR 41356 (Aug. 3, 1993).

[5] 73 FR 40154 (Jul. 11, 2008).

[6] 74 FR 9054 (Mar. 2, 2009).

the Rule; the benefits of the Rule to purchasers of automotive fuels; the burdens the Rule places on firms subject to its requirements; and the need for any modification to increase the Rule's benefits or reduce its burdens.

III. The Record

The Commission received twelve comments. Commenters explained that there is a continuing need for the Rule and that it benefits consumers and businesses. However, they supported three significant changes: providing rating, certification, and labeling requirements for Mid-Level Ethanol blends; allowing octane rating through the On-Line Method; and altering the Rule's requirements for biodiesel fuels. In addition, comments supported miscellaneous changes to the Rule.

A. Continuing Need for Rule and Benefits to Consumers and Business

Commenters agreed that there is a continuing need for the Fuel Rating Rule and that it benefits consumers and businesses. The Alliance of Automobile Manufacturers ("AAM") stated that "there is definitely a need to maintain the Rule" and explained that consumers could suffer significant harm in the absence of the Rule's labeling requirements:

> The [rating] information is critical because the vehicle warranty is dependent on use of the proper fuel. Fuel dispenser labeling that conveys information about octane rating, ethanol content, biodiesel content and other fuel quality properties and limits is the only mechanism available to consumers to link fuel requirements in the owner's manual to what is actually being put into the vehicle.[7]

In addition, AAM reported results from compliance surveys of retail gasoline pumps showing "very good compliance" with the Rule's octane provisions, and noted that "pump labeling of E85 dispensers appears to have been successful as well, given that reports about unintentional misfueling of conventional vehicles have been virtually nonexistent to date."[8] The National Automobile Dealers Association seconded AAM's support of the Rule, explaining that consumers need accurate fuel rating information to comply with manufacturer recommendations and warranty requirements.[9]

In addition to benefitting consumers, commenters noted that the Rule benefits businesses. The Petroleum Marketers Association of America ("PMAA"), a fuel retailer industry group, stated that "labeling requirements under the automotive fuel rating rule are generally beneficial to small business petroleum retailers."[10] PMAA further explained:

> The labels [required by the Rule] direct consumers to the octane rating and/or alternative fuel blends that are best suited for their vehicle according to manufacturer specifications. . . . The labels help to prevent misfueling. Fewer misfuelings reduce the potential liability of small business retailers for damages to engines and exhaust systems.[11]

Similarly, the Renewable Fuels Association ("RFA") stated that the Fuel Rating Rule "provides producers, distributors, and retailers the needed . . . [information] to meet regulatory requirements and support marketplace needs and expectations."[12]

B. Labels for Mid-Level Ethanol Blends

Although generally supportive, many commenters suggested altering the Fuel Rating Rule to provide specific requirements for rating, certifying, and labeling Mid-Level Ethanol blends. Currently, the Rule provides requirements for mixtures of gasoline with 10 percent or less ethanol, defined as gasoline, and fuels with at least 70 percent ethanol, but does not specifically address blends with more than 10 but less than 70 percent ethanol. Significantly, no commenters opposed providing requirements for Mid-Level Ethanol blends.

Several commenters noted that, though generally not available when the Commission first promulgated alternative fuel requirements, Mid-Level Ethanol blends have subsequently entered the marketplace. For example, commenter Downstream Alternatives, Inc. ("Downstream"), a renewable fuel business, stated that:

> [When the Commission expanded the Rule to cover alternative fuels], it was envisioned that ethanol blends would be either El0 (gasohol) covered by the octane rating rule or E85 containing a minimum of 70% ethanol (to allow for denaturant and volatility adjustments) for use in the Flex Fuel Vehicles (FFV). . . . Today . . . some marketers are selling blends like E20, and E30 (20% and 30% ethanol respectively) for use in FFV's [sic]. These fuels . . . are typically blended on site through a blend pump . . . . Several organizations are promoting using blender pumps to sell alternate blend levels such as E20, E30, E40.[13]

Downstream's comment included a list of more than 100 retail establishments with the capacity to sell Mid-Level Ethanol blends. RFA also noted that mid-level blends "are being developed and marketed to provide consumers with more fuel choices at the retail level."[14] Similarly, the Iowa Renewable Fuels Association ("IRFA") reported that "retailers are offering more fuel options for flex-fuel vehicle owners in the form of mid-level [ethanol] blends" and that "Iowa retailers are installing blend dispensers that offer blends such as E20, E30 or E50 and E85."[15]

Moreover, commenters agreed that the market for ethanol blends of all types will grow as part of a general move toward renewable fuels. RFA noted that EISA's provisions included a mandate for increasing use of renewable fuels, which "systematically advances the production and use of renewable fuels and ensures that ample amounts of renewable biofuels, like ethanol, will be required as an alternative to petroleum fuels."[16] In addition, a joint comment from SIGMA, a fuel-retailer association, and the National Association of Convenience Stores ("NACS") included EISA's specific fuel mandates, showing an increase in minimum renewables from 11.1 billion gallons in 2009 to 36 billion in 2022.[17] The comment concluded that "EISA's mandates will clearly require retailers to increase their sales of biofuels (whether biodiesel or biomass) in the future."[18]

However, commenters cautioned that ethanol blends above 10 percent concentration are not appropriate for conventional vehicles. AAM stated that "virtually all conventional vehicles built to date have been validated for gasoline containing only up to 10% ethanol (E10)."[19] AAM, therefore, warned that "unlabeled dispensers [of ethanol blends] would cause consumers to unwittingly put their vehicle warranties

[7] AAM Comment at 1. The comments are located at: (*http://www.ftc.gov/os/comments/fuelratingreview/index.shtm*).

[8] *Id.* at 1-2. AAM also referenced a study showing some mislabeling of biodiesel blends. *Id.* at 2. However, that study tested fuel offered for sale no later than summer 2008, prior to the December 16, 2008 effective date for the Commission's biodiesel labeling requirements. *See* 73 FR 40154 (Jul. 11, 2008).

[9] *See* National Automobile Dealers Association Comment at 1.

[10] PMAA Comment at 3.

[11] *Id.* at 1.

[12] RFA Comment at 3.

[13] Downstream Comment at 2-3.

[14] RFA Comment at 2.

[15] IRFA Comment at 1.

[16] RFA Comment at 1.

[17] SIGMA and NACS Comment at 2.

[18] *Id.* at 4.

[19] AAM Comment at 2.

at risk."[20] RFA stated that "[f]rom an automotive vehicle perspective, there are two spark ignition engine types available to U.S. consumers: [1] conventional engines designed to use E10 and unleaded gasoline and [2] flex-fuel engines designed to use alternative fuels such as E85"[21] and Mid-Level Ethanol blends.[22] Indeed, DOE has explained that "[a]lthough nearly all gasoline-fueled passenger cars and light-duty trucks sold in the last 20 years have been designed to operate on E10, substantial modifications are made to [flex-fuel vehicles] so they can use higher concentrations of ethanol . . . without adverse effects on fuel system materials, components, on-board diagnostics (OBD) systems, or driveability."[23]

In light of the emergence of Mid-Level Ethanol blends as retail fuels and the risk of harm to consumers' vehicles from a failure to disclose ethanol content, commenters urged the Commission to amend the Fuel Rating Rule to provide specific labeling, rating, and certification requirements for those blends. IRFA urged amending the rule to provide "uniformity in pump labeling, consistent consumer information and consumer protection" and supported a rating regime that, like that for biodiesel fuels, rates ethanol blends according to the percentage of ethanol in the blend, regardless of whether ethanol is the principal component in the fuel.[24] Downstream concurred, recommending that, for Mid-Level Ethanol blends,

> [T]he Commission should adopt a similar approach to that for labeling biodiesel. That is, a blend containing 30% denatured ethanol would be E30, 40% denatured ethanol, E40 etc. This would enable marketers [with] the ability to properly identify the fuel while providing consumers guidance on the approximate ethanol level of the blend.[25]

RFA also supported providing "posting requirements . . . for all ethanol blended fuels . . . ."[26]

C. On-Line Direct Method for Determining Octane Rating

PMPA defines "octane rating" as the average of gasoline's research octane number and motor octane number, as determined using ASTM D2699 and D2700, respectively.[27] However, PMPA further provides that the Commission may prescribe alternate gasoline rating methods.[28] Comments from gasoline refiners and distributors urged amending the Fuel Rating Rule to allow the On-Line Method.

ConocoPhillips, a petroleum refiner, explained the development of the On-Line Method:

> ASTM D 2885 Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-line Comparison Technique was adopted by ASTM after the promulgation of the Automotive Fuel Rating Rule in 1979. It uses the same [test] engines but in an updated methodology that provides acquisition efficiencies and accuracies for the industry.[29]

Therefore, ConocoPhillips argued, the "test method (suitable for determining Motor and Research Octane values) should be allowed to be used for octane determination."[30] Two industry groups also recommended allowing the On-Line Method. The American Petroleum Institute ("API") described the method as "reliable" and, therefore, stated that it "should be included" as a rating method prescribed by the Rule.[31] The National Petrochemical & Refiners Association ("NPRA") agreed with ConocoPhillips that the industry has "extensive experience" with the On-Line Method and stated that it "should be allowed in addition to ASTM D2699 and D2700."[32] No comments opposed allowing octane determination through the On-Line Method.

D. Biodiesel and Biomass-Based Diesel

Commenters raised two areas of concern with respect to the Rule's biodiesel fuel provisions, which currently require certifying, rating, and labeling those fuels if they contain more than 5 percent biodiesel or biomass-based diesel. Some commenters argued for expansion of the Rule to include biodiesel fuels at or below 5 percent concentration, and one argued for exemption from the Rule for biomass-based diesel blends at any concentration.

1. Rating All Biodiesel Fuel Blends

Commenters noted that because the Rule does not require rating of biodiesel fuels at concentrations of 5 percent or less, a distributor may transfer those fuels without disclosing the presence of biodiesel or biomass-based diesel. API noted that such a transfer places a potential burden on retailers and could lead to inaccurate labels:

> [A] company may receive diesel fuel containing 5% or less biodiesel and believe that the diesel fuel received contains no biodiesel. The company then may add additional biodiesel to achieve what they believe to be a blend of 5% or less, resulting in a fuel with over 5% biodiesel, but because the company was not made aware of the existing biodiesel concentration, they do not appropriately label the dispenser.[33] ConocoPhillips,[34] NPRA,[35] PMCI,[36] and SIGMA/NACS[37] also argued that the current lack of rating requirements for certain biodiesel blends could lead to retailers failing to post required labels and, as SIGMA noted, "subject [retailers] to penalties under the FTC Act."[38]

To obviate this risk, API,[39] ConocoPhillips,[40] and NPRA[41] recommended subjecting 5 percent and less biodiesel blends – but not biomass-based diesel blends – to the Fuel Rating Rule's rating and certification requirements, thereby requiring producers and distributors to disclose the presence of any biodiesel in fuel they distribute. PMCI[42] and SIGMA/NACS[43] agreed that the Rule should require rating and certification of all biodiesel blends, but argued that those requirements should apply to biomass-based diesel blends as well.

2. Applicability of Fuel Rating Rule to Biomass-Based Diesel

In contrast, API argued that the Rule should not apply to biomass-based diesel blends of any concentration. API gave four reasons in support of its argument. First, citing an Environmental Protection Agency ("EPA") description

[20] *Id.*

[21] RFA Comment at 2.

[22] *See* RFA Comment at 2-3. Downstream further noted that Mid-Level Ethanol blends "are legal fuels for use in [Flex-Fuel Vehicles] only." Downstream Comment at 2.

[23] *See* DOE's "Handbook for Handling, Storing, and Dispensing E85," p.17, available at: (*http://www.afdc.energy.gov/afdc/pdfs/41853.pdf*).

[24] IRFA Comment at 1.

[25] Downstream Comment at 5.

[26] RFA Comment at 3.

[27] 15 U.S.C. 2821(1) and (2).

[28] 15 U.S.C. 2821(1).

[29] ConocoPhillips Comment at 1.

[30] *Id.*

[31] API Comment at 3.

[32] NPRA Comment at 1.

[33] API Comment at 1.

[34] ConocoPhillips Comment at 2.

[35] NPRA Comment at 2.

[36] PMCI Comment at 2-3.

[37] SIGMA and NACS Comment at 4.

[38] Id.

[39] API Comment at 1.

[40] ConocoPhillips Comment at 2.

[41] NPRA Comment at 2.

[42] PMCI Comment at 3.

[43] SIGMA and NACS Comment at 4.

of a type of biomass-based diesel, API stated that the fuel "is indistinguishable in terms of its hydrocarbon structure from conventional petroleum diesel" and, therefore, "no standard test method referenced by ASTM D975 will reveal renewable diesel content."[44] Second, the Rule's prescribed use of the term "biodiesel" on biomass-based diesel labels may confuse consumers.[45] Third, the costs of rating and labeling the fuel increases its cost.[46] Finally, because no standard tests exist for concentration levels of biomass-based diesel blends, enforcement of the Rule with respect to those fuels will be difficult.[47]

E. Miscellaneous Comments

Commenters also raised several miscellaneous issues. Many explained that the Fuel Rating Rule references old versions of ASTM Standards and a no longer valid ASTM address.[48] Downstream noted that ASTM may change its E85 standard to provide that the fuel may contain as little as 68 percent ethanol. To accommodate that potential change, it recommended that the Commission consider amending the Rule, which limits E85 to blends of at least 70 percent.[49] Finally, PMAA urged allowing greater flexibility in terms of the size and shape of labels and stated that the Rule's provisions conflicted with unspecified state labeling requirements, while SIGMA/NACS similarly argued for a "heightened degree of flexibility" in labeling to assist retailers blending alternative fuels and changing concentration levels on a daily basis.[50]

IV. Analysis

In light of the comments discussed above, the Commission proposes retaining most of the Fuel Rating Rule while amending it to include explicit rating, certification, and labeling provisions for Mid-Level Ethanol blends and to provide labeling requirements for ethanol fuels above 70 percent concentration consistent with those proposed for Mid-Level Ethanol blends. Furthermore, the Commission proposes allowing octane rating using the On-Line Method. Finally, the Commission proposes minor amendments in response to miscellaneous comments. The Commission declines to propose amendments to the Rule's biodiesel provisions.

A. Retaining the Rule

The Commission promulgated its Fuel Rating Rule pursuant to PMPA,[51] which requires the FTC to provide rules for rating, certifying, and labeling liquid automotive fuels. Commenters noted that the Rule benefits consumers and businesses. As AAM reported, the Rule appears to successfully carry out PMPA's goal of alerting consumers to the type and grade of liquid fuel sold at retail fuel pumps. The Commission, therefore, retains the Rule.

B. Ethanol Fuel Labeling

As discussed above, several commenters noted a risk of misfueling conventional vehicles with ethanol blends and, therefore, urged the Commission to include specific requirements for rating, certifying, and labeling Mid-Level Ethanol blends.[52] As explained below, to address this misfueling risk, the Commission proposes including such requirements. The Commission further proposes altering its labeling requirements for all ethanol fuels to disclose that blends with more than 10 percent ethanol may harm some conventional vehicles.

As reflected in the comments, retailers currently offer Mid-Level Ethanol blends and E85 at fuel pumps, and EISA's renewable fuel standard will likely lead to increased availability of both. Furthermore, commenters noted that consumers who use those fuels in conventional vehicles place their warranties at risk. Similarly, DOE confirmed that fuels containing more than 10 percent ethanol are only proper for flex-fuel vehicles.[53] Therefore, providing specific labeling requirements for Mid-Level Ethanol blends will further PMPA's purpose of "assisting purchasers in identifying the specific type(s) of fuel required for their vehicles."[54]

The Commission also agrees that covered entities should rate Mid-Level Ethanol blends according to their percentage of ethanol, regardless of whether ethanol is the predominant fuel in the blend. Currently, the Rule requires covered entities to rate blends of less than 50 percent ethanol according to their gasoline percentage;[55] therefore, the labels for such blends would not reflect the presence of ethanol in all circumstances. However, as noted above, the significant information to the consumer is whether the blend contains more than 10 percent ethanol because use of ethanol blends at such concentrations in conventional vehicles places warranties at risk. Therefore, as explained in detail below, the Commission proposes requiring covered entities to rate and certify Mid-Level Ethanol blends according to their ethanol content and to label them accordingly.[56]

1. Definitions

In order to provide requirements for rating, certifying, and labeling Mid-Level Ethanol blends, the Commission proposes adding "Mid-Level Ethanol blend" as a new defined term in the Fuel Rating Rule. Specifically, the proposed new definition defines the term as "a mixture of gasoline and ethanol containing more than 10 but less than 70 percent ethanol."

2. Rating and Certification

Section 306.0(i)(2) of the Fuel Rating Rule currently lists examples of alternative fuels, but specifically states that alternative fuels are "not limited to" those listed. The proposed amendments expressly add Mid-Level Ethanol blends to this non-exhaustive list, thereby making clear that the rating and certification requirements of § 306 of the Rule apply to Mid-Level Ethanol blends. Subjecting such blends to those requirements should ensure the accuracy of information on Mid-Level Ethanol blend labels.

In addition, to ensure that Mid-Level Ethanol blend labels provide consumers with useful information, the proposed amendments include rating and certification provisions similar to those for biodiesel fuels. The proposed amendments modify language in the Rule's rating provision (§ 306.5(b)) to clarify that covered entities must rate Mid-Level Ethanol blends by "the percentage of ethanol contained in the

[44] API Comment at 2.

[45] Id.

[46] Id.

[47] Id.

[48] *See, e.g.*, ConocoPhillips Comment at 1.

[49] Downstream Comment at 5.

[50] PMAA Comment at 2; SIGMA/NACS Comment at 4.

[51] The Commission promulgated the Rule's biodiesel fuel provisions pursuant to EISA.

[52] PMPA authorizes the Commission to designate methods for fuel rating, fuel certification, and labeling any alternative liquid fuel. *See* 15 U.S.C. 2823(c).

[53] AAM noted a petition to the EPA seeking approval of blends containing up to 15 percent ethanol for use in conventional vehicles. AAM Comment at 2; *see also* 74 FR 18228 (Apr. 21, 2009). If EPA grants this petition, the Commission will reconsider requiring the proposed Mid-Level Ethanol blend label for such fuels.

[54] 58 FR 41356, 41360 (Aug. 3, 1993).

[55] Although the Rule currently does not provide specific requirements for Mid-Level Ethanol blends, that fuel qualifies as an alternative fuel under the Rule. 16 CFR 306.0(i)(2) (providing that alternative fuels are "not limited to" those explicitly listed in the Rule). Therefore, covered entities must rate the fuel according to its "principal component." 16 CFR 306.5(b).

[56] The Rule already requires rating and certifying E85 according to the percentage of ethanol in the blend.

fuel," not by the percentage of the principal component of the fuel.[57]

The Commission also proposes amending § 306.6(b), which allows transferors of alternative automotive fuels to certify fuel ratings with a letter of certification. That section provides that, generally, a certification by letter remains valid so long as the fuel transferred contains the same or greater rating of the principal component. The letter remains valid because an increase in concentration for most alternative fuels will not trigger different labeling requirements. An increase or decrease in concentration for ethanol blends or biodiesel fuels, however, may trigger different labeling requirements.[58] Therefore, the proposed amendment to § 306.6(b) states that if transferors of ethanol blends choose to use a letter of certification, that letter remains valid only as long as the fuel transferred contains the same percentage of ethanol as previous fuel transfers covered by the letter.

3. Labeling

The proposed amendments provide labeling requirements for Mid-Level Ethanol blends and amend the labeling requirements for E85.[59] The proposed requirements provide retailers flexibility to comply with the law while giving consumers critical information to avoid placing their warranties at risk. Specifically, the proposed Mid-Level Ethanol blend requirements provide that retailers must post either: 1) the precise concentration of ethanol (*e.g.*, "20% ETHANOL"); or 2) a disclosure that the blend's concentration is between 10 and 70 percent ("10% - 70% ETHANOL"), or within a narrower range (*e.g.*, "30% - 40% ETHANOL"). These content disclosures will alert consumers to the presence of more than 10 percent ethanol, thereby helping them avoid placing their warranties at risk.

The proposed amendments allow some flexibility by permitting Mid-Level Ethanol blend sellers to provide a specific ethanol percentage or a range narrower than 10 - 70 percent, as long as the label is accurate. This increased flexibility will allow sellers to compete within the Mid-Level Ethanol blend market by disclosing a more specific ethanol content to consumers who value that information, while ensuring all consumers have the information necessary to avoid harming their vehicles or placing their warranties at risk. The proposed amendment does not, however, require labels to disclose an exact blend percentage or a range narrower than 10 - 70 percent. Requiring retailers to post such a disclosure would likely impose a significant burden because, as Downstream and IRFA noted, retailers currently create Mid-Level Ethanol blends through blender pumps. These pumps allow retailers to adjust the blend concentration frequently to account for relative changes in the prices of gasoline and ethanol. Requiring a specific disclosure, therefore, likely would force some sellers to either change pump labels frequently or alter their blend concentrations less frequently, potentially raising their costs.

In addition, labels for all ethanol blends above 10 percent would state:

- MAY HARM SOME VEHICLES
- CHECK OWNER'S MANUAL

This additional information should assist consumers in identifying the proper fuel for their vehicles.[60] As noted above, AAM reported that consumers place their warranties at risk if they use Mid-Level Ethanol blends and E85 in conventional cars because "virtually all conventional vehicles built to date have been validated for gasoline containing only up to 10% ethanol."[61] This comment raises a question concerning whether ethanol blends above 10 percent concentration will damage conventional vehicles, and the Commission invites comment on that question.

Although the record contains no evidence regarding the incidence of ethanol misfueling, the increasing risk of such misfueling necessitates this additional disclosure. As discussed above, EISA's fuel mandate will require significant expansion of the alternative fuel market. Thus, in the coming years more retailers will likely offer Mid-Level Ethanol blends and E85, and consumers will encounter more fuel pumps dispensing those fuels near pumps dispensing conventional gasoline. Moreover, consumers' familiarity with gasoline containing up to 10 percent ethanol may lead them to assume wrongly that their conventional vehicle can tolerate fuels with more than 10 percent ethanol. The proposed amendments require the additional disclosure for both E85 and Mid-Level Ethanol blends because requiring that disclosure for only one of those fuels could confuse consumers. For example, if the "may harm some vehicles" disclosure appeared on a Mid-Level Ethanol blend pump but not on an adjacent E85 pump, consumers might conclude wrongly that E85 cannot harm conventional vehicles.

The proposed amendments specify the size, font, and format requirements for the new Mid-Level Ethanol blend labels and the revised labels for ethanol blends of at least 70 percent concentration.[62] These requirements are similar to those in place for most other alternative liquid fuels in the Rule (*see* § 306.12). The proposed labels for both fuels require an orange background (PMS 1495 or its equivalent),[63] which is the typical color for alternative fuel labels and will allow retail consumers to distinguish Mid-Level Ethanol blends from gasoline. In addition, consistent with labeling for other alternative fuels, the proposed amendments require the text to be in Helvetica black type and centered on the label. The Commission proposes amending § 306.12(f) to provide sample illustrations of Mid-Level Ethanol blend and E85 labels, which are included at the end of this notice of proposed rulemaking.[64]

C. Octane Rating Using the On-Line Method

The Commission also agrees with the commenters that the Fuel Rating Rule should allow octane rating through the On-Line Method, as specified in ASTM D2885. As noted above, PMPA authorizes the Commission to prescribe octane rating methods beyond those specified in ASTM D2699 and D2700. The On-Line Method detailed in ASTM D2885 produces the exact same octane rating as the D2699 and D2700

[57] For example, a 30 percent ethanol blend should be rated as 30 percent ethanol, not 70 percent gasoline. However, as explained below, a retailer selling a 30 percent blend need only disclose that the fuel contains 10% - 70% ethanol.

[58] *E.g.*, an increase from 60 percent ethanol to 85 percent ethanol would qualify the fuel as E85.

[59] The proposed amendments at the end of this notice of proposed rulemaking include sample Mid-Level Ethanol blend and E85 labels.

[60] PMPA authorizes the Commission to require labels displaying fuel "ratings," which the statute defines as including information the Commission deems "appropriate to carry out the [statute's] purposes . . . ." 15 U.S.C. 2821(17)(C). The Commission has explained that, under this definition, a fuel's rating encompasses not only a numerical value but also text necessary to assure consumers that "they are purchasing a product that satisfies automobile engine minimum content requirements, which may be specified in their owner's manuals." 58 FR 41356, 41364-65 (Aug. 3, 1993). Thus, because the proposed additional language will assist consumers in determining whether they can use ethanol fuels, the language is part of the fuel's rating and the Commission may require it under PMPA.

[61] AAM Comment at 2.

[62] The proposed amendments also delete the Rule's sample label for "E-100" (*i.e.*, ethanol not mixed with gasoline) because the record does not show any retail sales of such fuels.

[63] 16 CFR 306.12(c)(2).

[64] The Rule's recordkeeping provisions (16 CFR 306.7, 306.9, and 306.11) without amendment will require covered entities to maintain records supporting the rating of any Mid-Level Ethanol blend they produce, transfer, or sell.

methods.[65] Accordingly, the Commission proposes amending the Rule to allow the On-Line Method.[66]

D. Miscellaneous Comments

Commenters raised three miscellaneous issues. First, several noted outdated ASTM references. Therefore, the Commission proposes updating those references.[67] Second, Downstream argued that the Commission consider allowing E85 to contain 68 percent ethanol in light of a potential change to the relevant ASTM standard. The Commission declines to make this change because there is no current ASTM or DOE standard allowing E85 to contain 68 percent ethanol.[68] Third, some retail fuel industry commenters requested more flexibility in labeling specifications and noted possible state and FTC labeling conflicts. However, none of the comments demonstrated that the labeling specifications impose a substantial burden or identified a specific conflict. Therefore, the Commission does not propose any amendments in response to those comments.

Finally, in addition to the commenters' suggested changes, the Commission on its own initiative proposes amending the Rule's labeling specifications to address an inconsistency. Section 306.12(b)(2) requires all uppercase type for labels for all alternative fuels. Sections 306.12(a)(4) through (9), however, require some lowercase type on biodiesel fuel labels. The Commission, therefore, proposes amending § 306.12(b)(2) to make clear that its all-caps requirement does not apply to labeling requirements for biodiesel fuels.[69]

E. Biodiesel Fuel Provisions

1. Rating Biodiesel Fuel Blends of 5 Percent or Less

As discussed above, several commenters argued that, unless the Commission expanded the Fuel Rating Rule to require rating of biodiesel fuel blends at or below 5 percent in concentration, retailers who blend biodiesel might not know the blend's concentration and, therefore, fail to label the fuel appropriately. As an initial matter, the record does not show that retailers who blend cannot properly label their fuel in the absence of the suggested change. Indeed, none of the commenters presented evidence of such mislabeling.

Retailers can comply with the Rule in one of two ways. First, they can test their blends and label them accordingly. Alternatively, they can add enough pure biodiesel to uncertified diesel stock to ensure that the resulting blend will contain more than 5, but not more than 20, percent biodiesel. For example, if a retailer receives uncertified diesel from a refiner, the retailer knows that the fuel contains up to 5 percent biodiesel. The retailer can then add at least six, but not more than fifteen, percent pure biodiesel into this uncertified stock. The final product would thus contain more than 5, but less than 20, percent biodiesel. Therefore, the retailer could comply with the Rule by labeling the fuel as a "Biodiesel Blend" without a specific blend percentage.[70]

Although the Rule's biodiesel provisions require retailers who blend such fuels to take some affirmative steps, the Commission believes that this burden is reasonable. Indeed, the Commission knew of this burden when it first promulgated biodiesel fuel requirements, and in announcing those requirements stated:

> [A]n entity blending biodiesel fuels is responsible for determining the amount of biodiesel and/or biomass-based diesel in the fuel it sells. This includes the need to account for biodiesel and/or biomass-based diesel in any diesel fuel (*e.g.*, diesel fuel containing biodiesel at five percent or less) it uses to create blends that must be rated, certified, or labeled under the Rule.[71]

Moreover, there is no evidence that requiring producers and distributors of biodiesel fuels to rate blends of 5 percent or less would decrease the Rule's overall burden on businesses. Amending the Rule as proposed would require producers and distributors to rate 5 percent or less biodiesel blends regardless of whether those fuels would eventually require a label after blending. Thus, the proposed amendment might reduce a burden on some retailers while increasing the burden on many producers and distributors. The Commission, therefore, declines to adopt the change.

2. Exempting Biomass-Based Diesel from the Rule

Commenter API argued that the Commission should not require rating, certification, or labeling of biomass-based diesel blends because those blends are indistinguishable from conventional diesel. It also argued that the required label is confusing because it contains both the terms "biodiesel" and "biomass-based diesel." Even assuming that API is correct, however, the Commission cannot exempt biomass-based diesel blends or provide for different labels because Section 205 of EISA specifically provides that "[e]ach retail diesel fuel pump *shall be labeled* in a manner that informs consumers of the *percent of biomass-based diesel* or biodiesel that is contained in the biomass-based diesel blend or biodiesel blend that is offered for sale" (emphasis added) and that all blends over 5 percent "shall be labeled,"[72] depending on concentration levels, either "contains biomass-based diesel *or biodiesel* in quantities between 5 percent and 20 percent" or "contains more than 20 percent biomass-based diesel *or biodiesel*."[73] (Emphasis added.) Thus, the Commission has no discretion to exempt biomass-based diesel or exclude the term "biodiesel" from biomass-based diesel blend labels.

V. Request for Comment

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Fuel Rating Rule Review, R811005" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on

[65] *See* ASTM D2885, Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique, available for inspection at the FTC's public reference room. Notably, D2885 provides that the On-Line Method will produce "octane numbers" as that term is defined in D2699 and D2700. *See id* at Sec. 5.3.

[66] NPRA and ConocoPhillips recommended further loosening the Rule's octane rating provisions to allow non-ASTM approved procedures so long as they are "correlated" with ASTM D2699 and D2700. However, without specific rating procedures, the Commission would have difficulty determining whether a supposedly "correlated" procedure accurately rates octane, and the commenters did not provide any criteria for showing correlation. Thus, allowing any "correlated" procedure would impede Rule enforcement and, therefore, the Commission declines to allow such procedures. *See* 15 U.S.C. 2823(c)(3)(A)(i) (Commission must consider "ease of administration and enforcement" before approving alternative octane rating procedures).

[67] *E.g.*, the Commission proposes amending § 306.0(b) to provide ASTM's current street address.

[68] *See* 1 CFR Part 51.

[69] The Commission also proposes amending §§ 306.0(b), 306.0(j)(1), 306.0(j)(2), and 306.0(j)(3) to correct typographical errors, and proposes amending § 306.0(i) for clarification by eliminating the subsection number (3) and replacing that with "provided, however."

[70] The Rule does not require a specific percentage disclosure for biodiesel blends with more than 5 and no more than 20 percent biodiesel. Thus, sellers may label the fuel: "Biodiesel Blend." 16 CFR 306.12(a)(4).

[71] 73 FR 40154, 40159 n.20 (Jul. 11, 2008).

[72] 42 U.S.C. 17021(a) and (b).

[73] 42 U.S.C. 17021(b).

the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).[74]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink: (*https://public.commentworks.com/ftc/fuelratingreview*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://public.commentworks.com/ftc/fuelratingreview*). If this notice of proposed rulemaking appears at (*http://www.regulations.gov/search/Regs/home.html#home*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (*http://www.ftc.gov*) to read the notice of proposed rulemaking and the news release describing it.

A comment filed in paper form should include the "Fuel Rating Rule Review, R811005" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex M), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to the paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget ("OMB"), Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.htm*).

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an oral hearing for these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the **Federal Register** stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a hearing request, on or before April 5, 2010, in the form of a written comment that describes the issues on which the party wishes to speak. If there is no oral hearing, the Commission will base its decision on the written rulemaking record.

VI. Paperwork Reduction Act

The proposed certification and labeling requirements for Mid-Level Ethanol blends constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) ("PRA"). The additional required disclosures for fuels containing at least 70 percent ethanol, however, do not invoke the PRA because they comprise a disclosure supplied by the Federal Government.[75]

Consistent with the Fuel Rating Rule's requirements for other alternative fuels, under the proposed amendments refiners, producers, importers, distributors, and retailers of Mid-Level Ethanol blends must retain, for one year, records of any delivery tickets, letters of certification, or tests upon which they based the automotive fuel ratings that they certify or post.[76] The covered parties also must make these records available for inspection by staff of the Commission and Environmental Protection Agency or by persons authorized by those agencies. Finally, retailers must produce, distribute, and post fuel rating labels on fuel pumps. Therefore, the Commission will submit the proposed requirements to OMB for review under the PRA before issuing a final rule.

The Commission has previously estimated the burden associated with the Rule's recordkeeping requirements for the sale of automotive fuels to be no more than 5 minutes per year (or 1/12th of an hour) per industry member, and no more than 1/8th of an hour per year per industry member for the Rule's disclosure requirements.[77] Consistent with OMB regulations that implement the PRA, these estimates reflect solely the burden incremental to the usual and customary recordkeeping and disclosure activities performed by affected entities in the ordinary course of business. *See* 5 CFR 1320.3(b)(2).

Because the procedures for distributing and selling Mid-Level Ethanol blends are no different from those for other automotive fuels, the

[74] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[75] According to OMB, "[t]he public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not included" within in the definition of a PRA "collection of information." 5 CFR 1320.3(c)(2).

[76] See the Fuel Rating Rule's recordkeeping requirements, 16 CFR 306.7; 306.9; and 306.11.

[77] *See, e.g.*, 73 FR 12916, 12920 (Mar. 11, 2008); 73 FR 40154, 40160-40161 (Jul. 11, 2008). Staff has previously estimated that retailers of automotive fuels incur an average burden of approximately one hour to produce, distribute, and post fuel rating labels. Because the labels are durable, staff has concluded that only about one of every eight retailers incur this burden each year, hence, 1/8th of an hour, on average, per retailer.

Commission expects that, consistent with practices in the fuel industry generally, the covered parties will record the fuel rating certification on documents (*e.g.*, shipping receipts) already in use, or will use a letter of certification. Furthermore, the Commission expects that labeling of Mid-Level Ethanol blend pumps will be consistent, generally, with practices in the fuel industry. Accordingly, the PRA burden will be the same as that for other automotive fuels: 1/12th of an hour per year for recordkeeping and 1/8th of an hour per year for disclosure.

Based on information submitted by commenter Downstream, the Commission estimates that there are approximately 130 retailers of Mid-Level Ethanol blends. Furthermore, the Commission understands from the comments that Mid-Level Ethanol blends are created through blender pumps and, therefore, there are no producers or distributors of such blends. Thus, assuming that each retailer of Mid-Level Ethanol blends will spend 1/12th of an hour per year complying with the proposed recordkeeping requirements and 1/8th of an hour per year complying with the proposed disclosure requirements, the Commission estimates the incremental annual burden for Mid-Level Ethanol blend retailers to be 10.83 hours for recordkeeping (1/12th of an hour per year x 130 entities) and 16.25 hours for disclosure (1/8th of an hour per year x 130), combined, 27.08 hours.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff estimates the mean hourly wage for retailer employees to be $15.04.[78] Applied to the estimated affected population, this would total $407.28 ($15.04 x 27.08) for recordkeeping and disclosure, industry-wide.

The Commission invites comment on the above burden analysis and estimates to help ensure its accuracy and completeness.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires an agency to provide an Initial Regulatory Flexibility Analysis with a proposed rule and a Final Regulatory Flexibility Analysis with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603-605.

The FTC does not expect that the proposed amendments will have a significant economic impact on a substantial number of small entities. The amendment allowing alternative octane measurements does not impose any new costs on covered entities because, under the amendment, those entities would have the option of using the octane rating method currently required by the Rule. As explained in Section V above, the Commission expects that Mid-Level Ethanol blend retailers will spend, at most, 5 minutes per year complying with the proposed recordkeeping requirements and 1/8th of an hour per year complying with the disclosure requirements. As also explained in Section V, staff estimates the mean hourly wage for employees of ethanol retailers to be $15.04. Even assuming that all ethanol retailers are small entities, compliance with the recordkeeping requirements will cost retailers $1.25 ($15.04 x 1/12th of an hour). In addition, under the same conservative assumptions, compliance with the proposed disclosure requirements will cost retailers $1.88 ($15.04 x 1/8th of an hour).

In addition, retailers will incur the cost of procuring and replacing fuel dispenser labels to comply with the disclosure requirements of the Rule. Staff has previously estimated that the price per automotive fuel label is approximately fifty cents and that the average automotive fuel retailer has six dispensers. However, commenter PMAA stated that the cost of labels ranges from one to two dollars. Conservatively applying the upper range from PMAA's estimate results in an initial cost to retailers of $12.00 (6 pumps x $2). In addition, staff has previously estimated the useful life of dispenser labels to range from 6 to 10 years. Assuming a useful life of 8 years, the mean of that range, and distributing the costs on a per-year basis, staff estimates the total annual replacement labeling cost to be $0.25 (1/8 x $2).

This document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has determined that it is appropriate to publish an Initial Regulatory Flexibility Analysis in order to inquire into the impact of the proposed ethanol amendments on small entities. Therefore, the Commission has prepared the following analysis.

A. Description of the reasons that action by the agency is being considered.

The emergence of Mid-Level Ethanol blends as a retail fuel and the likely increased availability of both Mid-Level Ethanol blends and E85 as retail fuels.

B. Statement of the objectives of, and legal basis for, the proposed rule.

The Commission proposes these amendments to provide requirements for rating and certifying Mid-Level Ethanol blends and to amend its requirements for labeling blends of gasoline and more than 10 percent ethanol pursuant to PMPA, 15 U.S.C. 2801 *et seq.*

C. Description of and, where feasible, estimate of the number of small entities to which the proposed rule will apply.

Retailers of fuels containing more than 10 percent ethanol will be classified as small businesses if they satisfy the Small Business Administration's relevant size standards, as determined by the Small Business Size Standards component of the North American Industry Classification System ("NAICS"). The closest NAICS size standard relevant to this rulemaking is for "Gas Stations with Convenience Stores." That standard classifies retailers with a maximum $27 million in annual receipts as small businesses.[79] As discussed above, the only evidence in the comments regarding ethanol retailers is a list of Mid-Level Ethanol blend retailers provided by Downstream. DOE reports 1,944 E85 fueling stations.[80] Neither list contains any information on these retailers' revenue. Therefore, the Commission is unable to determine how many of these retailers qualify as small businesses. The Commission invites comments providing revenue data for retailers selling ethanol blends containing more than 10 percent ethanol.

D. Projected reporting, recordkeeping, and other compliance requirements.

The proposed amendments make clear that the Fuel Rating Rule's recordkeeping, certification, and labeling requirements apply to Mid-Level Ethanol blends. Small entities potentially affected are producers, distributors, and retailers of those blends. The Commission expects that the recordkeeping, certification, and labeling tasks are done by industry members in the normal course of their business. Accordingly, we do not expect the proposed amendments to require any professional skills beyond those already employed by industry members.

[78] Bureau of Labor Statistics, May 2008 Occupational Employment Statistics Survey, "Correspondence Clerks," Table 1, at (*http://www.bls.gov/news.release/pdf/ocwage.pdf*).

[79] *See* (*http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*).

[80] *See* (*http://www.afdc.energy.gov/afdc/fuels/stations_counts.html*).

The Commission invites comments on this issue.

E. Other duplicative, overlapping, or conflicting federal rules.

The FTC has identified no other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendments. The Commission invites comment on this issue.

F. Alternatives considered.

As explained above, PMPA requires retailers of liquid automotive fuels to post labels at the point of sale displaying those fuels' ratings. The posting requirements in the proposed amendments are minimal and, as noted above, do not require creating any separate documents because covered parties may use documents already in use to certify a fuel's rating. Furthermore, the amendments minimize what, if any, economic impact there is from the labeling requirements. Therefore, the Commission concludes that there are no alternative measures that would accomplish the purposes of PMPA and lessen the burden on small entities. The Commission invites comment on this issue.

VIII. Public Hearings

Persons desiring a public hearing should notify the Commission no later than April 5, 2010. If there is interest in a public hearing, it will take place at a time and date to be announced in a subsequent notice. If a hearing is held, persons desiring an appointment to testify must submit to the Commission a complete statement in advance, which will be entered into the record in full. As a general rule, oral statements should not exceed 10 minutes. The Commission will provide further instructions in the notice announcing the hearing.

IX. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

List of Subjects in 16 CFR Part 306

Fuel ratings, Trade practices.

For the reasons discussed in the preamble, the Federal Trade Commission proposes to amend title 16, Chapter I, Subchapter C, of the Code of Federal Regulations, part 306, as follows:

1. Revise the authority citation for part 306 to read as follows:

Authority: 15 U.S.C. 2801 et seq; 42 U.S.C. 17021.

2. Amend § 306.0 by revising paragraphs (b), (i), and (j), and adding new paragraph (o), to read as follows:

§ 306.0 Definitions.

* * * * *

(b) *Research octane number* and *motor octane number.* (1) These terms have the meanings given such terms in the specifications of the American Society for Testing and Materials ("ASTM") entitled "Standard Specification for Automotive Spark-Ignition Engine Fuel" designated D4814–09b and, with respect to any grade or type of gasoline, are determined in accordance with test methods set forth in either:

(i) ASTM D2699-08, "Standard Test Method for Knock Characteristics of Motor Fuels by the Research Method" and ASTM D2700-08, "Standard Test Method for Knock Characteristics of Motor and Aviation Fuels by the Motor Method"; or

(ii) ASTM D2885-08, "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique."

(2)These incorporations by reference were approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D4814–09b, ASTM D2699-08, ASTM D2700-08, and ASTM 2885-08, may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C., or at the National Archives and Records Administration ("NARA"). For information on the availability of this material at NARA, call 202-741-6030, or go to: (*http://www.archives.gov/federal-register/cfr/ibr-locations.html*).

* * * * *

(i) *Automotive fuel.* (1) This term means liquid fuel of a type distributed for use as a fuel in any motor vehicle, and the term includes, but is not limited to:

(i) Gasoline, an automotive spark-ignition engine fuel, which includes, but is not limited to, gasohol (generally a mixture of approximately 90% unleaded gasoline and 10% denatured ethanol) and fuels developed to comply with the Clean Air Act, 42 U.S.C. 7401 *et seq.*, such as reformulated gasoline and oxygenated gasoline; and

(ii) Alternative liquid automotive fuels, including, but not limited to:

(A) Methanol, denatured ethanol, and other alcohols;

(B) Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and/or other alcohols (or such other percentage, but not less than 70 percent, as determined by the Secretary of the United States Department of Energy, by rule, to provide for requirements relating to cold start, safety, or vehicle functions), with gasoline or other fuels;

(C) Mid-level ethanol blends;

(D) Liquefied natural gas;

(E) Liquefied petroleum gas;

(F) Coal-derived liquid fuels;

(G) Biodiesel;

(H) Biomass-based diesel;

(I) Biodiesel blends containing more than 5 percent biodiesel by volume; and

(J) Biomass-based diesel blends containing more than 5 percent biomass-based diesel by volume.

(2) Provided, however, that biodiesel blends and biomass-based diesel blends that contain less than or equal to 5 percent biodiesel by volume and less than or equal to 5 percent biomass-based diesel by volume, and that meet American Society for Testing and Materials ("ASTM") standard D975-09b ("Standard Specification for Diesel Fuel Oils"), are not automotive fuels covered by the requirements of this Part. The incorporation of ASTM D975-09b by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D975-09b may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C., or at NARA. For information on the availability of this material at NARA, call 202-741-6030, or go to: (*http://www.archives.gov/federal-register/cfr/ibr-locations.html*).

(j) *Automotive fuel rating* means—

(1) For gasoline, the octane rating.

(2) For an alternative liquid automotive fuel other than biodiesel, biomass-based diesel, biodiesel blends, biomass-based diesel blends, and mixtures of gasoline and more than 10 percent ethanol, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as a minimum percentage by volume, may be included, if desired.

(3) For biomass-based diesel, biodiesel, biomass-based diesel blends

with more than 5 percent biomass-based diesel, biodiesel blends with more than 5 percent biodiesel, a disclosure of the biomass-based diesel or biodiesel component, expressed as the percentage by volume.

(4) For mixtures of gasoline and more than 10 percent ethanol, including mid-level ethanol blends, a disclosure of the ethanol component, expressed as a percentage by volume.

* * * * *

(o) *Mid-level ethanol blend* means a mixture of gasoline and ethanol containing more than 10 but less than 70 percent ethanol.

3. Revise § 306.5 to read as follows:

§ 306.5 Automotive fuel rating.

If you are a refiner, importer, or producer, you must determine the automotive fuel rating of all automotive fuel before you transfer it. You can do that yourself or through a testing lab.

(a) To determine the automotive fuel rating of gasoline, add the research octane number and the motor octane number and divide by two, as explained by the American Society for Testing and Materials ("ASTM") in ASTM D4814–09b, entitled "Standard Specifications for Automotive Spark-Ignition Engine Fuel." To determine the research octane and motor octane numbers you may either:

(1) Use ASTM standard test method D2699-08 to determine the research octane number, and ASTM standard test method D2700-08 to determine the motor octane number; or

(2) Use the test method set forth in ASTM D2885-08, "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique."

(b) To determine automotive fuel ratings for alternative liquid automotive fuels other than mid-level ethanol blends, biodiesel blends and biomass-based diesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage by volume of the principal component of the alternative liquid automotive fuel that you must disclose. In the case of biodiesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of biodiesel contained in the fuel. In the case of biomass-based diesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of biomass-based diesel contained in the fuel. In the case of mid-level ethanol blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of ethanol contained in the fuel. You also must have a reasonable basis, consisting of competent and reliable evidence, for the minimum percentages by volume of other components that you choose to disclose.

4. Revise § 306.6(b) to read as follows:

§ 306.6 Certification.

* * * * *

(b) Give the person a letter or other written statement. This letter must include the date, your name, the other person's name, and the automotive fuel rating of any automotive fuel you will transfer to that person from the date of the letter onwards. Octane rating numbers may be rounded to a whole or half number equal to or less than the number determined by you. This letter of certification will be good until you transfer automotive fuel with a lower automotive fuel rating, except that a letter certifying the fuel rating of biomass-based diesel, biodiesel, biomass-based diesel blend, biodiesel blend, or mid-level ethanol blend will be good only until you transfer those fuels with a different automotive fuel rating, whether the rating is higher or lower. When this happens, you must certify the automotive fuel rating of the new automotive fuel either with a delivery ticket or by sending a new letter of certification.

* * * * *

5. Revise § 306.10(f) to read as follows:

§ 306.10 Automotive fuel rating posting.

* * * * *

(f) The following examples of automotive fuel rating disclosures for some presently available alternative liquid automotive fuels are meant to serve as illustrations of compliance with this part, but do not limit the Rule's coverage to only the mentioned fuels:

(1) "Methanol/Minimum ___% Methanol"

(2) "20% Ethanol/May harm some vehicles. Check owner's manual"

(3) "M-85/Minimum ___% Methanol"

(4) "E-85/Minimum ___% Ethanol/ May harm some vehicles. Check owner's manual"

(5) "LPG/Minimum ___% Propane" or "LPG/Minimum ___% Propane and ___% Butane"

(6) "LNG/Minimum ___% Methane"

(7) "B-20 Biodiesel Blend/contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent"

(8) "20% Biomass-Based Diesel Blend/ contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent"

(9) "B-100 Biodiesel/contains 100 percent biodiesel"

(10) "100% Biomass-Based Diesel/ contains 100 percent biomass-based diesel"

* * * * *

6. Amend § 306.12 by revising paragraph (a)(2), by redesignating existing paragraphs (a)(4) through (a)(9) as paragraphs (a)(6) through (a)(11), respectively, by adding new paragraphs (a)(4) and (a)(5), by revising paragraph (b)(2), by removing the fifth illustration in paragraph (f), and by adding new illustrations after the existing illustrations in paragraph (f), to read as follows:

§ 306.12 Labels.

(a) *Layout* -

* * * * *

(2) *For alternative liquid automotive fuel labels (one principal component) other than, biodiesel, biomass-based diesel, biodiesel blends, and biomass-based diesel blends, and mixtures of gasoline and more than 10 percent ethanol.* The label is 3 inches (7.62 cm) wide × 2 1/2 inches (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1 inch (2.54 cm) deep. Spacing of the fuel name is 1/4 inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 1/8 inch (.32 cm) from the bottom of the black band. All type below the black band is centered horizontally, with 1/8 inch (.32 cm) between each line. The bottom line of type is 3/16 inch (.48 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label. If you wish to change the dimensions of this single component label to accommodate a fuel descriptor that is longer than shown in the sample labels, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, D.C. 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

* * * * *

(4) *For mid-level ethanol blends.* (i) The label is 3 inches (7.62 cm) wide × 2 1/2 inches (6.35 cm) long. "Helvetica black" type is used throughout. The type in the band is centered both horizontally and vertically. The band at the top of the label contains one of the following:

(A) The numerical value representing the volume percentage of ethanol in the

fuel followed by the percentage sign and then by the term "ETHANOL";

(B) "X% - Y%," where X represents the numerical value of the minimum, at least 10, and Y represents the numerical value of the maximum, no more than 70, amount of ethanol in the fuel, followed by a line break and then the term "ETHANOL"; or

(C) "10% - 70%" followed by a line break and then the term "ETHANOL."

(ii) The band should measure 1 inch (2.54 cm) deep. The word "ETHANOL" is in 24 point font. The exact percentage disclosure in subsection (i) is in 24 point font. The range disclosures in subsections (ii) and (iii) are in 18 point font. The type below the black band is centered vertically and inset 3/16 inch (.48 cm) from the left edge of the box. The first line begins with a round bullet point in 16 point font and is followed by the text "MAY HARM SOME VEHICLES" in 20 point font. Below that text, a new line begins with a bullet point in 16 point font and is followed by the text "CHECK OWNER'S MANUAL" in 20 point font.

(5) *For mixtures of gasoline and at least 70 percent ethanol.* (i) The label is 3 inches (7.62 cm) wide × 2 1/2 inches (6.35 cm) long. "Helvetica black" type is used throughout. The band should measure 1 inch (2.54 cm) deep. The type in the band is in 50 point font and is centered both horizontally and vertically.

(A) If the fuel is E85, the type in the band reads "E-85."

(B) If the common name of the fuel is something other than E85, the type in the black band should be the common name of the fuel.

(ii) The type below the black band is centered vertically. The first line of text below the band, in 20 point font and centered horizontally, is the text: "MINIMUM X% ETHANOL," where X represents the numerical value of the minimum percentage of ethanol in the fuel. Below that text, a new line is left justified and inset 1/4 inch (.64 cm) from the left border of the label. The line begins with a round bullet point and is followed by the text "MAY HARM SOME VEHICLES" in 11 point font. Below that text, a new line is left justified and inset 1/4 inch (.64 cm) from the left border of the label. The line begins with a bullet point and is followed by the text "CHECK OWNER'S MANUAL" in 11 point font.

* * * * *

(b) * * *

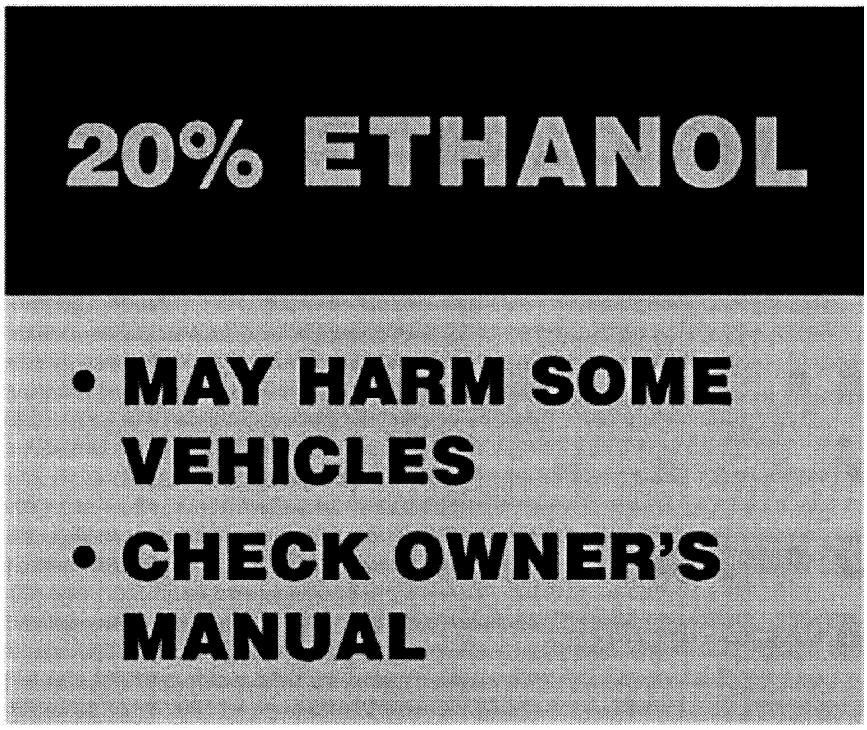
(2) *For alternative liquid automotive fuel labels (one principal component).* Except as provided above, all type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (1/2 inch; (1.27 cm) cap height) "Helvetica Black," knocked out of a 1 inch; (2.54 cm) deep band. The type for the words "MINIMUM" and the principal component is 24 pt. (1/4 inch; (.64 cm) cap height.) The type for percentage is 36 pt. (3/8 inch; (.96 cm) cap height).

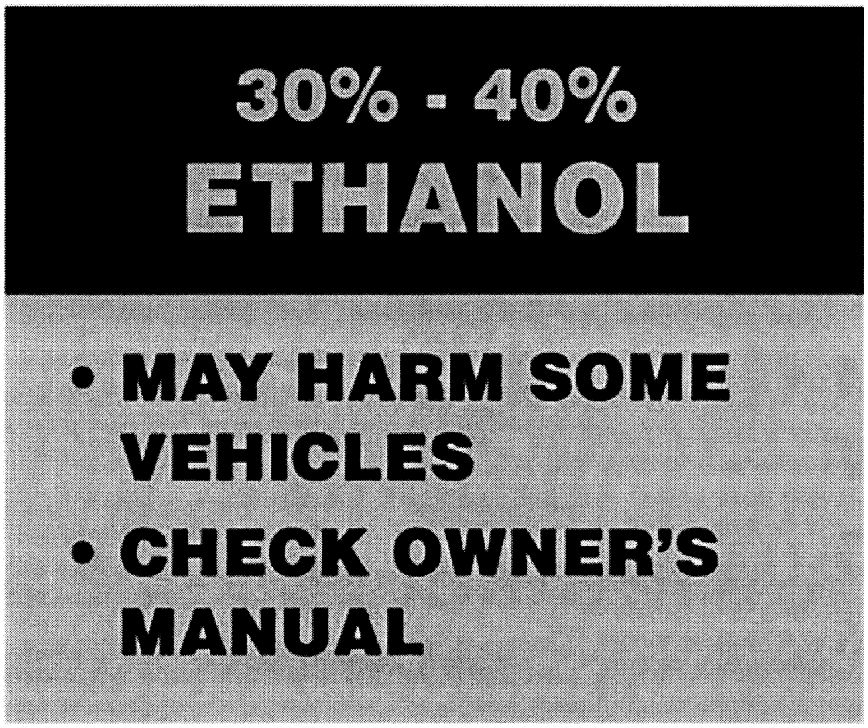
* * * * *

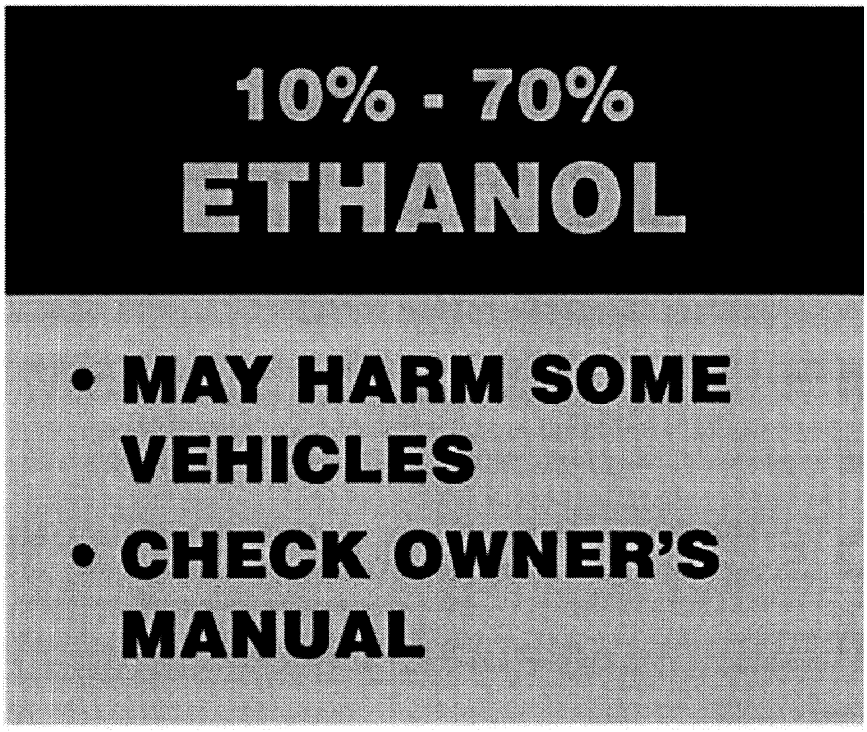
(f) *Illustrations of labels.*

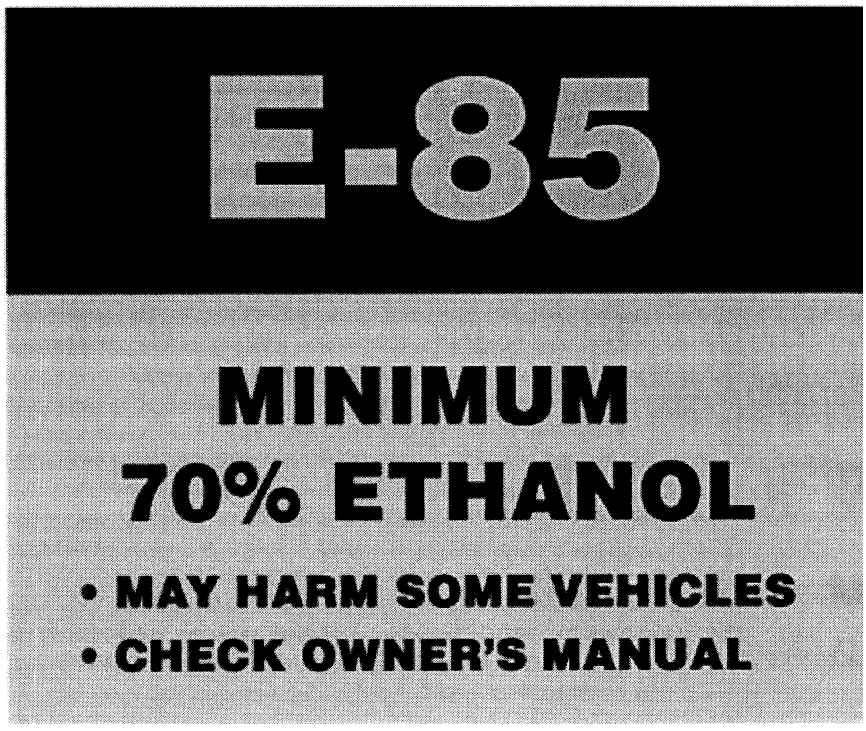
* * *

BILLING CODE 6750–01–S


20% ETHANOL
• MAY HARM SOME VEHICLES
• CHECK OWNER'S MANUAL


30% - 40%
ETHANOL
• MAY HARM SOME VEHICLES
• CHECK OWNER'S MANUAL


10% - 70%
ETHANOL
• MAY HARM SOME VEHICLES
• CHECK OWNER'S MANUAL


E-85
MINIMUM
70% ETHANOL
• MAY HARM SOME VEHICLES
• CHECK OWNER'S MANUAL

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–5647 Filed 3–15–10: 8:45 am]

Billing Code: 6750–01–S

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 159

[USCBP–2010–0008]

RIN 1505–AC21

Courtesy Notice of Liquidation

AGENCY: Customes and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend title 19 of the Code of Federal Regulations (CFR) pertaining to the method by which CBP issues courtesy notices of liquidation. Courtesy notices of liquidation provide informal, advanced notice of the liquidation date and are not required by statute. Currently, CBP provides an electronic and a paper courtesy notice for importers of record whose entry summaries are electronically filed in the Automated Broker Interface (ABI). In an effort to streamline the notification process and reduce printing and mailing costs, CBP proposes to discontinue mailing paper courtesy notices of liquidation to importers of record whose entry summaries are filed in ABI.

DATE: Comments must be received on or before May 17, 2010.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2010–0008.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW. (Mint Annex), Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and USCBP docket number for this rulemaking. 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 Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC.

Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Laurie Dempsey, Trade Policy and Programs, Office of International Trade, Customs and Border Protection, 202–863–6509.

SUPPLEMENTARY INFORMATION:

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. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

Section 1500(e) of title 19 of the United States Code (19 U.S.C. 1500(e)) requires CBP to provide notice of liquidation to the importer or his agent and authorizes CBP to determine the form and manner by which to issue the notice. Section 159.1 of the CBP regulations (19 CFR 159.1) defines "liquidation" as the final calculation of duties (not including vessel repair duties) or drawback accruing on an entry. "Duties" is defined in 19 CFR 101.1 as "[c]ustoms duties and any internal revenue taxes which attach upon importation." Accordingly, in the customhouse at each port of entry, CBP posts the official bulletin notice of liquidation indicating the date of liquidation for the entries listed therein. 19 CFR 159.9(c). The posting of the bulletin notice of liquidation is "legal evidence of liquidation." 19 CFR 159.9(c).

CBP also has the discretion to provide advance notice of the liquidation date to the importer or his agent by issuing informal, courtesy notices of liquidation (hereinafter "courtesy notice" or "courtesy notices"). 19 CFR 159.9(d). The courtesy notice is not required by 19 U.S.C. 1500(e) and does not trigger the date upon which an importer may file a protest under 19 U.S.C. 1514 challenging certain aspects of the liquidation.

CBP intends to make certain changes to the distribution of courtesy notices of liquidation. Courtesy notices are mailed and/or issued electronically to two parties who use the Automated Broker Interface (ABI) to file their entry summaries: Importers of record and customs brokers who are duly authorized agents of the Importers.

Currently, CBP's Technology Center transmits, on a weekly basis, electronic courtesy notices to all ABI filers and mails paper courtesy notices, on CBP Form 4333–A, to all importers of record whose entry summaries are set to liquidate by each port of entry. As a result, two courtesy notices are issued for importers of record whose electronic entry summaries are filed in ABI: the ABI filer receives an electronic courtesy notice on behalf of the importer of record; and, the importer of record receives a paper courtesy notice. If the importer of record is the ABI filer, then the importer of record receives both an electronic and a paper courtesy notice. *See* 19 CFR part 143. If an importer files a paper formal entry with CBP, that importer receives a mailed courtesy notice. *See* 19 CFR parts 141 and 142.

In an effort to streamline the notification process and reduce printing and mailing costs, CBP is proposing to discontinue mailing the paper courtesy notice to importers of record whose entry summaries are filed in ABI. The ABI filer, who is either the importer of record or a customs broker, already receives an electronic courtesy notice thereby rendering the paper courtesy notice duplicative. If the proposal is adopted, ABI filers would only receive electronic courtesy notices. Below is an analysis of the cost savings that will result if CBP discontinues paper courtesy notices to these recipients.

Cost Savings

The following analysis details the cost savings that would be realized by the agency as a result of eliminating paper courtesy notices to importers of record who personally receive an electronic courtesy notice or whose broker receives

an electronic courtesy notice on their behalf. In FY 2009, CBP sent approximately 7.2 million paper courtesy notices. CBP estimates that 99.6 percent of all summaries are currently filed electronically using ABI. Under the proposed rule, CBP estimates that over 90 percent of paper courtesy notices will be eliminated. For the purpose of this analysis, we assume 6.5 million paper notices (90 percent) will be eliminated. Additionally, we assume that the number of notices does not change from year to year.

Quantified Savings

1. Postage

By decreasing the number of paper courtesy notices distributed, CBP will significantly reduce postage costs required to mail the notices. Current U.S. Postal Service first-class letter rates are 44 cents within the United States, 75 cents to Canada, 79 cents to Mexico, and 98 cents to the rest of the world. Exhibit 1 shows the total estimated savings on postage in 2010, an estimated $3 million.

EXHIBIT 1—TOTAL SAVINGS ON POSTAGE IN 2010

[Undiscounted]

Notice destination	Number of notices	Total cost
Domestic	5,899,816	$2,595,919
Canada	379,301	284,475
Mexico	57,371	45,323
Other Foreign	167,193	163,849
Total	6,503,681	3,089,566

2. Forms

CBP estimates that each courtesy notice form costs $0.027. Decreasing the number of paper forms by 6.5 million will save the agency approximately $175,599 per year.

3. Labor

CBP employs contractors to print the paper courtesy notices and estimates the cost of labor is $0.08 per copy. Based on this estimate, the cost savings of labor for printing is approximately $520,294 per year.

Total Quantified Savings

Exhibit 2 displays all of the cost savings that have been quantified for this analysis.

EXHIBIT 2—TOTAL SAVINGS FROM REDUCING PAPER COURTESY NOTICES IN 2010

[Undiscounted]

Cost	Annual savings
Postage	$3,089,566
Forms	175,599
Labor	520,294
Total	3,785,460

We total these savings over the next 10 years at a 3 and 7 percent discount rate, per guidance provided in the OMB's Circular A–4. Total estimated savings range from $28.4 million to $33.3 million over the period of analysis. Annualized savings are $3.8 million. Total present value and annualized savings are presented in Exhibit 3.

EXHIBIT 3—TOTAL PRESENT VALUE AND ANNUALIZED COSTS OF ADDITIONAL DATA ELEMENTS, 2010–2019, $2010

Total present value costs ($millions)		Annualized costs ($millions)	
3%	7%	3%	7%
$33.3	$28.4	$3.8	$3.8

Additional Savings Not Quantified

CBP has service contracts with fixed monthly costs for the equipment used to print and mail the paper courtesy notices. Current maintenance costs are approximately $45,048 per year for two printers and approximately $3,478 per year for a finishing machine. CBP is exploring lower cost options to replace these machines, but we are unable to quantify these savings or predict when they might occur.

Additional costs associated with the printing and distribution of paper courtesy notices include labor by government employees on the CBP Mail Management Team and mainframe processing time. Reducing the number of paper notices will allow both Mail Management Team and mainframe resources to be used for other purposes. While we do not have enough data to quantify these savings at this time, they are important to consider in the analysis of the total impact of the reduction of paper courtesy notices.

Summary of Cost Savings

CBP estimates that this proposed rule will save the agency $3.8 million annually by eliminating 90%, or approximately 6.5 million, of the paper courtesy notices currently sent to importers. Quantified savings include reduced postage, forms, and contract labor costs. Additional savings may be realized by reducing maintenance costs on equipment used to produce the paper notices and allowing more efficient use of other government resources, but we do not have enough data to quantify these at this time.

Explanation of Proposed Amendments

This document proposes to amend section 159 of the CBP regulations (19 CFR 159) by removing any reference to Customs Form 4333–A, when used in connection with courtesy notices. This change is necessary to reflect that electronic courtesy notices in ABI are not set forth on CBP Form 4333–A; however, the form will continue to be used when paper courtesy notices are distributed. Moreover, this document proposes to amend 19 CFR 159.9(c)(1) by removing the last sentence, which refers to electronic courtesy notices, because section 159.9(d) discusses courtesy notices generally.

The proposed changes will not affect CBP's continuing legal obligation to post the official bulletin notice of liquidation in the customhouse at all ports of entry pursuant to 19 CFR 159.9(b). Moreover, the proposed amendment will not affect the use of CBP Form 4333–A as a notice of extension and suspension. 19 CFR 159.12(b)-(c).

In addition, this document proposes non-substantive amendments to §§ 159.9, 159.10, 159.11, and 159.12 of the CFR to reflect the nomenclature changes effected by the transfer of CBP to the Department of Homeland Security and other minor editorial edits.

Executive Order 12866

This proposed rule is not a "significant regulatory action" per Executive Order 12866 because it will not result in expenditures totaling $100 million or more in any one year. The Office of Management and Budget (OMB) has not reviewed this regulation

under that order. The proposed rule would result in cost savings as discussed earlier in the preamble.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to examine the impact a rule would have on small entities. 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).

It is noted that this proposal does not directly affect small entities because these proposed amendments place no new regulatory requirements on small entities to change their business practices. This proposed rule will eliminate paper courtesy notices that are sent to importers who file entry summaries via ABI or who hire a third party to file via ABI on their behalf. Those importers who do not file using ABI are likely to be small businesses or individuals making entry on personal goods, all of whom will continue to receive paper courtesy notices. As such, this rule should not adversely impact those importers. The primary impact of this proposed rule will be the savings realized by CBP as a result of eliminating a large portion of its annual printing and mailing costs associated with paper courtesy notices. For these reasons, we believe the effects of this proposed rule will not have an impact on a substantial number of small entities and that any effect would not rise to the level of a "significant" economic impact.

We welcome comments on this conclusion.

Paperwork Reduction Act

As there is no collection of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 159

Antidumping, Countervailing duties, Customs duties and inspection, Foreign currencies.

Proposed Amendments to the CBP Regulations

For the reasons set forth in the preamble, part 159 of title 19 of the CFR (19 CFR Part 159) is proposed to be amended as set forth below.

PART 159—LIQUIDATION OF DUTIES

1. The general authority citation for part 159 continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624.

* * * * *

2. In § 159.9:

a. Paragraph (a) is amended by removing the word "Customs" and adding in its place the term "CBP".

b. Paragraph (c)(1) is amended by removing the word "shall" from the first and second sentence and adding in its place the word "will"; and, by removing the last sentence.

c. Paragraph (d) is revised.

The revision reads as follows:

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

* * * * *

(d) *Courtesy notice of liquidation.* CBP will endeavor to provide importers or their agents with a courtesy notice of liquidation for all entries scheduled to be liquidated or deemed liquidated by operation of law. The courtesy notice of liquidation that CBP will endeavor to provide will be electronically transmitted pursuant to an authorized electronic data interchange system if the entry summary was filed electronically in accordance with part 143 of this chapter or on CBP Form 4333–A if the entry was filed on paper pursuant to parts 141 and 142 of this chapter. This notice will serve as an informal, courtesy notice and not as a direct, formal, and decisive notice of liquidation.

§ 159.10 [Amended]

3. In § 159.10:

a. Paragraph (a)(2) is amended by removing the word "Customs" and adding in its place the term "CBP".

b. Paragraphs (c)(1) and (3) are amended by removing the word "Customs" where it appears and adding in each place the term "CBP"; and in paragraphs (c)(1) through (3) by removing the word "shall" each place that it appears and adding in its place the word "will".

§ 159.11 [Amended]

4. In § 159.11:

a. Paragraph (a) is amended by removing the word "shall" each place that it appears and adding in its place the word "will", by removing the word "Customs" the first two places it appears and adding in its place the term "CBP", and, in the last sentence, by removing the words "on Customs Form 4333–A".

b. Paragraph (b) is amended by removing the word "shall" each place that it appears and adding in its place the word "will".

§ 159.12 [Amended]

5. In § 159.12:

a. Paragraphs (a)(1)(i) and (ii), (b), (c), and (d)(1) are amended by removing the word "Customs" each place that it appears and adding in its place the term "CBP".

b. Paragraph (f)(1) is amended, in the first sentence, by removing the word "shall" and adding in its place the word "will" and, in the last sentence, by removing the word "Customs" at its first occurrence and adding in its place the term "CBP" and removing the words "on Customs Form 4333–A".

c. Paragraph (f)(2) is amended by removing the word "shall" and adding in its place the word "will".

d. Paragraph (g) is amended, in the first sentence, by removing the word "shall" and adding in its place the word "will", and by removing the word "Customs" and adding in its place the term "CBP"; and, in the last sentence, by removing the word "Customs" at its first occurrence and adding in its place the term "CBP", and by removing the words "on Customs Form 4333–A".

Approved: March 10, 2010.

David V. Aguilar,

Acting Deputy Commissioner, U.S. Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2010–5635 Filed 3–15–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1926

[Docket No. OSHA–H054a–2006–0064]

RIN 1218–AC43

Revising the Notification Requirements in the Exposure Determination; Provisions of the Hexavalent Chromium Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: On February 28, 2006, OSHA published a final rule for Occupational Exposure to Hexavalent Chromium (Cr

(VI)). Public Citizen Health Research Group (Public Citizen) and other parties petitioned for review of the standard in the United States Court of Appeals for the Third Circuit. The court denied the petitions for review on all but one issue. The Third Circuit remanded the employee notification requirements in the standard's exposure determination provisions for further consideration. More specifically, the court directed the Agency to either provide an explanation for its decision to limit employee notification requirements to circumstances in which Cr(VI) exposures exceed the permissible exposure limit (PEL) or take other appropriate action with respect to that paragraph of the standard. After reviewing the rulemaking record on this issue, and reconsidering the provision in question, OSHA has decided to propose a revision of the notification requirements, by means of this Notice of Proposed Rulemaking (NPRM), that would require employers to notify employees of the results of all exposure determinations.

DATES: Comments to this NPRM, hearing requests, and other information must be submitted (transmitted, postmarked, or delivered) by April 15, 2010. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: You may submit comments, hearing requests, and other materials, identified by Docket No. OSHA–H054a-2006–0064, by any of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: OSHA allows facsimile transmission of comments and hearing requests that are 10 pages or fewer in length (including attachments). You can fax these documents to the OSHA Docket Office at (202) 693–1648; hard copies of these documents are not required. Instead of transmitting facsimile copies of attachments that supplement these documents (*e.g.,* studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, the date, and the Docket No. (OSHA–H054a–2006–0064) so that the Agency can attach them to the appropriate document.

Regular mail, express delivery, hand (courier) delivery, and messenger service: Submit comments and any additional material to the OSHA Docket Office, Docket No. OSHA–H054a–2006–0064 or RIN No. 1218–AC43, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Note that security procedures may delay OSHA's receipt of comments and other written materials submitted by regular mail. Please contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. Deliveries (hand, express mail, messenger service) are accepted during the Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., E.T.

Instructions: All submissions must include the Agency name and the OSHA docket number (*i.e.,* OSHA Docket No. OSHA–H054a–2006–0064). Comments and other material, including any personal information, will be placed in the public docket without revision, and will be available online at *http://www.regulations.gov*. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public or submitting comments that contain personal information (either about themselves or others) such as social security numbers, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or to the OSHA Docket Office at the address above. Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries contact Ms. Jennifer Ashley, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For technical inquiries, contact Maureen Ruskin, Office of Chemical Hazards—Metals, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1950, fax: (202) 693–1678. Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Request for Comment

OSHA requests comments on all issues related to this action including economic or other regulatory impacts of this action on the regulated community. OSHA will consider all of the comments, and the comments will become part of the record. OSHA will determine its next steps based on all comments and submissions.

II. Relationship Between This Proposed Rule and the Companion Direct Final Rule

In direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** with a statement that the rule will go into effect unless a significant adverse comment is received within a specified period of time. An identical proposed rule is often published at the same time. If significant adverse comments are not submitted in response to the direct final rule, the rule goes into effect. If a significant adverse comment is received, the agency withdraws the direct final rule and treats such comment as a response to the proposed rule. Direct final rulemaking is typically used where an agency anticipates that a rule will not be controversial. Examples include minor substantive changes to regulations, direct incorporations of mandates from new legislation, and in this case, minor changes to regulations resulting from a judicial remand.

OSHA is publishing this proposed rule along with a companion direct final rule. The comment period for the proposed rule runs concurrently with that of the direct final rule. Any comments received under this proposed rule will also be treated as comments regarding the companion direct final rule. Likewise, significant adverse comments submitted to the companion direct final rule will also be considered as comments to this proposed rule.

If OSHA receives a significant adverse comment on the companion direct final rule, the Agency will publish a timely withdrawal of the DFR and proceed with this NPRM. In the event OSHA

withdraws the companion direct final rule because of significant adverse comment, the Agency will consider all comments received when it continues with this proposed rule. OSHA will then decide whether to publish a new final rule.

III. Discussion of Changes

Paragraph (d) of the Chromium standard (29 CFR 1910.1026, 29 CFR 1915.1026, 29 CFR 1926.1126) (71 FR 10100) is titled "Exposure Determination" and requires employers to determine the 8-hour time-weighted-average exposure for each employee exposed to Cr(VI). This can be done through scheduled air monitoring (paragraph (d)(2)) or on the basis of any combination of air monitoring data, historical monitoring data, and/or objective data (paragraph (d)(3)). As originally promulgated, paragraph (d)(4) required the employer to notify affected employees of any exposure determinations indicating exposures in excess of the PEL. The employer can satisfy this requirement either by posting the exposure determination results in an appropriate location accessible to all affected employees or by notifying each affected employee in writing of the results of the exposure determination. Under the general industry standard, notice has to be provided within 15 work days, and in construction and maritime employers have 5 work days to provide the required notice.

The requirement to notify employees of exposures above the exposure limit was consistent with Section 8(c)(3) of the Occupational Safety and Health Act of 1970 (OSH Act), which requires employers "to promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents * * * at levels which exceed those prescribed by an applicable occupational safety and health standard," 29 U.S.C. 657(c)(3). The promulgated notice requirement was more limited than the proposed chromium standard (69 FR 59306, Oct. 4, 2004), however. The proposed standard would have required employers to notify affected employees of all exposure determinations, irrespective of the results. The broader, proposed notice requirement mirrored similar provisions in OSHA's other substance-specific health standards including, but not limited to, lead (29 CFR 1910.1025(d)(8)(i)); arsenic (29 CFR 1910.1018(e)(5)(i)); methylenedianiline (29 CFR 1910.1050(e)(7)(i)); butadiene (29 CFR 1910.1051(d)(7)(i)); and methylene chloride (29 CFR 1910.1052(d)(5)(i)). All of those other standards require employers to notify employees of all exposure monitoring results.

Public Citizen and other parties petitioned for review of the final chromium standard. (*See Public Citizen Health Research Group* v. *Dept. of Labor,* 557 F.3d 165 (3d Cir. 2009)). Part of Public Citizen's petition involved a challenge to paragraph (d)(4). Public Citizen argued that OSHA's decision to depart from the proposed rule and limit the employee notification requirement to exposures above the PEL was arbitrary and unexplained. Although OSHA defended the final notification provision on many grounds, including that it was consistent with Section 8(c)(3) of the OSH Act, the Third Circuit granted Public Citizen's petition for review with regard to the employee notification requirement (while denying all other challenges to the standard). *See Public Citizen,* 557 F.3d at 185–86. The court found that "OSHA failed to provide a statement of reasons for departing from the proposed standard and past practice in other standards," *id.* at 186, and remanded paragraph (d)(4) to the agency "for further consideration and explanation." *Id.* at 191. The court "expect[ed] OSHA [to] * * * act expeditiously in either providing an explanation for its chosen notification requirements or taking such further action as may be appropriate." *Id.* at 192.

In response to the Third Circuit's decision, OSHA re-examined the record. The Agency did not find any comments or testimony in the record on the narrow issue of whether employees should be notified of all exposure determinations. OSHA also confirmed that all of its other substance-specific health standards have broader notification requirements than the 2006 Cr(VI) standard, *i.e.,* they require employers to notify employees of exposures even below the relevant exposure limits. *See, e.g.,* lead (29 CFR 1910.1025(d)(8)(i)); arsenic (29 CFR 1910.1018(e)(5)(i)); methylenedianiline (29 CFR 1910.1050(e)(7)(i)); butadiene (29 CFR 1910.1051(d)(7)(i)); and methylene chloride (29 CFR 1910.1052(d)(5)(i)).

Upon reconsidering this issue, OSHA has decided to take action, by means of this notice, to propose an amendment to the notification requirements in the Cr(VI) standards. Consistent with the language in the proposed chromium standard, as well as past practice in OSHA's other substance-specific health standards, the amended provision would require employers to notify affected employees of all exposure determinations, whether above or below the PEL. OSHA is not proposing to change any other requirements in the exposure determination or notification provisions. For example, the number of work days employers have to provide notice to employees would remain unchanged.

In the preamble to the final Cr(VI) standard, OSHA concluded that employees were exposed to significant risk at the previous PEL for Cr(VI) of 52 $\mu g/m^3$ and that lowering the PEL to 5 $\mu g/m^3$ substantially reduced that risk. 71 FR at 10223–25. Feasibility considerations led OSHA to set the PEL at 5 $\mu g/m^3$, even though the Agency recognized that significant risk remained at lower levels. *See id.* at 10333–39. For example, OSHA still expected 2.1–9.1 excess lung cancer deaths per 1000 workers with a lifetime of regular exposure to Cr(VI) at 1 $\mu g/m^3$. *See id.* at 10224 (Table VII–1). OSHA explained in the preamble to the final rule that the ancillary provisions of the standard, *e.g.,* monitoring and medical surveillance requirements, were expected to reduce the residual risk remaining at the final PEL. *Id.* at 10334. OSHA believes that this amendment to the notification requirement will, in addition to the other ancillary requirements, further reduce the risk of health impairment associated with Cr(VI) exposures below 5 $\mu g/m^3$.

Notifying employees of their exposures arms them with knowledge that can permit and encourage them to be more proactive in working safely to control their own exposures through better work practices and by more actively participating in safety programs. As OSHA noted with respect to its Hazard Communication Standard: "Workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplaces." 59 FR 6126, 6127 (Feb. 9, 1994). Exposures to Cr(VI) below the PEL may still be hazardous, and making employees aware of such exposures may encourage them to take whatever steps they can, as individuals, to reduce their exposures as much as possible.

This may be of particular significance for welders, who make up almost half of the employees affected by the chromium standard. *See* 71 Fr at 10257–59 (Table VIII–3). Welders have a unique ability to control their own Cr(VI) exposures by making simple changes to their work practices, *e.g.,* changes in technique, posture or the positioning of portable local exhaust ventilation. *See, e.g.,* Shaw Environmental, Inc., *Cost and Economic Impact Analysis of a Final OSHA Standard for Hexavalent Chromium,* Chapter 2–Welding, Docket No. OSHA–H054a–2006–0064,

Document No. 2541, page 2–156 ("Another environmental variable is the variation in welding technique and posture used by different welders. Small differences in the welder's body position in relation to the welding task, the welder's body position in relation to the weld, and any LEV [local exhaust ventilation] may create large differences in an individual's fume exposure. Welder information and training should reduce the occurrence of this poor work practice.").

For a complete discussion of applicable legal considerations, OSHA's economic analysis and Regulatory Flexibility Act certification, issues involving federalism and State-Plan States, and OSHA's response under the Unfunded Mandates Reform Act, see the preamble to the direct final rule.

IV. OMB Review Under the Paperwork Reduction Act of 1995

The proposed revision to the notification requirement in the Cr(VI) standard is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA–95), 44 U.S.C. 3501 *et seq.,* and OMB's regulations at 5 CFR part 1320. The information collection requirements ("paperwork") currently contained in the Chromium VI (Cr(VI)) standard are approved by OMB (Information Collection Request (ICR), *Chromium (VI) Standards for General Industry (29 CFR 1910.1026*), *Shipyard Employment (29 CFR 1915.1026*), and *Construction (29 CFR 1926.1126*), under OMB Control number 1218–0252. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number, and the public is not required to respond to a collection of information requirement unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information requirement if the requirement does not display a currently valid OMB control number.

On June 22, 2009, OSHA published a preclearance **Federal Register** Notice, Docket No. OSHA–2009–0015, as specified in PRA–95 (44 U.S.C. 3506(c)(2)(A)), allowing the public sixty days to comment on a proposal to extend OMB's approval of the information collection requirements in the Cr(VI) standard (74 FR 29517). This Notice also served to inform the public that OSHA was considering revising the notification requirements in the exposure determination provision in response to the court-ordered remand. At that point OSHA estimated the new burden hours and costs that would result from this potential amendment to the standard, and the public had sixty days to comment on those estimates in accordance with the PRA, 44 U.S.C. 3506(c)(2). OSHA estimated that a requirement to notify employees of all exposure determination results would result in an increase of 62,575 burden hours and would increase employer cost, in annualized terms, by $1,526,731.

The pre-clearance **Federal Register** comment period closed on August 22, 2009. OSHA did not receive public comments on that notice. On October 30, 2009, DOL published a **Federal Register** notice announcing that the Cr(VI) ICR had been submitted to OMB (74 FR 56216) for review and approval, and that interested parties had until November 30, 2009 to submit comments to OMB on that submission. No comments were received in response to that Notice either.

Now that OSHA is proposing to amend the Cr(VI) standard via this NPRM, the Agency will provide an additional thirty days for the public to comment on the estimated paperwork implications of the proposed changes to the notification requirements.

Inquiries: You may obtain an electronic copy of the complete Cr(VI) ICR by visiting the Web page at: *http://www.reginfo.gov/public/do/PRAMain*, scroll under "Inventory of Approved Collections, Collections Under Review, Recently Approved/Expired" to "Department of Labor (DOL)" to view all of the DOL's ICRs, including those ICRs submitted for rulemakings. The Department's ICRs are listed by OMB control number. The Cr(VI) OMB control number is 1218–0252. To make inquiries, or to request other information, contact Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

Submitting comments: Members of the public who wish to comment on the estimated burden hours and costs attributable to the amendment to the notification provision, as described in the Cr(VI) ICR, may send their written comments to the Office of Information and Regulatory Affairs, Attn: OSHA Desk Officer (RIN 1218–AC43), Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503. The Agency encourages commenters to also submit their comments on these paperwork requirements to the rulemaking docket (Docket No OSHA–H054a–2006–0064). For instructions on submitting these comments to the rulemaking docket, see the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES**.

List of Subjects

29 CFR Part 1910

Exposure determination, General industry, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health.

29 CFR Part 1915

Exposure determination, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health, shipyard employment.

29 CFR Part 1926

Construction, Exposure determination, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice of proposed rulemaking. The Agency is issuing this rule under Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 5–2007 (72 FR 31159), and 29 CFR part 1911.

Signed at Washington, DC, on March 11, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons stated in the preamble, OSHA is proposing to amend 29 CFR parts 1910, 1915, and 1926 to read as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS—[AMENDED]

Subpart A—General

1. The authority citation for subpart A of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR

50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable.

Sections 1910.7, 1910.8, and 1910.9 also issued under 29 CFR Part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106–113 (113 Stat. 1501A–222); and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

Subpart Z—Toxic and Hazardous Substances

2. The authority citation for subpart Z of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act of 1970, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553, but not under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704) and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 or 29 CFR part 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under Pub. L. 106–430, 114 Stat. 1901.

3. Section 1910.1026, paragraph (d)(4)(i), is revised to read as follows:

§ 1910.1026 Chromium (VI)

* * * * *

(d) * * *

(4) * * *

(i) Within 15 work days after making an exposure determination in accordance with paragraph (d)(2) or paragraph (d)(3) of this section, the employer shall individually notify each affected employee in writing of the results of that determination or post the results in an appropriate location accessible to all affected employees.

* * * * *

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT [AMENDED]

Subpart A—General Provisions

4. The authority citation for part 1915 will continue to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

Subpart Z—Toxic and Hazardous Substances

5. Section 1915.1026, paragraph (d)(4)(i), is revised to read as follows:

§ 1915.1026 Chromium (VI)

* * * * *

(d) * * *

(4) * * *

(i) Within 5 work days after making an exposure determination in accordance with paragraph (d)(2) or paragraph (d)(3) of this section, the employer shall individually notify each affected employee in writing of the results of that determination or post the results in an appropriate location accessible to all affected employees.

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION—[AMENDED]

Subpart A—General

6. The authority citation for subpart A of part 1926 is revised to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160) as applicable; and 29 CFR part 1911.

Subpart Z—Toxic and Hazardous Substances

7. The authority citation for subpart Z of part 1926 is revised to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (62 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160) as applicable; and 29 CFR part 11.

Section 1926.1102 of 29 CFR not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

8. Section 1926.1126, paragraph (d)(4)(i), is revised to read as follows:

§ 1926.1126 Chromium (VI)

* * * * *

(d) * * *

(4) * * *

(i) Within 5 work days after making an exposure determination in accordance with paragraph (d)(2) or paragraph (d)(3) of this section, the employer shall individually notify each affected employee in writing of the results of that determination or post the results in an appropriate location accessible to all affected employees.

* * * * *

[FR Doc. 2010–5731 Filed 3–15–10; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2008–0508; FRL–9127–5]

RIN 2060–AQ15

Mandatory Reporting of Greenhouse Gases: Minor Harmonizing Changes to the General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the general provisions for the Mandatory Greenhouse Gas (GHG) Reporting Rule. The amendments do not change the requirements of the regulation for facilities and suppliers covered by the 2009 final rule. Rather, the amendments are minor changes to the format of several sections of the general provisions to accommodate the addition of new subparts in the future in a simple and clear manner. These changes include updating the language for the schedule for submitting reports and calibrating equipment to recognize that subparts that may be added in the future would have later deadlines. These revisions do not change the requirements for subparts included in the 2009 final rule.

DATES: *Comments.* Written comments must be received on or before April 15, 2010.

Public Hearing. EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section by March 23, 2010. If requested, the public hearing will be conducted on March 31, 2010 at 1310 L St., NW., Washington, DC, 20005

starting at 9 a.m., local time. EPA will provide further information about the hearing on its Web page if a hearing is requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0508, by mail to Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2008–0508, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingRule@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Issuing This Proposed Rule?

This document proposes to take action on the Mandatory Greenhouse Gas Reporting Rule (40 CFR part 98, subpart A.) We have published a direct final rule in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We are not accepting comment on any other aspect of 40 CFR Part 98 other than comments on the specific changes explained in the direct final rule. We would address all relevant public comments in any subsequent final rule based on this proposed rule. We are not requesting or entertaining comments on decisions made in the 2009 final rule. Comments received on issues resolved in the 2009 final rule will not be considered adverse comments on this direct final rule because they are outside the scope of the changes being made by this rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does This Action Apply to Me?

Regulated Entities. The proposed amendments to the Mandatory Greenhouse Gas Reporting Rule would affect owners and operators of fuel and chemicals suppliers and direct emitters of GHGs who are already subject to the rule. Regulated categories and entities would include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
General Stationary Fuel Combustion Sources.	.....	Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines.
	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries, and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
Electricity Generation	221112	Fossil-fuel fired electric generating units, including units owned by Federal and municipal governments and units located in Indian Country.
Adipic Acid Production	325199	Adipic acid manufacturing facilities.
Aluminum Production	331312	Primary aluminum production facilities.
Ammonia Manufacturing	325311	Anhydrous and aqueous ammonia manufacturing facilities.
Cement Production	327310	Portland Cement manufacturing plants.
Ferroalloy Production	331112	Ferroalloys manufacturing facilities.
Glass Production	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
HCFC–22 Production and HFC–23 Destruction.	325120	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production	325120	Hydrogen manufacturing facilities.
Iron and Steel Production	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops.
Lead Production	331419	Primary lead smelting and refining facilities.
	331492	Secondary lead smelting and refining facilities.
Lime Production	327410	Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities.
Nitric Acid Production	325311	Nitric acid manufacturing facilities.
Petrochemical Production	32511	Ethylene dichloride manufacturing facilities.
	325199	Acrylonitrile, ethylene oxide, methanol manufacturing facilities.
	325110	Ethylene manufacturing facilities.
	325182	Carbon black manufacturing facilities.
Petroleum Refineries	324110	Petroleum refineries.
Phosphoric Acid Production	325312	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing	322110	Pulp mills.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
	322121	Paper mills.
	322130	Paperboard mills.
Silicon Carbide Production	327910	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing	325181	Alkalies and chlorine manufacturing facilities.
	212391	Soda ash, natural, mining and/or beneficiation.
Titanium Dioxide Production	325188	Titanium dioxide manufacturing facilities.
Zinc Production	331419	Primary zinc refining facilities.
	331492	Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Municipal Solid Waste Landfills	562212	Solid waste landfills.
Manure Management [1]	112111	Beef cattle feedlots.
	112120	Dairy cattle and milk production facilities.
	112210	Hog and pig farms.
	112310	Chicken egg production facilities.
	112330	Turkey production.
	112320	Broilers and other meat type chicken production.
Suppliers of Coal Based Liquids Fuels	211111	Coal liquefaction at mine sites.
Suppliers of Petroleum Products	324110	Petroleum refineries.
Suppliers of Natural Gas and NGLs	221210	Natural gas distribution facilities.
	211112	Natural gas liquid extraction facilities.
Suppliers of Industrial GHGs	325120	Industrial gas manufacturing facilities.
Suppliers of Carbon Dioxide (CO_2)	325120	Industrial gas manufacturing facilities.

[1] EPA will not be implementing subpart JJ of the Mandatory GHG Reporting Rule due to a Congressional restriction prohibiting the expenditure of funds for this purpose.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be regulated by this action. Table 1 of this preamble lists the types of facilities that EPA is now aware could be potentially affected by this action. Other types of facilities not listed in the table could also be subject to reporting requirements. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A, and other subparts as necessary. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Suppliers, Reporting and recordkeeping requirements.

Dated: March 10, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–5694 Filed 3–15–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 75, No. 50
Tuesday, March 16, 2010

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

Departmental Management; Public Meeting on BioPreferred[SM] Intermediate Material and Feedstock Product Designation

AGENCY: Departmental Management, Office of Procurement and Property Management.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Agriculture (USDA) will hold a public meeting on April 1, 2010, for interested stakeholders to discuss the issue of intermediate material and feedstock (IMF) products that contain biobased materials. Intermediate materials and feedstocks represent those products frequently sold business to business, where the receiving business will use the product in some subsequent production or finishing cycle of a finished product. An example of an IMF product is a biobased plastic resin that can be used to produce fibers for fabrics, films for packaging and disposable cutlery.

This issue pertains to the designation by USDA of biobased products for a Federal Procurement preference, as mandated by the 2008 Farm Bill.

Speakers will include representatives from General Services Agency (GSA), Defense Logistics Agency (DLA), and a former government procurement official.

DATES: April 1, 2010, 8:30 a.m. to 1 p.m. (CST).

MEETING LOCATION: Iowa State University—Scheman Building at the intersection of University Boulevard and Lincoln Way, Ames, Iowa 50011.

Pre-registration for the public meeting on April 1, 2010, is not required but would be helpful, particularly if you wish to make a presentation. If you wish to register to attend the public meeting, please do so at this Web site: *https://www.ucs.iastate.edu/mnet/biopreferred/sessionregister.html* and state whether or not you wish to be recognized to make a formal presentation. The meeting is free of charge.

Directions to the Iowa State Center may be found at *http://www.center.iastate.edu/newsite/guests/maps.asp* and a map of the Iowa State University campus is accessible at *http://www.fpm.iastate.edu/maps* . The Scheman building is located just west of the Hilton Coliseum and north of the Jack Trice Stadium on the Campus Map. Parking for the event will be in Lots B1 and C1 just north of the building. The parking is free.

Those unable to attend the public meeting in person may listen to the meeting by calling 866–433–4616. The pass code is "635195". Participants using the audio bridge may submit questions or comments during the meeting to *USDABioInfo@iastate.edu* or through the webinar itself, the exact link of which will be sent to participants via email after registering.

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, BioPreferred Manager, U.S. Department of Agriculture, Office of Procurement and Property Management, 361 Reporters Building, 300 7th Street, SW., Washington, DC 20024, (202) 205–4008. *RonB.Buckhalt@DA.USDA.GOV.*

SUPPLEMENTARY INFORMATION: Section 9002 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) established a program for the procurement of USDA designated biobased products by Federal agencies and a voluntary program for the labeling of USDA certified biobased products. The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) continued these programs and made certain changes to the Federal procurement preference program. USDA refers to the procurement preference program and the voluntary labeling program together as the BioPreferred[SM] Program.

Due to the changes mandated by the 2008 Farm Bill, and the passage of five years since USDA first published the Guidelines for Designated Biobased Products for Federal Procurement (Guidelines) (7 CFR 2902), USDA intends to revise the Guidelines in 2010. USDA is holding three public meetings to gather input from interested stakeholders on what should be considered when revising the Guidelines. The first meeting, which occurred in January in Washington, DC, addressed evaluation of environmental impacts associated with the manufacture, use, and disposal of biobased products. The second meeting, held in February in Riverside, CA addressed the designation of complex assembly products under the BioPreferred program.

The purpose of the April 1, 2010, meeting, which is the third of the three meetings, will be to stimulate discussion and gather input from stakeholders on how USDA can effectively implement the designation of intermediate material and feedstock products for Federal preferred procurement status under the BioPreferred program as required by the 2008 Farm Bill.

Under the current Guidelines, USDA designates "finished" products by collecting information on available biobased products, manufacturers, and distributors to determine potential product categories and tests products for biobased content using ASTM International *Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, D–6866.* USDA also evaluates environmental and human health benefits and lifecycle costs of categories using the Building for Environmental and Economic Sustainability (BEES) model developed by the National Institute of Standards and Technology.

To set the stage before opening the forum for public comment, USDA has invited to the public meeting speakers from USDA, the Environmental Protection Agency (EPA), and individuals from academia and industry who are well-versed in biobased materials, manufacturing and products. USDA is seeking answers to a series of questions about intermediate material and feedstock products and their role in designating biobased products for Federal procurement.

These questions include:

- How should intermediate products be defined?
- The proposed rule for the Voluntary Labeling Program states that intermediate products and feedstocks do not include raw agricultural and forestry materials. How should "raw agricultural materials" be defined?
- What types of intermediate products should be included, and how should they be categorized?

- What entities are best positioned to help define the possible categories?
- How should the designation of intermediate ingredients and feedstocks be organized?
- What categories of intermediate ingredients/feedstocks currently have the greatest potential to expand product eligibility for the BioPreferred program, and what high-impact categories might be expected to emerge over the next five years?
- What should be the minimum allowable biobased content for intermediate products and feed stocks?
- What information should be provided to assist purchasing decision makers?
- Will federal procurement agencies ever purchase intermediate ingredients, or will they be purchasing only end-use products?
- What are the potential obstacles to designating intermediate products and ingredients for preferred procurement status?

Dated: March 10, 2010.

Pearlie S. Reed,

Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2010–5681 Filed 3–15–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF EDUCATION

Task Force on Childhood Obesity: Request for Information

AGENCY: U.S. Department of Agriculture, U.S. Department of Health and Human Services, U.S. Department of Education.

ACTION: Joint request for comments.

SUMMARY: Across the country, childhood obesity has reached epidemic rates. On February 9, 2010, President Obama signed a Presidential Memo establishing a Task Force on Childhood Obesity that directs Federal agencies to create a comprehensive interagency national action plan to solve the challenge of childhood obesity within a generation. The Presidential Memo directs the Task Force to focus on four pillars: Ensuring access to healthy, affordable food; increasing physical activity in schools and communities; providing healthier food in schools; and empowering parents with information and tools to make good choices for themselves and their families. This notice announces a request for public comments to assist the Task Force in making recommendations on public and private sector actions that can be taken to solve the problem.

DATES: To be assured of consideration, written comments must be submitted or postmarked on or before March 26, 2010.

ADDRESSES: Comments may be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Comments may also be submitted by fax or by mail to: Director, Office of Executive Secretariat, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 116–A Whitten Building, Washington, DC 20250 (FAX: 202–720–7166); however, respondents are strongly encouraged to submit comments through *http://www.regulations.gov,* as it will simplify the review of their input and help to ensure that it receives full consideration. All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. All comments will be made available publicly on the internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Alexia Green, Office of the Executive Secretariat, United States Department of Agriculture, 202–720–1570.

SUPPLEMENTARY INFORMATION: Nearly one-third of children in America are overweight or obese—a rate that has tripled in adolescents and more than doubled in younger children since 1980. One-third of all individuals born in the year 2000 or later will eventually suffer from diabetes over the course of their lifetime, while too many others will face chronic obesity-related health problems such as heart disease, high blood pressure, cancer, and asthma. Without effective intervention, many more children will endure serious illnesses that will put a strain on our health-care system and reduce their quality of life.

President Obama has set a goal to solve the problem of childhood obesity within a generation so that children born today will reach adulthood at a healthy weight. To reach that goal, President Obama signed a Presidential Memorandum on February 9, 2010, establishing a Task Force on Childhood Obesity that directs Federal agencies to create a comprehensive interagency national action plan to solve the challenge of childhood obesity within a generation. The Task Force is chaired by the Assistant to the President for Domestic Policy and composed of senior Federal officials representing the White House, the Office of Management and Budget, and the Departments of Interior, Agriculture, Health and Human Services, and Education, as well as senior officials of other executive departments, agencies, or offices designated by the chair. The Presidential Memorandum directs the Task Force to make recommendations that include, but are not limited to, meeting four objectives: (1) Ensuring access to healthy, affordable food; (2) increasing physical activity in schools and communities; (3) providing healthier food in schools; and (4) empowering parents with information and tools to make good choices for themselves and their families.

The specific responsibilities of the Task Force are to:

1. Detail a coordinated strategy by executive departments and agencies to meet the objectives of the Task Force and identify areas for reform to ensure complementary efforts and avoid duplication, both across the Federal Government and between other public or nongovernmental actors;

2. Include comprehensive, multi-sectoral strategies from each member executive department, agency, or office and describe the status and scope of its efforts to achieve this goal;

3. Identify key benchmarks and provide for regular measurement, assessment, and reporting of executive branch efforts to combat childhood obesity;

4. Describe a coordinated action plan for identifying relevant evidence gaps and conducting or facilitating needed research to fill those gaps;

5. Assist in the assessment and development of legislative, budgetary, and policy proposals that can improve the health and well-being of children, their families, and communities; and

6. Describe potential areas of collaboration with other public or nongovernmental actors, taking into consideration the types of implementation or research objectives the Federal Government, other public actors, or nongovernmental actors may be particularly well-situated to accomplish.

In addition, the Presidential Memo directs the Task Force to conduct outreach with representatives of private and nonprofit organizations, State, tribal, and local authorities, and other interested persons who can assist with the Task Force's development of a detailed set of recommendations to solve the problem of childhood obesity.

Consistent with the directives of the Presidential Memorandum, the Department of Agriculture, Department of Education, and Department of Health and Human Services are publishing this Request for Information on behalf of the Task Force to solicit comments and feedback to assist the Task Force in making recommendations on public and private sector actions that can be taken to solve the problem of childhood obesity. Through this notice, guidance is provided as to the matters to be discussed and the categories of information with respect to which interested parties may submit comments.

The work of the Task Force will complement the efforts of First Lady Michelle Obama as she leads a national public awareness effort to tackle the epidemic of childhood obesity. Through the First Lady's *Let's Move* initiative, she will encourage involvement from the public, nonprofit, and private sectors, as well as families to help support and amplify the work of the Federal Government in improving the health of the Nation's children. The campaign will give parents the information, motivation, and support they need to make sure that their children are healthy. It will help children be more physically active and allow them to make healthy food choices because healthy, affordable food will be available in every part of the country. For more information, please visit *http://www.letsmove.gov/*.

Matters To Be Considered: Information is being sought on the categories of information that follow. When submitting comments, interested parties are asked to restate the question and to provide any additional information deemed pertinent to their comment.

1. For each of the four objectives described above, what key topics should be addressed in the report?

2. For each of the four objectives, what are the most important actions that Federal, State, and local governments can take?

3. Which Federal government actions aimed at combating childhood obesity are especially in need of cross-agency coordination?

4. For each of the four objectives, what are the most important actions that private, nonprofit, and other nongovernmental actors can take?

5. For each of the four objectives, what strategies will ensure that efforts taken by all of the entities mentioned above reach across geographic areas and to diverse racial, ethnic, socioeconomic, and geographic groups, including children who are at highest risk of obesity and children with disabilities?

6. What goals should we set within each objective to ensure that we meet our overall goal of solving the problem of childhood obesity in this Nation in a generation?

7. What concrete, specific actionable recommendations or guidelines would help parents reduce the risk that their child will become overweight or obese and how can their effectiveness be measured?

8. What are the key benchmarks by which we should measure progress toward achieving those goals?

9. What important factors should be considered that do not easily fit under one of the four objectives?

10. What are the key unanswered research questions that need to be answered with regard to solving childhood obesity and how should the Federal Government, academia, and other research organizations target their scarce resources on these areas of research?

11. In areas or communities that currently have a high incidence of childhood obesity, what is the best explanation of why particular children do *not* become obese?

12. Specifically with regard to objective 1 (empowering parents): How can Federal, State, and local governments, the private sector, and community organizations best communicate information to help parents make healthy choices about food and physical activity?

13. Specifically with regard to objective 2 (healthier food in schools): What are the most promising steps that can be pursued by the Federal, State, and local governments, schools, communities, the private sector, and parents to ensure that children are eating healthy food in schools and child care settings?

14. Specifically with regard to objective 3 (access to healthy, affordable food): What are the biggest challenges to enhancing access to healthy and affordable food in communities across America, and what are the most promising strategies to overcome these challenges?

15. Specifically with regard to objective 4 (physical activity): What steps can be taken to improve quality physical education and expand opportunities for physical activity during the school day, in local communities and neighborhoods, and in outdoor activities and other recreational settings?

16. What other input should the Task Force consider in writing the report?

Dated: March 9, 2010.

Thomas J. Vilsack,

Secretary, U.S. Department of Agriculture.

Dated: March 9, 2010,

Kathleen Sebelius,

Secretary, U.S. Department of Health and Human Services.

Dated: March 9, 2010,

Arne Duncan,

Secretary, U.S. Department of Education.

[FR Doc. 2010–5719 Filed 3–15–10; 8:45 am]

BILLING CODE 3410–30–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: International Trade Administration (ITA).

Title: Procedures for Considering Requests from the Public under the Textile Apparel Safeguard Provision of the United States-Oman Free Trade Agreement.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 24.

Number of Respondents: 6 (1 for Request; 5 for Comments).

Average Hours per Response: 4 hours for a Request; and 4 hours for a Comment.

Needs and Uses: Title III, Subtitle B, Section 321 through Section 328 of the United States-Oman Free Trade Agreement Implementation Act (the "Act") implements the textile and apparel safeguard provisions, provided for in Article 3.1 of the United States-Oman Free Trade Agreement (the "Agreement"). This safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, an Omani textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 3.1 permits the United States to increase duties on the imported article from Oman to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (NTR)/most-favored-nation (MFN) duty

rate for the article or the U.S. NTR/MFN duty rate in effect on the day before the Agreement entered into force.

The Statement of Administrative Action accompanying the Act provides that the Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a) of the Act, and for providing relief under section 322(b) of the Act.

In Proclamation No. 8332 (73 FR 80289, December 31, 2008), the President delegated to CITA his authority under Subtitle B of Title III of the Act with respect to textile and apparel safeguard measures.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Oman, thereby allowing CITA to take corrective action to protect the viability of the domestic textile or apparel industry, subject to section 322(b) of the Act.

Affected Public: Individuals or households; business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

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 6625, 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 Wendy Liberante, OMB Desk Officer,

Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: March 11, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–5727 Filed 3–15–10; 8:45 am]

BILLING CODE 3510–DS–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: Construction Progress Reporting Surveys.

OMB Control Number: 0607–0153.

Form Number(s): C–700, C–700 (R), C–700 (SL), C–700 (F).

Type of Request: Revision of a currently approved collection.

Burden Hours: 54,600.

Number of Respondents: 21,000.

Average Hours per Response: 15 minutes for mail-back responses; 5 minutes for telephone responses.

Needs and Uses: The U.S. Census Bureau is requesting an extension of a currently approved collection for forms C–700, Private Construction Projects; C–700 (R), Multi-family Residential Projects; and C–700 (SL), State and Local Governments Projects and a revision to include form C–700 (F), Federal Government Projects. The C–700 (F) is being added because it was previously approved according to the procedures described in the Interagency Reports Act, which has been discontinued. The pre-submission notice that was submitted earlier did not include any reference to the C–700 (F) because it was believed that the form would be handled separately.

These forms are used to conduct the Construction Progress Reporting Surveys (CPRS) to collect information on the dollar value of construction put in place on building projects under construction by private companies or individuals, private multi-family residential buildings, and on building projects under construction by federal and state and local governments.

The Census Bureau uses the information collected on these forms to publish estimates of the monthly value of construction put in place: (1) For nonresidential projects owned by private companies or individuals; (2) for projects owned by state and local agencies; (3) for multi-family residential building projects owned by private companies or individuals; and (4) for projects owned by the federal government. Statistics from the CPRS become part of the monthly "Value of Construction Put in Place" series that is used extensively by the Federal Government in making policy decisions and become part of the gross domestic product (GDP). The private sector uses the statistics for market analysis and other research. Construction now accounts for more than eight percent of GDP.

The C–700 is used to collect data on industrial and manufacturing plants, office buildings, retail buildings, service establishments, religious buildings, schools, universities, hospitals, clinics, and miscellaneous buildings. The C–700 (SL) is used to collect data on public schools, courthouses, prisons, hospitals, civic centers, highways, bridges, sewer systems, and water systems. The C–700 (R) is used to collect data on residential buildings and apartment projects with two or more housing units. The C–700 (F) is used to collect data on residential buildings and nonresidential projects that include office buildings, conservation and development, public safety and health care.

Published statistics are used by all levels of government to evaluate economic policy, to measure progress toward national goals, to make policy decisions, and to formulate legislation. For example, Bureau of Economic Analysis (BEA) staff uses the data to develop the construction components of gross private domestic investment in the gross domestic product. The Federal Reserve Board and the Department of the Treasury use the value-in-place data to predict the gross domestic product, which is presented to the Board of Governors and has an impact on monetary policy. Private businesses and trade organizations use the data for estimating the demand for building materials and to schedule production, distribution and sales efforts.

Affected Public: Business or other for profit; Not-for-profit Institutions; Federal Government; State, local or Tribal Governments.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

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 6625, 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: March 10, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–5638 Filed 3–15–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Proposed Information Collection; Comment Request; DOC National Environmental Policy Act Environmental Questionnaire and Checklist

AGENCY: Office of the Secretary, Office of Administrative Services, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 17, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Genevieve Walker, NEPA Coordinator, (202) 482–2345, U.S. Department of Commerce, Room 1036, 1400 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *gwalker@doc.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce (DOC) National Environmental Policy Act (NEPA) Environmental Questionnaire and Checklist (EQC) was developed to assist DOC in complying with NEPA by facilitating the collection of data concerning potential environmental impacts, streamlining the collection of that data, and maintaining consistency in quality and quantity of information received.

The EQC address a diverse range of potential environmental issues covered under Federal environmental laws and regulations, and will allow DOC reviewers to rapidly review infrastructure projects, facilitate in evaluating the potential environmental impacts of a project, and help in determining the appropriate level of documentation (Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement) necessary to comply with NEPA.

II. Method of Collection

The form can be submitted via the Internet or paper format.

III. Data

OMB Control Number: 0690–0028.

Form Number(s): CD–593.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; Individuals or households.

Estimated Number of Respondents: 200.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 400.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 11, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–5729 Filed 3–15–10; 8:45 am]

BILLING CODE 3510–NW–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS00

Endangered and Threatened Species; Recovery Plans; Recovery Plan for the Kemp's Ridley Sea Turtle

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (USFWS), Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, NMFS and USFWS, announce the availability for public review of the draft Bi-National Recovery Plan (Plan) for the Kemp's Ridley Sea Turtle (Lepidochelys kempii). The Kemp's Ridley Recovery Plan is a bi-national plan developed by the NMFS and USFWS and the Secretary of Environment and Natural Resources, Mexico. We are soliciting review and comment on the Plan from the public and all interested parties, including state and local governments. We will consider all substantive comments received during the review period before submitting the Plan for final approval.

DATES: Comments on the draft Plan must be received by close of business on May 17, 2010.

ADDRESSES: Send comments by any one of the following methods:

(1) Electronic Submissions: Submit all electronic comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

(2) Mail: NMFS Deputy Chief Endangered Species Division, Attn: Draft Bi-National Kemp's Ridley Recovery Plan, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910

(3) Fax: 301–713–0376, Attn: NMFS Deputy Chief Endangered Species Division

FOR FURTHER INFORMATION CONTACT: Therese Conant (ph. 301–713–1401, fax 301–713–0376) or Tom Shearer (ph. 361–994–9005, fax 361–994–8626).

SUPPLEMENTARY INFORMATION:

Availability of the Draft Recovery Plan

Interested persons may obtain the Plan for review on the Internet at *http://www.nmfs.noaa.gov/pr/recovery/plans.htm or http://www.fws.gov/kempsridley/* or by contacting Therese Conant or Tom Shearer [see **FOR FURTHER INFORMATION CONTACT**].

Background

The Endangered Species Act of 1973 (15 U.S.C. 1531 *et seq.*) requires that NMFS and USFWS develop and implement recovery plans for the conservation and survival of threatened and endangered species under their jurisdiction, unless it is determined that such plans would not promote the conservation of the species. This Plan discusses the natural history, current status, and the known and potential threats to the Kemp's ridley. The Plan lays out a recovery strategy to address

the potential threats based on the best available science and includes recovery goals and criteria. The Plan is not a regulatory action, but presents guidance for use by agencies and interested parties to assist in the recovery of loggerhead turtles. The Plan identifies substantive actions needed to achieve recovery by addressing the threats to the species. Recovery of Kemp's ridleys has and will continue to be a long-term effort between the U.S. and Mexico and will require cooperation and coordination of Federal, state, local government agencies and nongovernment organizations. NMFS and USFWS will consider all substantive comments and information presented during the public comment period in the course of finalizing this Plan.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 10, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–5702 Filed 3–15–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838, A–570–892]

Carbazole Violet Pigment 23 from India and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: On November 2, 2009, the Department initiated sunset reviews of the antidumping duty orders on carbazole violet pigment 23 (CVP 23) from India and the People's Republic of China (PRC) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See *Initiation of Five-Year ("Sunset") Review*, 74 FR 56593 (November 2, 2009) (*Notice of Initiation*). The Department has conducted expedited (120-day) sunset reviews of these orders pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping as indicated in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: March 16, 2010.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 2009, the Department initiated sunset reviews of the antidumping duty orders on CVP 23 from India and the PRC[1] pursuant to section 751(c) of the Act. See *Notice of Initiation*.

On November 10, 2009, the Department received a notice of intent to participate in these sunset reviews from Nation Ford Chemical Company and Sun Chemical Corporation (collectively, the domestic interested parties) within the 15-day period specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested-party status under section 771(9)(C) of the Act as producers of a domestic like product in the United States.

The Department received complete substantive responses to the *Notice of Initiation* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i). The Department received no substantive responses from any respondent interested parties and no hearing was requested. On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of the domestic interested parties and no responses filed on behalf of respondent interested parties and in accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders on CVP 23 from India and the PRC.

Scope of the Orders

The product covered by the antidumping duty orders on CVP 23 from India and the PRC is CVP 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of diindolo [3,2-b:3,2-m][2] triphenodioxazine, 8,18-dichloro-5, 15-diethyl-5, 15-dihydro-, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$. The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.*, pigment dispersed in oleoresins, flammable solvents, water) are not included within the scope of the orders. The merchandise subject to the orders is classifiable under subheading 3204.17.90.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written descriptions of the scope of the orders are dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Carbazole Violet Pigment 23 from India and the People's Republic of China" from Acting Deputy Assistant Secretary John M. Andersen to Deputy Assistant Secretary Ronald K. Lorentzen, dated concurrently with this notice (Decision Memo), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Department of Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

The Department determines that revocation of the antidumping duty orders on CVP 23 from India and the PRC would be likely to lead to a continuation or recurrence of dumping at the following weighted-average percentage margins:

[1] On December 29, 2004, the Department published the following antidumping duty orders: *Antidumping Duty Order: Carbazole Violet Pigment 23 From the People's Republic of China*, 69 FR 77987 (December 29, 2004); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 From India*, 69 FR 77988 (December 29, 2004).

[2] The bracketed section of the product description, [3,2-b:3',2'-m], is not business-proprietary information. In this case, the brackets are simply part of the chemical nomenclature.

Country	Company	Weighted-Average Margin (Percent)
India	Alpanil Industries Ltd.	27.23
	Pidilite Industries Ltd.	66.59
	All Others	44.80
PRC	GoldLink Industries Co., Ltd.	12.46
	Nantong Haidi Chemical Co., Ltd.	57.07
	Trust Chem Co., Ltd.	39.29
	Tianjin Hanchem International Trading Co., Ltd.	85.41
	PRC-wide	241.32

Notification Regarding APO

This notice 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. Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: March 9, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–5713 Filed 3–15–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP71

Marine Mammal Stock Assessment Reports

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

ACTION: Notice of availability; response to comments.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). The 2009 reports are final and available to the public.

ADDRESSES: Electronic copies of SARs are available on the Internet as regional compilations and individual reports at the following address: *http://www.nmfs.noaa.gov/pr/sars/*. You also may send requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, 7600 Sand Point Way, BIN 15700, Seattle, WA 98115.

Copies of the Atlantic Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, NMFS, 8604 La Jolla Shores Drive, La Jolla, CA 92037–1508.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301–713–2322, ext. 105, *Tom.Eagle@noaa.gov*; Robyn Angliss, Alaska Fisheries Science Center, 206–526–4032, *Robyn.Angliss@noaa.gov*; Gordon Waring, Northeast Fisheries Science Center, 508–495–2311, *Gordon.Waring@noaa.gov*; or Jim Carretta, Southwest Fisheries Science Center, 858–546–7171, *Jim.Carretta@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare SARs for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, the stock's Potential Biological Removal (PBR) level, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every 3 years for non-strategic stocks. NMFS and FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in each of the three regions.

As required by the MMPA, NMFS updated SARs for 2009, and the revised reports were made available for public review and comment (74 FR 30527, June 26, 2009). The MMPA also specifies that the comment period on draft SARs must be 90 days. NMFS received comments on the draft SARs and has revised the reports as necessary. The final reports for 2009 are available (see ADDRESSES).

Comments and Responses

NMFS received letters containing comments on the draft 2009 SARs from the Marine Mammal Commission (Commission), four non-governmental organizations (Center for Biological Diversity, Humane Society of the United States, Cascadia Research Collective, and Hawaii Longline Association), a fishing company (Prowler Fisheries), and one individual. Most letters contained multiple comments.

Unless otherwise noted, comments suggesting editorial or minor clarifying changes were incorporated in the reports but were not included in the summary of comments and responses below. Other comments recommended development of Take Reduction Plans or to initiate or repeat large data collection efforts, such as abundance surveys, observer programs, or other mortality estimates. Comments on actions not related to the SARs (e.g., convening a Take Reduction Team or listing a marine mammal species under the Endangered Species Act (ESA)) are not included below. Many comments, including those from the Commission, recommending additional data collection (e.g., additional abundance surveys or observer programs) have been addressed in previous years. NMFS' resources for surveys, observer programs, or other mortality estimates are fully utilized, and no new large surveys or other programs may be

initiated until additional resources are available or until ongoing monitoring or conservation efforts can be terminated so that the resources supporting them can be redirected. Such comments on the 2009 SARs, and responses to them, may not be included in the summary below because the responses have not changed.

In some cases, NMFS' responses state that comments would be considered for, or incorporated into, future revisions of the SAR rather than being incorporated into the final 2009 SARs. The delay is due to review of the reports by the regional SRGs. NMFS provides preliminary copies of updated SARs to SRGs prior to release for public review and comment. If a comment on the draft SAR suggests a substantive change to the SAR, NMFS may discuss the comment and prospective change with the SRG at its next meeting.

Among the Commission's comments on another action (2009 List of Fisheries (LOF)), one was related to SARs. Because the comment period on the draft 2009 SARs was open when the Commission submitted that comment, a summary of it, and NMFS' response to it, are included in this notice rather than the notice for the final 2009 LOF.

In its letter (available on the Internet at the following address: *http://mmc.gov/letters/pdf/2009/sars__comments__92409.pdf*), the Commission also noted pertinent language in the MMPA and requested responses to its recommendations on the SARs. In the past NMFS has summarized and responded to Commission comments within the notice announcing availability of final SARs, as it has with comments from other writers. These notices, however, have not always identified the Commission's comments, which may have led to some confusion. Therefore, the Commission's comments on the draft 2009 SARs are explicitly noted to facilitate recognition of these comments and the responses to them. Some of the Commission's comments on the 2009 SARs contained recommendations related to activities (e.g., developing or implanting Take Reduction Plans or developing funding strategies) other than information included in the SARs. Responses to these comments are not included in this document and will be addressed in a letter to the Commission.

Comments on National Issues

Comment 1: One organization acknowledged that NMFS has regularly updated its SARs and has included a section on habitat concerns in many of them; however, they wrote that NMFS should include a "Habitat Concerns" section in all new SARs. Because the ocean is changing in response to global warming and ocean acidification, these threats should be discussed in the habitat sections. Similar comments were included for specific stocks of marine mammals (e.g., humpback whales, Central North Pacific stock), and the general response below applies to these stock-specific comments.

Response: The MMPA notes that SARs for strategic stocks should include other factors that may be causing a decline or impeding the recovery of the stock, including effects on habitat. Accordingly, some SARs (those for non-strategic stocks) do not need sections discussing habitat concerns, and for strategic stocks, such sections must discuss only those factors that may be causing a decline or impeding recovery.

Comment 2: The SARs tend to lag 2 years behind in incorporating available observer data. For those fisheries that have 100–percent observer coverage, such as the Hawaii-based swordfish fishery, such bycatch data are available in near real-time and should be included more promptly.

Response: Observed mortality and serious injury are not available in near real-time. The data must be reviewed and verified prior to inclusion in draft SARs. SARs are generally updated during the summer so they can be reviewed by the SRGs the following fall and winter, prior to release for a mandatory 90–day public comment period. NMFS does not use information that has become available, including data review and verification, after May or June in the draft revision. NMFS has considered the relative merits of a 2–year delay in reporting information and including information into the SARs before it has been thoroughly vetted and has concluded that the costs of reporting information that has not been reviewed exceed the costs of delaying information. (Also, see 74 FR 19530, April 29, 2009, response to Comment 2.)

Comment 3: For numerous stocks NMFS proposes to change PBR to "undetermined" because abundance data are more than 8 years old. There is no excuse for failing to update abundance estimates for many of these stocks. Stocks for which PBR is undetermined should be designated "strategic" because the lack of a PBR makes it impossible for NMFS to conclude that the stock does not meet the definition of strategic.

Response: NMFS conducts abundance surveys to the full extent allowed by resources, and resources for survey effort are at levels consistent with Administration priorities across the entire federal budget. Old or otherwise unreliable information results in increased uncertainty in making management decisions; however, NMFS' guidelines for assessing marine mammal stocks include a provision that uncertainty alone does not necessarily warrant labeling a stock as strategic.

Comment 4: The Commission recommended that NMFS list as "unknown" the PBR for all beaked whale stocks for which there is a reasonable basis for concern that they are being taken in fisheries or by other human activities.

Response: Currently there are no known recent fishery bycatch problems or mass stranding events of beaked whale stocks related to other anthropogenic activities. The Atlantic region uses a pooled PBR for undifferentiated beaked whales, and the Gulf of Mexico uses one PBR for Cuvier's beaked whales and another for undifferentiated Mesoplodon beaked whales; these PBRs are more informative than no PBRs at all. Therefore, as recommended by the Atlantic SRG and until methodologies are developed to reliably identify sightings of beaked whales by species, NMFS continues to derive a PBR for either Mesoplodon or undifferentiated beaked whales.

Comment 5: The Commission recommended that NMFS identify all transboundary stocks that are subject to partial assessment and develop a strategy to provide complete assessments.

Response: SARs illustrate the ranges of each stock; thus, the SARs identify transboundary stocks. NMFS does not plan to develop a strategy to provide complete assessment of all transboundary stocks because some transboundary stocks appear to be healthy, robust populations (e.g., California sea lions) despite uncertainty of the status of segments of the population occurring in waters not under the jurisdiction of the United States.

Comment 6: The Commission recommended that NMFS develop and implement a systematic approach for integrating all human-related risk factors into SARs.

Response: As noted in the response to Comment 38, the MMPA lists information that should be included in SARs. NMFS' SARs contain such information as directed by the MMPA but do not contain substantial amounts of additional information. A major strength of the SARs is that they are concise summaries of the status of each stock, focusing primarily on the effects of direct human-caused mortality and serious injury on marine mammals and

impacts to habitat when such impacts may result in the decline or failure of recovery of the affected stocks. In citation sections, the SARs identify sources of detailed information on status of marine mammals. (Also, see 74 FR 19530, April 29, 2009, response to Comment 11.)

Comments on Alaska Regional Reports

Comment 7: Loss of sea ice due to global warming is a human-caused threat to ice seals and, therefore, should be included in the determination of a stock as strategic.

Response: NMFS disagrees because the suggested designation would be inconsistent with the definition of "strategic stock" included in the MMPA.

Comment 8: The SAR for Cook Inlet beluga whales still considers the small Yakutat population of belugas part of the Cook Inlet stock. Yakutat belugas should be a separate stock and designated as "depleted".

Response: As noted in a previous response (74 FR 19530, April 29, 2009, Comment 14), NMFS regulations under the MMPA (50 CFR 216.15) include the beluga whales occupying Yakutat Bay as part of the Cook Inlet stock. Notice-and-comment rulemaking procedures would be required to change this regulatory definition. Until such procedures are completed, these animals remain designated as depleted as part of the Cook Inlet stock.

Comment 9: The SAR for Eastern North Pacific right whales should indicate a greater level of concern than "recent interest" in oil and gas exploration and development because the area is being formally evaluated for leasing.

Response: For the reasons cited in response to a similar comment on the 2008 SAR, a greater level of concern is not necessary at this time (see 74 FR 19530, April 29, 2009, Comment 17).

Comment 10: Sightings of narwhals in Alaska waters appear to be increasing, and NMFS should include a SAR for narwhal.

Response: NMFS is currently reviewing the existing data on narwhal sightings in Alaska waters to prepare a draft SAR for narwhals for 2010.

Comment 11: NMFS should update the SAR for Eastern North Pacific gray whales to include more recent abundance estimates. The SAR fails to properly consider findings of Alter *et al.* (2007), and NMFS should designate this stock as depleted.

Response: The SAR for the eastern North Pacific gray whale stock will be updated with substantial new information in 2010 after the necessary analyses are complete and reviewed. NMFS has responded to comments regarding Alter *et al.* (2007) and depleted status for gray whales in previous years (see 73 FR 21111, April 18, 2008, Comment 32 and 74 FR 19530, April 29, 2009, Comment 21). For the reasons discussed in those responses, NMFS neither anticipates additional discussion of the findings of Alter *et al.* (2007) nor designation of the gray whale stock as depleted. If information becomes available suggesting that gray whale abundance is below the lower limit of the stock's Optimum Sustainable Population (OSP), NMFS would formally evaluate status of the stock in accordance with MMPA section 115.

Comment 12: The Commission and another commenter repeated a recommendation made in previous letters to update harbor seal stock structure with information that has been available for many years.

Response: As noted in previous responses to comments (see 72 FR 12774, March 15, 2007, Comment 16, 73 FR 21111, April 18, 2008, Comment 23, 74 FR 19530, April 29, 2009, Comment 21), NMFS continues its commitment to work with the agency's co-managers in the Alaska Native community to evaluate and revise stock structure of harbor seals in Alaska.

Comment 13: Estimated mortality for longline fisheries uses incorrect observer coverage percentages, resulting in significant over-estimation of mortality. The observer coverage in the SAR is inconsistent with other reports prepared for NMFS.

Response: The observer coverage percentages reported for the longline fisheries are determined based on data obtained from the NMFS Observer Program. These data were used to estimate mortality and published in Perez (2006), which has been reviewed by NMFS Observer Program staff. The report referenced by the commenter was prepared in response to a request by the Observer Advisory Committee to demonstrate current strategies of observer placement on vessels and to modify methods for observer deployment on vessels of various sizes. This document was not designed to be used to calculate total observer coverage for fisheries. Attempts to calculate total observer coverage from this document would result in inaccurate estimations of observer coverage.

Comment 14: Effort can be determined accurately in fisheries with high observer coverage; therefore, proxies for effect (e.g., observed catch) are not necessary.

Response: As has been noted in the past (72 FR 66048, November 27, 2007, Comment 21), NMFS has considered other measures to estimate effort in the fishery. At this time, catch remains the best method of quantifying observed and total fishing effort. Should another measure of effort become available that can be used for all vessels, seasons, and areas, NMFS would consider modifying the analytical approach.

Comment 15: Expansions from observed to estimated mortality appear to be done inconsistently within and between fisheries.

Response: As noted in the response to Comment 23 in the 2008 LOF final rule (72 FR 66048, November 27, 2007), mortality estimates are based upon a stratified sample and analyses. The estimates are calculated using statistics appropriate for the sampling design. Similar numbers of observed mortalities or serious injuries may lead to different estimates because observer coverage differs among strata. The models used for estimates are explained fully in the reference cited in the SAR.

Comment 16: Default recovery factors should be re-evaluated for populations (e.g., sperm whales, Steller sea lions (Western stock), Central North Pacific humpback whales) that are increasing and/or are large.

Response: NMFS and the Alaska SRG evaluate the recovery factors for each stock during their annual review of the SARs. The recovery factors for these and other stocks will be discussed with the SRG at their next meeting when 2010 SARs are discussed.

Comment 17: As noted in the SAR for sperm whales, this species is at a low risk of extinction due to large numbers and minimal take. Accordingly, it should be de-listed from endangered status under the ESA and depleted status under the MMPA.

Response: NMFS completed a review of the status of sperm whales in January 2009 and concluded that the status should not change at this time. A report of that review is available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/pdfs/species/spermwhale_5yearreview.pdf.*

Comment 18: A single take of a humpback whale in the sablefish pot fishery is attributed to two stocks. This doubles the mortality from one take, and NMFS should consider distributing the single take across both stocks using a weighted probability of interaction with the stock.

Response: See responses to Comments 13 and 14 in the final 2005 LOF (71 FR 247, January 4, 2006), Comment 10 in the final 2003 LOF (68 FR 41725, July 15, 2003), and Comment 10 in the final 2008 LOF (72 FR 66048, November 27, 2007) for detailed responses to a similar

comment. The single take of a humpback whale in the sablefish pot fishery cannot be attributed to a specific stock. Therefore, NMFS is using a precautionary approach and attributing this single take to both Alaska stocks of North Pacific humpback whales for information purposes.

Comment 19: In the SARs for ice seals, the numbers of seals taken for subsistence harvest reported in the text and in the tables are different, and these differences are confusing. This situation should be clarified. Our comments here and in the past have noted that previous stock assessments have provided point estimates for native subsistence kills, but have also provided upper and lower estimates based on the bounds of confidence. This is no longer done in the stock assessments. We believe that the region should reconsider this decision. Because of the imprecision of these estimates, this information should be provided so that reviewers can gauge the possible range of impacts.

Response: NMFS has reviewed the numbers of seals taken for subsistence harvest reported in the draft 2009 SARs and updated the text and tables to clarify presentation of the information in the text and tables of the ice seal SARs.

NMFS has reported upper and lower confidence limits for subsistence harvests of some stocks in the past, but does not include them presently (e.g., beluga whales, Eastern Bering Sea stock). The SARs for these stocks note that variance estimates (or other measures of uncertainty) are not available. Without such measures, confidence limits cannot be calculated; therefore, none are included. For some stocks, the mortality estimates are noted to be underestimates because information is available from only a portion of the range of the stock. NMFS is aware of the potential consequences of underestimates, but, as noted in the introduction to this summary of comments and responses, funding levels limit the ability to initiate large new data collection programs until additional funds are obtained or until efforts directed toward other stocks are no longer necessary, which would allow resources to be re-directed.

Comment 20: There remains some inconsistency in declaring strategic status on the basis of outdated population and absent fishery data. Some (e.g., S.E. Alaska harbor porpoise) are designated strategic and others (e.g., Dall's porpoise) are not. There should be an explanation of this discrepancy.

Response: The PBR levels for harbor porpoise stocks in Alaska are "undetermined" because the population estimates are outdated. The harbor porpoise stocks were classified as "strategic" because there is information, for each stock, suggesting incidental serious injuries and mortalities may be greater than the stocks' PBR levels. Similarly, the PBR for Dall's porpoise is "undetermined" because the abundance estimate is outdated. However, federally-regulated fisheries that overlap with Dall's porpoise are observed with a high proportion of observer coverage and have routinely had very low levels of incidental mortality/serious injury. Some state fisheries with potential to result in serious injuries/mortalities of Dall's porpoise have been observed, and the estimated level of serious injury/mortality is also minimal or none. There are a few state fisheries with known historic serious injuries/mortalities of Dall's porpoise, but it seems unlikely that the level of serious injury/mortality from these fisheries would exceed the PBR level. Thus, Dall's porpoise stock was not classified as "strategic".

Comment 21: The SAR for the Western U.S. stock of Steller sea lions has inconsistent information in Table 2 and in the graph. It would help if the depiction in the graph matched the regions discussed in the text. Also, a shift from research focused on body condition and behavior of individuals to ecosystem-based studies would help answer questions such as potential shifts in abundance within the range of the stock.

Response: The data presented in Figure 2 were derived from those presented in Table 1, and the data are consistent. The graph (Figure 2) depicts the counts and overall trends for the entire western stock of Steller sea lions, as well as for the Gulf of Alaska and the Bering Sea/Aleutian Islands independently. The text provides more detailed information for trends at specific sites within these regions.

Comment 22: The subsistence harvest and struck-and-lost sea lions from the western stock of Steller sea lions appears to have increased. Given the lack of precision of harvest estimate, we are concerned that the increase may result in take exceeding PBR.

Response: The numbers of struck-and-lost sea lions from the subsistence harvest varies from year to year. The level of struck-and-lost sea lions, averaged over the most recent 5 years for which data are available, is incorporated into the total take for this stock. The current 5–year average (38.4) is slightly higher than the previous 5–year average (33.9). However, the total estimated annual level of total human-caused mortality and serious injury for this stock (232.8), which includes animals struck but lost, remains below the PBR level (247). NMFS is aware that there are uncertainties in the mortality and serious estimates for Steller sea lions and other stocks of marine mammals in Alaska and other parts of the United States and that human-caused mortality could, in fact, exceed PBR. However, the recovery plan for Steller sea lions indicates that the two primary sources of direct human-caused mortality (subsistence harvest and incidental take in commercial fisheries) are ranked as having relatively low impacts on recovery of the stock. In addition, the recovery factor for this stock of marine mammals would reserve 90 percent of annual net production for recovery (Barlow *et al.*, 1995), and performance testing through simulation models showed that the PBR approach was robust to wide ranges of precision and bias in mortality estimation (Wade, 1998).

Comment 23: The abundance estimates for the eastern stock of Steller sea lions are old despite permitted research designed to calculate annual estimates. Newer estimates should be reported.

Response: The abundance estimates presented in the 2009 SARs are based on the most recent complete counts for these areas and represent the best available data at the time the SAR was updated for 2009. NMFS is currently analyzing pup and non-pup counts from 2008 and 2009 for the eastern stock of Steller sea lions. These estimates will be incorporated in the SAR when they are available.

Comment 24: The SARs for the Western Pacific stock of humpback whales and fin whales do not include ship-strikes as a mortality factor. Even if no stock-specific strikes are reported, it seems unlikely that none have occurred. Does NMFS have confirmed stock identity for all whales found on ships so that each can be correctly assigned to a stock?

Response: The central North Pacific humpback whale SAR includes ship-strike mortalities in the estimated level of annual human-caused mortality and serious injury. NMFS assigned these mortalities to the central North Pacific stock based on the location of the occurrence. NMFS will be incorporating updated information on mortalities attributed to ship-strikes for humpbacks and fin whales in the 2010 SARs. Lacking confirmed stock identity of the whales found on ships, NMFS uses the relative stock densities in the areas where mortality likely occurs to assign it to a stock.

Comment 25: The SAR for Central North Pacific (CNP) humpback whales

divides the stock into four geographic areas (Hawaii, Aleutian Islands/Bering Sea, Gulf of Alaska, and Southeast Alaska) and estimates abundance in each region; however, the SAR does not estimate abundance of the stock. Division of the stock into these areas is neither scientifically accurate nor helpful from a management or scientific perspective.

Response: The SAR states that the CNP stock of humpback whales " winters in Hawaii " and presents abundance, minimum population estimate (Nmin), and PBR based upon these surveys of the stock in Hawaiian waters. The summary table for the SARs also shows the numbers for these parameters, which are identical to the numbers reported in the text of the report.

The division of the stock into the four areas is helpful to NMFS managers because the stock is migratory, whales from different breeding (wintering) areas mix on feeding grounds in Alaska, and reported human-caused mortality is higher in Alaskan waters than in Hawaiian waters. For the areas where information suggests trends in population abundance, each shows an increase, as is also the case for information on the entire ocean basin. The region-specific calculations allow NMFS managers to see that region-specific reported mortality is likely sustainable. The SAR reports mortality based primarily upon stranding reports, which are underestimates of actual mortality. However, the region-specific trends suggest that human-caused mortality is not causing the population to decline in any area where trend can be evaluated. Accordingly, the region-specific information is useful for conservation and management purposes.

Comment 26: Although NMFS reports that the point estimates for CNP humpbacks in Hawaii ranged from 7,469 to 10,103 and notes that the estimate from the "best model" is the upper end of the range, Nmin, thus PBR, for the Hawaii region is based upon the lowest estimate rather than the one from the best model. The SAR does not explain why NMFS did not use the best science in the calculation as is required by the MMPA.

Response: The SAR states that confidence limits or coefficients of variation (CVs) have not yet been calculated for abundance of the stock and that NMFS used an assumed value for CV in estimating Nmin from the abundance estimates. Accordingly, as required by the MMPA, the estimate of Nmin provides "reasonable assurance that the stock size is equal to or greater than the estimate." Such assurance could not be provided by using the maximum abundance estimate even it was calculated using the "best model".

Comment 27: The SAR for CNP humpback whales reports PBR as 20.4 animals and an alternative PBR of 8.3 whales, but it does not provide an explanation why two different PBRs were calculated or how they may be used for management purposes. If NMFS is going to develop multiple population sizes and PBRs, then NMFS should develop, as required by the MMPA, a single PBR for each of the regions and should not use the alternative PBR of 8.3 in the SAR.

Response: As is reported in the SAR text and the summary table for this stock of humpback whales, the PBR is 20.4. The alternative (8.3) is used only for information purposes and shows readers that even when PBR is calculated from an extremely conservative Nmin (i.e., the number of whales actually identified during the study), reported human-caused mortality is less than PBR.

Comments on Atlantic Regional Reports

Comment 28: Bottlenose dolphin stocks in the Gulf of Mexico should be designated strategic.

Response: In accordance with the MMPA, marine mammal stocks that are depleted, threatened, or endangered or for which human-caused mortality exceeds PBR are designated strategic. Others are not strategic, even in some cases where there is considerable uncertainty regarding abundance, mortality and serious injury.

Comment 29: Given the increasing trend of bycatch, Atlantic white-sided dolphins should be designated as strategic.

Response: Mean annual fishery-caused mortality and serious injury are below PBR; therefore, the stock is not appropriately designated as strategic.

Comment 30: Noting that the Poisson distribution could characterize rare and random events, the Commission recommended that the SAR for the Canadian East Coast stock of minke whales include an estimate of bycatch in the trawl fishery for which there was only one observed take.

Response: A total of three minke whales have been in observed in bottom trawl gear from 1997 through October 2009. NMFS intends to evaluate the estimation of total mortality of minke whales and harbor porpoise attributed to bottom trawl gear for the 2011 SAR.

Comment 31: The Commission recommended that NMFS conduct and report the necessary surveys to update the SARs for northwest Atlantic pinnipeds.

Response: NMFS is developing a new survey protocol for a harbor seal abundance survey; however, funding is not available for a 2010 survey. Since 2002, NMFS has been monitoring gray seal pup production on the three colonies (Muskeget Island in Nantucket Sound, and Green and Seal Islands off mid-coast Maine) in U.S. waters. The pup-monitoring research was a component of a recently-completed Ph.D. dissertation, and a published paper should be available in 2010. Information from these sources will be included in future SARs.

Comment 32: The SARs in the Atlantic region should include serious injuries identified in accordance with guidance from the 2007 workshop on distinguishing serious from non-serious injury, especially for North Atlantic right whales.

Response: NMFS is currently preparing guidelines for distinguishing serious and non-serious injuries. When these guidelines are completed and subjected to public review and comment, SARs will include serious injuries based upon them.

Comment 33: The minke whale SAR should include all entanglements included in the 2005 summary by Smith and Koyama. It is not clear why three mortalities from that document were not included in Table 5.

Response: These records have been re-reviewed by NMFS staff, who determined they were not serious injuries. Although evidence of entanglement was present, the necropsy report is inconclusive in the September 20, 2005, stranding. For the September 25, 2005, stranding, entanglement scarring was present, but the injury had healed. For the September 2007 stranding, there was insufficient information to determine the nature of the entanglement; images and descriptions were incongruous.

Comment 34: The SAR for sperm whales, Gulf of Mexico stock, discusses threats due to anthropogenic noise in the stock definition and range section. This would be more appropriate in another section on habitat concerns. The SAR should also address the potential impacts to sperm whales aggregated just off the Mississippi Delta from bioaccumulation of toxins from the river.

Response: The noise threat information has been moved and is included in the "Other Mortality" section. While there may be impacts from Mississippi River effluent on sperm whales and other marine mammals, specific reports on increases

in toxic effluent from the Mississippi River were not available. Given that little is known about contaminant levels in sperm whales in the Gulf of Mexico, any discussion would be speculation.

Comment 35: We note that there have been press reports or Internet postings of killer whales just off Texas and Alabama. This appears to represent an increased presence in areas not documented in the SAR. Given the seismic exploration and petroleum extraction underway or proposed, a change in distribution may entail additional risk not discussed in the stock assessments.

Response: Such increased reports are likely the result of more people with video cameras rather than increased numbers of killer whales in the Gulf of Mexico. The number of killer whale sightings made during NMFS assessment surveys (0–3 per survey) has remained about the same since 1990. Furthermore, sightings by the public are not new; O'Sullivan and Mullin (1997) report three records of killer whale sightings made by the public in the Gulf of Mexico prior to the mid–1990s.

Comment 36: Under population size, there is a different estimate for Ziphius (337) and Mesoplodon spp. (57). However, there is a notation in the stock assessment for Cuvier's beaked whales that "the estimate for unidentified Ziphiidae may also include an unknown number of Mesoplodon spp." Thus, it would seem that the Ziphius estimate is not, in fact, an estimate for them but is still a pooled estimate of multiple species. However, the stock assessments for Mesoplodonts (Blainville and Gervais beaked whales) do not include a similar caveat about possibly including Ziphius in that estimate. There is no explanation evident for the discrepancy. For both Ziphius and Mesoplodon, the map of distribution is for "beaked whales," which would include both of these genera. This is confusing and potentially misleading when reviewers attempt to gauge the status and threat to species in the Northern Gulf of Mexico.

Response: The wording in the affected beaked whale SARs for the Gulf of Mexico has been modified to resolve these discrepancies. The distribution maps will be changed in future SARs.

Comments on Pacific Regional Reports

Comment 37: The SARs for some species in Hawaiian waters (rough-toothed dolphins, bottlenose dolphins, pygmy killer whales, spinner dolphins, dwarf sperm whales, Cuvier's beaked whales and Blainville's beaked whales) should be updated to include evidence of multiple stocks.

Response: New information on stock structure for bottlenose and spinner dolphins in Hawaiian waters will be incorporated in the 2010 draft SARs. Stock structure information for other species will be incorporated into SARs as information becomes available to warrant the recognition of additional stocks.

Comment 38: In comments on the draft 2009 LOF, the Commission recommended that NMFS incorporate into the applicable SARs language similar to that included in the FWS SAR for the Washington stock of sea otters to clarify that, in accordance with the ruling in Anderson v. Evans, taking of marine mammals in tribal fisheries requires authorization under the MMPA.

Response: NMFS disagrees with the FWS interpretation of the ruling. Furthermore, even if FWS' interpretation were correct, MMPA section 117(a) explicitly lists the information that should be included in SARs. This list does not include identifying which takes need to be authorized and which do not. Accordingly, such language is inappropriate for SARs.

Comment 39: There is little mention of deaths of marine mammals resulting from research activities (e.g., research on California or Steller sea lions and fishery assessments). These should be included in the SARs.

Response: Information on research-related mortality will be included in 2010 draft SARs for northern fur seal, northern right whale dolphin and Pacific white-sided dolphin. Information on research-related mortality of California sea lions will be included in the next revision of that SAR.

Comment 40: Because tribal fisheries are not subject to federal observers and, as noted in Credle *et al.* (1994), self-reports are considered under-estimates, there may be a significant bias in reporting mortalities from gillnet fisheries.

Response: NMFS acknowledges that bycatch reports may be negatively biased when the only sources are self-reports and has noted such bias in previous SARs.

Comment 41: The MMPA requires that SARs for strategic stocks, such as those stocks listed as threatened or endangered, be updated annually, yet some were not updated. For example, fin whales have no revision although there is documented mortality that occurred during the reporting period (e.g., a 2006 mortality due to vessel collision in Washington).

Response: The commenter has misinterpreted the requirement of MMPA section 117(c). The MMPA requires that SARs for strategic stocks must be "reviewed" annually and "revised" when the status has changed or could be assessed more accurately. The SARs for all strategic stocks (including stocks for which strategic status is due to listing under the ESA) are reviewed annually, as required. The inclusion of a relatively small change in estimated mortality or abundance would not change the status of these stocks nor allow their status to be assessed more accurately. Although NMFS attempts to update SARs when information becomes available (whether the new information would change the status or not), some minor changes are not incorporated into a SAR each year.

Comment 42: The Hawaiian monk seal SAR should be updated to report that two monk seals were killed by gunshot in the main Hawaiian Islands. Also, the SAR should include more information about the loss of pupping habitat due to rising sea level.

Response: Although two monk seals were shot in 2009, these shootings did not occur early enough for inclusion in the 2009 or 2010 draft SARs. These shootings will be noted in the 2011 SAR. Interested readers may obtain and review the literature in the SAR for more details of loss of habitat due to rising sea level.

Comment 43: NMFS needs to obtain precise information on interactions of "nearshore" fisheries with Hawaiian monk seals. NMFS should work with the State to assure observer coverage in this fishery, which seems to have takes in almost every year.

Response: NMFS is working with the State of Hawaii to better characterize nearshore fishery interactions. The State has received a grant under section 6 of the ESA to work with NMFS in developing a system of monitoring, reporting and reducing these interactions via participatory approaches with nearshore fishers who engage in fishing methods (gill nets and shorecasting) that cause the most interactions.

Comment 44: The PBR for the Monterey Bay stock of harbor porpoise should not be reduced by changing the recovery factor from the previous 0.45 to 0.5 due to the downward trend of the stock.

Response: NMFS agrees. Given continued uncertainty in the source of fishery-related standings in this region, the recovery factor should remain at 0.45. The final 2009 SAR will reflect the use of this recovery factor in the PBR calculation.

Comment 45: The SAR for the Northern Oregon/Washington Coast stock of harbor porpoise should include mortality information on the 2006/2007 Unusual Mortality Event (UME) because some of the deaths could be attributed to fishery interactions.

Response: Fishery-related mortality information from the 2006–2007 UME is included in the Northern Oregon/Washington Coast harbor porpoise SAR. Both suspected and confirmed fishery-related mortalities from the UME are listed in the text, and confirmed mortalities are included in Table 1 under "Unknown fishery".

Comment 46: The "Habitat Concerns" section for Southern Resident Killer Whales should note that global warming and ocean acidification, as well as stream flows and health, pose an increasing threat to salmon and the killer whales that depend upon salmon.

Response: The SAR notes that Southern Resident Killer Whales appear to be Chinook salmon specialists and that change in salmon abundance is likely to have effects on this population. The factors affecting salmon abundance are implicit in this statement.

Comments 47 through 58 address false killer whales, primarily in waters surrounding Hawaii.

Comment 47: Available evidence, which was not included in the SAR, indicates that the Hawaii insular stock of false killer whales should be a strategic stock. Also, the SAR for this stock notes there is no quantitative analysis of sightings data to evaluate population trend. A statistical analysis was presented to the Western Pacific Fishery Management Council showing a significant decline in the number of groups per 10 survey hours during the period, 1993–2003.

Response: The MMPA includes specific criteria for designating a marine mammals stock as "strategic". None of these criteria are currently met for the insular stock of false killer whales; therefore, it is designated as "not strategic". NMFS will continue to review new information periodically and update the SAR based on new information. The trend analysis mentioned by this commenter was not available when the SAR was drafted and presented to the Pacific SRG in November 2008; it will be considered for the draft 2010 SARs.

Comment 48: The SAR for the insular stock indicates no habitat issues are a concern, yet notes recent evidence of high levels of pollutants and reduced biomass of prey species. These should be included as habitat concerns.

Response: NMFS has modified the 2009 SAR to remove this apparent contradiction by eliminating the statement that no habitat issues are of concern.

Comment 49: The insular stock of false killer whales should be strategic, because two takes in 2003 were during sets straddling the stock boundary and because there are two takes of probable false killer whales within the range of the insular stock. If even one of these takes were inside the boundary, then the estimated bycatch would likely exceed PBR.

Response: NMFS recognizes that the occurrence of longline sets straddling false killer whale stock boundaries complicates stock-specific bycatch estimation. The text of the 2009 SAR has been revised to clarify that the two 2003 false killer whale takes occurred in sets straddling the insular/offshore stock boundary and that these takes are provisionally considered to be from the pelagic stock. NMFS is also working on developing new analytical methods to estimate stock-specific bycatch and plans to present updated estimates for both stocks in the draft 2010 false killer whale SAR. Distinguishing takes of false killer whales and short-finned pilot whales remains problematic because the geographic ranges of these two species differ and sample sizes are insufficient to estimate a geographically-stratified ratio that might be used for pro-rating such takes. NMFS will continue to evaluate methods of addressing this source of uncertainty.

Comment 50: The SAR should include information on how frequently portions of longline gear are lost both in the shallow-set and deep-set fishery so that the likelihood that there are unobserved takes due to lost gear can be assessed.

Response: NMFS does not presently have estimates of the rates of gear loss in the deep-set and shallow-set longline fisheries.

Comment 51: The SAR should assess whether seasonal observer coverage of longline fisheries within the range of the insular false killer whale stock is sufficient to robustly assess bycatch rates. In addition, there are unobserved shortline fisheries that occur nearshore in the Hawaiian Islands that are using the same gear as offshore fisheries and are, thus, likely to be taking false killer whales.

Response: The shallow-set fishery has 100–percent observer coverage, and the deep-set fishery has a minimum of 20–percent annual coverage. Placement of observers and all statistical analyses are conducted on a quarterly basis to account for temporal variation in coverage, providing robust rates of mortality and serious injury.

NMFS included a Hawaii State shortline/handline fishery as a Category II fishery in the 2010 LOF. The inclusion of this fishery on the List is an early step in obtaining information on marine mammal interactions with the fishery, including mandatory reporting of injuries of marine mammals incidental to fishing operations.

Comment 52: The report is confusing because it includes multiple stocks within a single report, and it includes mortality and injury estimates combined across stocks.

Response: NMFS acknowledges that the current report, which includes a stock complex rather than individual reports for each stock, may be confusing. However, population stock boundaries in false killer whales in the North Pacific Ocean contain uncertainties, and an ongoing stream of information over the past few years has resulted in fairly rapid changes in our understanding of stock boundaries. NMFS has elected to combine these stocks into a single report which presents abundance and mortality information in a variety of scenarios as our understanding of stock structure remains dynamic. When our understanding of stock structure becomes more stable, the report will likely be modified to separate reports for each stock.

Comment 53: Distinction between Insular, Pelagic and Palmyra stocks of false killer whales is inaccurate because the pelagic animals are all part of a broader Eastern North Pacific Stock that occurs in the U.S. Exclusive Economic Zone (EEZ) and international waters.

Response: NMFS has previously responded to this and related comments (see 73 FR 21111, April 18, 2008, Comment 47, and 74 FR 19530, April 29, 2009, Comment 34) and reiterates that the stock division for false killer whales is consistent with the MMPA and with NMFS 2005 Guidelines for Assessing Marine Mammal Stocks (GAMMS), which were finalized after opportunity for public review and comment, and provide guidance on abundance and PBR of transboundary stocks. No international agreements presently exist for the management of cetacean bycatch in central Pacific longline fisheries; therefore, NMFS assesses the status of marine mammal stocks within the U.S EEZ waters, based on EEZ abundances and EEZ mortalities and serious injuries. Further, as noted in GAMMS, the lack of genetic differences among false killer whale samples from the broader eastern North Pacific region does not imply that these animals are from a single eastern North Pacific stock.

Comment 54: NMFS' abundance estimate for the pelagic stock is scientifically unsound. Specifically, and as described in more detail in a report enclosed with the comment, NMFS' abundance estimate fails to employ a Bayesian methodology, which is well-recognized in the scientific community as the best available method for estimating the population size of marine stocks such as the false killer whale pelagic stock. An alternative analysis of the existing false killer whale data utilizes the best available scientific methods and provides a best estimate of the Hawaii Pelagic Stock as 2,066 whales.

Response: NMFS disagrees that the alternative included in this comment represents the best available scientific information. Bayesian analyses may constitute excellent science and are widely used by NMFS scientists in assessing marine animal populations; however, the report enclosed with this comment has not been peer-reviewed or published, and it violates the fundamental principle of choosing an appropriate prior distribution when conducting a Bayesian analysis. The report assumes that the density of false killer whales in highly productive waters of the Eastern Tropical Pacific Ocean would be a suitable prior for their density in the unproductive waters surrounding Hawaii. The report did not discuss a rationale for this assumption or evaluate alternate, more suitable, data sets for the prior distribution. There is no ecological or oceanographic support for this assumption. Rather, there are differences in ocean productivity between the Eastern Tropical Pacific Ocean and the Hawaiian EEZ, and densities of most tropical dolphin species, including false killer whales, decline as one moves north from tropical latitudes and into the subtropical waters of the Hawaiian Islands.

Comment 55: NMFS fails to discuss a report from April 2009 documenting depredation in the Hawaii longline fishery based on interviews with vessel owners and captains. The comment states that the report constitutes current, published, and NMFS-funded scientific research suggesting that the sheer magnitude of catch depredation by false killer whales implicates a population size much larger than the 484 estimate reported in the 2009 draft SAR.

Response: The report cited in this comment was not available in 2008 when the draft 2009 SAR was prepared, and the report and its findings have not been subjected to peer review. Estimates in the report contain many untested assumptions (e.g., species identification, range of fishery). Furthermore, NMFS' abundance estimate of 484 is limited to the U.S. EEZ, whereas the depredation report included observations from a much larger area where the fishery operates. No assumption about uniformity of false killer whale distribution has been made in NMFS' estimates of abundance.

Comment 56: False killer whale densities on the high seas south of Hawaii should lead to a higher PBR for high seas stocks, warranting Cat II or III classification for the high seas component of the fishery.

Response: Although the fishery is conducted on the high seas as well as within the EEZ, the fishery is classified based upon its take of false killer whales in within the EEZ, where only U.S.-based fishing occurs. Incidental mortality and serious injury incidental to longline fishing within the EEZ exceed a PBR based upon surveys within the EEZ. Furthermore, mortality and serious injury of false killer whales exceed 50 percent of a number calculated using the PBR approach for false killer whales on the high seas areas of the fishery (which is also subject to an additional unknown level of mortality incidental to a substantial longline fishing effort by vessels from other nations within the range of the U.S. fishery on the high seas). Accordingly, the fishery is appropriately classified as a Category I fishery over its entire range.

Comment 57: Reeves *et al.* make several unsubstantiated assertions. Even if the insular stock has declined, there is no evidence that the longline fishery is responsible. No evidence of strandings or sightings of carcasses were made in support of a large mortality. SAR guidelines state old abundance data should not be used.

Response: Reeves *et al.* is a peer-reviewed scientific article that clearly outlines the data and basis for their conclusions, including observed line injuries and decreases in sighting rates. In the SAR, the longline fishery is listed only as one potential contributing factor, reflecting uncertainty in the sources of such injuries. The longline fishery operated within the known range of the insular false killer whale stock during the early 1990s, when the decline began, but there was no observer program to document potential interactions with cetaceans. Further, it is well established that animals that die at sea rarely strand or are recorded at sea, but rather they sink or are swept away from land by currents. The SAR guidelines state that old abundance data are unreliable to estimate current abundance. However, older data are essential for evaluating trends, and their inclusion in this historical context is fully warranted.

Comment 58: There is no evidence that the insular stock has interacted with longline fisheries.

Response: NMFS recognizes that the data available for determining stock identity of false killer whales is incomplete for this 2009 SAR. At the time of the 2009 SAR preparation, genetic samples were only available for five of the 24 false killer whales taken by the fishery (and only for two of the takes within HI EEZ waters). Thus, the identity of the majority of false killer whales taken by the fishery is unknown and can be assigned based only on location. No tissue samples are available for three takes that occurred during sets spanning the insular/pelagic stock boundary, and these animals could have been from the insular stock based on the distance from the islands at which they have been documented. NMFS will continue to investigate ways to improve allocation of stock-specific bycatch, taking into account takes and fishing effort within the insular stock range. NMFS will also continue efforts to obtain tissue samples for genetic analysis on as many animals as possible to aid in stock identification.

Dated: March 10, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–5699 Filed 3–15–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV22

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Habitat Committee, Advisory Panel and Plan Development Team in April, 2010 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, April 1, 2010 at 9 a.m. and Friday, April 2, 2010 at 9 a.m.

ADDRESSES: This meeting will be held at the Seaport World Trade Center, 200 Seaport Boulevard, Boston, MA 02210; telephone: (617) 385–5000; fax: (617) 385–5090.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review implementation and outputs of the Swept Area Seabed impact (SASI) model, and then to discuss and recommend management alternatives based on model outputs. Committee motions on alternatives for analysis in EFH Omnibus Amendment 2 DEIS will be solicited by the Committee Chair on the second day of the meeting. The meeting will include: PDT presentation on the components and implementation of the SASI model; PDT presentation of general model outputs; PDT presentation of model outputs specified to address previous committee tasking; group discussion of possible EFH impacts minimization alternatives and Committee motions related to inclusion of alternatives in the DEIS. Other issues may be raised at the Committee Chair's discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: March 11, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–5722 Filed 3–15–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV24

Fisheries of the South Atlantic and Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR Workshop for South Atlantic and Gulf of Mexico goliath grouper.

SUMMARY: The SEDAR assessments of the South Atlantic and Gulf of Mexico stocks of goliath grouper will consist of a series of three workshops: a Data Workshop, an Assessment Workshop, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The Data Workshop will take place April 27–29, 2010. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The Data Workshop will be held at the Hilton Bayfront, 333 First Street South, St. Petersburg, FL 33701; telephone: (727) -894–5000.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 23 Workshop Schedule

April 27–29, 2010; SEDAR 23 Data Workshop

April 27 - 28, 2010: 8 a.m. - 5 p.m.; April 29, 2010: 8 a.m. - 12 p.m.

An assessment data set and associated documentation will be developed during the Data Workshop. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office

(see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: March 11, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–5724 Filed 3–15–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV23

Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) will hold a meeting of its Scientific and Statistical Committee (SSC) to make fishing level recommendations for black and red grouper, discuss Acceptable Biological Catch (ABC) Control Rules, and recommend ABC values for South Atlantic managed species. The meeting will be held in North Charleston, SC.

DATES: The meeting will be held April 20–22, 2010. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 5265 International Boulevard, North Charleston, SC 29418; telephone: (843) 308–9330.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *Kim.Iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Reauthorized Act, the SSC is the body responsible for reviewing the Council's scientific materials. The SSC will receive reports on recent Southeast Data, Assessment, and Review (SEDAR) assessments of black grouper and Atlantic red grouper and will consider assessment findings in providing fishing level recommendations for the Council, in accordance with provisions of the Magnuson-Steven Reauthorized Act (MSRA). The SSC will also review available information on Council-managed stocks and provide recommendations for the Overfishing level (OFL) and the ABC for those stocks to be considered in the South Atlantic Council's Comprehensive Annual Catch Limit (ACL) Amendment addressing provisions of the MSRA.

SAFMC SSC Meeting Schedule:

April 20, 2010: 9 a.m. - 5 p.m.; April 21, 2010: 8 a.m. - 5 p.m.; April 22, 2010: 8 a.m. - 4 p.m.

Fishing level recommendations for South Atlantic black and red grouper will be developed during the SSC Meeting. Committee members will include SEDAR assessment results for these stocks in their analysis. Members will develop fishing level recommendations for black and red grouper, and ABC and OFL recommendations for South Atlantic managed species included within the Comprehensive ACL Amendment for SAFMC Council members.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 3 business days prior to the meeting.

Dated: March 11, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–5723 Filed 3–15–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an opportunity to apply for membership on the Manufacturing Council.

SUMMARY: The Department of Commerce is currently seeking applications for membership on the Manufacturing Council (Council). The purpose of the Council is to advise the Secretary of Commerce on matters relating to the competitiveness of the U.S. manufacturing sector and to provide a forum for regular communication between Government and the manufacturing sector.

The Manufacturing and Services division of the International Trade Administration oversees the administration of the Council and collaborates with Congress and other stakeholders to increase the global competitiveness of the U.S. manufacturing sector, and works to connect U.S. industry to the resources and tools available in the federal government to help support the creation of sustainable, highly skilled jobs for the 21st century economy.

ADDRESSES: Please submit application information via e-mail to *marc.chittum@trade.gov* or by mail to J. Marc Chittum, Office of Advisory Committees, Manufacturing Council Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230.

DATES: All applications must be received by the Office of Advisory Committees by close of business on April 15, 2010.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, Manufacturing Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, *telephone:* 202–482–4501, *e-mail: marc.chittum@trade.gov.* Please visit the Manufacturing Council Web site at: *http://www.manufacturing.gov/council/.*

SUPPLEMENTARY INFORMATION: The Department of Commerce is in the process of renewing the Manufacturing Council charter for another two-year term. The Office of Advisory Committees is accepting applications for Council members for the new two-year charter term beginning April 2010. Members are appointed for a two-year term to serve until the Council's charter expires on April 10, 2012. Members will be selected in accordance with applicable Department of Commerce guidelines based on their ability to advise the Secretary of Commerce on matters relating to the U.S. manufacturing sector, to act as a liaison among the stakeholders represented by the membership and to provide a forum

for those stakeholders on current and emerging issues in the manufacturing sector. The Council's membership shall reflect the diversity of American manufacturing by representing a balanced cross-section of the U.S. manufacturing industry in terms of industry sectors, geographic locations, demographics, and company size, particularly seeking the representation of small- and medium-sized enterprises. Additional factors which may be considered in the selection of Council members include candidates' proven experience in developing and marketing programs in support of manufacturing industries, job creation in the manufacturing sector, or the candidates' proven abilities to manage manufacturing organizations. Given the duties and objectives of the Council, the Department particularly seeks applicants who are active manufacturing executives (Chief Executive Officer, President, and a comparable level of responsibility) that are leaders within their local manufacturing communities and industries.

Each Council member shall serve as the representative of a U.S. entity in the manufacturing sector. For the purposes of eligibility, a U.S. entity shall be defined as a firm incorporated in the United States (or an unincorporated firm with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities.

Appointments to the Council will be made by the Secretary of Commerce. Council members will serve at the discretion of the Secretary of Commerce. Council members shall serve in a representative capacity, representing the views and interests of their particular industry sector. Council members are not special government employees.

Council members will receive no compensation for their participation in Council activities. Members participating in Council meetings and events will be responsible for their travel, living and other personal expenses.

Meetings will be held regularly and not less than annually, usually in Washington, DC. Members are required to attend a majority of the Council meetings. The first Council meeting for the new charter term has not yet been set.

To be considered for membership, please provide the following:

1. Name and title of the individual requesting consideration.
2. A sponsor letter from the applicant on organization letterhead or, if the applicant is to represent an entity other than his or her employer, a letter from the entity to be represented, containing a brief statement of why the applicant should be considered for membership on the Council. This sponsor letter should also address the applicant's manufacturing-related experience, including any manufacturing trade policy experience.
3. The applicant's personal resume.
4. An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.
5. An affirmative statement that the applicant is not a federally registered lobbyist, and that the applicant understands that if appointed, the applicant will not be allowed to continue to serve as a Council member if the applicant becomes a federally registered lobbyist.
6. Information regarding the control of the entity to be represented, including the governing structure and stock holdings as appropriate signifying compliance with the criteria set forth above.
7. The entity's size and ownership, product or service line and major markets in which the entity operates.
8. Please include all relevant contact information such as mailing address, fax, e-mail, fixed and mobile phone numbers and support staff information where relevant.

Dated: March 11, 2010.

Michael Masserman,

Director, Office of Advisory Committees.

[FR Doc. 2010–5716 Filed 3–15–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–962]

Certain Potassium Phosphate Salts From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value

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

DATES: *Effective Date:* March 16, 2010.

SUMMARY: The Department of Commerce ("the Department") preliminarily determines that certain potassium phosphate salts ("salts") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("Act"), for the period of investigation ("POI"), January 1, 2009, through June 30, 2009. The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Katie Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–6905 or (202) 482–7906, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On September 24, 2009, the Department received an antidumping duty petition concerning imports of salts from the PRC filed in proper form by Performance Products LP ("ICL") and Prayon, Inc. (collectively, "Petitioners").[1] The Department initiated this investigation on October 14, 2009.[2]

On November 17, 2009, the United States International Trade Commission ("ITC") issued an affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of dipotassium phosphate ("DKP"), monopotassium phosphate ("MKP"), and tetrapotassium pyrophosphate ("TKP"). Also on November 17, 2009, the ITC issued a negative preliminary determination with respect to sodium tripolyphosphate ("STPP") stating that there is no reasonable indication that an industry producing STPP is materially injured or threatened with material injury by reason of imports from the PRC.[3] The ITC's determination was

[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Sodium and Potassium Phosphate Salts from the People's Republic of China, dated September 24, 2009 ("Petition").

[2] *See Certain Sodium and Potassium Phosphate Salts from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 74 FR 54024 (October 21, 2009), ("*Initiation Notice*").

[3] Please note that after the *Initiation Notice* was published the ITC made a negative determination with respect to Sodium Tripolyphosphate, the only sodium phosphate salt included in the scope of the investigation. The Department subsequently issued a memo stating that the official name of this investigation is now Certain Potassium Phosphate Salts from the People's Republic of China. *See* Memorandum to the File, from Katie Marksberry,

published in the **Federal Register** on November 23, 2009.[4]

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.[5] We did not receive any scope comments.

Period of Investigation

The POI is January 1, 2009, through June 30, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition.[6]

Respondent Selection

In the *Initiation Notice,* the Department stated that it intended to select respondents based on quantity and value ("Q&V") questionnaires.[7] On October 15, 2009, the Department requested Q&V information from the 60 companies that Petitioners identified as potential exporters or producers of salt from the PRC.[8] Additionally, the Department also posted the Q&V questionnaire for this investigation on its Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html*. The Department received timely Q&V responses from eleven exporters/producers that shipped merchandise under investigation to the United States during the POI.

On November 13, 2009, the Department selected SD BNI(LYG) Co. Ltd. ("SD BNI"), and SiChuan Blue Sword Import & Export Co., Ltd. ("SiChuan Blue Sword"), as mandatory respondents in this investigation.[9] The Department sent its antidumping duty questionnaire to SD BNI and SiChuan Blue Sword on November 16, 2009. On December 7, 2009, SiChuan Blue Sword, filed a letter stating that it would not participate as a mandatory respondent in this investigation.[10]

On December 18, 2009, the Department determined that because it was still early enough in the investigation and because there were no requests for voluntary respondent treatment,[11] the Department would select the next largest producer/exporter of certain potassium phosphate salts as a mandatory respondent. Therefore the Department selected Wenda as a mandatory respondent after an analysis of the Q&V responses showed it to be the next largest producer/exporter.[12] On December 18, 2009, the Department sent Wenda the antidumping duty questionnaire, and on January 8, 2010, Wenda filed its Section A response. In its Section A response, Wenda corrected its Q&V data which was used as the basis of respondent selection.[13] Because the Q&V information changed substantially between Wenda's original Q&V submission and its Section A response, on February 4, 2010, the Department discontinued Wenda's status as a mandatory respondent and stated that we would continue to consider its request for separate rate status.[14] On February 5, 2010, the Department received comments from Wenda regarding the Department's decision to discontinue its status as a mandatory respondent. On February 16, 2010, Petitioners filed rebuttal comments in response to Wenda's February 5, 2010, comments, and on February 18, 2010, Wenda submitted additional comments in response to the Petitioners' most recent comments.

Additional Case Background

We received a Section A response on December 7, 2009, from SD BNI.[15] On December 22, 2009, we received an improperly filed Section C response from SD BNI. The deadline for the Section D response was also December 22, 2009, but no response was filed. We sent a letter to SD BNI on December 28, 2009, stating that its Section C response was not properly filed and its Section D response was not filed at all by the deadline, and we provided another week, until January 4, 2010, for SD BNI to re-file its Section C response and to file its Section D response.[16] On January 6, 2010, the Department received an improperly filed letter from SD BNI asking for more information as to the reason its Section C response was not properly filed and asking for an extension to submit its Section C and D responses. In its January 6, 2010, response SD BNI also asked whether the Department would accept current, post-POI production information to respond to the Department's NME questionnaires.[17] On January 7, 2010, the Department granted SD BNI a third opportunity to submit its Section C response and detailed how to properly file documents—per the Department's regulations. The Department also informed SD BNI that it must report the POI production and could not base Section D on its own post-POI production. The deadline to submit these responses was January 19, 2010.[18] On January 20, 2010, the Department received a Section D response from SD BNI, which did not fully respond to all of the Department's concerns.[19] SD BNI failed to submit a Section C response by this due date.

International Trade Compliance Analyst, regarding Certain Potassium Phosphate Salts from the People's Republic of China, dated November 12, 2009.

[4] *See Investigation Nos. 701–TA–473 and 731–TA–1173 (Preliminary) Certain Sodium and Potassium Phosphate Salts From China,* 74 FR 61173 (November 23, 2009).

[5] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997). *See also Initiation Notice,* 74 FR at 54024.

[6] *See* 19 CFR 351.204(b)(1).

[7] *See Initiation Notice,* 74 FR at 54027.

[8] *See* Petition at Vol. 2., Exhibit General–12.

[9] *See* Memorandum to James C. Doyle, Director, Office IX, from Katie Marksberry, Case Analyst, through Catherine Bertrand, Program Manager, Office IX; regarding Antidumping Duty Investigation of Certain Potassium Phosphate Salts from the People's Republic of China, dated November 13, 2009 ("Respondent Selection Memo").

[10] *See* December 7, 2009, Letter to the Department from SiChuan Blue Sword Import & Export Co., Ltd.

[11] We note that Wenda Co., Ltd. ("Wenda") filed a request for Voluntary Respondent Treatment on October 15, 2009, and withdrew its request on November 13, 2009. *See* letter to the Department from Wenda; regarding Sodium and Potassium Phosphate Salts from the People's Republic of China, Antidumping Duty Investigation; Request for Voluntary Respondent Treatment, dated October 15, 2009 ("Wenda's Voluntary Request Memo"); *see also* letter to the Department from Wenda; regarding Sodium and Potassium Phosphate Salts from the People's Republic of China, Antidumping Duty Investigation; Withdrawal of Request for Voluntary Respondent Treatment, dated November 13, 2009 ("Wenda's Voluntary Withdrawal Memo").

[12] *See* Memorandum to James C. Doyle, Director, Office IX, from Katie Marksberry, Case Analyst, through Catherine Bertrand, Program Manager, Office IX; regarding Antidumping Duty Investigation of Certain Potassium Phosphate Salts from the People's Republic of China: Selection of Additional Mandatory Respondent, dated December 18, 2009 ("Additional Respondent Selection Memo").

[13] *See* Respondent Selection Memo.

[14] *See* Memorandum to James C. Doyle, Director, Office IX, from Catherine Bertrand, Program Manager, Office IX; Antidumping Duty Investigation of Certain Potassium Phosphate Salts from the People's Republic of China: Discontinuation of Mandatory Respondent Status for Wenda Co. Ltd., dated February 4, 2010. ("Wenda Deselection Memo").

[15] *See* Letter from SD BNI to the Department; regarding Certain Potassium Phosphate Salts from China (A–570–962): Section A Questionnaire Response, dated December 7, 2009.

[16] *See* Letter to SD BNI (LYG) Co., Ltd. from the Department; regarding Certain Potassium Phosphate Salts from the People's Republic of China, dated December 28, 2009.

[17] *See* Memorandum to the File; from Katie Marksberry, International Trade Compliance Analyst; regarding Certain Potassium Phosphate Salts from the People's Republic of China: SD BNI (LYG) Co., Ltd. Letter, dated January 11, 2010 (placing SD BNI's improperly filed January 6, 2010, letter on the official record of the investigation.)

[18] *See* Letter to SD BNI (LYG) Co., Ltd. from the Department; regarding Certain Potassium Phosphate Salts from the People's Republic of China, dated January 7, 2010.

[19] *See* Letter from SD BNI to the Department; regarding Certain Potassium Phosphate Salts from China (A–570–962): Section D Questionnaire Response, dated January 20, 2010.

Separate Rate Applications

On November 30, 2009, we received a timely filed joint separate rate application from Chengdu Long Tai Biotechnology Co., Ltd. and Snow-Apple Group Limted. On December 22, 2009, we received timely filed separate rate applications from Wenda, Yunnan Newswift Company Ltd., and Tianjin Chengyi International Trading Co., Ltd. *See* the "Separate Rates" section below for further discussion on the eligibility for a separate rate. On February 3, 2010, the Department issued Wenda a supplemental questionnaire requesting additional information. Additionally, on February 18, 2010, the Department issued Chengdu Long Tai Biotechnology Co., Ltd. and Snow-Apple Group Limited a supplemental questionnaire requiring that each company submit an individual application. Additionally, on February 18, 2010, the Department issued Newswift Company Ltd. a supplemental questionnaire requesting additional information. Wenda, Yunnan Newswift Company Ltd., and Snow-Apple Group Limited submitted timely responses to these questionnaires. Chengdu Long Tai did not submit an individual separate rate application.

Product Characteristics and Questionnaires

In the *Initiation Notice,* the Department asked all parties in this investigation for comments on the appropriate product characteristics for defining individual products. We did not receive comments from interested parties on product characteristics.

Surrogate Country Comments

On January 7, 2010, the Department determined that India, the Philippines, Indonesia, Thailand, Ukraine, and Peru, are countries comparable to the PRC in terms of economic development.[20]

On January 8, 2010, the Department requested comments on surrogate country selection from the interested parties in this investigation. On January 29, 2010, Petitioners submitted surrogate country comments. No other interested parties commented on the selection of a surrogate country.

Scope of Investigation

The phosphate salts covered by this investigation include anhydrous Monopotassium Phosphate (MKP), anhydrous Dipotassium Phosphate (DKP) and Tetrapotassium Pyrophosphate (TKPP), whether anhydrous or in solution (collectively "phosphate salts").

TKPP, also known as normal potassium pyrophosphate, Diphosphoric acid or Tetrapotassium salt, is a potassium salt with the formula $K_4P_2O_7$. The CAS registry number for TKPP is 7320–34–5. TKPP is typically 18.7% phosphorus and 47.3% potassium. It is generally greater than or equal to 43.0% P_2O_5 content. TKPP is classified under heading 2835.39.1000, HTSUS.

MKP, also known as Potassium dihydrogen phosphate, KDP, or Monobasic potassium phosphate, is a potassium salt with the formula KH_2PO_4. The CAS registry number for MKP is 7778–77–0. MKP is typically 22.7% phosphorus, 28.7% potassium and 52% P_2O_5. MKP is classified under heading 2835.24.0000, HTSUS.

DKP, also known as Dipotassium salt, Dipotassium hydrogen orthophosphate or Potassium phosphate, dibasic, has a chemical formula of K_2HPO_4. The CAS registry number for DKP is 7758–11–4. DKP is typically 17.8% phosphorus, 44.8% potassium and 40% P_2O_5 content. DKP is classified under heading 2835.24.0000, HTSUS.

The products covered by this investigation include the foregoing phosphate salts in all grades, whether food grade or technical grade. The product covered by this investigation includes anhydrous MKP and DKP without regard to the physical form, whether crushed, granule, powder or fines. Also covered are all forms of TKPP, whether crushed, granule, powder, fines or solution.

For purposes of the investigation, the narrative description is dispositive, not the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.

Non-Market Economy Country

For purposes of initiation, Petitioners submitted LTFV analyses for the PRC as a non-market economy ("NME").[21] The Department considers the PRC to be a NME country.[22] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination and calculated normal value in accordance with section 773(c) of the Act, which applies to all NME countries.

Wenda's Status in This Investigation

As stated above in the "Respondent Selection" section, on February 4, 2010, the Department discontinued Wenda's status as a mandatory respondent in this investigation. On February 5, 2010, the Department received comments from Wenda requesting that we reconsider the decision to deselect Wenda as a mandatory respondent, or to allow Wenda to participate as a voluntary respondent. Wenda argued the Department has the resources to investigate two respondents and that it had already cooperated with the Department in submitting its questionnaire responses. Additionally, Wenda argued that the Department is risking having no calculated margins by deselecting Wenda, that the Court of International Trade ("CIT") has recently determined that we are not selecting an adequate number of respondents, and that allowing Wenda to participate as a voluntary respondent would not impede the Department's investigation.

On February 16, 2010, the Department received comments from Petitioners rebutting Wenda's February 5, 2010 comments. They stated that we should not reconsider our decision to deselect Wenda because Wenda was not deselected based on the Department's resources, but rather based on Wenda's conduct during the investigation. Furthermore, Petitioners raised further questions about Wenda's Section A reported Q&V, and stated that Wenda withdrew its request to be a voluntary respondent. Petitioners argued that both of these are reason to deny Wenda's request for reconsideration.

The Department continues to find that the determination made in the February 4, 2010, memorandum discontinuing Wenda's status as a mandatory respondent was appropriate. The Department did not deselect Wenda based on resource constraints, but rather because Wenda's Section A Q&V

[20] *See* January 8, 2010, Letter to All Interested Parties, regarding Antidumping Duty Investigation of Certain Potassium Phosphate Salts from the People's Republic of China: Surrogate Country List, attaching January 7, 2010, Memorandum to Catherine Bertrand, Program Manager, Office 9, AD/CVD Operations, from Kelly Parkhill, Acting Director, Office for Policy, regarding Request for List of Surrogate Countries for an Antidumping Duty Investigation of Certain Potassium Phosphate Salts from the People's Republic of China ("Surrogate Country List").

[21] *See Initiation Notice,* 74 FR 29665 (June 23, 2009).

[22] *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007) ("*CFS Paper*").

information was significantly different from the information provided by Wenda in its Q&V questionnaire response. The Department determined that it would be inappropriate to continue to individually investigate Wenda as a mandatory respondent because the corrected Q&V information indicates that Wenda is actually one of the smallest companies by volume.[23] In other words, the Department selected Wenda as a mandatory respondent on the basis of information later shown to be significantly incorrect. The Department's procedures and timetables rely on the record data provided by interested parties, and when this data is shown to be false, other, larger, potential respondents are effectively prohibited from participation because of statutory deadlines. Thus, it would be inappropriate to review Wenda now that it is clear that the information upon which the Department based its decision to select Wenda as a mandatory respondent was incorrect.

Additionally, the Department notes that Wenda does not have a request for voluntary treatment on the record of the investigation because its original request was withdrawn.[24] Furthermore, voluntary respondents are required to complete responses to the Department's NME questionnaire on the due dates for the original mandatory respondents, but Wenda did not do this.

Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.[25] It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[26]

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations.[27] The process requires exporters and producers to submit a separate-rate status application. The Department's practice is discussed further in *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* (April 5, 2005), ("*Policy Bulletin 05.1*"), available at *http://ia.ita.doc.gov/policy/bull05-1.pdf.*[28]

Yunnan Newswift, Tianjin Chengyi, Snow-Apple, and Wenda (hereinafter referred to as "Separate Rate Companies"), have provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control or are wholly foreign owned, and therefore satisfy the standards for the assignment of a separate rate. For each of the Separate Rate Companies we are granting the separate rate only to the name of the company that appears on the English translated copy of the business license in each company's SRA.[29]

We have considered whether each PRC company that submitted a complete application or complete Section A Response as a mandatory respondent, is eligible for a separate rate. The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls, *e.g.,* export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping.[30] The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level.[31]

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the merchandise under investigation under a test arising from the *Sparklers,* as further developed in *Silicon Carbide.*[32] In accordance with the separate rate criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[33]

The evidence provided by the Separate Rate Companies supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. *See, e.g.,* Yunnan Newswift's December 22, 2009, SRA at 6–8; and Tianjin Chengyi's SRA at 6–9.

2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to

[23] *See* Wenda Deselection Memo at 2.

[24] *See* Wenda's Voluntary Request Memo; *see also* Wenda's Voluntary Withdrawal Memo.

[25] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008) ("*PET Film LTFV Final*").

[26] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"); *see also Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"), and § 351.107(d) of the Department's regulations.

[27] *See Initiation Notice,* 74 FR 29665.

[28] The *Policy Bulletin 05.1* states: {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." *See Policy Bulletin 05.1* at 6.

[29] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 47191 (September 15, 2009); and accompanying Issues and Decision Memorandum at Comment 17.

[30] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255, 72256 (December 31, 1998).

[31] *See Notice of Final Determination of Sales at Less than Fair: Value Certain Cut-to-Length Carbon Steel Plate from Ukraine,* 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997).

[32] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"); *see also Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

[33] *See Sparklers,* 56 FR at 20589.

negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[34] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for the Separate Rate Companies, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management. *See, e.g.,* Yunnan Newswift's December 22, 2009, SRA at 9–15; and Tianjin Chengyi's SRA at 9–14.

3. Wholly Foreign-Owned

In their separate-rate applications, two separate rate companies, Wenda and Snow-Apple, reported that they were wholly owned by individuals or companies located in a market economy country during the POI.[35] Therefore, because they reported being wholly foreign-owned during the POI, and we have no evidence indicating that they were under the control of the PRC, a separate rate analysis is not necessary to determine whether these companies are independent from government control.[36] Accordingly, we have preliminarily granted a separate rate to these companies.

The evidence placed on the record of this investigation by the Separate Rate Companies, demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* As a result, we have granted the Separate Rate Companies a margin based on the Petition margins.

Application of Adverse Facts Available, the PRC-Wide Entity and PRC-Wide Rate

The Department has data that indicate there were more exporters of salts from the PRC than those indicated in the response to our request for Q&V information during the POI. *See* Respondent Selection Memorandum. We issued our request for Q&V information to sixty potential Chinese exporters of the merchandise under investigation, in addition to posting the Q&V questionnaire on the Department's Web site. While information on the record of this investigation indicates that there are other exporters/producers of salts in the PRC, we received only eleven filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter.

Furthermore, Sichuan Blue Sword, which responded to the Department's Q&V questionnaire and reported shipments during the POI, and was chosen by the Department as a mandatory respondent, did not respond to the Department's full antidumping duty questionnaire. Therefore, the Department has preliminarily determined that there were exporters/producers of the merchandise under investigation during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC exporters/producers, including Sichuan Blue Sword, as part of the PRC-wide entity because they did not qualify for a separate rate.[37]

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Certain companies did not respond to our questionnaire requesting Q&V information or the Department's request for more information. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available ("FA") is appropriate to determine the PRC-wide rate.[38]

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.[39] We find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776 of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the

[34] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[35] *See* Wenda's December 22, 2009, SRA at 7; *see also* Snow-Apple's February 24, 2010, SRA at 6.

[36] *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 64 FR 71104–71105 (December 20, 1999) (where the respondent was wholly foreign-owned, and thus, qualified for a separate rate).

[37] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 70 FR 77121, 77128 (December 29, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006).

[38] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

[39] *See Statement of Administrative Action,* accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103–316, 870 (1994) ("*SAA*"); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000).

petition, or (b) the highest calculated rate of any respondent in the investigation.[40] As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 95.40 percent, which is the highest margin alleged in the Petition.[41] The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

Application of Adverse Facts Available for SD BNI

As detailed above in the "Additional Case Background" Section, despite numerous attempts by the Department to provide additional instruction and three additional opportunites for SD BNI to file a Section C response, there is not a Section C response on the record of the investigation. Therefore, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we are applying facts otherwise available to SD BNI because the Department finds that the information necessary to calculate an accurate and otherwise reliable margin is not available on the record with respect to SD BNI. Additionally, the Department finds that SD BNI failed to provide the information requested by the Department in a timely manner and in the form required, and significantly impeded the Department's ability to calculate an accurate margin for SD BNI. The Department is unable to calculate a margin without a Section C response, requiring the application of facts otherwise available to SD BNI for the purpose of this preliminary determination.

In addition, in accordance with section 776(b) of the Act, the Department is applying an adverse inference in selecting the facts available rate as it has determined that SD BNI did not act to the best of its ability to cooperate with the Department and significantly impeded this investigation by not submitting a properly filed Section C response after the Department provided three opportunities for SD BNI to do so. Therefore, because SD BNI was selected as a mandatory respondent and failed to submit the information required, SD BNI will not receive a separate rate and will remain part of the PRC-wide entity.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted "corroborate" to mean that we will examine the reliability and relevance of the information submitted.[42] Because there are no margins calculated for the mandatory respondents, to corroborate the 95.40 percent margin used as AFA for the China-wide entity, to the extent appropriate information was available, we are affirming our pre-initiation analysis of the adequacy and accuracy of the information in the petition.[43] During our pre-initiation analysis, we examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioner prior to initiation to determine the probative value of the margins alleged in the petition. During our pre-initiation analysis, we examined the information used as the basis of export price and normal value ("NV") in the petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the export price and NV calculations.[44] We received no comments as to the relevance or probative value of this information. Therefore, the Department finds that the rates derived from the petition and used for purposes of initiation have probative value for the purpose of being selected as the AFA rate assigned to the PRC-wide entity.

Margin for the Separate Rate Companies

The Department received timely and complete separate rate applications from the Separate Rate Companies. The evidence placed on the record of this investigation by the Separate Rate Companies demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* As a result, for the purposes of this preliminary determination, we have granted the Separate Rate Companies an anti-dumping duty margin based on an average of the rates submitted in the Petition.[45] This rate is 64.55 percent.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*, 74 FR at 54024. This practice is described in *Policy Bulletin 05.1*, available at *http://ia.ita.doc.gov/*.

Preliminary Determination

The preliminary weighted-average dumping margins are as follows:

Exporter	Supplier	Weighted-average margin
Snow-Apple Group Limited	Chengdu Long Tai Biotechnology Co., Ltd	69.58
Tianjin Chengyi International Trading (Tianjin) Co., Limited	Zhenjiang Dantu Guangming Auxiliary Material Factory	69.58
Tianjin Chengyi International Trading (Tianjin) Co., Limited	Sichuan Shifang Hongsheng Chemicals Co., Ltd	69.58
Wenda Co., Ltd.	Thermphos (China) Food Additive Co., Ltd	69.58
Yunnan Newswift Company Ltd	Guangxi Yizhou Yisheng Fine Chemicals Co., Ltd	69.58
Yunnan Newswift Company Ltd.	Mainzhu Hanwang Mineral Salt Chemical Co., Ltd	69.58
Yunnan Newswift Company Ltd.	Sichuan Shengfeng Phosphate Chemical Co., Ltd	69.58
PRC-Wide **		95.40

** In this case, the PRC-wide rate includes Sichuan Blue Sword Import and Export Co., Ltd. and SD BNI(LYG) Co. Ltd.

[40] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum at Comment 1.

[41] The Department notes that in determining the AFA margin, the Department did not take into account the margins listed in the petition for STPP.

[42] *See, e.g. Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 5554, 5568 (February 4, 2000).

[43] *See* Antidumping Investigation Initiation Checklist: Certain Sodium and Potassium Phosphate Salts ("Initiation Checklist").

[44] *See id.*

[45] The Department notes that in calculating the average margin, the Department did not take into account the margins listed in the petition for STPP.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of merchandise subject to this investigation, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. For the exporter/producer combinations listed in the chart above, the following cash deposit requirements will be effective upon publication of the preliminary determination for all shipments of merchandise under consideration entered or withdrawn from warehouse, for consumption on or after publication date: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of merchandise subject to this investigation that have not received their own rate, the cash-deposit rate will be the PRC-wide rate; (3) for all non-PRC exporters of merchandise subject to this investigation that have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of phosphate salts, or sales (or the likelihood of sales) for importation, of the merchandise under investigation within 45 days of our final determination.

Public Comment

Case briefs or other written comments on the preliminary determination may be submitted to the Assistant Secretary for Import Administration no later than 30 days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if requested, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing shortly after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: March 10, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–5715 Filed 3–15–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–825]

Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel bar from Brazil. The review covers one producer/exporter of the subject merchandise, Villares Metals S.A. (VMSA). The period of review (POR) is February 1, 2008, through January 31, 2009.

The Department has preliminarily determined that VMSA made U.S. sales at prices less than normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results of review. We intend to issue the final results of review no later than 120 days from the publication date of this notice.

EFFECTIVE DATE: March 16, 2010.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S.Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–1757 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department published in the **Federal Register** an antidumping duty order on certain stainless steel bar from Brazil. See *Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995). On February 4, 2009, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 6013 (February 4, 2009).

In accordance with 19 CFR 351.213(b)(2), on March 2, 2009, VMSA requested that the Department conduct an administrative review of its sales and

entries of subject merchandise into the United States during the POR; the Department initiated a review on March 24, 2009. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 12310 (March 24, 2009). On October 29, 2009, we extended the time period for issuing the preliminary results of the review by 90 days until January 29, 2010. See *Stainless Steel Bar From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 55812 (October 29, 2009). On January 26, 2010, we extended the time period for issuing the preliminary results of the review by 30 additional days until March 1, 2010. See *Stainless Steel Bar From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 4044 (January 26, 2010).

As explained in the February 12, 2010, memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll Import Administration deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now March 8, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of the order covers stainless steel bar (SSB). The term SSB with respect to the order means articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold–finished SSBs that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process. Except as specified above, the term does not include stainless steel semi–finished products, cut–length flat–rolled products (*i.e.*, cut–length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections. The SSB subject to the order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Fair–Value Comparison

To determine whether VMSA's sales of the subject merchandise from Brazil to the United States were at prices below normal value, we compared the export price (EP) or constructed export price (CEP) to the normal value as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice. Therefore, pursuant to section 777A(d)(2) of the Act, we compared the EP or CEP of individual U.S. transactions to the monthly weighted–average normal value of the foreign like product where there were sales made in the ordinary course of trade as discussed in the "Cost–of-Production Analysis" section of this notice.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the "Scope of the Order" section, above, produced and sold by VMSA in the comparison market during the POR to be foreign like product for the purposes of determining appropriate products to use in comparison to U.S. sales of subject merchandise. Specifically, in making our comparisons, we used the following methodology. If an identical comparison–market model was reported, we made comparisons to weighted–average comparison–market prices that were based on all sales which passed the cost–of–production (COP) test of the identical product during the relevant or contemporary month. We calculated the weighted–average comparison–market prices on a level of trade–specific basis. If there were no contemporaneous sales of an identical model, we identified the most similar comparison–market model. To determine the most similar model, we matched the foreign like product based on the physical characteristics reported by the respondent in the following order of importance: general type of finish, grade, remelting process, type of final finishing operation, shape, size.

Export Price

The Department based the price of certain U.S. sales of subject merchandise by VMSA on EP as defined in section 772(a) of the Act because the merchandise was sold before importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States. We calculated EP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States, as appropriate. See section 772(c) of the Act. We made adjustments to price for billing adjustments and discounts, where applicable. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

Constructed Export Price

In addition to EP sales, the Department based the price of certain U.S. sales of subject merchandise by VMSA on CEP as defined in section 772(b) of the Act because the merchandise was sold, before importation, by a U.S.–based seller affiliated with the producer to unaffiliated purchasers in the United States. We calculated the CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in the United States, as appropriate. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting direct selling expenses associated with economic activities occurring in the United States, indirect selling expenses associated with economic activities occurring in the United States, and the profit allocated to expenses deducted under section 772(d)(1) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and comparison markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and comparison markets.

Normal Value

A. *Home–Market Viability*

In accordance with section 773(a)(1)(C) of the Act, in order to determine whether there was a sufficient volume of sales of SSB in the home market to serve as a viable basis for calculating the normal value, we compared the volume of the respondent's home–market sales of the foreign like product to its volume of the U.S. sales of the subject merchandise. VMSA's quantity of sales in the home market was greater than five percent of its sales to the U.S. market. Based on this comparison of the aggregate quantities sold in Brazil and to the United States and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we preliminarily determine that the quantity of the foreign like product sold by the respondent in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a)(1) of the Act. Thus, we determine that VMSA's home market was viable during the POR. Id. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value for the respondent on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the U.S. sales.

B. *Cost–of–Production Analysis*

On September 9, 2009, the petitioners[1] filed a timely below–cost allegation based on the revised home–market database that VMSA submitted with its September 1, 2009, response to our supplemental questionnaire. The petitioners based their cost allegation on VMSA's own cost information, *i.e.*, VMSA's reported sales data and the total COP for models represented by specific control numbers. The petitioners defined the total COP as the sum of the total cost of manufacturing, general and administrative expenses, and interest expenses which they then compared to the net price. The petitioners incorporated all of the respondent's claims regarding deductions from gross price as well as its reported cost data in their calculations. We adjusted the petitioners' calculation of the total COP by using the lowest absolute fixed–overhead cost from VMSA's U.S. sales database. We determined that the methodology employed by the petitioners, as we adjusted it, was reasonable.

On October 28, 2009, we initiated a cost investigation because we had reasonable grounds to believe or suspect that VMSA's sales of the foreign like product under consideration for the determination of normal value may have been made at prices below COP as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, we have conducted a COP investigation of VMSA's sales in the home market. On January 12, 2010, and January 19, 2010, we requested supplemental cost information from VMSA. On February 2, 2010, VMSA supplied the supplemental cost information.

The Department's normal practice is to calculate an annual weighted–average cost for the entire POR. See, *e.g., Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted–average cost for the entire period in order to even out slight fluctuations in production costs experienced by respondents during the POR). The Department recognizes, however, that distortions to the weighted–average cost may result if it uses its normal annual–average cost method for a POR in which significant cost changes occurred. Accordingly, the Department may elect to deviate from its normal methodology of calculating an annual weighted–average cost by using quarterly indexed weighted–average costs instead. See *Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398, 75399 (December 11, 2008) *(SSPC from Belgium), and Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009) (*SSSC from Mexico*). The Department determines whether to use this methodology by evaluating the case–specific record evidence using the following two primary factors: (1) the change in the cost of manufacturing (COM) recognized by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the COP or constructed value (CV) during the same shorter averaging periods. See *SSPC from Belgium* and *SSSC from Mexico.*

In this case, we have determined that the record evidence suggests it was necessary to request additional cost information which would enable us to determine whether we should calculate COP on a shorter cost period (*i.e.*, quarterly basis). We issued a supplemental questionnaire on February 24, 2010. The due date for the response to the supplemental questionnaire is March 10, 2010, which is later than the deadline for these preliminary results. Upon receipt of a response from VMSA, we will analyze this additional information. If we find that it is appropriate to use our alternative cost–calculation methodology (i.e., quarterly COPs), we will provide a memorandum discussing the results of our analysis to the respondent and the petitioners, and we will give the parties an opportunity to comment prior to the final results. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine From India*, 72 FR 62827, 62832 (November 7, 2007); see also *SSPC from Belgium*, 73 FR at 75398.

For these preliminary results we have followed our normal practice and used an annual weighted–average cost for the entire POR. In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and labor employed in producing the foreign like product, the selling, general, and administrative expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home–market sales and COP information provided by VMSA in its questionnaire responses.

After calculating the COP and in accordance with section 773(b)(1) of the Act, we tested whether home–market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. See section 773(b)(2) of the Act. We compared the COPs of the models represented by control numbers to the reported home–market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of VMSA's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that

[1] The petitioners are Carpenter Technology Corporation, Valbruna Slater, Inc., Electralloy Corporation, a Division of G.O. Carlson, Inc., and Universal Stainless.

product because the below–cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of VMSA's sales of a given product during the POR were at prices less than the COP, we disregarded the below–cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted–average COPs for the POR, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

D. *Price–to–Price Comparisons*

We based normal value for VMSA on home–market sales to unaffiliated purchasers. VMSA's home–market prices were based on the packed, ex–factory, or delivered prices. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411 and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to EP sales, we made circumstance–of-sale adjustments by deducting home–market direct selling expenses from and adding U.S. direct selling expenses to normal value. We also made adjustments, if applicable, for home–market indirect selling expenses to offset U.S. commissions in EP calculations. For comparisons to CEP sales, we made circumstance–of-sale adjustments by deducting home–market direct selling expenses from normal value.

We also made adjustments, when applicable, for home–market indirect selling expenses to offset U.S. commissions in EP and CEP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the EP or CEP. If normal value was calculated at a different level of trade, we made an adjustment, if appropriate, in accordance with section 773(a)(7)(A) of the Act. *See* "Level of Trade" section below.

Level of Trade

To the extent practicable, we determine normal value for sales at the same level of trade as EP or CEP sales. See section 773(a)(1)(B)(i) of the Act and 19 CFR 351.412. When there are no sales at the same level of trade, we compare EP and CEP sales to comparison–market sales at a different level of trade. The normal–value level of trade is that of the starting-price sales in the comparison market.

To determine whether home–market sales were at a different level of trade than VMSA's U.S. sales during the POR, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Based on our analysis, we have preliminarily determined that there is one level of trade in the United States and two levels of trade in the home market; we also find that the single U.S. level of trade is at the same level as one of the levels of trade in the home market and at a less advanced stage than the second home–market level of trade. Therefore, we have compared U.S. sales to home–market sales at the same level of trade and, where there was no home–market sale at the same level of trade, at a different level of trade.

Because there are two levels of trade in the home market, we were able to calculate a level–of-trade adjustment based on VMSA's home–market sales of the foreign like product. For a detailed description of our level–of–trade analysis for VMSA for these preliminary results, see VMSA Preliminary Results Analysis Memorandum, dated March 8, 2010.

Currency Conversion

Pursuant to section 773(a) of the Act and 19 CFR 351.415, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the dates of the relevant U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the weighted–average dumping margin for merchandise produced and exported by Villares Metals S.A. is 0.00 percent for the period February 1, 2008, through January 31, 2009.

Disclosure and Public Comment

We will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. See 19 CFR 351.310. If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. The Department will notify the interested parties on the time limit for filing case briefs. See 19 CFR 351.309(c). Interested parties may file rebuttal briefs, limited to issues raised in the case briefs. See 19 CFR 351.309(d). The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer/customer–specific assessment rates for these preliminary results of review. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each reported importer or customer. We will instruct CBP to assess the importer/customer–specific rate uniformly, as appropriate, on all entries of subject merchandise made by the relevant importer or customer during the POR. See 19 CFR 351.212(b). The Department intends to issue instructions to CBP 15 days after the publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*). This clarification will apply to entries of subject merchandise during the POR produced by VMSA for which VMSA did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of VMSA–produced merchandise at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this

clarification, see *Assessment of Antidumping Duties*.

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of SSB from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash-deposit rate for VMSA will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than–fair–value investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash–deposit rate will be the all–others rate for this proceeding, 19.43 percent. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Brazil*, 59 FR 66914 (December 28, 1994). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

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

Dated: March 8, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–5710 Filed 3–15–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Publication of Housing Price Inflation Adjustment Under 50 U.S.C. App. 531

AGENCY: Office of the Under Secretary (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: The Servicemembers Civil Relief Act, as codified at 50 U.S.C. App. 531, prohibits a landlord from evicting a servicemember (or the servicemember's family) from a residence during a period of military service except by court order. The law as originally passed by Congress applied to dwellings with monthly rents of $2,400 or less. The law requires the Department of Defense to adjust this amount annually to reflect inflation and to publish the new amount in the **Federal Register**. We have applied the inflation index required by the statute. The maximum monthly rental amount for 50 U.S.C. App. 531(a)(1)(A)(ii) as of January 1, 2010, will be $2,958.53.

DATES: Effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Thomas R. Williams II, Office of the Under Secretary of Defense for Personnel and Readiness, (703) 697–3387.

Dated: March 10, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–5672 Filed 3–15–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[OMB Control Number 0704–0231]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Part 237, Service Contracting

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 requirement for use through October 31, 2010. DoD proposes that OMB extend its approval for these collections to expire three years after the approval date.

DATES: DoD will consider all comments received by May 17, 2010.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0231, 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 0704–0231 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, (703) 602–1302. The information collection requirements addressed in this notice are available electronically on the World Wide Web at: *http://www.acq.osd.mil/dp/dars/dfars.html.* Paper copies are available from Ms. Meredith Murphy, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 237, Service Contracting, the associated clauses at DFARS 252.237–7000, Notice of Special Standards of Responsibility, and 252.237–7011, Preparation History, and DD Form 2063, Record of Preparation and Disposition of Remains (Within CONUS); OMB Control Number 0704–0231.

Needs and Uses: This information collection is used by contracting officers for two distinct purposes.

Audit Services. The clause at 252–237.7000 is used to provide information that enables verification that the apparently successful offeror for audit services is licensed by the cognizant licensing authority in the state or other political jurisdiction where the offeror operates its professional practice.

Mortuary Services. The clause at DFARS 252–237.7001 and DD Form 2063 are used (a) to ensure that the mortuary contractor has properly prepared the body, and (b), by the contract carrier, so that the body can be shipped by that carrier. When additional preparation of the body is required subsequent to shipment, information regarding the initial preparation of the body may be used by the mortuary services contractor to whom the body has been shipped.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 405.

Number of Respondents: 810.

Responses per Respondent: 1.

Annual Responses: 810.

Average Burden per Response: 0.5 hour average.

Frequency: On occasion.

Summary of Information Collection

DFARS Part 237, the clauses at DFARS 252.237–7000 and 252.237–7011, and DD Form 2063 are required for DoD contracting officers to—

(a) Verify that the apparently successful offeror for audit services is licensed by the cognizant licensing authority in the state or other political jurisdiction where the offeror operates its professional practice; or

(b) Ensure that the mortuary contractor has properly prepared the body, and by the contract carrier so that the body can be shipped by that carrier. When additional preparation of the body is required subsequent to shipment, information regarding the initial preparation of the body may be used by the mortuary services contractor to whom the body has been shipped.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–5735 Filed 3–15–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for Beddown of Training F–35A Aircraft

AGENCY: Air Education and Training Command and Air National Guard, United States Air Force.

ACTION: Revised Notice of Intent.

SUMMARY: The United States Air Force published a Notice of Intent to prepare an EIS in the **Federal Register** (Vol. 74, No. 247, page 68597) on Dec 28, 2009. Due to severe weather in New Mexico, some of the scoping meetings were cancelled. In the Air Force's effort to make every attempt to allow the public an opportunity for providing their input, we have re-scheduled the scoping meetings to be held in Ruidoso and Ft. Sumner, NM. Furthermore, due to public interest and comments, The Air Force has decided to add three additional scoping meetings in New Mexico and Arizona for the Holloman AFB and Tucson International Airport Air Guard Station alternatives. This revised Notice of Intent is prepared to notify the public of the rescheduling and additional scoping meetings to be held in New Mexico and Arizona. Also, due to these additional scoping meetings the public comment period is extended to May 17, 2010.

DATES: The Air Force intends to hold scoping meetings in the following communities:

Tucson International Airport Air Guard Station: Tuesday, March 30, 2010, at Buena High School Cafeteria, 5225 Buena School Road, Sierra Vista, Arizona; Holloman Air Force Base: Tuesday, April 13, 2010, at Best Western Stevens Inn, 1829 South Canal Street, Carlsbad, New Mexico; Wednesday, April 14, 2010 at La Quinta Inn and Suites, 200 E 19th Street, Roswell, New Mexico; Thursday, April 15, 2010 at De Baca County Courthouse Annex, 248 East Avenue C, Fort Sumner, New Mexico; Friday, April 16, 2010 at Best Western Pine Springs Inn, 1420 E Highway 70, Ruidoso, New Mexico.

The scheduled dates, times, locations and addresses for the meetings will be published in local media a minimum of 15 days prior to the scoping meetings. All meetings will be held from 5:30 p.m. to 7:30 p.m. Comments will be accepted at any time during the environmental impact analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by May 17, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. David Martin, HQ AETC/A7CPP, 266 F Street West, Randolph AFB, TX 78150–4319, telephone 210/652–1961.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–5666 Filed 3–15–10; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 17, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper

functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 11, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: New.

Title: Native American Career and Technical Education Program (NACTEP).

Frequency: Annually, Semi-Annually.

Affected Public: Federal Government, State, Local or Tribal Gov't.

Reporting and Recordkeeping Hour Burden:

Responses: 30.*Burden Hours:* 1,200.

Abstract: The Native American Career and Technical Education Program (NACTEP) is requesting approval to collect semi-annual, annual/ continuation reports, and final performance reports from currently funded NACTEP grantees. This information is necessary to (1) manage and monitor the current NACTEP grantees, and (2) award continuation grants for years four and five of the grantees' performance periods. The continuation performance reports will include budgets, performance/statistical reports, GPRA reports, and evaluation reports. The data, collected from the performance reports, will be used to determine if the grantees successfully met their project goals and objectives, so that NACTEP staff can award continuation grants. Final performance reports are required to determine whether or not the grant can be closed our in compliance with the grant's requirements.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4244. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–5711 Filed 3–15–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before [insert the 30th day after publication of this notice].

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 11, 2010.

James Hyler,

Acting Director Information Collection Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Carl D. Perkins Vocational and Technical Education Act (PL 105–332)—State Plan.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 2,052.

Abstract: Public Law 109–270 requires eligible State agencies to submit a 6-year plan, with annual revisions as the eligible agency deems necessary in order to receive Federal funds. The Office of Vocational and Adult Education/Division of Academic and Technical Education program staff review the submitted State plans for compliance and quality.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4198. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–5717 Filed 3–15–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 17, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 11, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: 2011–12 National Postsecondary Student Aid Study (NPSAS:12) Field Test.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 616.

Burden Hours: 576.

Abstract: NPSAS, a nationally representative study of how students and their families finance education beyond high school, was first implemented by National Center for Education Statistics (NCES) in 1987 and has been fielded every 3 to 4 years since. This submission is for the eighth cycle in the series, NPSAS:12, and requests reinstatement of the previously obtained clearance for NPSAS:08 (OMB No. 1850–0666 v.4). NPSAS:12 will also serve as the base year study for the Beginning Postsecondary Students Longitudinal Study (BPS) of first-time postsecondary students that will focus on issues of persistence, degree attainment, and employment outcomes. Following the field test study in 2010, NCES will submit an OMB clearance package for the full scale. The NPSAS:12 field test sample will include about 225 institutions (full-scale sample about 1,670) and about 4,500 students (120,000 full-scale). Institution contacting for the field test will begin in September 2010 and list collection will be conducted January through May 2011 (full-scale institution contacting will begin in September 2011 and student lists will be collected January through June 2012). A separate package to request clearance for student data collection (interviews and institution record data) will be submitted in September 2010. The main changes since the last NPSAS collection in 2008 consist of a new cohort of the Beginning Postsecondary Students Longitudinal Study (BPS) which will conduct follow-up studies in 2014 and 2017, and revised strata for institution sampling to reflect the recent growth in enrollment in for-profit 4-year institutions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4238. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–5712 Filed 3–15–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On February 26, 2010, the Department of Education published a 30-day comment period notice in the **Federal Register** (Page 8928, Column 3) seeking public comment for an information collection entitled, "Native American Career and Technical Education Program (NACTEP)". This notice is hereby cancelled. NACTEP 1830–0542 is the application portion of the NACTEP grant. The application does not need extension as it is the performance reporting stage of the grant. The performance report will need its own OMB number and run under a full clearance with a 60-day/30-day public comment period. The application will be discontinued until reinstatement in 2012. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: March 11, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

[FR Doc. 2010–5714 Filed 3–15–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Carol M. White Physical Education Program

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215F.

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of proposed priorities, requirements, and definitions.

SUMMARY: The Assistant Deputy Secretary for Safe and Drug-Free Schools proposes priorities, requirements, and definitions for the Carol M. White Physical Education Program (PEP). The Assistant Deputy Secretary may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2010 and later years. We take this action to align PEP projects more closely with best practices and research related to improving children's health and fitness. Under the proposed requirements, new projects would be required to address a variety of mechanisms and approaches for improving students' physical activity and eating habits and improve students' ability to meet their State physical education standards.

DATES: We must receive your comments on or before April 15, 2010.

ADDRESSES: Address all comments about this notice to Carlette Huntley, U.S. Department of Education, 550 12th Street, SW., Room 10071, Washington, DC 20202–6450. If you prefer to send your comments through e-mail, use the following address: *carlette.huntley@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Carlette Huntley.

Telephone: (202) 245–7871 or by e-mail: *carlette.huntley@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, and definitions, we urge you to identify clearly the specific proposed priority, requirement, or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 10096, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of PEP is to initiate, expand, and improve physical education for students in grades K–12.

Program Authority: 20 U.S.C. 7261–7261f.

Applicable Program Regulations: 34 CFR part 299.

SUPPLEMENTARY INFORMATION:

General: We propose a new direction to strengthen and enhance PEP and to support a broader, strategic vision for (a) encouraging the development of lifelong healthy habits, and (b) improving nutrition and physical education programming and policies in schools and communities to prevent obesity and to decrease the number of children who are overweight or obese. This new direction will focus on increasing opportunities for students to be physically active and practice good nutritional habits in and out of school. PEP's new direction would apply lessons learned and best practices based on research and program evaluation that were not available during PEP's earlier years. With this new direction, we seek to provide funding to districts and community-based organizations in communities that plan to implement comprehensive, integrated physical activity and nutrition programs and policies that are reinforced in and by the community. By promoting sequential, research-based physical education and instruction in healthy eating and implementing policies to encourage physical activity and healthy eating, we expect PEP projects to result in students developing important skills, knowledge, and behaviors that will translate into healthy habits that will carry into adulthood. Research demonstrates that active, healthy youth are more likely to become active, healthy adults.

Proposed Priorities:

This notice contains three proposed priorities. One is proposed as an absolute priority and two are proposed as competitive priorities.

Proposed Absolute Priority—Programs Designed To Create Quality Physical Education Programs

Background:

Over the last decade, health and education professionals, as well as States and communities, have been increasingly concerned about changing health and behavior patterns related to physical activity, nutrition, and weight status. While a healthy lifestyle can help prevent a host of serious health outcomes, including heart disease and diabetes, data show that a large percentage of youth are sedentary and neither active enough nor have a healthy diet. Only about 17 percent of high school students meet the current recommendations for physical activity.[1] In a recent study, about one-quarter of high school students reported that they used a computer or played computer or video games more than three hours a day and about 35 percent of high school students reported watching television three or more hours per day on an average school day. Only 21 percent of high school students reported eating five or more fruits or vegetables each day in the previous week.[2] These behaviors have contributed to a rise in overweight and obese youth, with recent studies indicating that 17 percent of 6–11 year-olds and 17.6 percent of 12–19 year-olds are considered obese. Furthermore, 33 percent of 6–11 year olds and 34 percent of 12–19 year olds

[1] Department of Health and Human Services. Office of Disease Prevention and Health Promotion. *2008 Physical Activity Guidelines for Americans.* Washington, DC, 2008. The *2008 Physical Activity Guidelines for Americans* recommends 60 minutes of physical activity per day for children and adolescents, which should include moderate to vigorous aerobic activity, as well as age-appropriate muscle and bone strengthening activities.

[2] Centers for Disease Control and Prevention. Youth Risk Behavior Survey, 2007. Accessed online at *http://www.cdc.gov/healthyyouth.* The question on physical activity asks about doing any kind of physical activity that increased their heart rate and made them breathe hard some of the time for a total of at least 60 minutes per day on five or more of the seven days before the survey. The question on nutritional intake asks students to report if the student ate fruits and vegetables (100 percent fruit juices, fruit, green salad, potatoes [excluding French fries, fried potatoes, or potato chips], carrots, or other vegetables) five or more times per day during the seven days before the survey.

are overweight; [3] these rates have roughly doubled since 1980.[4]

Schools are most likely to have an impact on student physical activity and dietary behaviors when they provide students with a quality physical education program, nutrition instruction and a healthy nutrition environment, and multiple opportunities and settings that promote and practice physical activity and healthy eating.[5] PEP's authorizing statute identifies six program elements that may be included in funded projects, and that, when undertaken together, characterize a quality program in physical education and nutrition education. The six program elements are designed to provide the cognitive, instructional, and experiential components that promote the adoption of lifelong healthy habits, as well as enhanced cooperative and social skills for students, and ongoing professional development for teachers and staff. The program elements are: (1) Fitness education and assessment to help students understand, improve, or maintain their physical well-being; (2) instruction in a variety of motor skills and physical activities designed to enhance the physical, mental, and social or emotional development of every student; (3) development of, and instruction in, cognitive concepts about motor skills and physical fitness that support a lifelong healthy lifestyle; (4) opportunities to develop positive social and cooperative skills through physical activity participation; (5) instruction in healthy eating habits and good nutrition; and (6) opportunities for professional development for teachers of physical education to stay abreast of the latest research, issues, and trends in the field of physical education.

Historically, the Department has required applicants for PEP grants to address at least one of the six elements. Beginning in 2004, we sought to re-focus the program to include efforts that strategically support the promotion of lifelong healthy habits. We have funded six cohorts of grantees under this particular framework and, through our observations, reviews of project reports, work with grantees, and consultation with other Federal agencies and non-governmental partners, have concluded that additional changes are necessary to strengthen the program, better align it with the latest research and best practices in the field, and fund programs that are most likely to be sustainable following the period of Federal funding.

We believe that requiring applicants to create programs and policies that address element 5, regarding nutrition instruction, plus at least one of the other elements related to physical activity will result in the development and implementation of approaches that go beyond instruction in physical education or fulfillment of physical education equipment needs, which have been the historical foci of PEP-funded projects. A combined focus on both nutrition and physical activity and physical education programming, curricula, and related equipment necessary for implementation, along with changes to related physical activity and nutrition policies, provide the basis for an initiative that goes beyond implementing a specific curriculum or using a particular piece or set of physical education equipment. Instead, this requirement will encourage applicants to consider the range of approaches necessary to promoting healthy habits within two broad categories, instruction in healthy eating and physical activity or physical education, while allowing applicants to design programs that best meet their identified gaps and needs and enhance their identified assets in as comprehensive a manner as possible.

Proposed Absolute Priority:

Under this proposed priority, an applicant would be required to develop, expand, or improve its physical education program and address its State's physical education standards [6] by undertaking the following activities: (1) Instruction in healthy eating habits and good nutrition and (2) physical fitness activities that must include at least one of the following: (a) Fitness education and assessment to help students understand, improve, or maintain their physical well-being; (b) instruction in a variety of motor skills and physical activities designed to enhance the physical, mental, and social or emotional development of every student; (c) development of, and instruction in, cognitive concepts about motor skills and physical fitness that support a lifelong healthy lifestyle; (d) opportunities to develop positive social and cooperative skills through physical activity participation; or (e) opportunities for professional development for teachers of physical education to stay abreast of the latest research, issues, and trends in the field of physical education.

Proposed Competitive Preference Priority 1—Collection of Body Mass Index Measurement Background:

Over the last several years, with increasing attention focused on the childhood obesity epidemic, several States and municipalities have begun using the Body Mass Index (BMI) to create awareness of the extent of weight problems in their State or municipality. Collecting data on BMI can identify the percentages of students in the population who are obese, overweight, normal weight, and underweight. Childhood obesity is associated with cardiovascular disease risk factors, including high blood pressure, high cholesterol, and impaired fasting glucose.[7] Obese young people are more likely than children of normal weight to become overweight or obese adults and, therefore, more at risk for associated health problems during adulthood, including heart disease, type 2 diabetes, stroke, several types of cancer, and osteoarthritis.[8] Additionally, researchers estimate that medical costs of the obesity epidemic may total as much as $147 billion annually.[9]

Several States and municipalities have started using BMI as an approach to identifying the percentage of youth in the population who are obese, overweight, normal weight, and underweight. These data, in the aggregate, can be used to describe the weight status over time in the student population; monitor progress toward achieving national health objectives [10]; and monitor the effects of school-based physical activity and nutrition policies and programs.

BMI is a tool for assessing weight status that is relatively easy to use and correlates with body fat. The BMI is based on a calculation using weight and height (kg/m^2). Although the same formula is used for adults, children, and adolescents, weight status for children

[3] "Overweight" is defined as at or above the 85th percentile and "obese" is defined as at or above the 95th percentile on BMI-for-age growth charts.

[4] Ogden C, Carroll M, Flegal K. High body mass index for age among US children and adolescents, 2003–2006. *JAMA.* 2008;299(20): 2410–2405.

[5] Institute of Medicine. *Preventing Childhood Obesity: Health in the Balance.* Washington, DC: The National Academies Press, 2005.

[6] States that do not have their own physical education standards may use another State's standards.

[7] Freedman D, Zuguo M, Srinivasan S, Berenson G, Dietz W. Cardiovascular risk factors and excess adiposity among overweight children and adolescents: The Bogalusa Heart Study. *J Pediatr.* 2007;150(1): 12–17.

[8] U.S. Surgeon General. *Overweight and obesity: Health consequences.* Rockville, MD, 2001. Accessed at *http://www.surgeongeneral.gov/topics/obesity/*on October 14, 2009.

[9] Finkelstein E, Trogdon J, Cohen J, and Dietz W. Annual medical spending attributable to obesity: Payer-and service-specific estimates. *Health Affairs.* 2009; 28(5): w822–w831.

[10] National health objectives can be found in *Healthy People, 2010,* accessed at *http://www.healthypeople.gov/Document/html/uih/uih_bw/uih_4.htm#overandobese* on October 15, 2009.

and adolescents is determined by plotting BMI by age on a sex-specific growth chart, created by the Centers for Disease Control and Prevention (CDC), and presented as a BMI-for-age percentile (*http://www.cdc.gov/growthcharts*). For children and adolescents, the weight status categories are "underweight" (BMI less than the 5th percentile), "healthy weight" (BMI is greater than the 5th percentile but less than the 85th percentile), "overweight" (BMI is greater than the 85th percentile and less than the 95th percentile) and "obese" (BMI is greater than the 95th percentile). The BMI-for-age percentiles identified by the CDC are the recommended method of reporting size and growth patterns among children in the United States.[11]

As BMI is a measure of weight status at only one point in time, it is important for students, families, and policy-makers to consider trends in BMI data rather than taking action based on one measurement point. For children and teens, BMI is used as a screening tool, not a diagnostic tool, which means that it can suggest that a child may have a weight concern but it is not a tool that will determine that the child's weight status is a problem.[12] A trained medical care provider would need to perform other follow-up assessments and tests [13] to determine if the student actually has excess body fat or other health risks related to obesity.

To understand a BMI score more accurately, practitioners often also look at other measures, such as assessments of fitness levels, physical activity levels, and nutritional intake. For policy-makers, looking at prevalence and trends in obesity among youth at the school, district, and/or community levels (as measured by the BMI) can create awareness of the overall population's health and fitness, and provide an impetus to improve policies, practices, and services.

Program planners should carefully consider the issues related to undertaking a BMI assessment program in a school or a school-related setting, and should first define the intent of their assessment program and the desired outcomes they wish to achieve by undertaking BMI assessment. Program planners should consider how these efforts would be understood and accepted by the community. Planners should also consider how the information would be used in the context of the other required measures for this program (*see* the REQUIREMENTS section of this notice) and as part of the fitness assessments that applicants may propose in response to this program element in Proposed Absolute Priority 1. When presented with complementary measures of fitness, physical activity, nutritional habits, and behaviors to be addressed through PEP, these measures provide not only a means for assessing the health and fitness of the student population, but also ideas about program and policy components that require improvement and the ability to monitor changes to these indicators over time.

Grantees that receive funds under this priority would be required to provide parents with the choice to have their child opt out of this assessment as part of the development and implementation of their BMI measurement practice, and to inform parents of this choice. Additionally, unless the BMI assessment is permitted or required by State law, local educational agency (LEA) applicants must develop policies in consultation with parents that provide reasonable notice of the applicant's plan to collect BMI data, in compliance with the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. 1232h.

Planners should also consider the timing and flow of students into the assessment site to have their BMI measured, how the measurement would be performed, the equipment needed to carry out the assessment, who would perform the assessment, and how data would be calculated, recorded, and protected. These procedures should adhere to the best available scientific practices and procedures.

If program planners intend to provide information to parents about their children, planners should consider if and how they would be able to access follow-up testing or treatment by a heath care provider, and might create a referral system for youth who are identified as obese, overweight, or underweight. If the information will be shared with parents, planners should provide a clear and respectful explanation of the BMI results and a list of the appropriate actions. Resources are available to help schools implement these kinds of activities in the safest and most effective way possible, including CDC's Children's BMI Tool for Schools, which can be accessed at: *http://www.cdc.gov/healthyweight/assessing/bmi/childrens_bmi/tool_for_schools.html.*

Proposed Competitive Preference Priority:

We propose giving a competitive preference priority to applicants that agree to implement aggregate BMI data collection, and use it as part of a comprehensive assessment of health and fitness for the purposes of monitoring the weight status of their student population across time. Applicants would be required to sign a Program-Specific Assurance that would commit them to:

(a) Use the CDC's BMI-for-age growth charts to interpret BMI results (*http://www.cdc.gov/growthcharts*);

(b) Create a plan to develop and implement a protocol that would include parents in the development of their BMI assessment and data collection policies, including a mechanism to allow parents to provide feedback on the policy. Applicants would be required to detail the following required components in their aggregate BMI data collection protocol: The proposed method for measuring BMI, who would perform the BMI assessment (*i.e.*, staff members trained to obtain accurate and reliable height and weight measurements), the frequency of reporting, the planned equipment to be used, methods for calculating the planned sampling frame (if the applicant would use sampling), the policies used to ensure student privacy during measurement, how the data would be secured to protect student confidentiality, who would have access to the data, how long the data will be kept, and what will happen to the data after that time. Applicants that intend to inform parents of their student's weight status must include plans for notifying parents of that status, and must include their plan for ensuring that resources are available for safe and effective follow-up with trained medical care providers;

(c) Create a plan to notify parents of the BMI assessment and to allow parents to opt out of the BMI assessment and reasonable notification of their choice to opt out. Unless the BMI assessment is permitted or required by State law, LEA applicants would be required to detail their policies for providing reasonable notice of the adoption or continued use of such policies directly to the parents of the students enrolled in the LEA's schools served by the agency. At a minimum, the LEA would have to provide such notice at least annually, at the beginning of the school year and within a reasonable period of time after any

[11] Krebs NF et al. Assessment of child and adolescent overweight and obesity. *Pediatrics.* 2007;120:S193–S228.

[12] Freedman D, Wang, J, Thornton J, Mei Z, Sopher A, Pierson R, Dietz W, and Horlick M. Classification of Body Mass Index-for-Age Categories Among Children. *Archives of Pediatrics and Adolescent Medicine.* 2009;163(9):805–811.

[13] Additional assessments and tests could include a patient's medical history, family history, diet, physical activity habits, and blood pressure and laboratory tests, such as cholesterol levels.

substantive change in such policies, pursuant to the Protection of Pupil Rights Amendment, 20 U.S.C. Section 1232h(c)(2)(A); and

(d) De-identify the student information (such as by removing the student's name and any identifying information from the record and assigning a record code [14]), aggregate the BMI data to the school or district level, and make the aggregate data publicly available and easily accessible to the public annually. Applicants would need to describe their plan for the level of reporting they plan to use, depending on the size of the population, such as at the district level or the school level. Applicants would also be required to detail in their application their plan for how these data will be used in coordination with other required data for the program, such as fitness, physical activity, and nutritional intake measures, and how the combination of these measures will be used to improve physical education programming and policy.

On June 18, 1991, 17 Federal Departments and Agencies, including the Department of Education, adopted a common set of regulations known as the Federal Policy for the Protection of Human Subjects or "Common Rule." See 34 CFR Part 97. Applicants that engage in BMI data collection may be subject to the U.S. Department of Education's Protection of Human Subjects regulations if the data are used in research funded by the Federal government or for any future research conducted by an institution that has adopted the Federal policy for all research of that institution. The regulations define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities." 34 CFR 97.102(d). Information on Human Subjects requirements is found at: *http://www.ed.gov/about/offices/list/ocfo/humansub.html*.

[14] LEAs are subject to the Family Educational Rights and Privacy Act and must de-identify education records based on regulations issued by the Department of Education in December, 2008. More information can be found at: *http://www.ed.gov/policy/gen/guid/fpco/pdf/ferparegs.pdf*. CBO applicants should follow all applicable Federal, State, and local privacy laws and regulations regarding the de-identification of personal data.

Applications that do not provide a Program-Specific Assurance signed by an Authorized Representative committing the applicant to completing the tasks above during their project period would not be eligible for competitive preference points.

In implementing this proposed priority, we would encourage applicants to consult with their partners to determine if and how any of the partners could contribute to the data collection, reporting, or potential referral processes.

Proposed Competitive Preference Priority 2—Partnerships Between Applicants and Supporting Community Entities

Background:

Most research demonstrates that to effectively change social norms and behaviors, coordinated, multi-component approaches and policies are necessary.[15] As part of a comprehensive approach to encouraging youth to be more physically active and eat healthier foods, schools and communities should have common and consistent policies, practices, and expectations for healthy eating and physical activity and provide the opportunity for healthy lifestyle choices in all settings in which a child spends time, throughout the student's day, including before, during, and after school, as well as on weekends, holidays, and vacations.[16]

This type of community effort requires a sustained commitment from LEAs and schools, local government, community-based organizations (CBOs), the health sector, businesses, parents, and community members. Schools have a critical role to play in teaching students about physical activity, fitness, and healthy choices, and providing opportunities to practice making healthy choices throughout the day. But students spend a significant amount of time outside of school, which makes it important to implement a consistent community approach that reinforces and supports lessons and messages that are taught and learned in schools. For example, CBOs, particularly those CBOs that provide before- or after-school or summer programs, can play an important role in supplementing the skills and concepts that students learn in school. CBOs can also help LEAs target specific populations of students who may be underserved or at higher risk of becoming overweight or obese, or provide additional expertise in such areas as nutrition instruction.

We have found that CBOs that have received PEP grants function optimally when they work collaboratively with one or more schools in the area served by the project. Grantees that conduct their projects separately from a school's or an LEA's efforts are often less familiar with State standards for physical education and, as a result, struggle to develop projects that help students meet or exceed these standards. Some CBOs also find it challenging to attract students to their programs, maintain the students' attendance at their programs, and deliver services that complement those that schools are already providing. A partnership between a CBO and an LEA or school should help ensure that these challenges will be addressed.

Although some current grantees' communities may be engaged in efforts to improve physical activity and nutrition, these efforts are not always coordinated with the PEP grant, often resulting in disjointed and inconsistent efforts to improve physical activity and nutrition policy and programs in schools and communities. Thus, a more coordinated effort would improve the community's ability to positively affect youth physical activity participation, childhood nutrition, and fitness, and prevent and reduce the trends of overweight and obese youth by fundamentally changing the policies and practices of the settings where children spend their time before, during, and after school.

We also believe that a formal partnership agreement will institutionalize this collaboration and ensure that local leadership is committed to investing in these efforts. Applicants might leverage these formal partnerships to secure the required matching funds for a PEP grant, such as through donated time, expertise, and other resources. Further, partners from public health agencies might also increase applicants' awareness of best practices and research-based approaches in the public health field, as well as connect applicants to other related efforts in the community and to potential funding streams, which could increase the likelihood of the PEP project being sustained after the end of Federal funding.

Proposed Competitive Preference Priority:

We propose giving a competitive preference priority to an applicant that includes in its application an agreement that details the participation of required partners, as defined in this notice. The agreement would have to include a

[15] Institute of Medicine. *Preventing Childhood Obesity: Health in the Balance*. Washington, DC: The National Academies Press, 2005.

[16] IOM (Institute of Medicine) and National Research Council. 2009. *Local Government Actions to Prevent Childhood Obesity*. Washington, DC: The National Academies Press.

description of: (1) Each partner's roles and responsibilities in the project; (2) if and how each partner will contribute to the project, including any contribution to the local match; (3) an assurance that the application was developed after timely and meaningful consultation between the required parties, as defined in this notice; and (4) a commitment to work together to reach the desired goals and outcomes of the project. The partner agreement would be required to be signed by the Authorized Representative of each of the required partners and by other partners as available and appropriate.

For an LEA applicant, we propose that this partnership agreement must include: (1) The LEA; (2) at least one CBO; (3) a local public health entity, as defined in this notice; (4) the LEA's food service or child nutrition director; and (5) the head of the local government, as defined in this notice.

For a CBO applicant, we propose that the partnership agreement must include: (1) The CBO; (2) a local public health entity, as defined in this notice; (3) a local organization supporting nutrition or healthy eating, as defined in this notice; (4) the head of the local government, as defined in this notice; and (5) the LEA from which the largest number of students expected to participate in the CBO's project attend. If the CBO applicant is a school, such as a parochial or other private school, the applicant would need to describe its school as part of the partnership agreement but would not be required to provide an additional signature from a different LEA or school. A CBO applicant that is a school and serves its own population of students would be required also to include another community CBO as part of its partnership and include the head of that CBO as a signatory on the partnership agreement.

Although partnerships with other parties are required, the eligible applicant would have to retain the administrative and fiscal control of the project.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements:

Background:

The Department believes that the following proposed requirements will result in PEP projects that are more likely to have an impact on children's health, fitness levels, and dietary habits.

Proposed Requirements:

The Assistant Deputy Secretary for Safe and Drug-Free Schools proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Proposed Requirement 1—Align Project Goals With Identified Needs Using the School Health Index

Background:

In order to ensure that PEP projects meet the needs of the schools and communities they are intended to serve, it is critical that the nutrition and physical education program needs, as well as the policies that support them, be assessed. The CDC's Division of Adolescent and School Health has developed the School Health Index (SHI), a self-assessment and planning tool that schools can use to assess their student health policies and programs and their "school health environment." The SHI includes eight self-assessment modules: (1) School Health and Safety Policies and Environment; (2) Health Education; (3) Physical Education and Other Physical Activity Programs; (4) Nutrition Services; (5) Health Services; (6) Counseling, Psychological, and Social Services; (7) Health Promotion for Staff; and (8) Family and Community Involvement. The SHI enables schools to develop an action plan for improving student health, which can be incorporated into the School Health Improvement Plan.

CDC has developed two forms of the SHI, one for elementary schools and one for middle and high schools. Although much of the content is identical on each, there are some differences that reflect the developmental differences between elementary school students and middle and high school students.

Completing the SHI allows a school to assess its health policies and practices and to compare those policies and practices with national standards and recommendations. The CDC estimates that undertaking the Physical Education and Other Physical Activity Programs and Nutrition Services SHI modules will take approximately one to three hours. For more information about the SHI, *please see http://www.cdc.gov/healthyyouth/SHI.*

In the context of PEP, we believe that the SHI will provide applicants with a framework for assessing their strengths and weaknesses, which can then be used to design programs based on identified gaps and plans to address these gaps. We have found that many PEP applicants have not undertaken this type of self-assessment prior to submitting their grant applications and, not having done so, have created programs and policies that are not responsive to their site's needs or aligned with best practices in the field.

Because the SHI must be done at the school-building level, CBOs cannot undertake the SHI without the support and participation of a school or LEA. Therefore, we suggest that CBO applicants collaborate with an identified school or LEA partner to complete the physical activity and nutrition questions in modules 1–4 of the SHI.

To meet this requirement, CBO applicants that do not collaborate with an LEA or school may propose and use a local needs assessment tool that analyzes the physical activity and nutrition environments at the community level and, ideally, at the CBO site itself. The CBO applicant would need to specify the local needs assessment tool used, as well as the results of the assessment. The applicant's program must be designed to address the needs and gaps identified through the needs assessment.

Proposed Requirement:

We propose that applicants be required to complete the physical activity and nutrition questions in Modules 1–4 of the CDC's SHI self-assessment tool and to develop project goals and plans that address the identified needs. Modules 1–4 are School Health and Safety Policies and Environment, Health Education, Physical Activity and Other Physical Activity Programs, and Nutrition Services. The applicant would use the SHI self-assessment to develop a School Health Improvement Plan focused on improving these issues, and design an initiative that addresses their identified gaps and weaknesses. Applicants would be required to include their Overall Score Card for the questions answered

in modules 1–4 in their application, and correlate their School Health Improvement Plan to their project design. Grantees would also be required to complete the same modules of the SHI at the end of the project period and submit the Overall Score Card from the second assessment in their final reports to demonstrate SHI completion and program improvement as a result of PEP funding.

If a CBO applicant (unless the CBO is a school) is in a partner agreement with an LEA or school, it would be required to collaborate with its partner or partners to complete modules 1–4 of the SHI.

Alternatively, if the CBO has not identified a school or LEA partner, the CBO would be required to use an alternative needs assessment tool to assess the nutrition and physical activity environment in the community for children. CBO applicants would be required to include their overall findings from the community needs assessment and correlate their findings with their project design. Grantees would also be required to complete the same needs assessment at the end of their project and submit their findings in their final reports to demonstrate the completion of the assessment and program involvement as a result of PEP funding.

Proposed Requirement 2—Nutrition- and Physical Activity-Related Policies

Background:

In recent years, research has shown that interventions to change behaviors and develop healthy habits, including physical activity and healthy eating, cannot rely on instruction alone.[17] Although interventions that focus on a single element of PEP may produce positive behavior changes, they typically result in smaller effects than those produced by comprehensive, multi-sector interventions that include changes to programs and curricula and create or enhance policies encouraging physical activity and healthy eating choices.[18] Applicants can identify physical activity and nutrition policies to address using their State's standards for physical education and the results from their SHI assessment.

Research also shows that policy interventions and environmental changes can promote desirable behaviors and discourage negative behaviors.[19] [20] To encourage students to eat more healthy foods in and out of school, policies might include those governing the sale of "competitive foods" [21] at school, and food placement and pricing in cafeterias; policies on vending machines and on food sold as fundraisers; developing partnerships with farms or farmers' markets; adopting the recent Institute of Medicine recommendations for school meals that include more fruits and vegetables, whole grains, and low-fat dairy products; [22] or creating school or community gardens.

Physical activity-related policy improvements that might enhance the applicant's programs include, but are not limited to: staffing policies that enable a physical educator to coordinate, plan, and direct the comprehensive program related to all physical activity efforts in the school, including those related to policy; integrating physical activity into the classroom to foster learning and increase children's physical activity; removing barriers to enable children to walk or bike to school or in the community; encouraging time for recess; developing and implementing joint-use agreements for use of facilities or equipment between schools and communities or community groups; providing supervision of play areas during out-of-school time; altering bus schedules to facilitate after-school program participation; establishing time requirements for physical education; requiring certification and professional development for physical education teachers; setting class size limits; and reviewing the use of waivers that allow students to opt out of physical education class.

Proposed Requirement:

We propose that grantees be required to develop, update, or enhance physical activity policies and food- and nutrition-related policies that promote healthy eating and physical activity throughout students' everyday lives, as part of their PEP projects. Applicants would describe in their application their current policy framework, areas of focus, and the planned process for policy development, implementation, review, and monitoring. Grantees would be required to detail at the end of their project period in their final reports the physical activity and nutrition policies selected and how the policies improved through the course of the project.

Applicants would be required to sign a Program-Specific Assurance that commits them to developing, updating, or enhancing these policies during the project period. Applicants that do not submit such a Program-Specific Assurance signed by the applicant's Authorized Representative would be ineligible for the competition.

Proposed Requirement 3—Linkage With Local Wellness Policies

Background:

The local wellness policy provision of the Child Nutrition Act of 2004 (Pub. L. 108–265) requires that each LEA participating in a program authorized by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*) have a local wellness policy beginning in school year 2006–2007.

Under these provisions, a local wellness policy, at a minimum, includes goals for nutrition education, physical activity, and other school-based activities designed to promote student wellness; nutrition guidelines for all foods available on each school campus; guidelines for reimbursable school meals that are no less restrictive than the U.S. Department of Agriculture (USDA) regulations and guidelines; and a plan for measuring implementation, including designation of one or more persons at the LEA or school level charged with operational responsibility for ensuring that the school meets the local wellness policies. In addition, parents, students, and various other "stakeholders" must be involved in the development of the local wellness policy.

Proposed Requirement:

We propose that applicants that are participating in a program authorized by the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966 must describe in their applications their school district's established local wellness policy and how the proposed PEP project will align with and support, complement, and enhance the implementation of the applicant's local wellness policy. The LEA's local wellness policy should address all requirements in the Child Nutrition Act of 2004.

[17] Institute of Medicine. *Preventing Childhood Obesity: Health in the Balance.* Washington, DC: The National Academies Press, 2005.

[18] Ibid.

[19] Peterson D, Zeger S, Remington P, Anderson P. The effect of state cigarette tax increases on cigarette sales, 1985–1988. *American Journal of Public Health.* 82(1): 94–96.

[20] French S, Story M, Breitlow K, Baxter J, Hannan P, Snyder M. Pricing and promotion effects on low-fat vending and snack purchases: The CHIPS study. *American Journal of Public Health.* 91(1): 112–117.

[21] "Competitive foods" are defined as any foods and beverages sold at a school separately from the US Department of Agriculture's school meal programs.

[22] Institute of Medicine. 2010, *School Meals: Building Blocks for Healthy Children.* Washington, DC: The National Academies Press.

We propose that CBO applicants describe in their applications how their proposed projects will enhance or support the intent of the local wellness policies of their LEA partner(s), if they are working in a partnership.

If an applicant or a member of its partnership does not participate in the school lunch program authorized by the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, it would not necessarily have a local wellness policy and, thus, would not be required to meet this requirement or adopt a local wellness policy. However, we would encourage such applicants to develop and adopt a local wellness policy, consistent with the provisions in the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966 in conjunction with its PEP project.

Applicants would be required to sign a Program-Specific Assurance that commits them to align their PEP project with the district's Local Wellness Policy, if applicable. Applicants that do not submit a Program Specific Assurance signed by the applicant's Authorized Representative would be ineligible for the competition.

Proposed Requirement 4—Linkages With Federal, State, and Local Initiatives

Background:

We believe that projects should conduct their activities in a manner that is coordinated, to the extent possible, with other, similar ongoing or planned State or local health and wellness initiatives.

For example, PEP projects, through their support of physical activity and nutrition instruction initiatives, complement the CDC's Coordinated School Health framework. This framework is a systemic model that integrates the basic, minimum components necessary for promoting the health and safety of students in schools. There are eight components of the Coordinated School Health Program: (1) Health Education; (2) Physical Education; (3) Health Services; (4) Nutrition Services; (5) Counseling and Psychological Services; (6) Healthy School Environments; (7) Health Promotion for Staff; and (8) Family and Community Involvement.

PEP projects could also complement the USDA's Team Nutrition initiative, which provides training and technical assistance for food service professionals, nutrition instruction for children and their caregivers, and school and community support for creating healthy school environments that are conducive to healthy eating and physical activity. More information on Team Nutrition can be found at: *http://www.teamnutrition.usda.gov*.

The U.S. Department of Health and Human Services (HHS) will also be providing funds to local public health departments to create community-level interventions to address obesity trends in both adults and children. This initiative funded under the American Recovery and Reinvestment Act, specifically the "Recovery Act Communities Putting Prevention to Work—Community Initiative," focuses on developing and promoting partnerships, programmatic support, community mentoring, and evaluation to achieve the following prevention outcomes: (1) Increased levels of physical activity; (2) improved nutrition; (3) decreased overweight/obesity prevalence; (4) decreased smoking prevalence and decreasing teen smoking initiation; and (5) decreased exposure to second-hand smoke. More information on this program can be found at: *http://www.cdc.gov/nccdphp/recovery/*. Applications for grants under this HHS program were due December 1, 2009, but grantees are not likely to be announced until after PEP's application period would close. As such, PEP applicants would only have to agree to coordinate efforts funded under this HHS program with activities funded by PEP should their communities receive both grants.

Many other Federal, State, and local initiatives also work to promote healthy nutrition and physical activity and, if applicable, should be coordinated with PEP project efforts. These other programs include, but are not limited to, Alliance for a Healthier Generation (*http://www.healthiergeneration.org/*), Farm-to-School initiatives (*http://www.farmtoschool.org/*), the YMCA's Pioneering Healthier Communities (*http://www.ymca.net/activateamerica/*), Action for Healthy Kids State or local teams (*http://www.actionforhealthykids.org/*), and USDA's HealthierUS School Challenge (*http://www.fns.usda.gov/tn/healthierus/index.html*).

Proposed Requirement:

We propose that if an applicant is implementing the CDC's Coordinated School Health program, it be required to coordinate project activities with that initiative and describe in its application how the proposed PEP project will be coordinated and integrated with the program.

We propose that if an applicant receives funding under the USDA's Team Nutrition initiative (Team Nutrition Training Grants), the applicant must describe in its application how the proposed PEP project supports the efforts of this initiative.

We propose that an applicant for a PEP project in a community that receives a grant under the Recovery Act Communities Putting Prevention to Work—Community Initiative must agree to coordinate its PEP project efforts with those under the Recovery Act Communities Putting Prevention to Work-Community Initiative.

We propose that applicants and PEP-funding projects must complement, rather than duplicate, existing, ongoing or new efforts whose goals and objectives are to promote physical activity and healthy eating or help students meet their State standards for physical education.

Applicants would be required to sign a Program-Specific Assurance that commits them to align their PEP project with the Coordinated School Health program, Team Nutrition Training Grant, Recovery Act Communities Putting Prevention to Work- Community Initiative, or any other similar Federal, State, or local initiatives. Applicants that do not submit a Program Specific Assurance signed by the applicant's Authorized Representative would be ineligible for the competition.

Proposed Requirement 5—Updates to Physical Education and Nutrition Instruction Curricula

Background:

Having a strong and appropriate curriculum is critical to ensuring that students develop and practice new skills. Historically, many PEP grantees purchased or designed new curricula before they had fully assessed the needs of their population or the capacity of their staff to implement that curriculum. In our experience, most PEP grantees do not implement a systematic, sequential nutrition instruction curriculum, but, rather, rely on one-time nutrition modules to provide instruction on healthy eating.

The CDC's Physical Education Curriculum Analysis Tool (PECAT) helps LEAs and others conduct a clear, complete, and consistent analysis of written physical education curricula, based upon national physical education standards. This free tool helps LEAs analyze written physical education curricula and can serve as a guide in developing or identifying a curriculum aligned with the LEA's goals and objectives for physical education programs that help them make progress toward meeting State standards for physical education.

The CDC's Health Education Curriculum Analysis Tool (HECAT) is a

similar free tool, comparable to the PECAT, used to assess health education curricula, and is intended to help LEAs, schools, and others conduct a clear, complete, and consistent analysis of health education curricula based on the National Health Education Standards and CDC's Characteristics of Effective Health Education Curricula. The HECAT results can help LEAs or CBOs select or develop appropriate and effective health education curricula and improve the delivery of health education. The HECAT can be customized to meet local needs and conform to the State or LEA curriculum requirements. The HECAT's healthy eating module can be used to determine the extent to which curricula are likely to enable students to master the essential concepts and skills that promote healthy eating.

Proposed Requirement:

We propose that applicants that plan to use grant-related funds, including Federal and non-Federal matching funds, to create, update, or enhance their physical education or nutrition education curricula be required to use the Physical Education Curriculum Analysis Tool (PECAT) and submit their overall PECAT scorecard, and the curriculum improvement plan from PECAT. We also propose that applicants that plan to use grant-related funds, including Federal and non-Federal matching funds to create, update, or enhance their nutrition instruction in health education be required to complete the healthy eating module of the Health Education Curriculum Analysis Tool (HECAT). Applicants must use the curriculum improvement plan from the PECAT to identify curricular changes to be addressed during the funding period. Applicants must also describe how the HECAT assessment would be used to guide nutrition instruction curricular changes. If an applicant is not proposing to use grant-related funds for physical education or nutrition instruction curricula, it would not need to use these tools.

Proposed Requirement 6—Equipment Purchases

Background:

We have found that some PEP grantees have used a significant portion of their PEP funds to purchase physical education equipment but that the use of this equipment is not always tied to a quality physical education program. Although equipment purchases may be essential to the project, these purchases alone do not constitute a comprehensive program. We have also found that PEP grantees have not always tied the use of that equipment to their physical education curriculum or physical education State standards. Because the needs of students or staff may not have been considered before equipment was purchased, we have found that equipment purchased under this program did not always complement ongoing instructional efforts, was not part of a sustainable program, and was sometimes used neither throughout the duration of the PEP program nor after the grant period ended.

Proposed Requirement:

We propose that purchases of equipment with PEP funds or related to grant activities (including equipment purchased with funds offered to meet the program's matching requirement) must be aligned with the curricular components of the applicant's physical education and nutrition program. Applicants must commit to aligning the students' use of the equipment with PEP elements applicable to their projects, identified in priority 1, and any applicable curricula by signing a Program Specific Assurance. Applicants that do not submit a Program Specific Assurance signed by the applicant's Authorized Representative would be ineligible for the competition.

Proposed Requirement 7—Increasing Transparency and Accountability

Background:

Another critical component to program success is ensuring that projects are meeting their desired goals by increasing "transparency" and accountability to parents, students, policy-makers, and the community. Regularly sharing information with parents about the work of the grantee would help them understand and reinforce lessons learned before, during, and after school, and would encourage students to make healthy choices.

Sharing information with local policy-makers should result in increased accountability and help policy-makers understand the challenges children face in making healthy choices. This increased level of accountability, in turn, would encourage local policy-makers to invest in promising programs and make budget and policy decisions that would complement, support, and enhance each project's efforts.

Program information provided to the community would include program-related measures related to the changes made by the LEAs or CBOs and could potentially be compared to those made in other communities. Additionally, reports to parents of students under 18 years old would include information on the progress of their child on measures related to that child's fitness and nutrition.

Proposed Requirement:

We propose that grantees create or use existing reporting mechanisms to provide information on students' progress, in the aggregate, on the key program indicators, as described in this notice and required under the Government Performance and Results Act, as well as on any unique project-level measures proposed in the application. Grantees that are educational agencies or institutions would be subject to applicable Federal, State, and local privacy provisions, including the Family Educational Rights and Privacy Act—a law that generally prohibits the non-consensual disclosure of personally identifiable information in a student's education record. All grantees must comply with applicable Federal, State, and local privacy provisions. The aggregate-level information should be easily accessible by the public, such as posted on the grantee's or a partner's Web site. Applicants would be required to describe in their application the planned method for reporting.

Applicants would be required to commit to reporting information to the public, including parents of students under 18 years old, by signing a Program Specific Assurance. Applicants that do not submit a Program Specific Assurance signed by the applicant's Authorized Representative would be ineligible for the competition.

Proposed Requirement 8—Participation in a National Evaluation

Background:

We have funded nine cohorts under the PEP program but have not yet undertaken a national evaluation to assess how the program has been implemented across sites. In 2008, the Department initiated a national evaluation effort to assess the PEP's processes and outcomes. The evaluation will use the grantees funded in FY 2010 for a national evaluation, and will follow this cohort through at least two years of implementation. We continue to collaborate with the contractor to identify an appropriate study design, which will be developed based on the final priorities and design of the FY 2010 PEP competition.

Proposed Requirement:

The applicant must provide documentation of its commitment to participate in the U.S. Department of Education's evaluation. An LEA applicant must include a letter from the research office or research board approving its participation in the evaluation (if approval is needed), and

a letter from the Authorized Representative agreeing to participate in the evaluation.

Proposed Requirement 9—Required Performance Measures and Data Collection Methodology

Background:

Since 2006, PEP grantees have been required to report on two performance measures, established under the Government Performance and Results Act (GPRA). The PEP GPRA measures have been: (1) The percentage of elementary school students who engage in 150 minutes of moderate to vigorous physical activity per week; and (2) The percentage of middle and/or high school students who engage in 225 minutes of moderate to vigorous physical activity per week.

Although these GPRA measures are a marked improvement from past GPRA measures under this program, they are not consistent with the physical activity guidelines that recommend 60 minutes of daily physical activity for children and adolescents.[23] In addition, we have also found that grantees collect and report their data in a variety of ways, which makes data aggregation and comparability across and between cohorts difficult.

The proposed changes to the PEP program, as described in this notice, would require a broader set of indicators to reflect the full range of activities to be undertaken. Therefore, we propose new GPRA measures that would provide comprehensive data on the following: 1. Physical activity levels; 2. Fitness levels; and 3. Nutritional habits of students involved in the PEP program. The proposed measures would require that districts aggregate data at the district and school level to facilitate program evaluation, rather than the assessment of individual students.

In addition to proposing new GPRA performance measures, this notice proposes a standard data collection methodology for each new proposed GPRA measure. The data collection methodologies proposed here are considered valid by researchers in the fields of physical activity and nutrition.

The first new GPRA measure is the extent to which grantees increase the number of students who are physically active for at least 60 minutes a day. The proposed methods for assessing this proposed GPRA measure are pedometry for students in grades K–12 and an additional self-report questionnaire for students in grades 5–12. Students would wear pedometers all day for four consecutive days (K–6), and eight consecutive days for students in 7th–12th grades.[24] One of the measurement days must be a weekend day. This data collection methodology is a valid and reliable protocol for assessing children's physical activity throughout the day, and has been used for many years in many settings with large numbers of students.[25] [26] [27] Using pedometers would provide the number of steps students accumulate during the day and the number of minutes of students' activity during the day, using specific formulas to convert steps counts into minutes of physical activity. In addition, students in grades 5–12 would complete the three-day physical activity recall. This self-report would ask students to evaluate their activity based on each 30-minute period between 7:00 a.m. and 10:30 p.m. based on activity type, intensity, and length of time. A self-report measure is a reliable, cost-effective means of gathering information from participants in this age range and provides important qualitative information that can be used to inform or modify the physical activity program.

The second proposed GPRA performance measure is student fitness levels. We propose that grantees measure fitness levels by assessing a student's cardiorespiratory or aerobic capacity fitness using the 20-meter shuttle run. Specifically, grantees would assess the number of students in middle and high school who achieve age-appropriate cardiovascular fitness levels using the 20-meter shuttle run. Researchers have determined that this type of assessment reliably measures a student's cardiovascular fitness, a key health and fitness measure.

The third proposed GPRA measure would focus on students' nutritional habits by assessing daily fruit and vegetable consumption. This measure would not only reflect changes in students' behaviors and their internalization of lessons learned, but potentially also changes to the offerings available to students as a result of the PEP program's focus on changes to nutrition policies.

We propose that grantees assess nutritional habits for high school students by administering five designated fruit and vegetable questions from the Youth Risk Behavior Survey.[28] We are seeking comment on how grantees could accurately assess nutritional habits of elementary and middle school students.

We propose that all grantees use the methodologies described so that we can collect consistent data from all grantees about program success and improve the quality of the PEP program evaluation. In addition, Department staff would be more easily able to provide technical assistance to grantees on the proposed data collection methodologies.

Many districts are already using these indicators and methodologies. If LEAs or communities are using the methodologies described, they may use their existing systems to capture and report on these indicators for their proposed PEP project.

Proposed Requirement:

Grantees would be required to collect and report data on three GPRA measures using uniform data collection methods. Measure one would assess physical activity levels: The number of students that engage in 60 minutes of daily physical activity. Grantees would be required to use pedometers for students in grades K–12 and an additional 3-Day Physical Activity Recall (3DPAR) instrument to collect data on students in grades 5–12.

Measure two would focus on student fitness levels: The number of students who achieve age-appropriate cardiovascular fitness levels. Grantees would be required to use the 20-meter shuttle run to assess cardiovascular fitness in middle and high school students.

Measure three would require grantees to measure the percentage of students

[23] Department of Health and Human Services. Office of Disease Prevention and Health Promotion. *2008 Physical Activity Guidelines for Americans. Washington,* DC, 2008.

[24] Students will be instructed on how to wear the pedometer and will be asked to place the pedometer on in the morning and remove the pedometer in the evening, during bathing/showering, or when they are swimming. Students can be introduced to pedometers and provided an orientation to pedometers during physical education. This phase exposes them to how pedometers work, allows them to explore moving with a pedometer, provides them the opportunity to put the pedometer on, and allows the PE teacher or physical activity leader to emphasize that pedometers are like any PE equipment that must be returned.

[25] Craig C, Tudor-Locke C, Cragg S, Cameron C. Process and treatment of pedometer data collection for youth: The Canadian Physical Activity Levels among Youth Study. *Med. Sci. Sports Exerc.* 2010; 42(3): 430–435.

[26] Tudor-Locke C, Lee S, Morgan C, Beighle A, Pangrazi R. Children's pedometer-determined physical activity during the segmented school day. *Med. Sci. Sports Exerc.* 2006; 38(10): 1732–1738.

[27] LeMasurier G, Beighle A, Corbin C, Barst P, Morgan C, Pangrazi R, Wilde B, Vincent S. Pedometer-determined physical activity levels of youth. *Journal of Physical Activity and Health.* 2005; 2: 159–168.

[28] The Centers for Disease Control and Prevention, Youth Risk Behavior Survey (YRBS). More information on the YRBS can be found at *http://www.cdc.gov/healthyyouth.*

served by the grant who consumed fruit two or more times per day and vegetables three or more times per day. Programs serving high school students would be required to use the nutrition-related questions from the Youth Risk Behavior Survey to determine the number of students who meet these goals. We request comment on how grantees serving elementary and/or middle students might assess nutritional intake by, for example, using a set of questions similar to those in the Youth Risk Behavior Survey, to assess nutritional intake of these students. Depending on the comments received, we may recommend or require a specific methodology to be used with elementary and middle school students to assess nutritional intake for these students.

For each measure, grantees would be required to collect and aggregate data from four discrete data collection periods throughout each year. During the first year, grantees would have an additional data collection period prior to program implementation to collect baseline data.

Proposed Definitions:

Background:

We are proposing the following definitions to describe the specific and appropriate partners whose participation would be most likely to result in enhanced program implementation and sustainability and that applicants will designate in their applications.

Proposed Definitions:

The Assistant Deputy Secretary for Safe and Drug-Free Schools proposes the following definition for this program.

We may apply one or more of these definitions in any year in which this program is in effect.

Organization supporting nutrition or healthy eating means a local public or private non-profit school, health-related professional organization, or local business that has demonstrated interest and efforts in promoting student health or nutrition. This term would include, but not be limited to LEAs (particularly an LEA's school food or child nutrition director), grocery stores, supermarkets, restaurants, corner stores, farmers' markets, farms, other private businesses, hospitals, institutions of higher education, Cooperative Extension Service and 4H Clubs, and community gardening organizations, when such entities have demonstrated a clear intent to promote student health and nutrition or have made tangible efforts to do so. This definition would not include representatives from trade associations or representatives from any organization representing any producers or marketers of food or beverage product(s).

Head of local government means the party responsible for the civic functioning of the county, city, town, or municipality and includes, but is not limited to, the mayor, city manager, or county executive.

Local public health entity means an administrative or service unit of local or State government concerned with health and carrying some responsibility for the health of a jurisdiction smaller than the State (except that for Rhode Island and Hawaii, because these States' health departments operate on behalf of local public health and have no sub-State units, the definition would apply to the State health department).

Final Priorities, Requirements, and Definitions:

We will announce the final priorities, requirements, and definitions in a notice in the **Federal Register.** We will determine the final priorities, requirements, and definitions after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, and definitions, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priorities, requirements, and definitions justify the costs.

We have determined, also, that this proposed regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Discussion of Costs and Benefits: The potential costs associated with the proposed priorities and requirements are minimal while the potential benefits are significant.

Grantees may anticipate costs in developing their partnerships and time spent in developing infrastructure for supporting integrated, comprehensive programming and policies, and building data and accountability systems and processes. Additional costs associated with developing a structure and system for conducting and analyzing BMI include identifying staff who can conduct the assessment, creating and implementing processes, and identifying methods for dissemination.

The benefits include creating a comprehensive, coordinated program that is likely to be sustained after the end of the project period. Creating and leveraging community partners will allow grantees to amplify their project efforts and to increase the likelihood that the activities will become institutionalized. Grantees and the Department will also benefit from the improved focus on outcomes and accountability by uniformly tracking student-level indicators over time.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action will affect are small LEAs or nonprofit organizations applying for and receiving funds under this program. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, and definitions would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the proposed priorities, requirements, and definitions would impose no burden on small entities in general. Eligible applicants would determine whether to apply for funds, and have the opportunity to weigh the requirements for preparing applications, and any associated costs, against the likelihood of receiving funding and the requirements for implementing projects under the program. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to spur improvement in physical education planning without additional Federal funding.

The U.S. Small Business Administration Size Standards defines as "small entities" for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. The Urban Institute's National Center for Charitable Statistics reported that of 203,635 nonprofit organizations that had an educational mission and reported revenue to the IRS by July 2009, 200,342 (or about 98 percent) had revenues of less than $5 million. In addition, there are 12,484 LEAs in the country that meet the definition of small entity. However, given program history, the Secretary believes that only a small number of these entities would be interested in applying for funds under this program, thus reducing the likelihood that the proposals contained in this notice would have a significant economic impact on small entities.

Further, the proposed action may help small entities determine whether they have the interest, need, or capacity to implement activities under the program and, thus, prevent small entities that do not have such an interest, need, and capacity from absorbing the burden of applying.

This proposed regulatory action would not have a significant economic impact on small entities once they receive a grant because they would be able to meet the costs of compliance using the funds provided under this program and with any funds they might obtain from external parties to fulfill the matching requirements of the program.

The Secretary invites comments from small nonprofit organizations and small LEAs as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, requests evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: http://*www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 11, 2010.

Kevin Jennings,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 2010–5736 Filed 3–15–10; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9124–3]

FY2010 Supplemental Funding for Brownfields Revolving Loan Fund (RLF) Grantees

Correction

In notice document 2010–4965 beginning on page 10793 in the issue of Tuesday, March 9, 2010, make the following correction:

On page 10793, in the second column, under **SUMMARY**, in the second paragraph, in the sixth line "insert date 30 days from date of publication" should read "April 8, 2010".

[FR Doc. C1–2010–4965 Filed 3–15–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on March 23, 2010, at the headquarters of the IEA in Paris, France, in connection with a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market on March 23, and on March 24 in connection with a meeting of the SEQ on March 24.

DATES: March 23–24, 2010.

ADDRESSES: 9, rue de la Fédération, Paris, France.

FOR FURTHER INFORMATION CONTACT: Diana D. Clark, Assistant General for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–3417.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

Meetings of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on March 23, 2010, beginning at 9:30 a.m. and on March 24 beginning at 9:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) on March 23 beginning at 9:30 a.m. at the same location, and at a meeting of the SEQ on March 24 beginning at 9:30 a.m. The IAB will also hold a preparatory meeting among company representatives at the same location at 8:30 a.m. on March 24. The agenda for this preparatory meeting is to review the agenda for the SEQ meeting commencing at 9:30 a.m. on March 24 and to discuss the possibility of disbanding the Industry Supply Advisory Group (ISAG).

The agenda of the joint SEQ/SOM meeting on March 23 is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

1. Adoption of the Agenda.
2. The 2011–2012 Program of Work for the SOM and SEQ.
3. The Current Oil Market Situation.
4. Preparation for the International Energy Forum Meeting (Cancun, Mexico).
5. Update on the Gas Market.
6. Reports on Workshops Held Abroad.

—Workshop on Price Formation (Tokyo, February 2010)
—Global Oil and Gas Market Dynamics and Outlook (Beijing, October 2009)
—Global Oil Markets and Security (New Delhi, October 2009)

7. Report on Study on Fuel Switching.
8. Report on Study on Natural Gas Liquids.

9. Cooperation with Non-Member Countries During Supply Disruptions.

10. Other Business.

The agenda of the SEQ meeting on March 24, 2009, is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Installation of New Chair.

2. Adoption of the Agenda.

3. Approval of the Summary Record of the 128th Meeting.

—Guidelines for Demand Restraint Measures

—Review of IEA Procedures for Collective Actions

4. Status of Compliance with IEP Stockholding Commitments.

5. Emergency Response Review Program.

—Schedule of Emergency Response Reviews

—Emergency Response Review of the Czech Republic

—Emergency Response Review of the United Kingdom

6. Emergency Response Exercise 5 (ERE 5).

—Report on the ERE 5 Exercise in Capitals

7. Emergency Policy for Natural Gas.

—Possible Questionnaire on Gas Security

—The Use of Oil Stocks During Gas Disruptions

8. Emergency Response Review Program.

—Emergency Response Review of New Zealand

—Questionnaire Response of Greece

9. Emergency Response Measures.

—Draft Outline for Workshop on Industry Stock Release

10. Policy and Other Developments in Member Countries.

—Belgium

—France

—Japan

—United States

11. Activities with International Organizations and Non-Member Countries.

—Proposal for an Emergency Response Assessment (ERA) in Thailand

—Proposal for an ERA in Chile

—Update on APEC Energy Working Group

—Report on China

—Report on Indonesia

12. Report from the Industry Advisory Board.

—The Future of the Industry Supply Advisory Group (ISAG)

13. Documents for Information.

—Emergency Reserve Situation of IEA Member Countries on January 1, 2010

—Base Period Final Consumption: 1Q 2009–4Q 2009

—Monthly Oil Statistics: December 2009

—Updated Emergency Contacts List

—Panel of Arbitrators: Nomination from Poland

13. Other Business.

—Tentative Schedule of Meetings for 2010:

—June 29—Joint SEQ/SOM Meeting

—June 30 (morning)—Workshop on the Effective Release of Industry Stocks and Tickets

—June 30 (afternoon)—July 1: 130th Meeting of the SEQ

—November 16 (morning)—SOM Meeting

—November 16 (afternoon)—Training Session ERE 5

—November 17–18—ERE 5

—November 19—131st Meeting of the SEQ

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, DC, March 11, 2010.

Diana D. Clark,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 2010–5568 Filed 3–15–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13646–000]

The Power Company, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

March 9, 2010.

On December 21, 2009, The Power Company, Inc. filed an application, pursuant to Section 4(f) of the Federal Power Act, proposing to study the feasibility of the Damariscotta River Hydrokinetic Tidal Energy Project No. 13646, to be located on the Damariscotta River, in Lincoln County, Maine.

The proposed project would consist of: (1) Approximately 10–20 Encurrent hydrokinetic generator units with a total installed capacity of 250 kilowatts; (2) a new 100 to 500-foot-long, 220-volt transmission line; and (3) appurtenant facilities. The project would have an estimated annual generation of 657 megawatt-hours.

Applicant Contact: Richard Simon, 598 Augusta Road, Washington, ME 04574, (207) 845–6100.

FERC Contact: Brandon Cherry, (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.*

Enter the docket number (P–13646) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5645 Filed 3–15–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings #1

March 8, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–49–000.

Applicants: GWF Energy LLC.

Description: GWF Energy LLC submits an application for disposition of jurisdictional facilities.

Filed Date: 03/04/2010.

Accession Number: 20100305–0213.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2948–018; ER00–2918–017; ER01–1654–020; ER01–556–016; ER02–2567–017; ER04–485–015; ER05–261–010; ER05–728–010; ER07–244–009; ER07–245–009; ER07–247–009; ER10–346–003.

Applicants: Baltimore Gas and Electric Company; Constellation Pwr Source Generation LLC; Nine Mile Point Nuclear Station, LLC; Handsome Lake Energy, LLC; Constellation NewEnergy, Inc.; R.E. Ginna Nuclear Power Plant, LLC; Constellation Energy Commodities Group; Constellation Energy Commodities Group Maine; Raven Three, LLC; Raven Two, LLC; Raven One, LLC; Calvert Cliffs Nuclear Power Plant LLC.

Description: Calvert Cliffs Nuclear Power Plant submits Substitute First Revised Sheet 1 et al. to its Second Revised FERC Electric Tariff No. 1 et al.

Filed Date: 03/05/2010.

Accession Number: 20100308–0202.

Comment Date: 5 p.m. Eastern Time on Friday, March 26, 2010.

Docket Numbers: ER01–2217–008; ER02–2263–010; ER06–736–002; ER08–337–005; ER08–931–004; ER09–712–002.

Applicants: High Lonesome Mesa, LLC, Midway Sunset Cogeneration Company, Southern California Edison Company, Sunrise Power Company, LLC; Walnut Creek Energy, LLC, Watson Cogeneration Company.

Description: Southwest EIX MBR Affiliates submits supplements and corrects its 12/22/09 triennial filing.

Filed Date: 03/08/2010.

Accession Number: 20100308–0092.

Comment Date: 5 p.m. Eastern Time on Thursday, March 18, 2010.

Docket Numbers: ER06–560–007.

Applicants: Credit Suisse Energy LLC.

Description: Notice of Non-Material Change in Status of Credit Suisse Energy LLC.

Filed Date: 03/05/2010.

Accession Number: 20100305–5161.

Comment Date: 5 p.m. Eastern Time on Friday, March 26, 2010.

Docket Numbers: ER06–1355–006; ER09–1400–002; ER09–1549–002; ER09–172–006; ER09–173–006; ER09–174–004.

Applicants: Canandaigua Power Partners I, LLC; Evergreen Wind Power, LLC, Canandaigua Power Partners, LLC, Evergreen Wind Power V, LLC, Canandaigua Power Partners II, LLC, Milford Wind Corridor Phase I, LLC, First Wind Energy Marketing, LLC.

Description: Canandaigua Power Partners, LLC, et al. Updated Information.

Filed Date: 03/05/2010.

Accession Number: 20100305–5102.

Comment Date: 5 p.m. Eastern Time on Friday, March 26, 2010.

Docket Numbers: ER07–1358–015; ER00–2885–029; ER01–2765–028; ER02–2102–028; ER05–1232–025; ER09–1141–008.

Applicants: J.P. Morgan Ventures Energy Corporation, BE Louisiana LLC, Cedar Brakes I, LLC, Utility Contract Funding, LLC, Cedar Brakes II, LLC, J.P. Morgan Commodities Canada Corporation.

Description: BE Louisiana LLC, et al. Notice of Change In Status.

Filed Date: 03/04/2010.

Accession Number: 20100304–5080.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

Docket Numbers: ER10–502–001.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits an errata to the 12/24/09 filing of the Participation Power Agreement with Kansas Power Pool.

Filed Date: 03/05/2010.

Accession Number: 20100305–0215.

Comment Date: 5 p.m. Eastern Time on Friday, March 26, 2010.

Docket Numbers: ER10–576–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits amendment to its 1/11/2010 filing to amend Schedule 10, et al.

Filed Date: 03/05/2010.

Accession Number: 20100308–0205.

Comment Date: 5 p.m. Eastern Time on Friday, March 26, 2010.

Docket Numbers: ER10–840–000.

Applicants: Electric Energy, Inc.

Description: Electric Energy, Inc submits Interconnection Agreement with Tennessee Valley Authority et al.

Filed Date: 03/05/2010.

Accession Number: 20100305–0225.

Comment Date: 5 p.m. Eastern Time on Friday, March 26, 2010.

Docket Numbers: ER10–841–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits proposed revisions to its Open Access Transmission Tariff.

Filed Date: 03/05/2010.

Accession Number: 20100305–0226.

Comment Date: 5 p.m. Eastern Time on Friday, March 26, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–5650 Filed 3–15–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 5, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–3168–011; ER04–994–007; ER04–659–012; ER04–657–012; ER04–660–012.

Applicants: Astoria Generating Company, LP, Boston Generating, LLC, Fore River Development, LLC, Mystic I, LLC, Mystic Development, LLC.

Description: Supplement to Clarify Quarterly Report Pursuant to 18 CFR Section 35.42(d) of Astoria Generating Company, LP, *et al.*

Filed Date: 03/04/2010.

Accession Number: 20100304–5081.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

Docket Numbers: ER08–1317–007.

Applicants: California Independent System Operator Corporation.

Description: Q4 2009 Quarterly Report of the California Independent System Operator Corporation.

Filed Date: 01/29/2010.

Accession Number: 20100129–5183.

Comment Date: 5 p.m. Eastern Time on Monday, March 15, 2010.

Docket Numbers: ER09–1142–006.

Applicants: New York Independent System Operator Inc.

Description: New York Independent System Operator, Inc submits a compliance filing.

Filed Date: 02/25/2010.

Accession Number: 20100303–0216.

Comment Date: 5 p.m. Eastern Time on Thursday, March 18, 2010.

Docket Numbers: ER10–319–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits errata to 3/1/2010 ISO's response.

Filed Date: 03/02/2010.

Accession Number: 20100303–0033.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 23, 2010.

Docket Numbers: ER10–386–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Sub Second Sheet No. 800 *et al.* to FERC Electric Tariff, Fourth Revised Volume No. 1.

Filed Date: 03/04/2010.

Accession Number: 20100305–0205.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

Docket Numbers: ER10–573–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits Compliance filing.

Filed Date: 03/04/2010.

Accession Number: 20100305–0204.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

Docket Numbers: ER10–642–002; ER10–643–002.

Applicants: Algonquin Tinker Gen Co., Algonquin Northern Maine Gen Co.

Description: Algonquin Tinker Gen Co *et al.* submits the tariff sheets as Exhibits A (red-lines) and B (clean) with revised tariff number and sheet designations.

Filed Date: 03/04/2010.

Accession Number: 20100305–0203.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

Docket Numbers: ER10–825–000.

Applicants: Day County Wind, LLC.

Description: Day County Wind, LLC submits application for authorization to make market-based sales of energy, capacity and certain ancillary services under a market-based rate tariff.

Filed Date: 03/04/2010.

Accession Number: 20100305–0211.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

Docket Numbers: ER10–838–000.

Applicants: WSPP Inc.

Description: WSPP, Inc submits revised pages to Schedule Q of the WSPP Agreement to update the cost-based rate schedule of Arizona Public Service Company.

Filed Date: 03/04/2010.

Accession Number: 20100305–0202.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

Docket Numbers: ER10–839–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Facilities Construction Agreement among Otter Tail Power Company *et al.*

Filed Date: 03/04/2010.

Accession Number: 20100305–0206.

Comment Date: 5 p.m. Eastern Time on Thursday, March 25, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–5651 Filed 3–15–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–45–000]

Midwest Independent Transmission System Operator, Inc., Complainant v. PJM Interconnection, LLC Respondent; Notice of Complaint

March 9, 2010.

Take notice that on March 8, 2010, pursuant to section 206 of the Rules and Practice and Procedure of the Federal

Energy Regulatory Commission (Commission), 18 CFR 385.206 and sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824(e), 825(e), and 825(h), Midwest Independent Transmission System Opeator, Inc. (Complainant) filed a formal complaint against PJM Interconnection, LLC (Respondent) alleging that the Respondent is in violation of the redispatch requirement under the Joint Operating Agreement between parties.

The Complainant certifies that a copy of the complaint has been served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 29, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5643 Filed 3–15–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–46–000]

Midwest Independent Transmission System Operator, Inc. Complainant v PJM Interconnection, LLC Respondent; Notice of Complaint

March 9, 2010.

Take notice that on March 8, 2010, pursuant to Rule 206 of the Rules of Practice and Procedure, 18 CFR 385.206 (2009), and sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), and 825(h), Midwest Independent Transmission System Operator, Inc. (Complainant) filed a formal complaint against PJM Interconnection, LLC (Respondent). Complainant alleges that Respondent underreported market flows under the Joint Operating Agreement, which Complainant argues, caused net underpayment of market-to-market settlement cost by the Respondent.

Complainant states that a copy of the complaint has been served on PJM.

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 March 29, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5644 Filed 3–15–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI10–8–000]

City of Tenakee Springs; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

March 9, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI10–8–000.

c. *Date Filed:* March 1, 2010.

d. *Applicant:* City of Tenakee Springs.

e. *Name of Project:* Indian River Hydroelectric Project.

f. *Location:* The proposed Indian River Hydroelectric Project will be located on the Indian River near the City of Tenakee Springs, on Chichagof Island, Sitka Borough, Alaska, affecting T. 47 S, R. 63 E, secs. 15, 21, and 22, Copper River Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Jeff Groves, 1503 W. 33rd Ave., #310, Anchorage, AK 99503; telephone: (907) 258–2420; FAX: (907) 258–2419; e-mail: *joel@polarconsult.net.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* April 9, 2010.

All documents may be filed electronically via the Internet. 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. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go

to the Commission's Web site at *http://www.ferc.gov.filing-comments.asp.*

Please include the docket number (DI10–8–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed run-of-river Indian River Hydroelectric Project will consist of: (1) A 6-foot-high, 30-foot-wide diversion structure, to be located at river mile (RM) 0.85; (2) a 40-inch-diameter, 1,550-foot-long penstock; (3) a 30-foot-wide, 40-foot-long, wood frame powerhouse, located at RM 0.55, housing a 250 kW turbine-synchronous generator; (4) a 50-foot-long tailrace returning flows back into Indian River; (5) a 5,900-foot-long transmission line; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Locations of the Application: Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (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. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5646 Filed 3–15–10; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

Sunshine Act Meeting Notice

March 11, 2010.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 18, 2010, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda, * **Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

957TH—MEETING; REGULAR MEETING, MARCH 18, 2010, 10 A.M.

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	RM10–17–000	Demand Response Compensation in Organized Wholesale Energy Markets.
	EL09–68–000	PJM Interconnection, L.L.C.
E–2	RM06–16–009	Mandatory Reliability Standards for the Bulk Power System.
E–3	RM06–16–010	Mandatory Reliability Standards for the Bulk Power System.
E–4	RM06–22–008	Mandatory Reliability Standards for Critical Infrastructure Protection.
E–5	RM08–13–000	Transmission Relay Loadability Reliability Standard.
E–6	RM09–13–000	Time Error Correction Reliability Standard.
E–7	RM09–15–000	Version One Regional Reliability Standard for Resource and Demand Balancing.
E–8	RM09–18–000	Revision to Electric Reliability Organization Definition of Bulk Electric System.
E–9	RM10–6–000	Interpretation of Transmission Planning Reliability Standard.

957TH—MEETING; REGULAR MEETING, MARCH 18, 2010, 10 A.M.—Continued

Item No.	Docket No.	Company
E–10	RR09–6–000	North American Electric Reliability Corporation.
E–11	EL10–22–000	Tres Amigas LLC.
E–12	ER10–396–000	Tres Amigas LLC.
E–13	EL07–39–004 EL07–39–005 ER08–695–003 ER08–695–002	New York Independent System Operator, Inc.
E–14	ER09–1273–000	Westar Energy, Inc.
E–15	RM04–7–008	Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities.
E–16	OMITTED	
E–17	ER10–722–000	Pittsfield Generating Company, L.P. and Pawtucket Power Associates, L.P.
E–18	EL00–95–238	San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and California Power Exchange Corporation.
	EL00–98–222	*Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation.*
	EL01–10–053	*Puget Sound Energy, Inc.* v. *Sellers of Energy and/or Capacity.*
	IN03–10–054	Investigation of Anomalous Bidding Behavior and Practices in Western Markets.
	PA02–2–070	Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices.
	EL03–137–018	American Electric Power Service Corporation.
	EL03–180–047	Enron Power Marketing, Inc. and Enron Energy Services, Inc.
	ER03–746–019	California Independent System Operator Corporation.
	EL02–71–026	State of California, ex rel. Bill Lockyer, Attorney General of the State of California v. British Columbia Power Exchange Corporation.
	EL03–144–005	Cargill-Alliant, LLC.
	EL09–56–003	*People of the State of California, ex rel. Edmund G. Brown Jr., Attorney General of the State of California, Complainant* v. *Powerex Corp.*
E–19	ER09–745–001	Baltimore Gas and Electric Company.
E–20	EL00–95–239	*San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and California Power Exchange Corporation.*
	EL00–98–223	Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation.
	EL01–10–054	*Puget Sound Energy, Inc.* v. *Sellers of Energy and/or Capacity.*
	IN03–10–055	Investigation of Anomalous Bidding Behavior and Practices in Western Markets.
	PA02–2–071	Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices.
	EL03–137–019	American Electric Power Service Corporation.
	EL03–180–048	Enron Power Marketing, Inc. and Enron Energy Services, Inc.
	ER03–746–020	California Independent System Operator Corporation.
	EL03–157–008	Los Angeles Department of Water and Power.
E–21	EL00–95–237	*San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and California Power Exchange Corporation.*
	EL00–98–221	Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation.
	EL01–10–052	*Puget Sound Energy, Inc.* v. *Sellers of Energy and/or Capacity.*
	IN03–10–057	Investigation of Anomalous Bidding Behavior and Practices in Western Markets.
	PA02–2–069	Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices.
	EL03–137–017	American Electric Power Service Corporation.
	EL03–180–046	Enron Power Marketing, Inc. and Enron Energy Services, Inc.
	ER03–746–018	California Independent System Operator Corporation.
	EL02–71–025	State of California, ex rel. Bill Lockyer.
	EL03–198–007	PECO ENERGY Company.
	ER05–167–004	California Power Exchange Corporation.
	ER07–861–002	California Power Exchange Corporation.
E–22	EL00–95–240	*San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and California Power Exchange Corporation.*
	EL00–98–224	Investigation of Practices of California Independent System Operator Corporation & California Power Exchange Corporation.
	EL01–10–055	*Puget Sound Energy, Inc.* v. *Sellers of Energy and/or Capacity in the Pacific Northwest.*
	IN03–10–056	Investigation of Anomalous Bidding Behavior and Practices in the Western Markets.
	PA02–2–072	Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices.
	ER03–746–021	California Independent System Operator Corporation.
	EL02–71–027	State of California, ex rel. Bill Lockyer, Attorney General of the State of California v. British Columbia Power Exchange Corporation.

957TH—MEETING; REGULAR MEETING, MARCH 18, 2010, 10 A.M.—Continued

Item No.	Docket No.	Company
	EL09–56–004	*People of the State of California, ex rel. Edmund G. Brown Jr., Attorney General of the State of California, Complainant* v. *Powerex Corp.*
E–23	RD10–3–000	North American Electric Reliability Corporation.
E–24	RM06–22–011	Mandatory Reliability Standards for Critical Infrastructure Protection.
E–25	QM10–3–000	New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation.
E–26	OA10–4–000	Evergreen Wind Power V, LLC. Evergreen Wind Power III, LLC. Stetson Wind II, LLC. Champlain Wind, LLC. Evergreen Gen Lead, LLC. Canandaigua Power Partners, LLC. Canandaigua Power Partners II, LLC.
	ER09–1549–000	First Wind Energy Marketing, LLC.
E–27	ER02–2001–014	Electric Quarterly Reports.
	ER07–514–000	G&G Energy, Inc.
	ER07–177–000	NCSU Energy, Inc.
	ER98–4333–000	Primary Power Marketing L.L.C.
	ER05–1020–000	WASP Energy, LLC.
E–28	ER09–1546–001	ISO New England Inc. and New England Power Pool.
E–29	OMITTED	
E–30	OMITTED	
E–31	RM09–23–000	Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility.
E–32	EL09–71–000	Resale Power Group of Iowa and WPPI Energy.
E–33	ER08–413–002	Startrans IO, L.L.C.
	Multi-Industry	
M–1	PL10–4–000	Policy Statement on Penalty Guidelines.
	Gas	
G–1	RM96–1–030	Standards for Business Practices for Interstate.
	RM96–1–036	Natural Gas Pipelines.
G–2	RP99–480–026	Texas Eastern Transmission, LP.
	RP99–480–027	
	RP09–143–001	
	RP09–143–002	
G–3	RP10–30–000	Texas Eastern Transmission, LP.
G–4	OMITTED	
G–5	RP09–995–001	Sea Robin Pipeline Company, LLC.
	Hydro	
H–1	P–13366–001	City of Angoon, Alaska.
	P–13364–001	Petersburg Municipal Power and Light.
	P–13363–001	City and Borough of Wrangell, Alaska.
	P–12619–003	Cascade Creek, LLC.
H–2	P–382–076	Southern California Edison Company.
	Certificates	
C–1	CP09–36–002	Southern Natural Gas Company.
	CP09–40–001	Southeast Supply Header, LLC and Southern Natural Gas Company.
	AD10–3–000	Accrual of Allowance for Funds Used During Construction.
C–2	CP09–17–001	Florida Gas Transmission Company, LLC.
	AC08–161–002	
	AD10–3–000	Accrual of Allowance for Funds Used During Constrution.
C–3	CP10–4–000	Gulfstream Natural Gas System, L.L.C.
C–4	RM05–1–002	Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transmission Projects.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast through the Capitol Connection service.

[FR Doc. 2010–5774 Filed 3–12–10; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Technical Conference

March 9, 2010.

As has been previously noticed, in Order No. 714,[1] the Commission adopted regulations requiring tariff and tariff related filings to be made electronically starting April 1, 2010. One of the required electronic tariff filing's data elements is the *Type of Filing Code.*

Several technical conferences have been held to address issues related to the *Type of Filing Codes* as they will affect Natural Gas Act, Natural Gas Policy Act and Interstate Commerce Act pipelines as well as Federal Power Act Public utilities. Specifically, these meetings have addressed the tariff filing definitions used for electronic filings and the attachments that are required, in accordance with the Commission's regulations, for each tariff filing type.

Take notice that a final technical conference on *Type of Filing Codes* will be held to address specific issues related to Federal Power Marketing Authorities on March 16, 2010 from 2 p.m.–3:30 p.m. EST. Teleconferencing will be available for the public. The meetings are open to the public. No preregistration or participation fee is required. The number for teleconferencing in these meetings will be posted on *http://www.ferc.gov/docs-filing/etariff.asp* and an RSS alert of the posting will be issued. The meeting will be held at the Commission's offices, 888 First Street, NE., Washington, DC. All interested persons are invited to participate by phone or in person.

The documents that will be discussed are located at *http://www.ferc.gov/docs-filing/etariff.asp*.

FERC meetings 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.

For more information about these conferences, please contact Keith Pierce, Office of Energy Market Regulation at (202) 502–8525 or send an e-mail to *ETariff@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–5642 Filed 3–15–10; 8:45 am]

BILLING CODE 6717–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 25, 2010, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- January 21, 2010 (Regular)

B. Business Reports

- FCSIC Financial Reports
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Consideration of Allocated Insurance Reserves Accounts
- Procedures for Control of Accountable Property
- Presentation of 2009 Audit Results

Closed Sesson

- FCSIC Report on System Performance

Executive Session

- Executive Session of the FCSIC Board Audit Committee with the External Auditor

Dated: March 10, 2010.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2010–5733 Filed 3–15–10; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted to the Office of Management and Budget for Review and Approval, Comments Requested

March 10, 2010.

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, 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; (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 and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it

[1] *Electronic Tariff Filings,* Order No. 714, 73 FR 57,515 (Oct. 3, 2008), 124 FERC ¶ 61,270, FERC Stats. & Regs [Regulations Preambles] ¶ 31,276 (2008) (Sept. 19, 2008).

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.

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DATES: Persons wishing to comment on this information collection should submit comments by April 15, 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 email to Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), via email to Cathy.Williams@fcc.gov and to PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0849.

Title: Commercial Availability of Navigation Devices, CS Docket 97–80.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 958 respondents; 529,510 responses.

Estimated Time per Response: 0.00278 hours – 40 hours per response.

Frequency of Response: Recordkeeping and third party disclosure requirements; On occasion, quarterly, and semi–annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 4(i), 303(r) and 629 of the Communications Act of 1934, as amended.

Total Annual Burden: 44,173 hours.

Total Annual Cost: $137,550.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On March 17, 2005 the FCC released a Second Report, In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97–80, FCC 05–76. In the Second Report and Order and Further Notice of Proposed Rulemaking, the Commission extended by twelve months the existing 2006 deadline in Section 76.1204(a)(1) prohibiting the deployment of integrated navigation devices by multichannel video programming distributors in order to promote the retail sale of non–integrated navigation devices. This extension was intended to afford cable operators additional time to investigate and develop a downloadable security solution that will allow common reliance by cable operators and consumer electronics manufacturers on an identical security function without the additional costs of physical separation inherent in the point–of–deployment module, or CableCARD, solution. The rules adopted in this proceeding added information collection requirements to this collection and also were intended to implement Section 629 of the Communications Act of 1934, as amended, 47 U.S.C. 549.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–5641– Filed 3–15–10– 8:45 am]

BILLING CODE: 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Renewal of Currently Approved Collections (3064–0079, 0103, 0104, 0122 & 0173); Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC hereby gives notice that it is seeking public comment on the proposed renewal of the following collections: Application for Consent to Reduce or Retire Capital (OMB No. 3064–0079); Appraisal Standards (OMB No. 3064–0103); Activities and Investments of Savings Associations (OMB No. 3064–0104), Forms Relating to Outside Counsel, Legal Support & Expert Services (OMB No. 3064–0122); and Prepaid Assessments (OMB No. 3064–0173). At the end of the comment period, any comments and recommendations received will be analyzed to determine the extent to which the FDIC should modify the collections prior to submission to OMB for review and approval.

DATES: Comments must be submitted on or before May 17, 2010.

ADDRESSES: Interested parties are invited to submit written comments. All comments should refer to the name of the collection. Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Federal Deposit Insurance Corporation, F–1072, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the FDIC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper at the address identified above.

SUPPLEMENTARY INFORMATION:

The FDIC is proposing to renew these collections:

1. *Title:* Application for Consent to Reduce or Retire Capital (OMB No. 3064–0079).

Estimated Number of Respondents and Burden Hours:

FDIC document	Number of respondents	Frequency of response	Hours per response	Hours of burden
Application for Consent to Reduce or Retire Capital	80	1	1	80
Total	80			80

General Description of Collection: This collection requires insured state nonmember banks that propose to change their capital structure to submit an application containing information about the proposed change in order to obtain FDIC's consent to reduce or retire capital. The FDIC evaluates the information contained in the letter application in relation to statutory considerations and makes a decision to grant or to withhold consent.

2. *Title:* Appraisal Standards (OMB No. 3064–0103).

Estimated Number of Respondents and Burden Hours:

FDIC document	Number of respondents	Frequency of response	Hours per response	Hours of burden
Appraisal Standards	328,600	1	.25	82,150
Total	328,600			82,150

General Description of Collection: This collection is provided for in 12 CFR Part 323 of FDIC's regulations. Part 323 implements a portion of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Title XI of FIRREA is designed to provide protection for Federal financial and public policy interests by requiring real estate appraisals used in connection with federally-related transactions to be performed in writing, in accordance with uniform standards, by an appraiser whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

3. *Title:* Activities and Investments of Savings Associations (OMB No. 3064–0104).

Estimated Number of Respondents and Burden Hours:

FDIC document	Number of respondents	Frequency of response	Hours per response	Hours of burden
Activity and Investment Applications	75	1	5	375
Total	75			375

General Description of Collection: Section 28 of the FDI Act (12 U.S.C. 1831e) imposes restrictions on the powers of savings associations, which reduce the risk of loss to the deposit insurance funds and eliminate some differences between the powers of state associations and those of Federal associations. Some of the restrictions apply to all insured savings associations and some to state-chartered associations only. The statute exempts some Federal savings banks and associations from the restrictions, and provides for the FDIC to grant exemptions to other associations under certain circumstances. In addition, Section 18(m) of the FDI Act (12 U.S.C. 1828(m)) requires that notice be given to the FDIC prior to an insured savings association (State or Federal) acquiring, establishing, or conducting new activities through a subsidiary.

4. *Title:* Forms Relating to Outside Counsel, Legal Support & Expert Services (OMB No. 3064–0122).

Estimated Number of Respondents and Burden Hours:

FDIC document	Number of respondents	Hours per response	Hours of burden
5000/26	85	.50	42.5
5000/31	376	.50	188
5000/33	63	.50	31.5
5000/35	722	.50	361
5200/01	500	.75	375
5210/01	100	0.5	50
5210/02	55	0.5	22.5
5210/03	50	1.0	50
5210/03A	50	1.0	50
5210/04	200	1.0	200
5210/04A	200	1.0	200
5210/06	100	1.0	100
5210/06(A)	100	1.0	100
5210/08	240	0.5	120
5210/09	100	1.0	100
5210/10	100	1.0	100
5210/10(A)	100	1.0	100
5210/11	100	1.0	100
5210/12	100	1.0	100

FDIC document	Number of respondents	Hours per response	Hours of burden
5210/12A	100	1.0	100
5210/14	100	0.5	50
5210/15	25	.50	12.5
Total	3,566		2,553

General Description of Collection: The information collected enables the FDIC to ensure that all individuals, businesses and firms seeking to provide legal support services to the FDIC meet the eligibility requirements established by Congress. The information is also used to manage and monitor payments to contractors, document contract amendments, expiration dates, billable individuals, and minority law firms, and to ensure that law firms, experts, and other legal support services providers are in compliance with statutory and regulatory requirements.

5. *Title:* Prepaid Assessments: Application for Exemption, Application for Withdrawal of Exemption, and Transfer Notice (OMB No. 3064–0173).

Estimated Number of Respondents and Burden Hours:

FDIC document	Number of respondents	Frequency of response	Hours per response	Hours of burden
A. Application for Exemption (Deadline passed on 12/31/09)	0	1	8	0
B. Application for Withdrawal of Exemption (Deadline passed on 12/31/09)	0	1	8	0
C. Transfer of Assessments Notice	50	1	2	100
Total	50			100

General Description of Collection: The FDIC obtained emergency approval from OMB for three collections of information related to an amendment to the FDIC's assessment regulations that required insured depository institutions to prepay, on December 30, 2009, their estimated, quarterly, risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012. The FDIC will begin to offset prepaid assessments on March 30, 2010, representing payment for the fourth quarter of 2009. Any prepaid assessment not exhausted by December 30, 2014, would be returned to the institution.

The deadline of 12/31/09 for applications for exemptions, or for applications for withdrawal of exemptions has passed, and there are no exceptions. Transfers of assessments, however, are still permitted. When an insured depository institution enters into an agreement to transfer any portion of its prepaid assessment to another insured depository institution, it is required to notify the FDIC's Division of Finance of that transaction by submitting a written agreement signed by the legal representatives of both institutions, including documentation that each representative has the legal authority to bind the institution.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burdens of the information collections, including the validity of the methodology and assumptions used; (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 collections on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 11th day of March, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–5725 Filed 3–15–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: March 11, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10191	Bank of Illinois	Normal	IL	3/05/2010
10193	Centennial Bank	Ogden	UT	3/05/2010
10192	Sun American Bank	Boca Raton	FL	3/05/2010
10190	Waterfield Bank	Germantown	MD	3/05/2010

[FR Doc. 2010–5726 Filed 3–15–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[Notice 2010–07]

Filing Dates for the Hawaii Special Election In the 1st Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Hawaii has scheduled a Special General Election on May 22, 2010, to fill the U.S. House seat in the 1st Congressional District vacated by Representative Neil Abercrombie.

Committees required to file reports in connection with the Special General Election on May 22, 2010, shall file a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Hawaii Special General Election shall file a 12-day Pre-General Report on May 10, 2010, and a 30-day Post-General Report on June 21, 2010. (See chart below for the closing date for each report).

Note that these reports are in addition to the campaign committee's quarterly filings in April and July. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2010 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Hawaii Special General Election by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that make contributions or expenditures in connection with the Hawaii Special General Election will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Hawaii Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates_2010.shtml.*

Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $16,000 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v).

CALENDAR OF REPORTING DATES FOR HAWAII SPECIAL ELECTION COMMITTEES INVOLVED IN THE SPECIAL GENERAL (05/22/10) MUST FILE

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Pre-General	05/02/10	05/07/10	05/10/10
Post-General	06/11/10	06/21/10	06/21/10
July Quarterly	06/30/10	07/15/10	07/15/10

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

On behalf of the Commission.

Dated: March 10, 2010.

Matthew S. Petersen,

Chairman, Federal Election Commission.

[FR Doc. 2010–5634 Filed 3–15–10; 8:45 am]

BILLING CODE 6715–01–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 March 31, 2010.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice

President) 701 East Byrd Street, Richmond, Virginia 23261–4528:≤

1. Peden B. McLeod, Mary H. McLeod, John R. McLeod, all of Walterboro, South Carolina; Peden B. McLeod, Jr., Mt. Pleasant, South Carolina; Mary C. Benson, Columbia, South Carolina; and Rhoda L. Perry, Hendersonville, North Carolina; acting in concert to retain voting shares of Communitycorp, and thereby indirectly retain voting shares of Bank of Walterboro, both of Walterboro, South Carolina.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. First State Bancorp, Inc. Employee Stock Ownership Plan (Irvin G. Waller and Duane S. Michie as trustees), all of Caruthersville, Missouri; to acquire voting shares of First State Bancorp, Inc., and thereby indirectly acquire voting shares of First State Bank and Trust Company, both of Caruthersville, Missouri.

Board of Governors of the Federal Reserve System, March 11, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–5686 Filed 3–15–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 2010.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Tower Bancorp, Inc., Harrisburg, Pennsylvania; to merge with First Chester County Corporation, and thereby indirectly acquire First National Bank of Chester County, both of West Chester, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Du Quoin State Bank ESOP, Du Quoin, Illinois; to become a bank holding company by retaining voting shares of Perry County Bancorp, Inc., and Du Quoin State Bank, both of Du Quoin, Illinois.

Board of Governors of the Federal Reserve System, March 11, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–5687 Filed 3–15–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Ryan White Treatment and Modernization Act Part A Minority AIDS Initiative Report (the Part A MAI Report). (OMB No. 0915–0304): Extension

HRSA's HIV/AIDS Bureau (HAB) administers Part A of Title XXVI of the Public Health Service Act as amended by Congress in October 2009 (Ryan White HIV/AIDS Treatment Extension Act of 2009). Part A provides emergency relief for areas with substantial need for HIV/AIDS care and support services that are most severely affected by the HIV/AIDS epidemic, including eligible metropolitan areas (EMA) and Transitional Grant Areas (TGAs). As a component of Part A (previously Title I), the purpose of the Minority AIDS Initiative (MAI) Supplement is to improve access to high quality HIV care services and health outcomes for individuals in disproportionately impacted communities of color who are living with HIV disease, including African-Americans, Latinos, Native Americans, Asian Americans, Native Hawaiians and Pacific Islanders (Section 2693(b)(2)(A) of the Public Health Service (PHS) Act). Since the purpose of the Part A MAI is to expand access to medical, health, and social support services for disproportionately impacted racial/ethnic minority populations living with HIV/AIDS, who are not yet in care, it is important that HRSA is able to report on minorities served by the Part A MAI.

The Part A MAI Report is a data collection instrument in which grantees report on the number and characteristics of clients served and services provided. The *Part A MAI Report,* first approved for use in March 2006, is designed to collect performance data from Part A Grantees that will not change, and it has two parts: (1) a web-based data entry application that collects standardized quantitative and qualitative information, and (2) an accompanying narrative report. Grantees submit two *Part A MAI Reports* annually: *Part A MAI Plan* (*Plan*) and the *Part A MAI Year-End Annual Report* (*Annual Report*). The *Plan* and *Annual Report* components of the report are linked to minimize the reporting burden, and include drop-down menu responses, fields for reporting budget, expenditure and aggregated client level data, and open-ended responses for describing client or service-level outcomes. Together the *Plan* and *Annual Report* components collect information from grantees on MAI-funded services, expenditure patterns, the number and demographics of clients served, and client-level outcomes.

The MAI *Plan* Narrative that accompanies the *Plan* Web forms provides (1) an explanation of the data submitted in the *Plan* Web forms; (2) a summary of the *Plan,* including the plan and timeline for disbursing funds, monitoring service delivery, and implementing any service-related capacity development or technical assistance activities; and (3) the plan and timeline for documenting client-level outcome measures. In addition, if the EMA/TGA revised any planned services, allocation amounts or target communities after their grant application was submitted, the changes must be highlighted and explained. The accompanying MAI *Annual Report* Narrative describes (1) progress towards achieving specific goals and objectives identified in the Grantee's approved *MAI Plan* for that fiscal year and in linking MAI services/activities to Part A and other Ryan White HIV/AIDS Program services; (2) achievements in relation to client-level health outcomes; (3) summary of challenges or barriers at the provider or grantee levels, the strategies and/or action steps implemented to address them, and lessons learned; and, (4) discussion of MAI technical assistance needs identified by the EMA/TGA.

This information is needed to monitor and assess: (1) Changes in the type and amount of HIV/AIDS health care and related services being provided to each disproportionately impacted community of color; (2) the aggregate number of persons receiving HIV/AIDS services within each racial and ethnic community; and (3) the impact of Part A MAI-funded services in terms of client-level and service-level health outcomes. The information also is used to plan new technical assistance and capacity development activities, and inform the HRSA policy and program management functions. The data provided to HRSA does not contain individual or personally identifiable information.

The annual estimated response burden for grantees is as follows:

Form	Estimated number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Part A MAI Report	56	2	112	5	560

Note: Data collection system enhancements have resulted in a shortened response burden (from 6 to 5 total hours per response) for respondents since the previous OMB approval request.

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 30 days of this notice.

Dated: March 5, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–5673 Filed 3–15–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0120]

Agency Information Collection Activities; Proposed Collection; Comment Request; Cosmetic Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions in FDA's cosmetic labeling regulations.

DATES: Submit written or electronic comments on the collection of information by May 17, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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 through the use of automated collection techniques, when appropriate, and other forms of information technology.

Cosmetic Labeling Regulations—21 CFR Part 701 (OMB Control Number 0910–0599)—Extension

The Federal Food, Drug, and Cosmetic Act (the act) and the Fair Packaging and Labeling Act (the FPLA) require that cosmetic manufacturers, packers, and distributors disclose information about themselves or their products on the labels or labeling of their products.

Sections 201, 502, 601, 602, 603, 701, and 704 of the act (21 U.S.C. 321, 352, 361, 362, 363, 371, and 374) and sections 4 and 5 of the FPLA (15 U.S.C. 1453 and 1454) provide authority to FDA to regulate the labeling of cosmetic products. Failure to comply with the requirements for cosmetic labeling may render a cosmetic adulterated under section 601 of the act or misbranded under section 602 of the act.

FDA's cosmetic labeling regulations are published in part 701 (21 CFR part 701). Four of the cosmetic labeling regulations have information collection provisions. Section 701.3 requires the label of a cosmetic product to bear a declaration of the ingredients in descending order of predominance. Section 701.11 requires the principal display panel of a cosmetic product to bear a statement of the identity of the product. Section 701.12 requires the label of a cosmetic product to specify the name and place of business of the manufacturer, packer, or distributor. Section 701.13 requires the label of a cosmetic product to declare the net quantity of contents of the product.

FDA's cosmetic labeling regulations remain unchanged by this document. FDA is publishing this document in compliance with the PRA. This document does not represent any new regulatory initiative.

FDA estimates the annual burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency of Disclosure	Total Annual Disclosures	Hours per Disclosure	Total Hours
701.3	1,518	21	31,878	1	31,878
701.11	1,518	24	36,432	1	36,432
701.12	1,518	24	36,432	1	36,432
701.13	1,518	24	36,432	1	36,432
Total					141,174

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The hour burden is the additional or incremental time that establishments need to design and print labeling that includes the following required elements: A declaration of ingredients in decreasing order of predominance, a statement of the identity of the product, a specification of the name and place of business of the establishment, and a declaration of the net quantity of contents. These requirements increase the time establishments need to design labels because they increase the number of label elements that establishments must take into account when designing labels. These requirements do not generate any recurring burden per label because establishments must already print and affix labels to cosmetic products as part of normal business practices.

According to the 2001 census, there are 1,518 cosmetic product establishments in the United States (U.S. Census Bureau, *http://www.census.gov/epcd/susb/2001/us/US32562.HTM*). FDA calculates label design costs based on stockkeeping units (SKUs) because each SKU has a unique product label. Based on data available to the agency and on communications with industry, FDA estimates that cosmetic establishments will offer 94,800 SKUs for retail sale in 2010. This corresponds to an average of 62 SKUs per establishment.

One of the four provisions that FDA discusses in this information collection, § 701.3, applies only to cosmetic products offered for retail sale. However, the other three provisions, §§ 701.11, 701.12, and 701.13, apply to all cosmetic products, including non-retail professional-use-only products. FDA estimates that including professional-use-only cosmetic products increases the total number of SKUs by 15 percent to 109,020. This corresponds to an average of 72 SKUs per establishment.

Finally, based on the agency's experience with other products, FDA estimates that cosmetic establishments may redesign up to one-third of SKUs per year. Therefore, FDA estimates that the annual frequency of response will be 21 (31,878 SKUs) for § 701.3 and 24 each (36,432 SKUs) for §§ 701.11, 701.12, and 701.13.

FDA estimates that each of the required label elements may add approximately 1 hour to the label design process. FDA bases this estimate on the hour burdens the agency has previously estimated for food, drug, and medical device labeling and on the agency's knowledge of cosmetic labeling. Therefore, FDA estimates that the total hour burden on members of the public for this information collection is 141,174 hours per year.

Dated: March 11, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–5657 Filed 3–15–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0119]

Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the agency's regulations that require registration for domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States.

DATES: Submit written or electronic comments on the collection of information by May 17, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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 through the use of automated collection techniques, when appropriate, and other forms of information technology.

Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002—21 CFR 1.230–1.235 (OMB Control Number 0910–0502)—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) added section 415 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350d), which requires domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA. Sections 1.230–1.235 of FDA's regulations (21 CFR 1.230–1.235) set forth the procedures for registration of food facilities. Information provided to FDA under these regulations will help the agency to notify quickly the facilities that might be affected by a deliberate or accidental contamination of the food supply.

Description of Respondents: The respondents to this information collection include owners, operators, or agents in charge of domestic or foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States. Domestic facilities are required to register whether or not food from the facility enters interstate commerce. Foreign facilities that manufacture/process, pack, or hold food also are required to register unless food from that facility undergoes further processing (including packaging) by another foreign facility before the food is exported to the United States. However, if the subsequent foreign facility performs only a minimal activity, such as putting on a label, both facilities are required to register.

FDA's regulations require that each facility that manufactures, processes, packs, or holds food for human or animal consumption in the United States register with FDA using Form FDA 3537 (§ 1.231). The term "Form FDA 3537" refers to both the paper version of the form and the electronic system known as the Food Facility Registration Module, which is available at *http://www.access.fda.gov*. The agency strongly encourages electronic registration because it is faster and more convenient. The system the agency has developed can accept electronic registrations from anywhere in the world 24 hours a day, 7 days a week. A registering facility will receive confirmation of electronic registration and its registration number instantaneously once all the required fields on the registration screen are filled in. However, paper registrations will be accepted. Form FDA 3537 is available for download for registration by mail, fax, or CD–ROM. Registration by mail may take several weeks to several months, depending on the speed of the mail system and the number of paper registrations that FDA will have to enter manually.

Information FDA requires on the registration form includes the name and full address of the facility; emergency contact information; all trade names the facility uses; applicable food product categories identified in § 170.3 (21 CFR 170.3), unless "most/all" human food categories "or none of the above mandatory categories" is selected as a response; and a certification statement that includes the name of the individual authorized to submit the registration form. Additionally, facilities are encouraged to submit their preferred mailing address; type of activity conducted at the facility; food categories not included under § 170.3, but which are helpful to FDA for responding to an incident; type of storage, if the facility is primarily a holding facility; and approximate dates of operation if the facility's business is seasonal.

In addition to registering, a facility is required to submit timely updates within 60 days of a change to any required information on its registration form, using Form FDA 3537 (§ 1.234), and to cancel its registration when the facility ceases to operate or is sold to new owners or ceases to manufacture/process, pack, or hold food for consumption in the United States, using Form FDA 3537a (§ 1.235).

FDA estimates the burden of complying with the information collection provisions of the agency's regulations for food facility registration as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form No.	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
New Facilities						

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	FDA Form No.	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
Domestic						
1.230–1.233	FDA 3537[2]	13,560	1	13,560	2.5	33,900
Foreign						
1.230–1.233	FDA 3537	23,370	1	23,370	8.5	198,645
New Facility Registration Subtotal						232,545
Previously Registered Facilities-Updates (Form 3537) and Cancellations (Form 3537a)						
1.234	FDA 3537	118,530	1	118,530	1	118,530
1.235	FDA 3537a	6,390	1	6,390	1	6,390
Updates or Cancellations to Existing Registration Subtotal						124,920
Total Hours Annually						357,465

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The term "Form FDA 3537" refers to both the paper version of the form and the electronic system known as the Food Facility Registration Module, which is available at *http://www.access.fda.gov*.

This estimate is based on FDA's experience and the average number of new facility registrations, updates and cancellations received in the past 3 years. FDA received 12,681 new domestic facility registrations during 2006; 14,629 during 2007; and 13,378 during 2008. Based on this experience, FDA estimates the annual number of new domestic facility registrations will be 13,560. FDA estimates that listing the information required by the Bioterrorism Act and presenting it in a format that will meet the agency's registration regulations will require a burden of approximately 2.5 hours per average domestic facility registration. The average domestic facility burden hour estimate of 2.5 hours takes into account that some respondents completing the registration may not have readily available Internet access. Thus, the total annual burden for new domestic facility registrations is estimated to be 33,900 hours (13,560 x 2.5 hours).

FDA received 25,513 new foreign facility registrations during 2006; 23,302 during 2007; and 21,281 during 2008. Based on this experience, FDA estimates the annual number of new foreign facility registrations will be 23,370. FDA estimates that listing the information required by the Bioterrorism Act and presenting it in a format that will meet the agency's registration regulations will require a burden of approximately 8.5 hours per average foreign facility registration. The average foreign facility burden hour estimate of 8.5 hours includes an estimate of the additional burden on a foreign facility to obtain a U.S. agent, and takes into account that for some foreign facilities the respondent completing the registration may not be fluent in English and/or not have readily available Internet access. Thus, the total annual burden for new foreign facility registrations is estimated to be 198,645 hours (23,370 x 8.5 hours).

FDA received 114,199 updates to facility registrations during 2006; 128,070 during 2007; and 113,318 during 2008. Based on this experience, FDA estimates that it will receive 118,530 updates annually. FDA also estimates that updating a registration will, on average, require a burden of approximately 1 hour, taking into account fluency in English and Internet access. Thus, the total annual burden for updating all registrations is estimated to be 118,530 hours.

FDA received 5,703 cancellations of facility registrations during 2006; 5,578 during 2007; and 7,888 during 2008. Based on this experience, FDA estimates the annual number of cancellations will be 6,390. FDA also estimates that cancelling a registration will, on average, require a burden of approximately 1 hour, taking into account fluency in English and Internet access. Thus, the total annual burden for cancelling registrations is estimated to be 6,390 hours.

Dated: March 11, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–5656 Filed 3–15–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0118]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations requiring that the agency receive prior notice before food is imported or offered for import into the United States.

DATES: Submit written or electronic comments on the collection of information by May 17, 2010.

ADDRESSES: Submit electronic comments on the collection of

information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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 through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002—21 CFR 1.278 to 1.285 (OMB Control Number 0910–0520)—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) added section 801(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(m)), which requires that FDA receive prior notice for food, including food for animals, that is imported or offered for import into the United States. Sections 1.278, 1.279, 1.280, 1.281, and 1.282 of FDA's regulations (21 CFR 1.278, 1.279, 1.280, 1.281, 1.282) set forth the requirements for submitting prior notice; §§ 1.283(d) and 1.285(j) (21 CFR 1.283(d) and 1.285(j)) set forth the procedure for requesting FDA review after an article of food has been refused admission under section 801(m)(1) of the act or placed on hold under section 801(l) of the act; and § 1.285(i) (21 CFR 1.285(i)) sets forth the procedure for post-hold submissions. Advance notice of imported food allows FDA, with the support of the U.S. Customs and Border Protection (CBP), to target import inspections more effectively and help protect the nation's food supply against terrorist acts and other public health emergencies. Any person with knowledge of the required information may submit prior notice for an article of food. Thus, the respondents to this information collection may include importers, owners, ultimate consignees, shippers, and carriers.

FDA's regulations require that prior notice of imported food be submitted electronically using CBP's Automated Broker Interface of the Automated Commercial System (ABI/ACS) (§ 1.280(a)(1)) or the FDA Prior Notice (PN) System Interface (Form FDA 3540). The term "Form FDA 3540" refers to the electronic system known as the FDA PN System Interface, which is available at *http://www.access.fda.gov*. Prior notice must be submitted electronically using either ABI/ACS or the FDA PN System Interface. Information collected by FDA in the prior notice submission includes: The submitter and transmitter (if different from the submitter); entry type and CBP identifier; the article of food, including complete FDA product code; the manufacturer, for an article of food no longer in its natural state; the grower, if known, for an article of food that is in its natural state; the FDA Country of Production; the shipper, except for food imported by international mail; the country from which the article of food is shipped or, if the food is imported by international mail, the anticipated date of mailing and country from which the food is mailed; the anticipated arrival information or, if the food is imported by international mail, the U.S. recipient; the importer, owner, and ultimate consignee, except for food imported by international mail or transshipped through the United States; the carrier and mode of transportation, except for food imported by international mail; and planned shipment information, except for food imported by international mail (§ 1.281).

Much of the information collected for prior notice is identical to the information collected for FDA's importer's entry notice, which has been approved under OMB control number 0910–0046. The information in FDA's importer's entry notice is collected electronically via CBP's ABI/ACS at the same time the respondent files an entry for import with CBP. To avoid double-counting the burden hours are already accounted for in the importer's entry notice information collection, and the burden hour analysis in table 1 of this document reflects the reduced burden for prior notice submitted through ABI/ACS in the column labeled "Hours per Response."

In addition to submitting a prior notice, a submitter should cancel a prior notice and must resubmit the information if information changes after FDA has confirmed a prior notice submission for review (e.g., if the identity of the manufacturer changes) (§ 1.282). However, changes in the estimated quantity, anticipated arrival information, or planned shipment information do not require resubmission of prior notice after FDA has confirmed a prior notice submission for review (§ 1.282(a)(1)(i), (a)(1)(ii), and (a)(1)(iii)). In the event that an article of food has been refused admission under section 801(m)(1) of the act or placed on hold under section 801(l), §§ 1.283(d) and 1.285(j) set forth the procedure for requesting FDA review and the information required to be included in a request for review. In the event that an article of food has been placed under hold under section 801(l) of the act, § 1.285(i) sets forth the procedure for and the information to be included in a post-hold submission.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Prior Notice Submissions						
Prior Notice submitted through ABI/ACS						
1.280, 1.281	None	6,500	1,290	8,385,000	0.15	1,257,750[2]
Prior Notice submitted through PN System Interface						
1.280, 1.281	FDA 3540[3]	21,500	73	1,569,500	0.37	580,715[2]
New Prior Notice Submissions Subtotal						1,838,465
Prior Notice Cancellations						
Prior Notice cancelled through ABI/ACS						
1.282	FDA 3540	6,500	3	19,500	0.25	4,875
Prior Notice cancelled through PN System Interface						
1.282, 1.283(a)(5)	FDA 3540	21,500	3	64,500	0.25	16,125
Prior Notice Cancellations Subtotal						21,000
Prior Notice Requests for Review and Post-hold Submissions						
1.283(d), 1.285(j)	None	1	1	1	8	8
1.285(i)	None	1	1	1	1	1
Prior Notice Requests for Review and Post-hold Submissions Subtotal						9
Total Hours Annually						1,859,474

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] To avoid double-counting, an estimated 396,416 burden hours already accounted for in the Importer's Entry Notice information collection approved under OMB Control No. 0910–0046 are not included in this total.
[3] The term "Form FDA 3540" refers to the electronic system known as the FDA PN System Interface, which is available at *http://www.access.fda.gov*.

This estimate is based on FDA's experience and the average number of prior notice submissions, cancellations, and requests for review received in the past 3 years.

In the **Federal Register** of November 7, 2008 (73 FR 66294), FDA and CBP issued the prior notice final rule, which finalized the prior notice interim final rule (IFR) (October 10, 2003, 68 FR 58974)). From the IFR to the final rule, FDA removed a few of the required prior notice data elements. Specifically, submitters no longer need to include the fax number of the submitter and transmitter, the anticipated border crossing, the country of the carrier, or the 6-digit HTS code in their prior notices. Other changes include the addition of the registration number of the transshipper for articles of food for transshipment, storage and export, or manipulation and export; flexibility in submitting the registration number and the city and country of the manufacturer and shipper instead of full addresses of these entities; and the option of submitting the tracking number for articles of food arriving by express consignment instead of anticipated arrival information when the prior notice is submitted through the PN System Interface (73 FR 66294 at 66402). Accordingly, FDA has reduced its estimate of the hours per response for prior notices received through ABI/ACS from 10 minutes, or 0.167 hours, per notice, to 9 minutes, or 0.15 hours, per notice. FDA has also reduced its estimate of the hours per response for prior notices received through the PN System Interface from 23 minutes, or 0.384 hours, per notice, to 22 minutes, or 0.366 hours (rounded to 0.37 hours), per notice.

FDA received 8,144,419 prior notices through ABI/ACS during 2007; 8,266,200 during 2008; and 5,221,549 as of August 26, 2009. Based on this experience, FDA estimates that approximately 6,500 users of ABI/ACS will submit an average of 1,290 prior notices annually, for a total of 8,385,000 prior notices received annually through ABI/ACS. FDA estimates the reporting burden for a prior notice submitted through ABI/ACS to be 9 minutes, or 0.15 hours, per notice, for a total burden of 1,257,750 hours. This estimate takes into consideration the burden hours already counted in the information collection approval for FDA's importer's entry notice, as previously discussed in this document.

FDA received 1,744,287 prior notices through the PN System Interface during 2007; 1,662,033 during 2008; and 989,708 as of August 26, 2009. Based on this experience, FDA estimates that approximately 21,500 registered users of the PN System Interface will submit an average of 73 prior notices annually, for a total of 1,569,500 prior notices received annually through the PN System Interface. FDA estimates the reporting burden for a prior notice submitted through the PN System Interface to be 22 minutes, or 0.366

hours (rounded to 0.37 hours), per notice 22 minutes, or 0.366 hours (rounded to 0.37 hours), per notice, for a total burden of 580,715 hours.

FDA received 16,215 cancellations of prior notices through ABI/ACS during 2007; 16,673 during 2008; and 16,045 as of August 26, 2009. Based on this experience, FDA estimates that approximately 6,500 users of ABI/ACS will submit an average of 2.64 (rounded to 3) cancellations annually, for a total of 19,500 cancellations received annually through ABI/ACS. FDA estimates the reporting burden for a cancellation submitted through ABI/ACS to be 15 minutes, or 0.25 hours, per cancellation, for a total burden of 4,875 hours.

FDA received 58,345 cancellations of prior notices through the PN System Interface during 2007; 63,779 during 2008; and 55,019 as of August 26, 2009. Based on this experience, FDA estimates that approximately 21,500 registered users of the PN System Interface will submit an average of 3.24 (rounded to 3) cancellations annually, for a total of 64,500 cancellations received annually through the PN System Interface. FDA estimates the reporting burden for a cancellation submitted through the PN System Interface to be 15 minutes, or 0.25 hours, per cancellation, for a total burden of 16,125 hours.

FDA has not received any requests for review under §§ 1.283(d) or 1.285(j) in the last 3 years (2007 through August 26, 2009); therefore, the agency estimates that one or fewer requests for review will be submitted annually. FDA estimates that it will take a requestor about 8 hours to prepare the factual and legal information necessary to prepare a request for review. Thus, FDA has estimated a total reporting burden of 8 hours.

FDA has not received any post-hold submissions under § 1.285(i) in the last 3 years (2007 through August 26, 2009); therefore, the agency estimates that one or fewer post-hold submissions will be submitted annually. FDA estimates that it will take about 1 hour to prepare the written notification described in § 1.285(i)(2)(i). Thus, FDA has estimated a total reporting burden of 1 hour.

Dated: March 11, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–5655 Filed 3–15–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0124]

Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements Under the Comprehensive Smokeless Tobacco Health Education Act of 1986, as amended by the Family Smoking Prevention and Tobacco Control Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information pertaining to the submission of smokeless tobacco rotational warning plans under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (the Smokeless Tobacco Act), as amended by the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act).

DATES: Submit written or electronic comments on the collection of information by May 17, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.Capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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 through the use of automated collection techniques, when appropriate, and other forms of information technology.

Requirements under the Comprehensive Smokeless Tobacco Health Education Act of 1986, as amended by the Family Smoking Prevention and Tobacco Control Act

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111–31) into law. The Smokeless Tobacco Act (15 U.S.C. 4402), as amended by section 204 of the Tobacco Control Act, requires that manufacturers, packagers, importers, distributors, and retailers (in limited circumstances) of smokeless tobacco products include one of four specified health warning label statements on product packages and in advertisements.[1] The Smokeless Tobacco Act, as amended, also requires smokeless tobacco product manufacturers, importers, distributors, and certain retailers to submit a plan to FDA specifying the method to rotate, display, and distribute the specified health warning label statements

[1] The warnings themselves disclose information completely supplied by the Federal Government. As such, the disclosure does not constitute a "collection of information" as it is defined in the regulations implementing the PRA, nor, by extension, do the financial resources expended in relation to it constitute paperwork "burden." See 5 CFR 1320.3(c)(2).

required to appear in advertising and packaging. FDA is required to review each plan submitted and approve the plan if it provides for rotation, display, and distribution of warnings in compliance with the requirements of the Smokeless Tobacco Act. To the best of FDA's knowledge, all of the affected companies have previously submitted similar plans to the Federal Trade Commission (FTC), which had authority to implement the requirements of the Smokeless Tobacco Act prior to the Tobacco Control Act's amendments. However, since the requirements of the Smokeless Tobacco Act have been revised and since FDA now has authority to implement the Smokeless Tobacco Act, each affected company will be required to submit a new plan to FDA instead of FTC. The Tobacco Control Act's amendments to the Smokeless Tobacco Act are effective on June 22, 2010.

In the **Federal Register** of August 7, 2007 (72 FR 44138), FTC published a 30-day notice announcing an opportunity for public comment and that the information collection would be sent to OMB for review. Based on FTC's previous experience with the submission of rotational plans and FDA's experience with smokeless tobacco companies (e.g., correspondence associated with user fees under section 919 of the Federal Food, Drug, and Cosmetic Act, as amended by the Tobacco Control Act), FDA estimates that there are 14 companies affected by this information collection. To account for the entry of new smokeless tobacco companies who may be affected by this information collection, FDA is estimating the total number of respondents to be 20.

When FTC originally implemented the rotational plan requirements in 1986, the Smokeless Tobacco Council, Inc. indicated that the 6 companies it represented would require 700 to 800 hours in total (133 hours each) to complete an initial rotational plan, involving multiple brands, multiple brand varieties, and multiple forms of both packaging and advertising. When FTC requested an extension of their PRA clearance in 2007, FTC decreased the estimate for submitting an initial plan from 143 hours to 60 hours, accounting for increased computerization and improvements in electronic communication over the subsequent 20 years since the Smokeless Tobacco Act was enacted. FDA believes the estimate of 60 hours to complete an initial rotational plan continues to be reasonable. However, since the requirements of the new Smokeless Tobacco Act are unfamiliar to industry, FDA is increasing the time estimate for submitting initial plans to 100 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Submission of rotational plans for health warning label statements	20	1	20	100	2,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 11, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–5654 Filed 3–15–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Availability of Final Policy Document

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Final agency guidance and response to public comments.

SUMMARY: HRSA is publishing a Final Agency Guidance ("Policy Information Notice" (PIN) 2010–01) to describe the documentation that will be considered by the Health Resources and Services Administration (HRSA) in confirming public agency status for organizations that self-identify as public agencies (also referred to in previous PINs as "public entities" or "public applicants") for Health Center Program grant funding authorized under section 330 of the Public Health Service Act, as amended, and/or for Federally Qualified Health Center Look-Alike designation. The PIN, "Confirming Public Agency Status under the Health Center Program and FQHC Look-Alike Program," and the Agency's "Response to Public Comments" are available on the Internet at *http://bphc.hrsa.gov/policy/pin1001/*and *http://bphc.hrsa.gov/policy/pin1001/PublcCommentsPIN2010–01.pdf,* respectively.

DATES: The effective date of this final Agency guidance is February 5, 2010.

Background: HRSA administers the Health Center Program, which supports more than 1,100 organizations operating more than 7,500 health care delivery sites, including community health centers, migrant health centers, health care for the homeless centers, and public housing primary care centers. Health centers serve medically underserved communities delivering preventive and primary care services to patients regardless of their ability to pay. The Health Center Program's authorizing statute and implementing regulations (Section 330 of the PHS Act, as amended, 42 CFR part 51c, and 42 CFR part 56) state that any public or non-profit private entity is eligible to apply for a grant under the Health Center Program. The term "public agency" is not defined in section 330 of the PHS Act, as amended, or in the Health Center Program's regulations; however, reference is made to public agencies in section 330 of the PHS Act, as amended, in the context of defining a public center as "a health center funded (or to be funded) through a grant under this section to a public agency." (Sentence following Section 330(k)(3)(M) of the PHS Act, as amended) HRSA is issuing this PIN to describe the documentation that will be considered by HRSA in confirming public agency status for organizations that self-identify as public agencies (also referred to in previous PINs as "public entities" or "public applicants") for Health Center Program grant funding authorized under section 330 of the Public Health Service Act, as amended, and/or for Federally Qualified Health Center Look-Alike designation.

On August 14, 2009, the Health Resources and Services Administration (HRSA) made the draft Program Information Notice (PIN), "Confirming Public Agency Status under the Health Center Program and FQHC Look-Alike Program," available for public comment. HRSA also published a notice in the

Federal Register of August 28, 2009, requesting comments on this draft PIN.

Sixteen parties, including both individuals and groups, submitted a total of 31 comments regarding the draft PIN. After review and careful consideration of all comments received, HRSA has amended the PIN to incorporate certain recommendations from the public. The final PIN reflects these changes.

In addition to making the final PIN available on HRSA's Web site, HRSA is also posting the Agency's "Response to Public Comments." The purpose of that document is to summarize the major comments received and describe the Agency's response, including any corresponding changes made to the PIN. Where comments did not result in a revision to the PIN, explanations are provided.

FOR FURTHER INFORMATION CONTACT: For questions regarding this notice, please contact the Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, at *OPPDGeneral@hrsa.gov.*

Dated: March 8, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–5671 Filed 3–15–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Clinical Laboratory Improvement Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through February 19, 2012.

For information, contact Thomas Hearn, PhD, Designated Federal Officer, Clinical Laboratory Improvement Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop C12, Atlanta, Georgia 30333, telephone (404) 718–1048 or fax (404) 639–3039.

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 the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 9, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–5633 Filed 3–15–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health (MSHRAC, NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Date: 8:15 a.m.–5 p.m., March 30, 2010; 8 a.m.–11:30 a.m., March 31, 2010.

Place: Hilton Garden Inn Pittsburgh/Southpointe, 1000 Corporate Drive, Canonsburg, Pennsylvania 15317, telephone (724) 743–5000, fax (724) 743–5010.

Status: Open to public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters To Be Discussed: The meeting will focus on deep cover retreat mining research, mine illumination research, mine escape and rescue, human factors research, coal dust particle size surveys, and updates on proximity detection, a mine escape vehicle, robotics research, and results of broad agency announcements for mining research.

Agenda items are subject to change as priorities dictate.

For More Information Contact: Jeffery L. Kohler, PhD, Designated Federal Officer, MSHRAC, NIOSH, CDC, 626 Cochrans Mill Road, telephone (412) 386–5301, fax (412) 386–5300.

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: March 9, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–5628 Filed 3–15–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meetings:

Name: National Advisory Council on Nurse Education and Practice (NACNEP).

Dates and Times: April 22, 2010, 8:30 a.m.–4:30 p.m.

April 23, 2010, 8:30 a.m.–4 p.m.

Place: Doubletree Bethesda Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Status: The meeting will be open to the public.

Agenda: Agency and Bureau administrative updates will be provided.

Purpose: The purpose of this meeting is to address issues relating to the role of nursing in primary care and implications for workforce. The objectives of the meeting are to: (1) Delineate the variety of roles nurses play in primary care including health promotion, screening, public education, illness prevention, primary care and management of stable chronic conditions; (2) review and evaluate the data related to education preparation and supply of primary care nurses and advanced practice registered nurses; (3) describe factors that facilitate and sustain primary care practice by qualified, competent advanced practice registered nurses; (4) identify the financial and regulatory barriers to effective, accessible primary care delivered by nurses and recommended strategies for resolution; and (5) review and recommend community-based, nurse-directed models for primary care delivery that are cost effective and produce quality outcomes. This meeting is a continuation of the meeting that was held November 2009. Experts from professional nursing, public and private organizations will make presentations on primary care delivery models. During this meeting, the NACNEP council

members will deliberate on the content presented and formulate recommendations to the Secretary of Health and Human Services and the Congress on the role of nursing in primary care. This meeting will form the basis for NACNEP's mandated Tenth Annual Report.

The NACNEP will join the Council on Graduate Medical Education (COGME), the Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD), and the Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL) on April 21, 2010, for the third Bureau of Health Professions (BHPr) All Advisory Committee Meeting. Please refer to the **Federal Register** notice for the BHPr All Advisory Committee Meeting for additional details.

For further information regarding NACNEP, to obtain a roster of members, minutes of the meeting, or other relevant information, contact Lakisha Smith, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5688. Information can also be found at the following web site: *http://bhpr.hrsa.gov/nursing/nacnep.htm*

Dated: March 10, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–5675 Filed 3–15–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0128]

Prescription Drug User Fee Act; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting on the Prescription Drug User Fee Act (PDUFA). The legislative authority for PDUFA expires in September 2012. At that time, new legislation will be required for FDA to continue collecting user fees for the prescription drug program. The Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that before FDA begins negotiations with the regulated industry on PDUFA reauthorization, we publish a notice in the **Federal Register** requesting public input on the reauthorization, hold a public meeting at which the public may present its views on the reauthorization, provide a period of 30 days after the public meeting to obtain written comments from the public suggesting changes, and publish the comments on FDA's Web site. FDA invites public comment on the PDUFA program and suggestions regarding the features FDA should propose for the next PDUFA program.

DATES: The public meeting will be held on April 12, 2010, from 9 a.m. to 5 p.m. Registration to attend the meeting must be received by April 5, 2010. See Section III.C of this document for information on how to register for the meeting. Submit written or electronic comments by May 12, 2010.

ADDRESSES: The meeting will be held at the Hilton Washington DC/Rockville Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Submit written comments 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*. All comments should be identified with the docket number found in brackets in the heading of this document.

Transcripts of the meeting will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Mary Gross, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, rm. 6178, Silver Spring, MD 20993, 301–796–3519, FAX: 301–847–8753, *Mary.Gross@fda.hhs.gov*; or

Patrick Frey, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, rm. 6350, Silver Spring, MD 20993, 301–796–3844, FAX: 301–847–8443, *Patrick.Frey@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is announcing its intention to hold a public meeting on PDUFA. The authority for PDUFA expires in September 2012. Without new legislation, FDA will no longer be able to collect user fees to fund the human drug review process. Section 736B(d)(2) (21 U.S.C. 379h-2(d)(2)) of the FD&C Act requires that before FDA begins negotiations with the regulated industry on PDUFA reauthorization, we do the following: (1) Publish a notice in the **Federal Register** requesting public input on the reauthorization, (2) hold a public meeting at which the public may present its views on the reauthorization, (3) provide a period of 30 days after the public meeting to obtain written comments from the public suggesting changes, and (4) publish the comments on the FDA Web site. This notice, the public meeting, the 30 day comment period after the meeting, and the posting of the comments on the FDA Web site will satisfy these requirements. The purpose of the meeting is to hear stakeholder views on PDUFA as we consider the features to propose in the next PDUFA program. FDA is interested in responses to the following two general questions and welcomes any other pertinent information stakeholders would like to share:

1. What is your assessment of the overall performance of the PDUFA IV program thus far?

2. What aspects of PDUFA should be retained, changed, or discontinued to further strengthen and improve the program?

The following information is provided to help potential meeting participants better understand the history and evolution of the PDUFA program and its current status.

II. What is PDUFA? What Does It Do?

PDUFA is a law that authorizes FDA to collect fees from drug companies that submit marketing applications for certain human drug and biological products. The original PDUFA (PDUFA I) was enacted in 1992 (as the Prescription Drug User Fee Act, Public Law 102–571) and had a 5-year life. In 1997, as PDUFA I expired, Congress passed the FDA Modernization Act (FDAMA, Public Law 105–115) which included an extension of PDUFA (PDUFA II) for an additional 5 years. In 2002, Congress extended PDUFA again through fiscal year 2007 (PDUFA III) through the Public Health Security and Bioterrorism Preparedness and Response Act (Public Law 107–188). Most recently, Title I of the Food and Drug Administration Amendments Act of 2007 (FDAAA, Public Law 110–85) reauthorized PDUFA through fiscal year 2012 (PDUFA IV).

PDUFA's intent has been to provide additional revenues so that FDA could hire more staff, improve systems, and establish a better managed human drug review process to make important therapies available to patients sooner without compromising review quality or approval standards. In conjunction with PDUFA, FDA agrees to certain performance goals. These goals apply to

the process for the review of original new human drug and biological product applications, resubmissions of original applications, and supplements to approved applications. During the first few years of PDUFA I, the additional funding enabled FDA to eliminate backlogs of original applications and supplements. Phased in over the 5 years of PDUFA I, the goals were to review and act on 90 percent of priority new drug applications (NDAs), biologics license applications (BLAs), and efficacy supplements within 6 months of submission of a complete application; to review and act on 90 percent of nonpriority original NDAs, BLAs, and efficacy supplements within 12 months; and on resubmissions and manufacturing supplements within 6 months. Over the course of PDUFA I, FDA exceeded all of these performance goals and significantly reduced median review times of both priority and standard NDAs and BLAs.

Under PDUFA II, many of these review performance goals were shortened and new procedural goals were added to improve FDA interactions with industry sponsors and help facilitate the drug development process. The procedural goals, for example, articulated timeframes for scheduling sponsor-requested meetings intended to address emerging drug development challenges, as well as timeframes for the timely response to industry submitted questions on special study protocols. FDA met or exceeded nearly all of the review and procedural goals under PDUFA II. However, concerns grew that overworked review teams often had to return applications as "approvable" as they did not have the resources and sufficient staff time to work with the sponsors to resolve issues so that applications could reach approval in the first review cycle.

A sound financial footing and support for limited postmarket risk management were key themes of PDUFA III. Base user fee resources were significantly increased and a mechanism to account for changes in human drug review workload was adopted. PDUFA III also expanded the scope of user fee activities to include postmarket surveillance of new therapies for up to 3 years after marketing approval. FDA committed to the development of guidance for industry on risk assessment, risk management, and pharmacovigilance as well as guidance to review staff and industry on Good Review Management Principles (GRMPs). Initiatives to improve application submission and agency-sponsor interactions during the drug development and application review processes were also adopted.

With PDUFA reauthorization under FDAAA Title I (PDUFA IV), FDA obtained a significant increase in base fee funding and committed to full implementation of GRMPs, which includes providing a planned review timeline for premarket review, development of new guidance for industry on innovative clinical trials, modernization of postmarket safety, and elimination of the 3-year limitation on fee support for postmarket surveillance. However, the passage of FDAAA Titles IV, V, and IX added statutory requirements that increased the pre- and postmarket review process requirements, added new deadlines, and effectively increased the review workload. For example, these provisions significantly increased the number of applications requiring advisory committee review while creating more stringent conflict-of-interest rules for advisory committee members. The provisions also provided expanded drug safety authorities such as the authority to require Risk Evaluation Mitigation Strategies (REMS), order safety labeling changes, and require postmarket studies and trials. Since enactment of PDUFA IV at the start of fiscal year 2008, FDA has focused on implementation of the new statutory requirements, rapidly hiring new staff to increase FDA review capacity, and the iterative improvement of review processes. This necessary focus has affected performance on a number of PDUFA review goals and delayed work on some of the new PDUFA IV initiatives.

FDA has published a number of reports that may provide the public with useful background on PDUFA IV and FDAAA. Key **Federal Register** documents, PDUFA-related guidances, legislation, performance reports, and financial reports and plans can be found at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/default.htm*. FDA will also post a webinar on PDUFA to give the public more background information on the program. The webinar will be available at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm117890.htm* approximately 10 days before the public meeting. FDAAA-specific information is available at: *http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FoodandDrugAdministrationAmendmentsActof2007/default.htm*.

III. What Information Should You Know About the Meeting?

A. When and Where Will the Meeting Occur? What Format Will FDA Use?

Through this notice, we are announcing a public meeting to hear stakeholder views on what features we should propose in the PDUFA V program. We will conduct the meeting on April 12, 2010, at the Hilton Washington DC/Rockville (see **ADDRESSES**). In general, the meeting format will include presentations by FDA and a series of panels representing different stakeholder interest groups (such as patient advocates, consumer protection, industry, health professionals, and academic researchers). We will also provide an opportunity for individuals to make presentations at the meeting and for organizations and individuals to submit written comments to the docket after the meeting. FDA policy issues are beyond the scope of these reauthorization discussions. Accordingly, the presentations should focus on process enhancements and funding issues, and not focus on policy issues.

B. What Questions Would FDA Like the Public to Consider?

Please consider the following questions for this meeting:

1. What is your assessment of the overall performance of the PDUFA IV program thus far?

2. What aspects of PDUFA should be retained, changed, or discontinued to further strengthen and improve the program?

C. How Do You Register for the Meeting or Submit Comments?

If you wish to attend and/or present at the meeting, please register by e-mail to *PDUFAReauthorization@fda.hhs.gov* by April 5, 2010. Your e-mail should contain complete contact information for each attendee, including name, title, affiliation, address, e-mail address, and phone number. Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability. We will try to accommodate all persons who wish to make a presentation. The time allotted for presentations may depend on the number of persons who wish to speak. If you need special accommodations because of disability, please contact

Mary Gross (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

In addition, any person may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. To ensure consideration, all comments must be received by May 12, 2010.

D. Will Meeting Transcripts Be Available?

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov* and *http://www.fda.gov*. It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: March 11, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–5664 Filed 3–15–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Family Assistance; Privacy Act of 1974; System of Records

AGENCY: Office of Family Assistance, ACF, HHS.

ACTION: Notice to establish a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, the Administration for Children and Families (ACF) is publishing notice of a new system of records, entitled "Administration for Children and Families' National Responsible Fatherhood Pledge Campaign (NRFPC)."

DATES: The Department of Health and Human Services (HHS) invites interested parties to submit written comments on the proposed system until April 14, 2010. As required by the Privacy Act (5 U.S.C. 552a(r)), HHS on March 9, 2010, sent a report of a new system of records to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The proposed action described in this notice is effective on April 26, 2010, unless HHS receives comments which result in a contrary determination.

ADDRESSES: Interested parties may submit written comment on this notice by writing to Robin Y. McDonald, Office of Family Assistance, Administration for Children and Families, 370 L'Enfant Promenade, SW., 5th Floor East, Washington, DC 20447. Comments received will be available for public inspection at this address from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robin Y. McDonald, Office of Family Assistance, Administration for Children and Families, 370 L'Enfant Promenade, SW., 5th Floor East, Washington, DC 20447. The telephone number is (202) 401–5587.

SUPPLEMENTARY INFORMATION: The establishment of the proposed new system of records will enable ACF, in response to President Barack Obama's call for a national conversation on responsible fatherhood and healthy families, to assist interested parties to do all they can in providing children in their homes and communities the encouragement and support they need to fulfill their potential. In support of this objective, pledge cards will be available on the National Responsible Fatherhood Clearinghouse Web site and in print formats. The voluntarily provided data elements from these pledge cards will assist ACF and the White House Office of Faith-Based and Neighborhood Partnerships to provide supporting parties with information to promote a national discourse on responsible fatherhood and healthy families.

Dated: March 9, 2010.

Carmen R. Nazario,

Assistant Secretary for Children and Families.

09–80–0390

SYSTEM NAME:

Administration for Children and Families' National Responsible Fatherhood Pledge Campaign (NRFPC).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Administration for Children and Families, Office of Family Assistance, 370 L'Enfant Promenade, W., 5th Floor East, Washington, DC 20447.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parties who voluntarily complete and submit the NRFPC pledge card through the National Responsible Fatherhood Clearinghouse, part of the Administration for Children and Families (ACF).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Mobile Phone Number, E-mail address, City, State, Zip Code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Legal authority for maintenance of the system is provided by section 403(a)(2)(C) of the Social Security Act, 42 U.S.C. 603(a)(2)(C).

PURPOSE:

As authorized by the Social Security Act, and in response to President Barack Obama's call for a national conversation on responsible fatherhood and healthy families, parties will pledge to renew their commitment to family and community and recognize the positive impact that responsible adults can have on our children and youth. By taking the President's Pledge on Responsible Fatherhood, parties commit to do all they can in providing children in their homes and communities the encouragement and support they need to fulfill their potential. In support of this objective, pledge cards will be available on the National Responsible Fatherhood Clearinghouse website and in print formats. The voluntarily provided data elements from these pledge cards will assist the Administration for Children and Families and the White House Office of Faith-Based and Neighborhood Partnerships to provide supporting parties with information to promote a national discourse on responsible fatherhood and healthy families.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which ACF may release information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure

is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

(1) Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

(2) Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of the individual.

(3) Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof; or

2. Any employee of the Agency in his or her official capacity; or

3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency has agreed to represent the employee; or

4. The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(4) Information may be disclosed to the National Archives and Records Administration in records management inspections.

(5) Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency.

(6) Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

(7) Information from this system of records may be disclosed to the White House Office of Faith-Based and Neighborhood Partnerships for the purposes of outreach, communication and information dissemination related to the promotion of responsible fatherhood and healthy families activities, as described by the Social Security Act, at 42 U.S.C. 603(a)(2)(C)(ii)(IV).

(8) Information from this system of records may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are stored on a computer network.

RETRIEVABILITY:

Records can be accessed by name and/or location (area code, city, state, zip code).

SAFEGUARDS:

Safeguards conform to the HHS Information Security Program, described at *http://www.hhs.gov/ocio/securityprivacy/index.html.*

RETENTION AND DISPOSAL:

Records will be retained by ACF until the termination or transfer of the National Responsible Fatherhood Clearinghouse. Hard copies of collected pledge cards will be shredded upon entry into the NRFPC database.

SYSTEM MANAGER AND ADDRESS:

Technical Assistance Branch Chief, Office of Family Assistance, Administration for Children and Families, 370 L'Enfant Promenade, SW., 5th Floor East, Washington, DC 20447.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, and address of the individual, and the request must be signed. Verification of identity as described in the Department's Privacy Act regulations may be required. 45 CFR 5b.5. The requestor's letter must also provide sufficient particulars to enable ACF to distinguish between records on subject individuals with the same name.

RECORD ACCESS PROCEDURE:

Individuals seeking access to a record about themselves in this system of records should address written inquiries to the System Manager. The request should include the name, telephone number and/or email address, and address of the individual, and should be signed. Verification of identity as described in the Department's Privacy Act regulations may be required. 45 CFR 5b.5. The requestor's letter must also provide sufficient particulars to enable ACF to distinguish between records on subject individuals with the same name.

CONTESTING RECORD PROCEDURE:

Individuals seeking to amend a record about themselves in this system of records should address the request for amendment to the System Manager. The request should (1) include the name, telephone number and/or email address, and address of the individual, and should be signed; (2) provide the name or other information about the project that the individual believes contains his or her records; (3) identify the information that the individual believes is not accurate, relevant, timely, or complete; (4) indicate what corrective action is sought; and (5) include supporting justification or documentation for the requested amendment. Verification of identity as described in the Department's Privacy Act regulations may be required. 45 CFR 5b.5.

RECORD SOURCE CATEGORIES:

The record subjects are the source for the records that will be collected and contained in the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–5585 Filed 3–15–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 75 FR 7608–7610 dated February 22, 2010).

This notice reflects organizational changes in the Health Resources and Services Administration. Specifically, this notice updates the functional statements for the Division of Practitioner Data Banks (RPG), within the Bureau of Health Professions (RP).

Chapter RP, Bureau of Health Professions

Section RP–20, Functions

Delete the functional statement for the Division of Practitioner Data Banks (RPG) in its entirety and replace with the following:

Division of Practitioner Data Banks (RPG)

Coordinates with the Department and other Federal entities, State licensing boards, and National, State and local professional organizations to promote quality assurance efforts and deter fraud and abuse by administering the National Practitioner Data Bank (NPDB) as authorized under Title IV of the Health Care Quality Improvement Act of 1986 and Section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987, and administering the Healthcare Integrity and Protection Data Bank (HIPDB) for the Office of Inspector General. Specifically: (1) Maintains active consultative relations with professional organizations, societies, and Federal agencies involved in the NPDB and HIPDB; (2) maintains and publishes State Board compliance reports; (3) conducts audits to ensure validity of data in the banks; (4) develops programs of research on trends in data, quality assurance, risk management, medical liability and malpractice; (5) conducts and supports research based on NPDB and HIPDB information; (6) works with the other departmental entities to provide technical assistance to States undertaking malpractice reform; (7) analyzes multi-year State licensing board reporting patterns; and (8) maintains liaison with the Office of the General Counsel and the Office of the Inspector General, HHS, concerning practitioner licensing and data bank issues.

Section RP–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon signature.

Dated: March 5, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–5679 Filed 3–15–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Aircraft Operator Security

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on an existing information collection requirement abstracted below that will be submitted to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The collection requires aircraft operators to adopt and implement a TSA-approved security program. These programs require aircraft operators to maintain and update records to ensure compliance with security provisions outlined in 49 CFR part 1544.

DATES: Send your comments by May 17, 2010.

ADDRESSES: Comments may be mailed or delivered to Joanna Johnson, Communications Branch, Business Management Office, Operational Process and Technology, TSA–32, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–4220.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651 or facsimile (571) 227–3588.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The Information Collection Requirement (ICR) documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0003; Security Programs for Aircraft Operators, 49 CFR part 1544. The information collected is used to determine compliance with 49 CFR part 1544 and to ensure passenger safety by monitoring aircraft operator security procedures. TSA is seeking to renew its OMB control number, 1652–0003, Aircraft Operator Security. TSA has implemented aircraft operator security standards at 49 CFR part 1544 to require each aircraft operator to which this part applies to adopt and implement a security program. These TSA-approved security programs establish procedures that aircraft operators must carry out to protect persons and property traveling on flights provided by the aircraft operator against acts of criminal violence, aircraft piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft.

This information collection is mandatory for aircraft operators. As part of their security programs, affected aircraft operators are required to maintain and update, as necessary, records of compliance with the security program provisions set forth in 49 CFR part 1544. This regulation also requires affected aircraft operators to make their security programs and associated records available for inspection and copying by TSA to ensure transportation security and regulatory compliance.

The information requested of aircraft operators has increased due to the security measures mandated by the Federal Government since September 11, 2001. The information TSA now collects includes identifying information on aircraft operators' flight crews and passengers. Specifically, TSA requires aircraft operators to submit the following information: (1) A master crew list of all flight and cabin crew members flying to and from the United States; (2) the flight crew list on a flight-by-flight basis; (3) passenger information on a flight-by-flight basis; (4) total amount of cargo screened; (5) total amount of cargo screened at 100%; and (6) total amount of cargo screened at 50%. Aircraft operators are required to provide this information via electronic means. Aircraft operators with limited electronic systems may need to modify their current systems or generate a new computer system in order to submit the requested information but are not restricted to these means. Under this regulation, aircraft operators must ensure that flight crew members and employees with unescorted access authority or who perform screening, checked baggage or cargo functions submit to and receive a criminal history records check (CHRC). As part of the CHRC process, the individual must provide identifying information, including fingerprints. Additionally, aircraft operators must maintain these records and make them available to TSA for inspection and copying upon request.

TSA will continue to collect information to determine aircraft operator compliance with other requirements of 49 CFR part 1544. TSA estimates that there will be approximately 800 respondents to the information requirements described above requiring approximately 1,841,130 hours per year to process.

Issued in Arlington, Virginia, on March 11, 2010.

Joanna Johnson,

Paperwork Reduction Officer, Office of Information Technology.

[FR Doc. 2010–5732 Filed 3–15–10; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0106]

Certificate of Alternative Compliance for the Offshore Supply Vessel BUMBLE BEE

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel BUMBLE BEE as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on February 3, 2010.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2010–0106 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed under Title 33, Code of Federal Regulations, Parts 81 and 89, has been issued for the offshore supply vessel BUMBLE BEE, O.N. 1218416. Full compliance with 72 COLREGS and the Inland Rules Act would hinder the vessel's ability to maneuver within close proximity of offshore platforms. Due to the design of the vessel it would be difficult and impractical to build supporting structure that would put the side lights within 5.6′ from the greatest breadth of the vessel, as required by Annex I, paragraph 3(b) of the 72 COLREGS and Annex I, Section 84.05(b) of the Inland Rules Act. Compliance with the rule would cause the lights to be in a location which will be highly susceptible to damage from offshore platforms. Locating the sidelights 12′–4¼″ inboard from the greatest breadth of the vessel on the pilot house will provide a shelter location for the lights and allow maneuvering within close proximity to offshore platforms. In addition the forward masthead light may be located on the top forward portion of the pilothouse 38′–2¼″ above the hull. Placing the forward masthead light at the height as required by Annex I, paragraph 2(a) of the 72 COLREGS would result in a masthead light location highly susceptible to damage when working in close proximity to offshore platforms. Furthermore the horizontal distance between the forward and aft masthead lights may be 18′–10$^{9}/_{16}$″. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act would result in an aft masthead light location directly over the aft cargo deck where it would interfere with loading and unloading operations. Lastly the aft anchor light may be placed 25′–1$^{5}/_{16}$″ off centerline to the starboard side of the vessel, just forward of the stern. Placing the aft anchor light directly over the aft cargo deck would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the placement of the sidelights to deviate from requirements set forth in Annex I, paragraph 3(b) of 72 COLREGS and Annex I, paragraph 84.05(b) of the Inland Rules Act. In addition the Certificate of Alternative Compliance allows for the vertical placement of the forward masthead light to deviate from requirements set forth in Annex I, paragraph 2(a) of 72 COLREGS. Furthermore the Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act. Lastly the Certificate of Alternative Compliance allows for the placement of the aft anchor light to deviate from the requirements of Rule 30(a)(ii) of 72 COLREGS and Rule 30(a)(ii) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: February 23, 2010.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2010–5649 Filed 3–15–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0333]

Delaware River and Bay Oil Spill Advisory Committee; Meeting Cancelled

AGENCY: Coast Guard, DHS.

ACTION: Notice of cancellation of meeting.

SUMMARY: The Delaware River and Bay Oil Spill Advisory Committee (DRBOSAC) meeting scheduled for March 17, 2010 in Philadelphia, PA and published in the **Federal Register** on March 2, 2010 (75 FR 9426) is cancelled.

FOR FURTHER INFORMATION CONTACT: Gerald Conrad, Liaison to the DFO of the DRBOSAC, (215) 271–4824.

Dated: March 12, 2010.

Joseph M. Re,

Captain, U.S. Coast Guard, Office of Performance Management (CG–0954).

[FR Doc. 2010–5834 Filed 3–12–10; 3:45 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Request for Applicants for Appointment to the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee Management; request for applicants for appointment to the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC).

SUMMARY: U.S. Customs and Border Protection (CBP) is requesting individuals who are interested in serving on the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) to apply for appointment. COAC provides advice and makes recommendations to the Commissioner of CBP, Secretary of Homeland Security, and Secretary of the Treasury on all matters involving the commercial operations of CBP and related DHS functions.

DATES: Applications for membership should reach CBP on or before May 15, 2010.

ADDRESSES: If you wish to apply for membership, your application should be sent to CBP by one of the following methods:

- *E-mail: Tradeevents@dhs.gov.*
- *Facsimile:* 202–325–4290.
- *Mail:* Ms. Wanda J. Tate, Program Management Analyst, Office of Trade Relations, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda J. Tate, Program Management Analyst, Office of Trade Relations, Customs and Border Protection, (202) 344–1440, FAX (202) 325–4290.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C., app.

Purpose and Objective: The purpose of the Committee is to provide advice to the Commissioner of Customs and Border Protection, Secretary of Homeland Security, and Secretary of the Treasury on all matters involving the commercial operations of U.S. Customs and Border Protection (CBP) and related functions within the Department of Homeland Security (DHS) or Treasury, and to submit an annual report to Congress describing its operations and setting forth any recommendations. The Committee provides a critical and unique forum for distinguished representatives of diverse industry sectors to present their views and advice directly to senior Treasury, DHS, and CBP officials. This is done on a regular basis in an open and candid atmosphere.

Balanced Membership Plans: The members will be selected by the Commissioner of CBP, subject to approval by the Secretary of Homeland Security, jointly with the Secretary of the Treasury from representatives of the trade and transportation community that do business with CBP, or others who are directly affected by CBP commercial operations and related functions. In addition, members will represent major regions of the country, and, by statute, not more than ten of the twenty Committee members may be affiliated with the same political party.

Background

In the Omnibus Budget Reconciliation Act of 1987, (Pub. L. 100–203), Congress directed the Secretary of the Treasury to create an Advisory Committee on Commercial Operations of the Customs Service (now CBP). The Committee is to consist of twenty members drawn from industry sectors affected by CBP commercial operations with balanced political party affiliations. The Committee's first two-year charter was filed on October 17, 1988, and the Committee has been renewed for subsequent two-year terms times since then.

With the creation of DHS, the Secretary of the Treasury delegated a joint chair and Committee management role to the Secretary of Homeland Security (*see* Treasury Department Order No. 100–16, 19 CFR Part 0, Appendix.). In Delegation Number 7010.3 (May 2006), the Secretary of Homeland Security delegated to the Commissioner of CBP the authority to preside jointly with Treasury over the meetings of the Committee, to make appointments to COAC subject to approval of the Secretary of Homeland Security jointly with Treasury, and to receive COAC advice.

It is expected that, during its twelfth two-year term, the Committee will consider issues relating to enhanced border and cargo supply chain security, CBP modernization and automation, informed compliance and compliance assessment, account-based processing, commercial enforcement and uniformity, international efforts to harmonize customs practices and procedures, strategic planning, northern border and southern border issues, CBP agricultural inspection and import safety.

Committee Meetings

The Committee meets once each quarter, although additional meetings may be scheduled. Generally, every other meeting of the Committee may be held outside of Washington, DC, usually at a CBP port of entry.

Committee Membership

Membership on the Committee is personal to the appointee and is concurrent with the two-year duration of the charter for the twelfth term. Under the Charter, a member may not send an alternate to represent him or her at a Committee meeting. However, since Committee meetings are generally open to the public, another person from a member's organization may attend and observe the proceedings in a nonparticipating capacity. Regular attendance is essential; the Charter provides that a member who is absent for two consecutive meetings or two meetings in a calendar year may be recommended for replacement on the Committee.

No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a

foreign principal may serve on this advisory committee.

Members who are currently serving on the Committee are eligible to re-apply for membership provided that they are not in their second consecutive term and that they have met attendance requirements. A new application letter (*see* **ADDRESSES** above) is required, but it may incorporate by reference materials previously filed (please attach courtesy copies).

Members will not be paid compensation by the Federal Government for their services with respect to the COAC.

Application for Advisory Committee Appointment

There is no prescribed format for the application. Applicants may send a letter describing their interest and qualifications and enclose a resume.

Any interested person wishing to serve on the (COAC) must provide the following:

- Statement of interest and reasons for application;
- Complete professional biography or resume;
- Home address and telephone number;
- Work address, telephone number, and email address;
- Political affiliation in order to ensure balanced representation (mandatory). If no party registration or allegiance exists, indicate "independent" or "unaffiliated";
- Statement agreeing to submit to pre-appointment background and tax checks (mandatory). A national security clearance is not required for the position.

In support of the policy of DHS on gender and ethnic diversity, qualified women and members of minority groups are encouraged to apply for membership.

Dated: March 10, 2010.

David V. Aguilar,

Acting Deputy Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2010–5637 Filed 3–15–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

THE UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Central Utah Project Completion Act

AGENCY: Department of the Interior, Office of the Assistant Secretary—Water and Science; Utah Reclamation Mitigation and Conservation Commission; and the Central Utah Water Conservancy District.

ACTION: Notice of intent to prepare an Environmental Impact Statement and Announcement of Public Scoping for the proposed Provo River Delta Restoration, Utah County, Utah.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations at 40 CFR 1501.7, and authorities under the Endangered Species Act (15 U.S.C. 1536, *et seq.*), the Department of the Interior (Interior), Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission), and the Central Utah Water Conservancy District (District), as Joint Lead Agencies, will prepare an Environmental Impact Statement (EIS), with public involvement, for the Provo River Delta Restoration Project. The restoration project is a recovery action within the approved species recovery plan.

DATES: Date and location for the public Scoping meeting will be announced locally. Public comments on Scoping issues will be accepted at the meeting, or in writing on or before April 30, 2010.

ADDRESSES: Send written comments to the Utah Reclamation Mitigation and Conservation Commission, 230 South 500 East, Suite 230, Salt Lake City, UT 84102–2045; or by e-mail to *urmcc@usbr.gov.*

FOR FURTHER INFORMATION: Additional information may be obtained by contacting Mr. Mark Holden at (801) 524–3146, or by e-mail at *urmcc@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Record of Decision for the Diamond Fork System Final Supplement to the Diamond Fork Power System Final Environmental Impact Statement (FEIS 99–25) commits the Joint Lead Agencies to "* * * participate in the development of a Recovery Implementation Program for June sucker." Moreover, "* * * [a]ny future development of the Bonneville Unit of CUP [Central Utah Project] will be contingent on the RIP [Recovery Implementation Program] making 'sufficient progress' towards recovery of June sucker." The June Sucker Recovery Implementation Program (JSRIP) was established in 2002, and the Joint Lead Agencies are participants. The goals of the JSRIP are to recover June sucker so that it no longer requires protection under the Endangered Species Act; and allow continued operation of existing water facilities and future development of water resources for human uses within the Utah Lake basin in Utah.

The June sucker (*Chasmistes liorus*) exists naturally only in Utah Lake and spawns naturally only in the lower Provo River, a Utah Lake tributary. Monitoring indicates young June sucker hatching in the lower Provo River do not survive to the adult stage. It is believed that first-year fish do not survive due to habitat inadequacies in the lower Provo River and its interface with Utah Lake related to flow, food supply and shelter. A compounding factor is likely predation by nonnative fishes. Dredging and channelization for flood control has eliminated the shallow, warm, complex wetland habitat at the mouth of the Provo River where it entered Utah Lake. The conceptual restoration is to relocate the lower Provo River onto public and acquired private fee lands, and connect the river to a former bay of Utah Lake that will be restored to provide habitat conditions necessary for survival and recruitment of June sucker.

A Draft Purpose and Need statement for the project will be presented and discussed at the Scoping Meeting as follows:

Need

- Functional habitat conditions in the lower Provo River and its interface with Utah Lake that are suitable for spawning, hatching, larval transport, survival, rearing and recruitment of June sucker to the adult stage.

Purposes

- Preserve and improve fish, wildlife, riparian and wetlands habitats at lower Provo River and its interface with Utah Lake;
- Expedite recovery of the endangered June sucker by re-establishing essential June sucker habitat through restoration of the lower Provo River ecosystem at the Provo River-Utah Lake interface to a more natural condition (a delta);
- Provide recreational improvements and opportunities associated with the habitat restoration project; and
- Provide for continued development of the Central Utah Project (CUP).

Dated: March 9, 2010.

Reed R. Murray,

Program Director, Central Utah Project Completion Act, Department of the Interior.

Michael C. Weland,

Executive Director, Utah Reclamation Mitigation and Conservation Commission.

[FR Doc. 2010–5630 Filed 3–15–10; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORORO957000–L62510000–PM000: HAG10–0178]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 3 S., R. 41 E., accepted January 15, 2010
T. 30 S., R. 11 W., accepted January 22, 2010
T. 2 N., R. 33 E., accepted January 27, 2010
T. 38 S., R. 1 W., accepted January 27, 2010
T. 18 S., R. 12 W., accepted January 27, 2010
T. 2 N., R. 33 E., accepted January 28, 2010

Washington

T. 10 N., R. 31 E., accepted February 9, 2010

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 S.W. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, 333 S.W. 1st Avenue, Portland, Oregon 97204.

Dated: March 5, 2010.

Cathie Jensen,

Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2010–5668 Filed 3–15–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2010–N019; BAC–4311–K9 S3]

Patuxent Research Refuge, Anne Arundel and Prince George's Counties, MD

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; announcement of public scoping meetings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for Patuxent Research Refuge in Laurel, Maryland. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process. We are also announcing public meetings and requesting public comments.

DATES: To ensure consideration, please send your written comments by March 31, 2010. We will announce opportunities for public input in local news media throughout the CCP process.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

Electronic mail: northeastplanning@fws.gov. Include "Patuxent Research Refuge CCP" in the subject line of the message.

Facsimile: Attention: Nancy McGarigal, 413–253–8468.

U.S. Mail: U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

In-Person Drop-off: You may drop off comments during regular business hours at Patuxent Research Refuge, 10901 Scarlet Tanager Loop, Laurel, MD 20708.

FOR FURTHER INFORMATION CONTACT: Brad Knudsen, Refuge Manager, Patuxent Research Refuge, 10901 Scarlet Tanager Loop, Laurel, MD 20708; phone: 301–497–5580; electronic mail: *brad_knudsen@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Patuxent Research Refuge, in Anne Arundel and Prince George's Counties, Maryland. This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge, and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Our CCP process provides participation opportunities for Tribal, State, and local governments, agencies, organizations, and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Patuxent Research Refuge.

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Patuxent Research Refuge

Established in 1936 by executive order of President Franklin D. Roosevelt, a major portion of Patuxent Research Refuge is to support wildlife research. Today most of the research on

the refuge is conducted by the U.S. Geological Survey through the Patuxent Wildlife Research Center.

With land surrounding the Patuxent and Little Patuxent Rivers between Washington, DC, and Baltimore, Maryland, the refuge has grown from the original 2,670 acres to its present size of 12,841 acres, and encompasses land formerly managed by the Departments of Agriculture and Defense. Refuge habitats consist of forested floodplain and mixed hardwood uplands, managed impoundments, fields, and shrublands. The impressive breadth of research that has occurred over the years includes projects involving issues such as environmental contaminants, captive propagation of endangered species, including the whooping crane, and bird population monitoring techniques. The refuge is home to the National Wildlife Visitor Center, a first-class facility for environmental education, interpretation, and scientific information exchange. There are over 24 miles of hiking trails on the refuge, and a variety of opportunities for hunting, fishing, and wildlife observation year-round.

Scoping: Preliminary Issues, Concerns, and Opportunities

The planning team has identified some preliminary issues, concerns, and opportunities to address in the CCP. We list below the categories for issues we have preliminarily identified. During public scoping, we expect additional issues may be raised.

(1) Ecoregional or ecosystem-wide issues, such as climate change, land conservation, and protection of water quality throughout the watershed;

(2) Biological program issues, such as habitat and species management, protection, restoration, monitoring, inventories, and research;

(3) Public-use program issues, such as the breadth and quality of programs, public access, user conflicts, and use impacts on natural resources;

(4) Infrastructure and staffing issues, such as appropriateness of facilities, safety, accessibility, and additional staffing needs;

(5) Community relations and outreach issues and opportunities, such as tourism, and local economic impacts; and

(6) Coordination and communication issues and opportunities with other Service programs and the U.S. Geological Survey.

Public Meetings

We will give the public an opportunity to provide input at public meetings. You can obtain the schedule from the planning team leader or project leader (*see* **ADDRESSES**). You may also send comments anytime during the planning process by mail, electronic mail, or facsimile (*see* **ADDRESSES**). There will be additional opportunities to provide public input once we have prepared a draft CCP.

Public Availability of Comments

Before including your address, phone number, electronic mail address, or other personal identifying information in your comments, 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.

Dated: February 11, 2010.

Wendi Weber,

Acting Regional Director, Northeast Region, U.S. Fish and Wildlife Service.

[FR Doc. 2010–5632 Filed 3–15–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N039]
[96300–1671–0000–P5]

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species and/or marine mammals.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703–358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703–358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
060470	Hollywood Animals, Inc.	74 FR 47821; September 17, 2009	January 15, 2010
060472	Hollywood Animals, Inc.	74 FR 47821; September 17, 2009	January 15, 2010
060473	Hollywood Animals, Inc.	74 FR 47821; September 17, 2009	January 15, 2010
192403	Ricardo E. Longoria	74 FR 58977; November 16, 2009	December 28, 2009
220887	Fort Worth Zoo	74 FR 55062; October 26, 2009	February 19, 2010
223400	Earth Promise, doing business as Fossil Rim Wildlife Center	74 FR 46222; September 8, 2009	February 19, 2010
223447	Zoological Society of San Diego	75 FR 427; January 5. 2010	February 26, 2010
230742	The Phoenix Zoo	74 FR 66675; December 16, 2009	February 2, 2010
231594	Seneca Park Zoo	74 FR 58977; November 16, 2009	February 2, 2010
232558	William J. Butler	74 FR 62586; November 30, 2009	January 20, 2010
233622	National Zoological Park	74 FR 66675; December 16, 2009	January 26, 2010
234069	Carl Wagner	74 FR 66675; December 16, 2009	January 28, 2010

ENDANGERED SPECIES—Continued

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
235302	Jarrell W. Martin	75 FR 427; January 5, 2010	February 5, 2010

MARINE MAMMALS

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
220509	Dr. Beth Shapiro, Pennsylvania State University	74 FR 62586, November 30, 2009	March 5, 2010
225854	Tom S. Smith, Brigham Young University	74 FR 57702; November 9, 2009	February 18, 2010
226641	Natalija Lace, University of Southern Mississippi	74 FR 57702; November 9, 2009	January 26, 2010
229154	John Downer Productions LTD	74 FR 62586, November 30, 2009	February 23, 2010
230255	Pontecorvo Productions LLC	74 FR 62586, November 30, 2009	February 26, 2010

Dated: March 5, 2010

Brenda Tapia

Program Analyst, Branch of Permits, Division of Management Authority

[FR Doc. 2010–5510 Filed 3–15– 10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as an Addition to the Confederated Tribes of the Chehalis Reservation, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation Proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 213.73 acres, more or less, to be added to the Chehalis Indian Reservation, Washington.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop-4639–MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according with section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the lands described below. The land was proclaimed to be an addition to and part of the Chehalis Indian Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Confederated Tribes of the Chehalis Indian Reservation

Grays Harbor County, State of Washington

130–T1168

Parcel A

The East 670 feet of that portion of the Northeast Quarter of the Southeast Quarter of Section 34, Township 16 North, Range 4 West of the Willamette Meridian, lying Southerly of the Southerly margin of State Road No. 9 (now State Road No. 12); AND the South Half of the Southeast Quarter, Section 34, Township 16 North, Range 4 West of the Willamette Meridian;

Except County Road;

And Except that portion deeded to State of Washington by Warranty Deed dated March 13, 1985, recorded April 22, 1985, under Auditor's File No. 850422081, records of Grays Harbor County;

And Except that portion deeded to the State of Washington by Warranty Deed dated December 15, 1989, recorded January 22, 1990 under Auditor's File No. 900123052, records of Grays Harbor County, situated in the County of Grays Harbor, Washington.

Containing 86.01 acres more or less.

Parcel B

All that portion of the East 2/3rds of the Northwest Quarter of the Southeast Quarter of Section 34, Township 16 North, Range 4 West of the Willamette Meridian lying Southerly of State (U.S.) Highway 12, situated in the County of Grays Harbor, Washington.

Containing 11.10 acres more or less.

130–T1183

That portion of the abandoned Union Pacific Railroad, in varying width, over and across the following property:

Government Lots 5, 6, 7 and 8, Section 10, Township 15 North, Range 4 West of the Willamette Meridian;

Government Lots 1, 2 and 3; The Northeast Quarter of the Northwest Quarter, Section 9, Township 15 North, Range 4 West of the Willamette Meridian;

Government Lots 7 and 8, Section 4, Township 15 North, Range 4 West of the Willamette Meridian;

Government Lots 8 and 9, Section 5, Township 15 North, Range 4 West of the Willamette Meridian, situated in the County of Grays Harbor, Washington.

Containing 37.81 acres, more or less.

130–T1184

The Northeast Quarter of the Southeast Quarter of Section 34, Township 16 North, Range 4 West of the Willamette Meridian, lying South of State Highway No. 9 (now State Highway No. 12);

Except the East 670 feet thereof;

And Except that portion conveyed to the State of Washington by Warranty Deed recorded February 11, 1985, under Auditor's File No. 850211040, situated in the County of Grays Harbor, Washington.

Containing 7.05 acres, more or less.

130–T1185

Lot 8, Block 11, Brewer's Addition to the Town of Oakville, as per plat recorded in Volume 1 of Plats, page 191;

Also Lot 8, Plat of Line Addition to Oakville, as per plat recorded in Volume 4 of Plats, page 3, records of Grays Harbor County;

Also the West ½ of Third Street North of Oak Street adjacent to Lot 8, Block 11, Brewer's Addition to Oakville;

Also the East ½ of Third Street North of Oak Street adjacent to Lot 5, Block 12, Brewer's Addition to Oakville;

All situated in the County of Grays Harbor, Washington.

Containing 0.44 acre, more or less.

Confederated Tribes of the Chehalis Indian Reservation

Willamette Principal Meridian, Thurston County, Washington

130–T1170

That portion of Tract 27 of Western Irrigation Land Company Second Farm Tracts, as recorded in Volume 8 of Plats, page 81, lying Southerly and Easterly of Case Road S.W. in Thurston County, Washington.

Containing 0.936 acre, more or less.

130–T1182

Parcel A

Parcel 28 of land described in the deed to Herbrand-Mcgowan Timber Company, a Washington General Partnership under Recording No. 9212230303, and set forth therein as follows:

A piece or parcel of land, being all those parts of the Westerly portion of Lot 7, Section 11, Township 15 North, Range 4 West of the Willamette Principal Meridian, Thurston County, Washington, that lies within 100 feet on each side of the centerline of the railway of the Grays Harbor and Puget Sound Railway Company, now known as, the Union Pacific Railroad Company, as the same is now surveyed, located and staked out, over and across said portion of said Lot 7 of Section 11, said center line, being more particularly described as follows, to wit:

Commencing at a point on the west line of said Section 11, 1932.5 feet, more or less, northerly of the southwest corner of said Section 11; thence north 76°37′ east, a distance of 1363.8 feet, more or less, to the west line of Lot 7, which is the true point of beginning;

Thence continuing north 76°37′ east, a distance of 477 feet to the west boundary line of Parcel 32, described above;

Except any portion lying easterly of the west line of Independence Road.

Parcel B

A piece of land, being all those parts of Government Lot 6, Section 11, Township 15 North, Range 4 West of the Willamette Principal Meridian, Thurston County, Washington, that lies within 100 feet on each side of the centerline of the railway of the Grays Harbor and Puget Sound Railway Company, now known as, the Union Pacific Railroad Company, as the same is now staked, located and staked out, over and across said portion of said Lot 6 of Section 11, said center line, being more particularly described as follows, to wit:

Beginning at a point on the west line of said Section 11, 1932.5 feet, more or less, Northerly of the Southwest corner of said Section 11;

Thence North 76° 37′ East, a distance of 1363.8 feet, more or less, to the East line of Lot 6;

Containing 7.4 acres, more or less.

130–T1193

That part of Tract 10 lying Southerly of Primary State Highway No. 9 and that part of Tract 11 of Farmdale Addition to Gate City, as recorded in Volume 6 of Plats, page 19, lying in the North half of the South half of the Southwest quarter of Section 35, Township 16 North, Range 4 West, W.M., together with that part of vacated street lying between said lots;

And Excepting Therefrom county road known as Anderson Road along the West boundary of said property.

Also Excepting that portion of said premises lying Easterly of a line described as follows: Beginning at the Northeast corner of said Tract 10; thence North 88°09′35″ West 489.76 feet along the North line of said Tract 10; thence South 904.56 feet to the Southerly right of way line of Primary State Highway No. 12–E and the true point of beginning; thence South 08°54′05″ West 236.47 feet, South 18° 20′15″ West 244.74 feet, South 15°15′05″ West 127.84 feet, South 06°24′25″ East 53.49 feet, South 16°32′10″ East 146.73 feet, South 18°22′40″ East to the South line of the North half of the South half of the Southwest quarter of said Section 35, and the terminus of said line.

Also Excepting those portions deeded to the State of Washington for highway purposes, by deeds recorded under Auditor's File Nos. 8910250087 and 9102210063.

Also Excepting those portions conveyed to Thurston County by Deeds recorded August 28, 2002 and May 12, 2003, under File Nos. 3457969 and 3530786.

In Thurston County, Washington.

Containing 20 acres, more or less.

130–T1205

That part of the Northwest Quarter of Section 13, Township 15 North, Range 3 West, W.M., lying easterly of Old Pacific Highway and Westerly of the Chehalis Western Railroad Company right-of-way (Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way).

Situated in Thurston County, Washington.

Containing 42.99 acres, more or less.

The above-described lands contain a total of 213.73 acres, more or less, which is subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect: (1) Title to the lands described above; (2) any valid existing easements for public roads and highways or public utilities; (3) any valid existing easements for railroads and pipelines; or (4) any other rights-of-way or reservations of record.

Dated: March 9, 2010.

Del Laverdure,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010–5696 Filed 3–15–10; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OMB Number 1121–0094]

Agency Information Collection Activities: Existing Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a Currently Approved Collection; Annual Survey of Jails.

The Department of Justice (DOJ), Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "thirty days" until April 15, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Todd D. Minton, Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531 (phone: 202–305–9630).

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 Bureau of Justice Statistics, 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;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revisions of a currently approved collection.

(2) *Title of the Form/Collection:* The Annual Survey of Jails (ASJ). The collection includes the forms: Annual Survey of Jails (ASJ), which includes the regular form and the certainty jurisdiction form; the Survey of Large Jails (SLJ); and the Survey of Jails in Indian Country (SJIC), which includes the regular SJIC form and an addendum.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form numbers include:

- *Annual Survey of Jails:* This collection consists of four forms:
  - CJ–5 and CJ–5A, the ASJ regular forms: These forms go to jail jurisdictions in the ASJ sample that are not selected with certainty. The CJ–5 form goes to jail jurisdictions operated by the county or city and the CJ–5A goes to privately owned or operated confinement facilities;
  - CJ–5D and CJ–5DA, the ASJ certainty jurisdiction forms: The forms go to jail jurisdictions in the ASJ sample that are selected with certainty. The CJ–5D and CJ–5DA request additional information about the distribution of time served, staffing, and inmate misconduct that are not requested on the CJ–5 and CJ–5A. The CJ–5D goes to jurisdictions operated by the county or city; the CJ–5DA goes to confinement facilities administered by two or more governments and privately owned or operated confinement facilities.
- The Survey of Large Jails (SLJ) has one form, the CJ–5C. This form goes to confinement facilities in jail jurisdictions with an average daily population (ADP) of 1,000 or more inmates or a rated capacity of 1,000 beds or more.
- Survey of Jails in Indian Country (SJIC): This collection consists of two forms, the CJ–5B (the SJIC regular form) and the CJ–5B Addendum (a one-time addendum to the SJIC). All respondents receive both forms.

The applicable component of the Department of Justice sponsoring the collection is the Bureau of Justice Statistics, which is within the Office of Justice Programs.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: The affected public that will be asked to respond include approximately 1,000 county, city, and Tribal jail authorities (936 respondents to the ASJ and 88 to the SJIC). As community institutions that book an estimated 13 million inmates per year, local jails are an integral part of the justice system, operating at the front end (that is, following arrest or referral) as well as the back end (discharging inmates and holding those sentenced to jail). Their broad functions include handling inmates who are awaiting trial or sentencing, holding inmates for other authorities, detaining inmates with special needs such as mental health holds or alcohol detoxifications, transferring inmates to court appearances and bringing them back to detention, discharging inmates at the behest of the court or other entities, and holding inmates who have been sentenced to terms in jail. The set of collections in this package provides BJS with the capacity to track and analyze changes in the jail inmate population that might signal changes in the kinds of cases coming into or leaving the criminal justice system, and to analyze how the volatility of jail inmate populations affects the workload of jails and their capacities to provide services. In combination with the SLJ, the ASJ provides BJS with these capacities to study local jails nationwide. The parallel structure of the SJIC collection (the regular form with the addendum) provides BJS with this capacity for Indian country jails.

In its entirety, this collection is the only national effort devoted to describing and understanding annual changes in jail populations as well as assessing programs and capacities to provide services. The collection enables BJS, other federal agencies, and state, local, and Tribal corrections authorities and administrators, as well as legislators, researchers, and jail planners to track growth in the number of jails and their capacities nationally; as well as, track changes in the demographics and supervision status of jail population and the prevalence of crowding. Information collected in the certainty jurisdiction form and survey addendums provide critical data on jail population movements and inmate mental and medical health services and other programs available to confined inmates.

The forms and information content for this collection are outlined next in the following order: First, the components of the Annual Survey of Jails (ASJ), which include the CJ–5, CJ–5A, CJ–5D, and CJ–5DA. Second, the Survey of Large Jails (SLJ), which is a one-time survey of large jails to obtain supplementary information about jail programs, which are described in the CJ–5C. Third, the Survey of Jails in Indian Country (SJIC), which has a regular form to be administered annually (CJ–5B) and a one-time addendum on programs and practices (CJ–5B Addendum).

The two components of the Annual Survey of Jails include the CJ–5/5A and CJ–5D/5DA forms. The CJ–5/5A forms are to be administered to ASJ sample elements that are selected with a probability of less than 1. The CJ–5D/5DA forms are to be administered to ASJ sample elements selected with certainty.

CJ–5 and CJ–5A

For these forms, 561 respondents from sampled county and city jails will be asked to provide information for the following categories:

(a) At midyear (last weekday in the month of June), the number of inmates confined in jail facilities including; male and female adult and juvenile inmates; persons under age 18 held as adults; race categories; held for Federal authorities, State prison authorities and other local jail jurisdictions.

(b) At midyear, the number of convicted inmates that are unsentenced or sentenced and the number of unconvicted inmates awaiting trial/arraignment, or transfers/holds for other authorities. The breakout into sentenced and unsentenced inmates is newly proposed for this collection.

(c) At midyear, the number of persons under jail supervision who were not U.S. citizens.

(d) Whether the jail facilities has a weekend incarceration program prior to midyear and the number of inmates participating.

(e) The number of new admissions into and final discharges from jail facilities during the last week in June.

(f) The date and count for the greatest number of confined inmates during the 30-day period in June.

(g) The average daily population of jail facilities from July 1 of the previous year to June 30 of the current collection year.

(h) Jail capacity, measured three ways: rated capacity, operating capacity, and design capacity. The information on

operating and design capacities are newly proposed for this collection.

(i) At midyear, the number of persons under jail supervision but not confined (*e.g.,* electronic monitoring, day reporting, etc.)

CJ–5D and CJ–5DA

These forms will be administered to the certainty jurisdictions in the ASJ sample; in addition to the information collected in the regular ASJ forms (the CJ–5/5A), the 373 respondents that are included with certainty in the ASJ sample survey will be asked to provide additional information on the flow of inmates going through jails and the distribution of time served, staff characteristics and assaults on staff resulting in death, and inmate misconduct. More specifically, these include:

(a) The distribution of time served by inmates discharged during the final week of June, broken out by whether the inmates were convicted or unconvicted.

(b) At midyear, the number of correctional officers and other staff employed by jail facilities;

(c) From July 1 of the previous year to June 30 of the current collection year: the number of inmate-inflicted physical assaults (and counts) on correctional officers and other staff and the number of staff deaths as a result.

(d) From July 1 of the previous year to June 30 of the current collection year: the number of inmates, by category, who were written up or found guilty of a rule violation.

The Survey of Large Jails (SLJ), form CJ–5C, is conceived of as a one-time collection to be administered in 2011, pending final OMB approval. The survey complements the ASJ by collecting detailed data from large jail jurisdictions (those housing an average of 1,000 or more inmates or a rated capacity of 1,000 beds or more) on mental health, medical, and substance abuse treatment services.

CJ–5C (SLJ)

Information on mental and medical health and substance abuse treatment services issues will be requested. Based upon the SLJ administered in 2004, the following categories of information will be requested. However, BJS is currently undertaking efforts to revise this form to capture more detailed information on the processes used by jails to screen and treat offenders. This effort is integrated into a project that BJS has with the National Center for Health Statistics (NCHS). As part of the NCHS project, BJS and NCHS are convening meetings of experts to provide facts and information related to measuring services in jails, and based on the information obtained from these meetings, BJS will revise the SLJ form and submit to OMB a separate package for clearance of this form.

Mental Health Treatment and Services

(a) During the 31-day period in (month of the reference year of administration), the number of new admissions to the jail facility that are male and female, adult and juvenile inmates;

(b) Whether the jail facility conducts mental health screening at intake, the type(s) of screening instruments, and when does the screening process occur (*e.g.,* within 24 hours of booking, in an emergency or crisis situation, etc.);

(c) Who conducts the mental health screening (*e.g.,* correctional staff, mental health professional, etc.);

(d) During the 31-day period in (month), the number of persons with new admissions to the jail facility that were screened at intake for mental health disorders or emotional problems and the number determined to have major depressive symptoms, major manic symptoms, major psychotic symptoms;

(e) What services to inmates are provided when the intake screening reveals a mental health disorder (*e.g.,* referral for further testing/assessment, contacted a mental health professional, moved to a special housing facility and under special observation, etc.);

(f) During the 31-day period in (month), the number of inmates who received mental health treatment and the type(s) of treatment;

(g) Designated area with beds allocated under the authority of a physician with mental health services and 24 hour nursing coverage. How many beds are for inmates and the number of beds occupied;

(h) Jail facility discharge plan for inmates who needed mental health care. Who provides this service linkage? What agencies administer this service? What agency pays for this service?

Substance Abuse Treatment and Services and Other Programs

(i) Whether the jail facility conducts medical detoxification on confined persons and the number of persons who were being detoxified;

(j) During the 31-day period in (month), the number of persons with new admissions to the jail facility that:

(1) Were tested for the use of drugs at intake and how many tested positive;

(2) Participated in counseling or special programs (*e.g.,* drug/alcohol counseling/awareness, domestic violence counseling, etc.);

(3) Participated in an education program (*e.g.,* basic adult education (ABE), GED program, and college level classes, etc.).

The Survey of Jails in Indian Country consists of two forms, the annual survey form (CJ–5B) and a one-time addendum on programs and services (CJ–5B Addendum).

CJ–5B

Respondents from Indian country correctional facilities operated by tribal authorities or the Bureau of Indian Affairs (BIA) (currently there are 85) will be asked to provide information for the following categories:

(a) At midyear (last weekday in the month of June), the number of inmates confined in jail facilities including; male and female adult and juvenile inmates; persons under age 18 held as adults; convicted and unconvicted males and females; persons held for a felony, misdemeanor; their most serious offense (*e.g.,* domestic violence offense, aggravated or simple assault, driving while intoxicated, etc.)

(b) The average daily population during the 30-day period in June;

(c) The date and count for the greatest number of confined inmates during the 30-day period in June;

(d) The number of new admissions into and final discharges during the month of June;

(e) From July 1 of the previous year to June 30 of the current collection year: the number of inmate deaths while confined and the number of deaths attributed to suicide and the number of confined inmates that attempted suicide;

(f) At midyear, the total rated capacity of jail facilities;

(g) At midyear, the inmate housing characteristics and the number held (*e.g.,* single occupied cells or rooms, multiple occupied units originally designed for single occupancy; multiple occupied units designed for multiple occupancy, temporary holding areas, etc.)

(h) At midyear, whether or not the jail facility was under a Tribal, State, or Federal court order or consent decree to limit the number of persons it can house (and the count), and/or for conditions of confinement;

(i) At midyear, the number of male and female correctional staff employed by the facility and their occupation (*e.g.,* administration, jail operations, educational staff, etc.)

(q) At midyear, how many jail operations employees had received the basic detention officer certification and how many had received 40 hours of in-service training;

(r) From July 1 of the previous year to June 30 of the current collection year: how many jail operation employees did the facility hire for employment; how many jail operation employees were separated from employment in the facility;

(s) At midyear, how many specific jail operation employee positions were vacant.

CJ–5B Addendum (SJIC)

This is to be a one-time collection between 2010 and 2012 will be administered to 85 respondents. Information for the following categories will be requested:

(a) How does the facility provide medical health services to inmates (*e.g.,* on-site staff physicians, IHS, off-site medical services, etc.);

(b) At midyear, whether the jail facilities detoxify confined persons (and count) from drugs or alcohol;

(c) Policy for testing inmates for Tuberculosis, Hepatitis B and C, and the Human Immunodeficiency Virus (HIV) that causes AIDS (*e.g.,* at admission, at regular intervals, random sample, indication of need, etc.);

(d) How does the facility provide mental health services to inmates (*e.g.,* screen inmates at intake, 24-hour mental health care; counseling by a trained mental health professional, monitor the use of psychotropic medications, assist released inmates to obtain community mental health services, etc.);

(e) Types of specific suicide prevention procedures (*e.g.,* assessment of risk at intake, special inmate counseling or psychiatric services, monitoring of high risk inmates; suicide, etc.);

(a) From July 1 of the previous year to June 30 of the current collection year, whether facility has inmate work assignments and the types of assignments;

(b) From July 1 of the previous year to June 30 of the current collection year, counseling or special programs available to confined persons either on or off facility grounds (*e.g.,* drug/alcohol counseling/awareness, domestic violence counseling, etc.);

(c) From July 1 of the previous year to June 30 of the current collection year, educational programs available to confined persons either on or off facility grounds.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Six hundred and forty-six respondents each taking an average 75 minutes to respond for collection forms CJ–5 and CJ–5A, and CJ–5B. Three hundred and seventy-three respondents each taking 120 minutes to respond for collection forms CJ–5D and CJ–5DA. Eighty-five respondents each taking an average of 30 minutes to respond for collection form CJ–5B Addendum. Two hundred and ten respondents each taking an average of 4 hours to respond for collection form CJ–5C.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 2,436 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 11, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–5706 Filed 3–15–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Safe Drinking Water Act

Pursuant to 28 CFR 50.7, notice is hereby given that on March 10, 2010, a proposed Consent Decree in *United States* v. *Evenhouse Enterprises, Inc.,* d/b/a Skyview Subdivision and Windmill Estates Subdivision, Civil Action No. 10–CV–2056, was lodged with the United States District Court for the Central District of Illinois.

In a civil action filed simultaneously with the Consent Decree, the United States seeks injunctive relief and a civil penalty against Evenhouse Enterprises, Inc. ("Evenhouse"), defendant, pursuant to Section 1414(b) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300G–3(b), based upon Evenhouse's alleged violations of the SDWA and regulations thereunder at two separate community water systems serving the Skyview subdivision mobile home park ("Skyview") and the Windmill estate subdivision mobile home park ("Windmill"), both of which are located in Kankakee County, Illinois. Evenhouse allegedly failed to comply with the monitoring, reporting, public notification and record-keeping requirements of the National Primary Drinking Water Regulations ("NPDWR") codified at 40 CFR Part 141.

Under the proposed settlement, among other things, Evenhouse will be required to take samples from its public water system to monitor for various contaminants in accordance with the NPDWR and provide the results to the Environmental Protection Agency on a quarterly basis in accordance with the NPDWR; to prepare and distribute Consumer Confidence Reports; to provide public notification of any NPDWR violations found in its monitoring process; and to obtain a Responsible Person in Charge and Certified Operator for Skyview and Windmill. In addition, the defendant must pay a total civil penalty of Twenty Thousand Dollars ($20,000.00)

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either 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.*Evenhouse Enterprises, Inc,* D.J. Ref. 90–5–1–1–09479.

The Consent Decree may be examined at the Office of the United States Attorney, 211 Fulton Street, Suite 400, Peoria, Illinois 61614 and at U.S. EPA Region V, Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $17.25 for $.25 per page reproduction costs payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–5653 Filed 3–15–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0009]

Presence Sensing Device Initiation (PSDI); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in its Standard on Presence Sensing Device Initiation (29 CFR 1910.217(h)).

DATES: Comments must be submitted (postmarked, sent, or received) by May 17, 2010.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2010–0009, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2010–0009). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments *see* the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the Information Collection Request (ICR).

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Paragraph 1910.217(h) regulates the use of presence sensing devices ("PSDs") used to initiate the operation of mechanical power presses; a PSD (*e.g.,* a photoelectric field or curtain) automatically stops the stroke of a mechanical power press when the device detects an operator entering a danger zone near the press. A mechanical power press using Presence Sensing Device Initiation (PSDI) automatically starts (initiates) the stroke when the device detects no operator within the danger zone near the press. The certification/validation of safety systems for PSDI shall consider the press, controls, safeguards, operator, and environment as an integrated system which shall comply with 29 CFR 1910.217(a) through (h). Accordingly, the Standard protects workers from serious crush injuries, amputations, and death.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)). The Agency is requesting to retain its current burden hour estimate of 1 hour. The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved information collection.

Title: Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)).

OMB Number: 1218–0143.

Affected Public: Business or other for-profits.

Number of Respondents: 0.

Frequency of Responses: Initially, Annually; On occasion.

Average Time per Response: 0.

Estimated Total Burden Hours: 1.

Estimated Cost *(Operation and Maintenance):* $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0009). You may supplement electronic

submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on March 9, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–5730 Filed 3–15–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Comment Request

AGENCY: Bureau of Labor Statistics, DOL.

ACTION: Notice of solicitation of comments.

SUMMARY: The Bureau of Labor Statistics (BLS) is responsible for developing and implementing the collection of new data on green jobs. The resulting information will assist policymakers in planning policy initiatives and understanding their impact on the labor market, and will facilitate the monitoring of labor market developments related to protecting the environment and conserving natural resources. BLS activities also will be useful to State labor market information offices in their efforts to meet the need for information for State policymakers, businesses, and job seekers.

BLS is currently soliciting comments on the definition BLS will use in measuring green jobs, the industry list, or any other aspect of the information provided in this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before April 30, 2010.

ADDRESSES: Send comments to Richard Clayton, Office of Industry Employment Statistics, Bureau of Labor Statistics, Room 4840, 2 Massachusetts Avenue, NE., Washington, DC 20212 or by e-mail to: *green@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Clayton, Office of Industry Employment Statistics, Bureau of Labor Statistics, telephone number 202–691–5185 (this is not a toll-free number), or by e-mail to: *green@bls.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

BLS is responsible for developing and implementing the collection of new data on green jobs. The goal is to develop information on: (1) The number of and trend over time in green jobs, (2) the industrial, occupational, and geographic distribution of the jobs, and (3) the wages of the workers in these jobs.

The resulting information will assist policymakers in planning policy initiatives and understanding their impact on the labor market, and will facilitate the monitoring of labor market developments related to protecting the environment and conserving natural resources. BLS activities also will be useful to State labor market information offices in their efforts to meet the need for information for State policymakers, businesses, and job seekers.

There is no widely accepted standard definition of "green jobs." While this topic is of interest across government, academia, and the business community, various studies define the term differently. BLS reviewed a wide range of studies, including several surveys conducted by State Workforce Agencies and work conducted internationally. BLS also consulted with a variety of stakeholders, including Federal agencies, the State labor market information offices, and industry groups. The common thread through the studies and discussions is that green jobs are jobs related to preserving or restoring the environment. Several categories of green economic activity are nearly universally cited: renewable energy, energy efficiency, pollution prevention and clean-up, and natural resources conservation.

The studies reviewed showed that neither of the standard classification systems used in BLS data, the North American Industry Classification System (NAICS) and the Standard Occupational Classification (SOC), identifies a green or environmental grouping of industries or occupations.

In response to the challenge of defining green jobs, BLS has adopted the approach of identifying environmental economic activity and counting the associated jobs. These jobs will be found across a range of industries and occupations.

BLS plans to use two approaches in identifying environmental economic activity and measuring associated jobs: (1) The *output approach,* which identifies establishments that produce green goods and services and counts the associated jobs, and (2) the *process approach,* which identifies establishments that use environmentally-friendly production processes and practices and counts the associated jobs.

In the output approach, BLS is concerned with jobs related to producing a specific set of goods and services, and is not concerned with the environmental impact of the production process. The output approach alone, however, would not cover some activities and associated jobs that favorably impact the environment although the product or service produced is itself not "green." The process approach is intended to address this aspect of green jobs. In the process approach, BLS is concerned with whether the production process has a favorable impact on the environment, but not with what good or service is produced. The process approach is

relevant to any industry. Each approach requires different measurement strategies and will tend to count different jobs, with some overlap in industries that produce green goods and services.

II. Defining and Identifying Green Goods and Services

BLS has worked toward a definition that is objective and empirically measurable. In addition, because BLS data about jobs are categorized and described according to industry (product or service produced) and occupation (type of work performed), the development and presentation of information on jobs related to green economic activity will be based on NAICS and SOC. Using these standard classifications will allow comparison of green jobs data with existing measures of employment and wages that are based on NAICS or SOC, as well as meet Office of Management and Budget statistical standards. Within NAICS, BLS may develop information for more detailed subcategories.

The Bureau's definition of green jobs is based on economic activity, and does not consider job aspects unrelated to the work itself, such as wages, union membership, benefits, or career ladders. However, BLS will produce data on occupational wages; data users may supplement the BLS green jobs data with data from other sources. Further, because some data users may make different choices about which goods and services they prefer to include or exclude from "green," BLS intends to present results by industry, allowing users to choose those industries needed for their purposes.

In specifying green goods and services, BLS has identified whether a good or service has a discernible positive impact on the environment or natural resources conservation. Some goods and services may have both a positive and a negative impact. BLS has not attempted to assess the net impact.

Defining green jobs. Broadly defined, green jobs are jobs involved in economic activities that help protect or restore the environment or conserve natural resources. These economic activities generally fall into the following categories:

1. *Renewable energy.* Research on and development, production, storage, and distribution of energy (electricity, heat, and fuel) from renewable sources, including hydropower, wind, biomass (including biofuels and biogas), geothermal, solar energy, tidal energy, hydrogen fuel cells, and other renewable sources.

2. *Energy efficiency.* Research on and development and implementation of energy conservation technologies and practices, including production of energy efficient products, cogeneration, and increasing the energy efficiency of production processes, distribution, construction, installation, and maintenance.

3. *Greenhouse gas reduction.* Research on and development and implementation of technologies and practices to reduce greenhouse gas emissions through approaches other than renewable energy generation and energy conservation. Includes generation of electricity from nuclear sources and reduction of greenhouse gas emissions in electricity generation from fossil fuels.

4. *Pollution reduction and cleanup.* Research on and development and implementation of technologies and practices to reduce the emission of pollutants and remove pollutants and hazardous waste from the environment.

5. *Recycling and waste reduction.* Research on and development and implementation of technologies and practices to collect and recycle materials and waste water.

6. *Agricultural and natural resources conservation.* Research on and development and implementation of technologies and practices to reduce the environmental impact of agricultural production and improve natural resources conservation, including reducing use of chemical fertilizers and pesticides, soil and water conservation, sustainable forestry, land management, and wildlife conservation.

7. *Education, compliance, public awareness, and training.* Activities to increase public awareness of environmental issues; activities to develop and enforce environmental regulations; and providing training in the application of "green" technologies and practices.

These economic activities result in the production of green goods and services. BLS has defined these to include four types:

1. *Direct green goods and services.* A good or service that is produced specifically for the purpose of protecting or restoring the environment or conserving natural resources. (Examples include pollution control equipment and weatherizing buildings.)

2. *Indirect green goods and services.* Selected goods and services not included in 1 above that are produced for another purpose, but when produced, consumed, or scrapped have a favorable impact on protecting the environment or conserving natural resources relative to other goods or services generally used for the same purpose. (Examples include electricity produced from renewable sources, non-polluting dry cleaning services, hybrid vehicles, and mercury-free batteries.)

BLS is considering using Federal product ratings or standards, where they exist, to determine which goods and services to include in this category. Such standards will be used to provide an objective method to distinguish green goods and services from other goods or services generally used for the same purpose. These standards will also help BLS clearly communicate to respondents what goods and services they produce that should be reported on the planned survey, and to communicate to data users what products and services are represented in the resulting data on associated jobs. Examples of such Federal standards include USDA Certified Organic and Energy Star. Well established and widely recognized industry standards also may be used, to the extent they are objective and empirically measurable. An example of such an industry standard is the Leadership in Energy and Environmental Design (LEED) Green Building Rating System. A potential limitation of using these types of labeling programs is that they are voluntary and some employers may not participate although they may in fact meet the standards.

Indirect green goods include goods containing recycled inputs, such as primary metals containing scrap inputs, and remanufactured goods, such as retreaded tires. Goods containing recycled inputs are generally limited to those produced at the stage where the recycled input is introduced. (For example, steel containing scrap input is included as a green good, but hand tools made from such steel are not included.)

Indirect green goods also include organic agricultural products and processed organic products that carry the USDA Certified Organic designation. (Examples include organic produce and canned organic vegetables.)

3. *Specialized inputs.* A good or service that is a specialized input to production of a direct or indirect green good or service included in categories 1 or 2 above. (Examples include USDA-approved fertilizers for organic crops, wind turbine blades, and mass transit rail cars.)

4. *Distribution of green goods.* Services that specialize in distributing green goods included in categories 1, 2, or 3 above, including: (a) Transportation and warehousing services, (b) wholesale and retail trade services, (c) rental and leasing services, and (d) restaurants and food services.

Measuring jobs associated with producing green goods and services. To implement the output approach, BLS plans to collect data on jobs associated with producing green goods and services (GGS) through a sample survey of establishments identified as potentially producing such products and services based on their NAICS classification. The purpose of the survey will be to identify whether the establishment is producing any green goods and services and, if so, to measure the number of associated jobs in the establishment.

If a business establishment produces a single good or service, and if the good or service is included in the BLS definition, all employment at that establishment will be counted towards the green job total, including production, management, and administrative staff. For establishments that produce more than one good or service, BLS proposes to capture the share of establishment revenue (an alternative will be used for non-market sectors) received from the sale of green goods and services. BLS would use the revenue share as a proxy for the share of the establishment's employment associated with the production of green goods and services. BLS research to date indicates businesses are unlikely to be able to report shares of employment related to the green good or service and that revenue share will be a reasonable proxy. BLS will attempt to confirm this during field tests of the GGS survey forms.

Identifying industries that produce green goods and services. BLS has reviewed the NAICS and identified detailed (6-digit) industries where green goods and services are classified. Industries on the list accounted for about 4.0 million establishments in the first quarter of 2009. This industry list will constitute the scope for the GGS industry survey; the sample survey will estimate the number of jobs in establishments in these industries that actually produce green goods and services. The list may be accessed at *http://www.bls.gov/green.*

Note that the proposed BLS methodology will estimate green jobs for a NAICS industry by summing the green jobs found at individual establishments classified within the industry. The methodology does not simply designate an industry as "green" and count all jobs in that industry as green jobs, since establishments in the industry may also produce goods and services that are not considered green outputs.

In addition to the number of jobs by industry associated with GGS production, BLS will estimate the occupational employment and wages for establishments identified as producing green goods and services. These estimates will be based on data collected from establishments in the GGS industry survey through the Occupational Employment Statistics (OES) program. The OES survey sample will be supplemented as needed.

III. Defining and Identifying Environmentally-Friendly Production Processes

For the process approach, BLS will develop a special employer survey to test the feasibility of collecting data on jobs associated with use of environmentally-friendly production processes. Environmentally-friendly production processes and practices are those that reduce the environmental or natural resources impact resulting from production of any good or service. These production processes include (1) production of green goods and services for use within the establishment, and (2) use of methods, procedures, or practices during the production of goods and services that have a positive environmental or natural resources conservation impact.

Examples of environmentally-friendly processes and practices include generating solar power for use within a retail establishment, using hybrid vehicles to transport employees, redesigning product packaging to reduce the use of plastics, and collecting and recycling waste created during a manufacturing process.

In the special employer survey, BLS proposes to identify whether the establishment uses environmentally-friendly productions processes and, if so, whether it employs any workers whose primary duties are related to those processes. Such workers may be performing a variety of activities, such as:

- Conducting research and development of processes to conserve energy or natural resources or to reduce pollution (for example, a chemical engineer who develops a chemical manufacturing process that results in lower air pollution emissions),
- Planning, implementing, and monitoring of these processes (for example, a worker who operates renewable energy generation equipment to produce electricity for use within the establishment),
- Maintaining or installing equipment or infrastructure associated with the processes (for example, a control valve installer in a manufacturing plant who installs systems that reduce water pollution emissions), and
- Measuring and controlling outputs of the process (for example, a chemical technician who tests air samples for pollution emissions levels).

When development of the process approach nears completion, BLS plans to publish a **Federal Register** Notice presenting the concepts for comment.

IV. Desired Focus of Comments

Comments and recommendations are requested from the public on the definition, industry list, or any other aspect of the information provided in this Notice. The concepts, methods, and definitions described here may change based on input from the public and experience gained in data collection.

BLS is especially interested in comments on:

1. The composition of the set of seven economic activities in which green jobs are involved.

2. The composition of the set of four types of green goods and services, including:

- Whether the distribution of green goods should be included as green services. Distribution encompasses certain detailed industries in the following NAICS sectors: Transportation and Warehousing, Wholesale Trade, Retail Trade, and Real Estate and Rental and Leasing.
- Whether the preparation and sale of organic food by restaurants and food service industries should be included as green services. This inclusion brings Accommodation and Food Services industries such as restaurants, caterers, and cafeterias into scope.

3. The apportioning of employment at establishments producing green and non-green outputs into green and non-green jobs using revenue share.

Signed at Washington, DC, this 11th day of March 2010.

Kimberley Hill,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2010–5705 Filed 3–15–10; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Electronic Records Archives (ACERA)

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the National Archives and Records Administration (NARA) announces a

meeting of the Advisory Committee on the Electronic Records Archives (ACERA). The committee serves as a deliberative body to advise the Archivist of the United States, on technical, mission, and service issues related to the Electronic Records Archives (ERA). This includes, but is not limited to, advising and making recommendations to the Archivist on issues related to the development, implementation and use of the ERA system. This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Electronic Records Archives Program at *era.program@nara.gov.* This meeting will be recorded for transcription purposes.

DATES: The meeting will be held on April 7–8, 2010 from 9 a.m.–4 p.m.

ADDRESSES: 700 Pennsylvania Avenue, NW., Washington, DC 20408–0001.

FOR FURTHER INFORMATION CONTACT: Martha Morphy, Designated Federal Official, Office of Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740 (301) 837–3670.

SUPPLEMENTARY INFORMATION:

Agenda

- Opening Remarks.
- Approval of Minutes.
- Committee Updates.
- Activities Reports.
- Adjournment.

Dated: March 10, 2010.

Mary Ann Hadyka,

Committee Management Office.

[FR Doc. 2010–5743 Filed 3–15–10; 8:45 am]

BILLING CODE 7515–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority To Close Advisory Committee Meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 1, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for United States History in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

2. *Date:* April 5, 2010.
Time: 9 a.m. to 5 p.m.
Room: 402.
Program: This meeting will review applications for Institutes for Advanced Topics in the Digital Humanities, submitted to the Office of Digital Humanities at the February 17, 2010 deadline.

3. *Date:* April 7, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Music History in America's Media Makers Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

4. *Date:* April 8, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for United States History in Interpreting America's Historic Places Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

5. *Date:* April 9, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for World Cultures and Ethnicity in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

6. *Date:* April 12, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for United States History in America's Media Makers Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

7. *Date:* April 13, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for United States History in Interpreting America's Historic Places Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

8. *Date:* April 13, 2010.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Public Programming Organizations, submitted to the Office of Challenge Grants at the February 3, 2010 deadline.

9. *Date:* April 14, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Visual Cultures in America's Media Makers Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

10. *Date:* April 15, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for World History and Philosophy in America's Media Makers Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

11. *Date:* April 19, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for United States History in America's Media Makers Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

12. *Date:* April 19, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs at the March 2, 2010 deadline.

13. *Date:* April 20, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs at the March 2, 2010 deadline.

14. *Date:* April 20, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Literature in America's Media Makers Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

15. *Date:* April 21, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs at the March 2, 2010 deadline.

16. *Date:* April 22, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs at the March 2, 2010 deadline.

17. *Date:* April 22, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Art History in America's Historical and Cultural Organizations Grants Program, submitted to the Division of Public Programs at the January 13, 2010 deadline.

18. *Date:* April 22, 2010.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Colleges and Universities, submitted to the Office of Challenge Grants at the February 3, 2010 deadline.

19. *Date:* April 26, 2010
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs at the March 2, 2010 deadline.

20. *Date:* April 27, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs at the March 2, 2010 deadline.

21. *Date:* April 28, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs at the March 2, 2010 deadline.

22. *Date:* April 29, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Seminars and Institutes, submitted to the Division of Education Programs at the March 2, 2010 deadline.

Michael P. McDonald,
Advisory Committee, Management Officer.

[FR Doc. 2010–5640 Filed 3–15–10; 8:45 am]
BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0091]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Forms 540 and 540A, "Uniform Low-Level Radioactive Waste Manifest (Shipping Paper) and Continuation Page"; NRC Forms 541 and 541A, "Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description, and Continuation Page"; NRC Forms 542 and 542A, "Uniform Low-Level Radioactive Waste Manifest, Index and Regional Compact Tabulation, and Continuation Page".

2. *Current OMB approval number:* 3150–0164, 3150–0165, and 3150–0166.

3. *How often the collection is required:* Forms are used by shippers whenever radioactive waste is shipped. Quarterly or less frequent reporting is made to Agreement States depending on specific license conditions. No reporting is made to the NRC.

4. *Who is required or asked to report:* All NRC or Agreement State low-level waste facilities licensed pursuant to 10 CFR Part 61 or equivalent Agreement State regulations. All generators, collectors, and processors of low-level waste intended for disposal at a low-level waste facility must complete the appropriate forms.

5. *The number of annual respondents:*
NRC Form 540 and 540A: 220
NRC Form 541 and 541A: 220
NRC Form 542 and 542A: 22

6. *The number of hours needed annually to complete the requirement or request:*
NRC Form 540 and 540A: 4,200
NRC Form 541 and 541A: 18,480
NRC Form 542 and 542A: 567

7. *Abstract:* NRC Forms 540, 541, and 542, together with their continuation pages, designated by the "A" suffix, provide a set of standardized forms to meet Department of Transportation (DOT), NRC, and State requirements. The forms were developed by NRC at the request of low-level waste industry groups. The forms provide uniformity and efficiency in the collection of information contained in manifests which are required to control transfers of low-level radioactive waste intended for disposal at a land disposal facility. NRC Form 540 contains information needed to satisfy DOT shipping paper requirements in 49 CFR Part 172 and the waste tracking requirements of NRC in 10 CFR Part 20. NRC Form 541 contains information needed by disposal site facilities to safely dispose of low-level waste and information to meet NRC and State requirements regulating these activities. NRC Form 542, completed by waste collectors or processors, contains information which facilitates tracking the identity of the waste generator. That tracking becomes more complicated when the waste forms, dimensions, or packagings are changed by the waste processor. Each container of waste shipped from a waste processor may contain waste from several different generators. The information provided on NRC Form 542 permits the States and Compacts to know the original generators of low-level waste, as authorized by the Low-Level Radioactive Waste Policy Amendments Act of 1985, so they can ensure that waste is disposed of in the appropriate Compact.

Submit, by May 17, 2010 comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to

properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2010–0091. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2010–0091. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 10th day of March 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–5674 Filed 3–15–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287; NRC–2010–0093]

Duke Energy Carolinas, LLC; Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Renewed Facility Operating Licenses DPR–38, DPR–47, and DPR–55, issued to Duke Energy Carolinas, LLC (the licensee), for operation of the Oconee Nuclear Station Units 1, 2, and 3 located in Oconee County, South Carolina.

The proposed amendments would change the Technical Specifications to allow the usage of gadolinia as an integral burnable neutron absorber. The amendments application dated October 19, 2009, contains sensitive unclassified non-safeguards information (SUNSI). Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revisions to the technical specifications and to Duke's NRC approved methodology reports support the use of gadolinia in the Oconee fuel design. The methodology reports will be approved by the NRC prior to plant operation with the new fuel. The proposed safety limit ensures that fuel integrity will be maintained during normal operations and anticipated operational transients. The Core Operating Limits Report (COLR) will be developed in accordance with the approved methodology reports. The proposed safety limit value does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. There is no negative impact on the source term or pathways which have been assumed in accidents previously analyzed. No analysis assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose[s] as the result of an accident.

[Therefore, the proposed action does not involve a significant increase in the probability or consequences of an accident previously evaluated.]

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed safety limit value does not change the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered. The new and revised fuel melt equations are not an accident/event initiator. No new initiating events or transients result from the use of the revised safety limit.

[Therefore, the proposed action does not create the possibility of a new or different kind of accident than any accident previously evaluated.]

(3) Involve a significant reduction in a margin of safety.

The proposed safety limit value has been reviewed and approved by the NRC as part of the approval of the AREVA NP TACO3 and GDTACO topical reports to, in part, specifically calculate the temperature at which the fuel will melt. Duke uses TACO3 and will use GDTACO in accordance with the restrictions stipulated in the safety evaluation of both AREVA NP topical reports and those set forth in Duke's NRC approved methodology reports to ensure that the limit is not exceeded for those events in which fuel melt is not allowed. The other reactor core safety limits will continue to be met by analyzing the reload using NRC approved methods and incorporation of resultant operating limits into the COLR.

[Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The

Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC'Ss Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System

requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing 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 E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

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, or the presiding officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment dated October 19, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092960626), which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Attorney for licensee: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff,

and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 10th day of March 2010.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2010–5688 Filed 3–15–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362; NRC–2010–0101]

Southern California Edison Company, San Onofre Nuclear Generating Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR Part 73, "Physical protection of plants and materials," for Facility Operating License Nos. NPF–10, and NPF–15, issued to Southern California Edison Company (SCE, the licensee), for operation of the San Onofre Nuclear Generating Station, Units 2 and 3 (SONGS 2 and 3), located in San Diego County, California. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt SCE from the required implementation date of March 31, 2010, for several new requirements of 10 CFR Part 73. Specifically, SCE would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. SCE has proposed an alternate full compliance implementation date of January 31, 2011, approximately 10 months beyond the date required by 10 CFR Part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR Part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the SONGS 2 and 3 site.

The proposed action is in accordance with the licensee's application dated December 17, 2009.

The Need for the Proposed Action

The proposed action is needed to provide the licensee with additional time to implement two specific elements of the new requirements that involve significant physical modifications to the SONGS 2 and 3 security systems.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR Part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13926). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered

Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR Part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926 (March 27, 2009)].

With its request to extend the implementation deadline, the licensee currently maintains a security system acceptable to the NRC and that will continue to provide acceptable physical protection of SONGS 2 and 3 in lieu of the new requirements in 10 CFR Part 73. Therefore, the extension of the implementation date of the new requirements of 10 CFR Part 73 to January 31, 2011, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed actions, the NRC staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no-action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for SONGS Units 2 and 3, dated May 12, 1981.

Agencies and Persons Consulted

In accordance with its stated policy, on March 1, 2010, the NRC staff consulted with the California State official, Mr. Stephen Hsu of the California Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 17, 2009. Portions of the December 17, 2009, submittal contain safeguards information and, accordingly, a redacted version of the December 17, 2009, letter is available for public review in the Agencywide Documents Access and Management System (ADAMS) Accession No. ML093570268. This document may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of March 2010.

For The Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–5683 Filed 3–15–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7015; NRC–2009–0187]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for Exemption From 10 CFR 30, 40, and 70; Commencement of Construction Requirements; AREVA Enrichment Services, Eagle Rock Enrichment Facility, Bonneville County, ID

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact for Exemption from Commencement of Construction Requirements.

FOR FURTHER INFORMATION CONTACT: Mary Adams, Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852. *Telephone:* (301) 492–3113; *Fax:* (301) 492–3363; *e-mail: Mary.Adams@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated June 17, 2009, Byproduct, Source, and Special Nuclear Materials License applicant AREVA Enrichment Services, LLC, (the Applicant) submitted a request to exempt certain activities described in the license application from the "commencement of construction" provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) 70.4, 70.23(a)(7), 30.4, 30.33, 40.4, and 40.32(e). The U.S. Nuclear Regulatory Commission (NRC) staff is considering issuing an exemption to the Applicant from provisions in 10 CFR 70.4, 70.23(a)(7), 30.4, 30.33, 40.4, and 40.32(e). The exemption would authorize the Applicant to undertake certain site preparation activities at its proposed uranium enrichment facility in Bonneville County, Idaho. Granting this exemption is not a guarantee that the NRC has decided to issue an operating license to the Applicant. The Applicant would be undertaking these site preparation activities with the risk that its license application may later be denied. NRC has prepared an Environmental Assessment (EA) in support of this exemption in accordance with the requirements of 10 CFR 51.21 and 51.33. Based on this EA, the NRC has reached a Finding of No Significant Impact.

II. Summary of the Environmental Assessment

Background

The commencement of construction provisions of 10 CFR 30.33, 40.32(e), and 70.23(a)(7) date back to 1972, when they were initially codified by the NRC as part of a comprehensive rulemaking pertaining to all facilities licensed under Parts 30, 40, 50 and 70. These regulatory provisions remained unchanged until the NRC in 1980 amended its regulations in 10 CFR part 40. These revisions required that the NRC's NEPA review be completed prior to authorizing any uranium milling

activities. NRC also amended 10 CFR parts 30 and 70 to conform to the amendment of Part 40.

Subsequently, in 2007, the NRC completed a rulemaking amending the regulations applicable to limited work authorizations (LWAs) for nuclear power plants (LWA rulemaking), which included a consideration of issues pertaining to preconstruction and site preparation work performed by Part 50 (and Part 52) licensees and applicants. As part of that rulemaking, the NRC modified the scope of activities that are considered construction and for which a construction permit, combined license, or LWA is necessary. After noting that the Atomic Energy Act of 1954, as amended (AEA) does not require an applicant to obtain permission before undertaking site preparation activities that do not implicate radiological health and safety or common defense and security, the NRC developed a revised definition of construction that excluded certain preparatory activities.

In doing so, the NRC determined that its NEPA obligations and responsibilities arise only when the NRC undertakes a "Federal" action, and that NEPA, a purely procedural statute, does not expand the NRC's jurisdiction beyond the scope of the AEA. Regarding the site preparation activities excluded from the LWA definition of construction, the NRC noted that such activities do not have a reasonable nexus to radiological health and safety or the common defense and security, and as such, were "non-Federal actions." Accordingly, these site preparation activities are not subject to the requirements of NEPA because they are not within the scope of the NRC's AEA authority. The NRC, therefore, amended its 10 CFR part 51 NEPA regulations to include a definition of construction that was consistent with the definition added to 10 CFR 50.10. Site preparation activities that were deemed not to have a direct nexus to radiological health and safety were listed in 10 CFR 51.4 as activities not included within the "construction" definition.

The NRC's determination that certain site preparation activities did not constitute "construction" impacted the scope of the agency's NEPA review of such activities. The NRC clarified that because these site preparation activities lacked a reasonable radiological nexus to radiological health and safety and/or common defense and security—and thus did not require NRC approval or oversight—these activities were not Federal actions within the context of NEPA. Consequently, these activities would only be considered in the agency's environmental review to that extent necessary to establish an environmental baseline against which the incremental effect of the NRC's subsequent major Federal action (*i.e.,* issuance of a license) would be measured.

While the NRC had previously recognized the need for uniformity in carefully approving conforming amendments when it modified the "commencement of construction" provisions in 1980, no conforming amendments were made in Parts 30, 40 and 70 when the LWA rulemaking was finalized in 2007. Ever since, the NRC's "commencement of construction" provisions in Parts 30, 40 and 70 have been inconsistent with the Part 51 "construction" definition. Activities that do not constitute construction under 10 CFR parts 50, 51, and 52, are viewed as construction under 10 CFR parts 30, 40 and 70. Site preparation actions that a materials license applicant or licensee cannot engage in—absent an exemption—are the same actions that the NRC determined in the LWA rulemaking were not within the scope of the agency's licensing review under the AEA. In short, while 10 CFR 30.33, 40.32(e), and 70.23(a)(7) specifically cite the need to perform a Part 51 environmental analysis, the terms of 10 CFR 30.4, 30.33, 40.4, 40.32(e), 70.4 and 70.23(a)(7) are now inconsistent with 10 CFR part 51 as modified by the LWA rulemaking.

Identification of the Proposed Action

NRC proposes to grant an exemption that will allow the Applicant to conduct certain site preparation activities that are currently allowed under 10 CFR 51.4, notwithstanding the provisions of 10 CFR 30.33(a)(5), 40.32(e) and 70.23(a)(7). The scope of the Applicant's June 17, 2009, exemption request includes the following nine items. NRC staff, as part of its safety review of the request, is considering approving each item on the list as an exempted activity.

- Clearing the site.
- Site grading and erosion control.
- Excavating the site including rock blasting and removal.
- Installing parking areas.
- Constructing the storm water detention pond.
- Constructing highway access roadways and site roads.
- Installing utilities (*e.g.,* temporary and permanent power) and storage tanks.
- Installing fences for investment protection (not used to implement the Physical Security Plan).
- Installing construction buildings, offices (including construction trailers), warehouses and guard houses.

In response to a request for additional information dated September 14, 2009, the Applicant clarified that the storage tanks would be used strictly for construction purposes; the guardhouses are not part of the physical security plan; and the construction buildings, offices, and warehouses are not part of the Standard Practice Procedure Plan for the Protection of Classified Matter.

This EA has been prepared pursuant to 10 CFR 51.21, which states, "[a]ll licensing and regulatory actions subject to this subpart require an environmental assessment * * *." The only two exceptions to this rule are those actions requiring environmental impact statements, and those that are categorically excluded or identified as otherwise not requiring environmental review pursuant to § 51.22. Exemptions are not currently covered by any categorical exclusion, and, therefore, an EA is required here.

Need for the Proposed Action

As indicated by the above list, the Applicant seeks permission to engage in certain site preparation work before it is authorized to conduct uranium enrichment operations. This action is needed to allow the Applicant to complete certain on-site activities in parallel with the licensing and hearing processes, so that it can begin construction promptly upon issuance of the license. The NRC staff proposes to grant the exemption request and allow the Applicant to begin site preparation activities.

Alternatives to the Proposed Action

An alternative is to not grant the exemption and not allow the Applicant to engage in any site preparation activities before an operating license is issued. If the NRC does not grant the exemption, the Applicant would need to wait until a decision is made on its license application request to engage in the preconstruction activities.

Environmental Impacts of the Proposed Action

The NRC staff reviewed the Applicant's exemption request in the context of whether or not the requested activities fall within one of the categories of site preparation activities considered not construction under § 51.4. The staff intends to exempt only those activities that fall within this definition. Therefore, the impacts of those activities are excluded from this EA. The impacts of site preparation activities will be addressed in the

environmental impact statement being prepared in conjunction with the NRC's review of the license application.

As discussed in Section 2 of the EA, the site preparation activities will only be considered in the NRC's environmental review of the subsequent major Federal action (*i.e.,* issuance of a license) to the extent necessary to establish an environmental baseline. Thus, these preparatory activities will be considered in the environmental impact statement (EIS) the NRC staff is preparing to support a licensing decision on the proposed Eagle Rock Enrichment Facility.

Environmental Impacts of the No-Action Alternative

There are no environmental impacts of not granting the exemption.

Agencies and Persons Consulted

The NRC staff consulted with the Idaho State Historic Preservation Office, the U.S. Fish and Wildlife Service, and the Idaho Department of Environmental Quality regarding the site preparation activities addressed in this EA.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, because none of the activities approved by the action are considered "construction" for the purposes of Part 51 environmental analyses, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

The Applicant's exemption request is available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the June 17, 2009, exemption request is ML091770390, and the October 15, 2009, reply to NRC's request for additional information is ML092920169. The ADAMS accession number for the NRC staff's September 14, 2009, request for additional information is ML092180375. The ADAMS Accession number for the complete EA is ML093220528.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or via e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 8th day of March 2010.

For the U.S. Nuclear Regulatory Commission.

Marissa G. Bailey,

Deputy Director, Special Projects and Technical, Support Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–5677 Filed 3–15–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of March 15, 22, 29, April 5, 12, 19, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 15, 2010

Tuesday, March 16, 2010

1:30 p.m. Joint Meeting of the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission on Grid Reliability (Public Meeting). (*Contact:* Kenn Miller, 301–415–3152).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 22, 2010—Tentative

There are no meetings scheduled for the week of March 22, 2010.

Week of March 29, 2010—Tentative

Tuesday, March 30, 2010

9:30 a.m. Briefing on Safety Culture (Public Meeting) (*Contact:* Jose Ibarra, 301–415–2581).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 5, 2010—Tentative

Tuesday, April 6, 2010

9 a.m. Periodic Briefing on New Reactor Issues—Design Certifications (Public Meeting) (*Contact:* Amy Snyder, 301–415–6822).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, April 8, 2010

9:30 a.m. Briefing on Regional Programs—Programs, Performance, and Future Plans (Public Meeting) (*Contact:* Richard Barkley, 610–337–5065).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 12, 2010—Tentative

Thursday, April 15, 2010

9:30 a.m. Briefing on Resolution of Generic Safety Issue (GSI)—191, Assessment of Debris Accumulation on Pressurized Water Reactor (PWR) Sump Performance (Public Meeting) (*Contact:* Michael Scott, 301–415–0565).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 19, 2010—Tentative

There are no meetings scheduled for the week of April 19, 2010.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: March 11, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010–5792 Filed 3–12–10; 11:15 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Public Hearing

March 17, 2010.

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 75, Number 38, Page 9004) on February 26, 2010. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 3 p.m., March 17, 2010 in conjunction with OPIC's March 31, 2010 Board of Directors meeting has been cancelled.

Contact Person for Information: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov.*

Dated: March 10, 2010.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2010–5663 Filed 3–12–10; 11:15 am]

BILLING CODE 3210–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Public Hearing

March 17, 2010.

OPIC's Sunshine Act notice of its Annual Public Hearing meeting was published in the **Federal Register** (Volume 75, Number 38, Pages 9004 and 9005) on February 26, 2010. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's annual public hearing scheduled for 2 p.m. on March 17, 2010 has been cancelled.

Contact Person for Information: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov.*

Dated: March 10, 2010.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2010–5665 Filed 3–12–10; 11:15 am]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61677; File No. SR–FINRA–2009–054]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Extend Certain Regulation NMS Protections to Quoting and Trading in the Market for OTC Equity Securities

March 9, 2010.

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 August 7, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. The proposed rule change was subsequently amended by FINRA on March 1, 2010. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing Amendment No. 1 to SR–FINRA–2009–054, a proposed rule change to adopt new FINRA Rules 6434 (Minimum Pricing Increment for OTC Equity Securities), 6437 (Prohibition from Locking or Crossing Quotations in OTC Equity Securities), 6450 (Restrictions on Access Fees) and 6460 (Display of Customer Limit Orders). The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule Filing History

On August 7, 2009, FINRA filed with the SEC SR–FINRA–2009–054, a proposed rule change to adopt new FINRA rules to extend certain Regulation NMS protections to quoting and trading in over-the-counter equity securities.[3] On August 26, 2009, the Commission published for comment the proposed rule change in the **Federal Register** and received twelve comment letters.[4] Based on comments received, FINRA is filing this Amendment No. 1 to respond to the comments received and to propose amendments, where appropriate.

Proposal

As described in the Proposing Release, FINRA proposes to adopt rules to: (1) Restrict sub-penny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the display of customer limit orders. FINRA believes that these Regulation NMS principles, if applied to over-the-counter equity securities ("OTC

[3] *See* Securities Exchange Act Release No. 60515 (August 17, 2009), 74 FR 43207 (August 26, 2009) (Notice of Filing File No. SR–FINRA–2009–054) ("Proposing Release").

[4] Letter from Ann L. Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated October 13, 2009 ("SIFMA"); Letter from Christopher Nagy, Managing Director Order Strategy, TD Ameritrade, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated October 6, 2009 ("TD Ameritrade"); Letters from R. Cromwell Coulson, Chief Executive Officer, Pink OTC Markets Inc., to Elizabeth M. Murphy, Secretary, SEC, dated September 23, 2009 ("Pink1") and January 6, 2010 ("Pink2"); Letter from Janet M. Kissane, Senior Vice President, Legal & Corporate Secretary, NYSE Euronext, to Nancy M. Morris, Secretary, SEC, dated September 23, 2009 ("ArcaEdge"); Letter from William Assatly, Sr. Vice President, Trading, Mercator Associates, to Elizabeth M. Murphy, Secretary, SEC, dated September 16, 2009 ("Mercator"); Letter from Leonard J. Amoruso, General Counsel, and Michael T. Carrao, Chief Compliance Officer, Knight Capital Group, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated September 16, 2009 ("Knight"); Letter from Elaine M. Kaven, Chief Compliance Officer, StockCross Financial Services, Inc., to Florence H. Harmon, Deputy Secretary, SEC, dated September 16, 2009 ("StockCross"); Letters from Kimberly Unger, Executive Director, Security Traders Association of New York, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated September 14, 2009 ("STANY1) and September 16, 2009 ("STANY2"); Letter from Daniel Kanter, President, and Craig Carlino, Chief Compliance Officer, Monroe Securities, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated September 16, 2009 ("Monroe"); and Letter from Anonymous dated September 1, 2009. (available at *http://www.sec.gov/comments/sr-finra-2009–054/finra2009054.shtml*).

Equity Securities"),[5] would enhance market quality and investor protections in this market.

Comments to the Proposed Rule Change

Restriction on Access Fees

Currently, FINRA Rule 6540(c), which applies only to the OTC Bulletin Board ("OTCBB") montage, requires that an alternative trading system ("ATS") [6] and electronic communications network ("ECN") [7] reflect non-subscriber access or post-transaction fees in their posted quote. Consistent with Regulation NMS, FINRA proposed to eliminate the OTCBB access fee display requirement and to, instead, implement a cap on access fees in all OTC Equity Securities, wherever displayed, that exceed or accumulate to more than the following limits:

a. If the price of the quotation is $1.00 or more, the fee or fees cannot exceed or accumulate to more than $0.003 per share; or

b. If the price of the quotation is less than $1.00, the fee or fees cannot exceed or accumulate to more than 0.3% of the quotation price per share.

Also consistent with Regulation NMS, the proposal would explicitly permit market makers to charge access fees.

While some commenters generally expressed support for the proposal to impose a cap on access fees,[8] most commenters opposed it.[9] Several commenters expressed concern that the proposal would lead to a reduction in the transparency of over-the-counter ("OTC") quotations by permitting market participants to charge an access fee without displaying it in the quoted price, making it difficult for investors to compare prices offered by different broker-dealers across different marketplaces.[10] Commenters also expressed concern that an access fee cap (without a corresponding display requirement) would result in a shift in market structure that harms investors by leading to an increase in transaction costs.[11] Some commenters also argued that the proposal would unfairly favor the ATS business model, result in an increase in the incidence of locked and cross markets, and lead to an increase in gaming practices.[12]

Commenters noted that the proposed access fee cap of 0.3% of the quotation price per share for securities priced under $1.00 may result in the assessment of an undisclosed access fee that is greater than the price increment, which may provide an incentive for gaming activity and "access fee trading." [13] One commenter presented a scenario that would result in "access fee trading" through crossing quotes across inter-dealer quotation systems.[14] In the example, the inside market for a stock quoted on the OTCBB is $.8999 × $.90 (the relevant access fee cap under the original proposal would have been $.0027 per share). Rather than take the offering at $.90, the commenter states that a market maker could cross the market in the Pink Sheets by posting a bid of $.9001. If the market maker's bid is hit in the Pink Sheets, it will be able to buy the stock at $.9001 and then immediately sell to the OTCBB bid at $.8999. The commenter notes that, although the market maker sold the stock at a slight loss of $.0002 per share, the access fee of $.0027 per share provided an instant, virtually riskless profit.[15] Accordingly, certain commenters argued that the appropriate access fee cap should never be greater than 30% of the relevant pricing increment, which would ensure that the access fee is always lower than the relevant increment.[16]

FINRA has considered the comments opposing the elimination of the access fee display requirement in conjunction with the establishment of an access fee cap, and continues to believe that the proposal strikes the appropriate balance between addressing the practical difficulties of incorporating access fees in published quotes and the need to curtail potentially excessive undisclosed access fees. FINRA notes that similar concerns and debate were raised in the context of the adoption of Regulation NMS, to which the Commission concluded that a uniform fee limitation of $0.003 per share is the fairest and most appropriate resolution of the access fee issue.[17] FINRA believes that the same holds true in this context as well.

However, in light of the lower price points for securities in the OTC market, and in response to commenters' concerns regarding potential gaming activities, FINRA believes that an adjustment to the proposed access fee cap calculation method is appropriate. FINRA is proposing a revised method of calculating the access fee for securities priced under $1.00 to ensure that the access fee is always less than the relevant quotation increment. FINRA is proposing that the cap on access fees for securities priced under $1.00 would be the lesser of: (a) 0.3% of the published quotation price on a per share basis, or (b) 30% of the relevant minimum pricing increment applicable to the display of the quotation. The revised proposal would provide that:

A member shall not impose, nor permit to be imposed, non-subscriber access or post-transaction fees against its published quotation in any OTC Equity Security that exceeds or accumulates to more than:

(a) $0.003 per share, if the published quotation is priced equal to or greater than $1.00; or

(b) the lesser of 0.3% of the published quotation price on a per share basis or 30% of the minimum pricing increment under Rule 6434 relevant to the display of the quotation on a per share basis if the published quotation is less than $1.00.

FINRA believes that this approach would ensure that a permissible access fee would always be smaller than the pricing increment (which would address concerns regarding gaming). If the security is priced at $1.00 or more, the access fee cap would continue to be $0.003 per share.

Sub-Penny Restrictions

Currently there are no restrictions in place for quotations in subpenny increments in the OTC marketplace. Subpenny increments have been associated with certain market abuses, including stepping ahead of standing limit orders for an economically insignificant amount. Subpenny increments also have been associated with added difficulty for broker-dealers in meeting certain regulatory obligations by increasing the incidence of so-called "flickering" quotes. Thus, FINRA has proposed restrictions on the display of quotations and orders in sub-penny increments for OTC Equity Securities.

Specifically, FINRA proposed to prohibit members from displaying, ranking or accepting from others a bid, offer, order, or indication of interest in

[5] "OTC Equity Security" means any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting. *See* FINRA Rule 6420(d).

[6] *See* Rule 300(a) of Regulation ATS under the Act.

[7] *See* Rule 600(b)(23) of the Act (defining "electronic communications network").

[8] *See* ArcaEdge and TD Ameritrade.

[9] *See* Knight, Mercator, Pink1, SIFMA, STANY2 and StockCross.

[10] *See e.g.*, Knight, Pink1 and SIFMA.

[11] *See e.g.*, Mercator and Pink1.

[12] *See e.g.*, Knight, Pink1 and SIFMA.

[13] *See generally* ArcaEdge, STANY2 and Pink1. As an example, Pink noted that, using the proposed formula, the access fee cap on a $0.90 security would be $0.0027 while the pricing increment would be $0.0001.

[14] *See* Knight.

[15] *See* Knight.

[16] *See* ArcaEdge, Pink1 and STANY2.

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (order adopting rules under Regulation NMS, SEC File No. S7–10–04).

OTC Equity Securities in an increment smaller than:

—$0.01 if the bid or offer, order, or indication of interest is priced $1.00 or greater per share,

—$0.0001 if the bid or offer, order, or indication of interest is priced below $1.00 and equal to or greater than $0.01 per share, and

—$0.000001 if the bid or offer, order or indication of interest is priced less than $0.01 per share.

Commenters generally favored a restriction on quoting in subpenny increments, though some argued for modifications to the increments proposed. Commenters also generally believed that the proposal should go further by prohibiting subpenny quotations in increments of more than four decimal places.[18] Certain commenters also proposed specific alternative quotation increments for the OTC market.[19]

FINRA has considered commenters' concerns and is proposing a modification to the tiers originally proposed. Specifically, FINRA is proposing to reduce the minimum pricing increment from $0.000001 to $0.0001 for all securities priced under $1.00. However, with respect to securities priced less than $0.0001, members would be permitted to rank or accept (but not display) orders and indications of interest in an increment of $0.000001 or greater so as not to effectively eliminate trading in such securities. For example, a member would be permitted to rank or accept an order of $.000089, but would not be permitted to display the order at such increments. A member would not be permitted to rank or accept an order of $.00059, because it has an increment of $.00001 and is not priced less than $.0001. The proposed exception to allow the ranking and acceptance of orders in smaller increments for securities priced below $.0001 per share is in recognition of the fact that some OTC Equity Securities trade at prices below $.0001 and having a restriction on increments below that amount would in effect eliminate trading of those securities. The proposal for securities priced $1.00 or greater would continue to be a penny. Therefore the revised proposal would provide that:

No member shall display, rank, or accept a bid or offer, an order, or an indication of interest in any OTC Equity Security priced in an increment:

(1) Smaller than $0.01 if that bid or offer, order or indication of interest is priced equal to or greater than $1.00 per share; and

(2) Smaller than $0.0001 if that bid or offer, order or indication of interest is priced less than $1.00 per share except, where an order or indication of interest is priced less than $0.0001, a member may rank or accept (but not display) such order or indication of interest in an increment of $0.000001 or greater.[20]

FINRA believes that most, if not all, systems cannot accommodate the display of pricing increments smaller than four decimal places and that increasing the minimum pricing increment to $0.0001 would further promote and solidify uniformity in the OTC market at these price levels.

Prohibition on Locking and Crossing Quotations

FINRA rules do not currently prohibit locking or crossing quotations in OTC Equity Securities. FINRA believes that locked and crossed markets can cause confusion among investors concerning the trading interest in a stock and, therefore, FINRA believes that restricting the practice of submitting locking or crossing quotations (and requiring reconciliation of locked/crossed quotes) will enhance the usefulness of quotation information for OTC Equity Securities. Thus, FINRA proposed requiring members to implement policies and procedures that reasonably avoid the display of, or engaging in a pattern or practice of displaying, locking or crossing quotations in any OTC Equity Security within the same inter-dealer quotation system.

Commenters generally supported the adoption of a rule reasonably designed to prohibit locked and crossed markets, though commenters preferred that the prohibition apply across interdealer quotation systems.[21] One commenter expressed concern that the proposed rule takes a "fragmented" approach and should, instead, require members to canvas multiple venues for the purpose of avoiding locking/crossing the market in a similar manner as is currently required to meet best execution obligations.[22]

As FINRA stated in the Proposing Release, because there currently is no mandated consolidated quotation dissemination mechanism for OTC Equity Securities (as exists for NMS stocks), the proposed rule would only restrict locking and crossing quotations within inter-dealer quotation systems. FINRA continues to believe that, at the present time, the lock/cross rule can only reasonably be made to impose restrictions on locking and crossing quotations within, but not across, interdealer quotations systems due to the lack of a widely accessible, consolidated national best bid and offer for OTC Equity Securities. FINRA notes, however, that FINRA has proposed a rule that would require members to submit all quotation information in OTC Equity Securities to FINRA, and FINRA would, in turn, disseminate a best bid and offer as part of the Level 1 data feed entitlement.[23] If this proposed quotation consolidation facility is approved, FINRA believes that it would then be reasonable to propose that members must avoid locking and crossing across interdealer quotation systems. Thus, FINRA does not believe that any amendments to the proposed rule addressing locked and crossed quotations are warranted at this time.

Limit Order Display

FINRA proposed requiring market makers displaying a priced quotation in a security to immediately display customer limit orders received where such order: (1) improves the price of the bid or offer displayed by the market maker, or (2) improves the size of its bid or offer by more than a de minimis amount where it is the best bid or offer in the interdealer quotation system where the market maker is quoting. Regulation NMS includes several exceptions from its limit order display requirements, which generally also would apply to the proposed limit order display rule for OTC Equity Securities.

Commenters generally supported a display requirement for limit orders but requested certain clarifications and modifications. For example, commenters request that the rule permit market makers to retain discretion as to the size displayed because small orders are more likely to be executed than large ones.[24] Certain commenters also argued that market makers should not be required to display limit orders in thinly traded securities, but that these orders should be excepted for the same reason block orders are excepted (*i.e.*, market impact).[25] One commenter expressed concern that requiring automatic display prevents market makers from

[18] *See* ArcaEdge and Pink1.

[19] *See* ArcaEdge and Pink1.

[20] FINRA also is clarifying that such orders priced less than $.0001 are not required to be displayed pursuant to proposed Rule 6460 (Display of Customer Limit Orders).

[21] *See e.g.*, ArcaEdge, Pink1 and TD Ameritrade.

[22] *See* Pink1.

[23] *See* Securities Exchange Act Release No. 60999 (November 13, 2009), 74 FR 61183 (November 23, 2009). (Notice of Filing File No. SR–FINRA–2009–077; Proposed Rule Change to Restructure Quotation Collection and Dissemination for OTC Equity Securities).

[24] *See* Pink1 and STANY2.

[25] *See* Mercator, Pink1 and STANY2.

exercising discretion to handle the order in the best possible manner, which will disadvantage retail customers.[26] One commenter believed that the proposal should be amended to require the display in an interdealer quotation system of all limit orders in OTC Equity Securities (unless immediately executed by the member or transmitted to another firm that would display such order in an interdealer quotation system) and should be expanded to include debt securities.[27] Commenters asserted that any automatic limit order display size requirement should be based on the current OTCBB tier sizes, and provide members with discretion above the size of the tier.[28] Commenters argued that the proposed definition of "block size" in the context of the exception to the display requirement still would require display of orders at sizes that may disadvantage the customer.[29] Therefore, these commenters believed that members should be required to display only a portion of the order equal to the minimum quote size.

FINRA appreciates the issues raised by commenters regarding the possible impact of limit order display on OTC Equity Securities in general and thinly traded OTC Equity Securities in particular. We confirm that the proposed limit order display rule would not require display of customer orders that would result in a violation of the tiers prescribed in FINRA Rule 6450 (Minimum Quotation Size Requirements For OTC Equity Securities).[30] FINRA is proposing a new exception for limit orders less than $0.0001, consistent with the changes made to proposed FINRA Rule 6434 prohibiting the display of a bid or offer, order, or indication of interest in any OTC Equity Security priced less than $0.0001 per share.[31] However, FINRA does not believe that any additional modifications to the proposed rule are appropriate, including with respect to comments that market makers should retain discretion over display of the size of a customer's limit order.

FINRA notes that, where the member believes that a customer would be best served by not displaying the full size of a limit order, the member is free to obtain the customer's consent to refrain from displaying such customer's order as is permitted by a proposed exception to the limit order display provision. FINRA is not persuaded that the suggested more volatile nature of OTC Equity Securities in general (or of any subset of especially thinly traded OTC Equity Securities) should permit a member independently to determine to withhold display of the full size of a customer limit order. Finally, FINRA does not agree that the proposed definition of "block size" should be modified. As stated in the Proposing Release, the proposed definition of "block size" is consistent with the existing large order size exception under IM–2110–2 (Trading Ahead of Customer Limit Order) and we believe it is appropriate that large orders be defined consistently across both rule sets.[32] Furthermore, if a member believes that full display of a limit order that does not meet the definition of "block size" would disadvantage the customer, the member may obtain that customer's consent to refrain from display of the full size. As stated in the Proposing Release, FINRA believes that extending limit order display requirements to OTC Equity Securities will improve transparency in the OTC equity market and will advance the goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution and disintermediation.

With respect to the recommendation that all customer limit orders in OTC Equity Securities be displayed, irrespective of whether the firm that receives the order is already quoting the security, FINRA continues to believe that the appropriate conditions for the trigger of an obligation to display a customer limit order is where a market maker is already displaying a priced quotation in an interdealer quotation system in the same security (unless an exception applies). Finally, the changes recommended by the commenter to expand the limit order display requirements to debt securities are outside the scope of the proposed changes that are part of this rule filing and therefore, FINRA is not responding to these recommendations specifically herein. FINRA will review and analyze these recommendations in the same manner in which it would consider any requests for rulemaking, and, based on such review and analysis, will determine whether further action on these recommendations is appropriate.

As stated in the Proposing Release, because the proposed new rules provide for significant regulatory changes, FINRA plans to implement the requirements in two phases to minimize the impact on firms. Phase one would implement sub-penny quoting restrictions, an access fee cap and restrictions on locked and crossed markets. Phase two would implement customer limit order display requirements. FINRA will announce the implementation dates for the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date of Phase one will be at least 120 days but no more than 365 days from the date of Commission approval and Phase two will be at least 90 days following the implementation of Phase one, but no more than 365 days from the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[33] which requires that FINRA rules must be 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.

FINRA further believes that the proposed rule change is consistent with the provisions of 15A(b)(11) of the Act,[34] which requires, among other things, that FINRA rules must govern the form and content of quotations relating to securities sold otherwise than on a national securities exchange and require that such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

FINRA is proposing to: (1) Restrict sub-penny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the

[26] *See* Pink1.

[27] *See* Pink2.

[28] *See* Pink1.

[29] *See* Knight and SIFMA.

[30] If a member is already displaying a quotation at or above the minimum quotation size, then the displayed size must be increased to reflect the full size of any customer limit order (if the limit order size represents more than a de minimis amount).

[31] *See supra* note 20 and accompanying text.

[32] FINRA filed proposed rule change SR–FINRA–2009–090 to adopt NASD IM–2110–2 (Trading Ahead of Customer Limit Order) and NASD Rule 2111 (Trading Ahead of Customer Market Orders) with significant changes in the Consolidated FINRA Rulebook as new FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders). However, FINRA is not proposing changes to the definition of "large order." *See* Securities Exchange Act Release No. 61168 (December 15, 2009), 74 FR 68084 (December 22, 2009) (Notice of Filing File No. SR–FINRA–2009–090).

[33] 15 U.S.C. 78o–3(b)(6).

[34] 15 U.S.C. 78o–3(b)(11).

display of customer limit orders. FINRA believes that the proposed restrictions on sub-penny quoting will promote greater price transparency and consistency, reduce the potential harms associated with sub-penny quoting in OTC equity securities and improve the depth and liquidity of this market.

FINRA believes that locked and crossed markets can cause confusion among investors concerning trading interest in a stock and that restricting the practice of submitting locking or crossing quotations will enhance the usefulness of quotation information in the over-the-counter market, facilitate more fair and orderly markets and support market efficiency.

Where wide disparities in access fees are permitted, the prices of quotations are less useful and accurate. Therefore, FINRA believes that a cap on access fees would improve the usefulness and accuracy of quotations and address the potential distortions caused by substantial, disparate fees. Finally, FINRA believes that applying limit order display requirements to OTC Equity Securities would improve transparency in the OTC equity market and advance the goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution and disintermediation.

FINRA believes that the proposed extension of the specified Regulation NMS protections to quoting and trading in OTC Equity Securities will prevent fraudulent and manipulative acts and practices in this market, promote just and equitable principles of trade, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were solicited by the Commission in response to the publication of SR–FINRA–2009–054, which proposed new rules to: (1) Restrict sub-penny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the display of customer limit orders.[35] The Commission received twelve comment letters.[36] The comments are summarized above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–054 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–054. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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 publicly available. All submissions should refer to File Number SR–FINRA–2009–054 and should be submitted on or before April 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5648 Filed 3–15–10; 8:45 am]

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[35] *See* Proposing Release.

[36] *See supra* note 4.

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61674; File No. SR–CBOE–2010–025]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Permanent Approval of the Dividend, Merger and Short Stock Interest Strategies Fee Cap Pilot Program

March 9, 2010.

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 March 1, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange")

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

proposes to amend its Fees Schedule to make permanent its dividend, merger and short stock interest strategies fee cap program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to make permanent the pilot program for caps on market-maker, firm, and broker-dealer transaction fees associated with dividend, merger and short stock interest strategies, as described in Footnote 13 of the CBOE Fees Schedule ("Strategy Fee Cap"). Under this program, market-maker, firm and broker-dealer transaction fees are capped at $1,000 for all (i) dividend strategies,[4] (ii) merger strategies [5] and (iii) short stock interest strategies [6] executed on the same trading day in the same options class. In addition, such transaction fees for these strategies are further capped at $25,000 per month per initiating member or firm. The Strategy Fee Cap pilot program is due to expire on March 1, 2010.

Other than requesting permanent approval of the pilot program, no other changes to the Strategy Fee Cap are being proposed at this time.[7]

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[8] in general, and furthers the objectives of Section 6(b)(4) [9] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes permanent approval of the Strategy Fee Cap pilot program would benefit market participants who trade these strategies by lowering their fees and allow the Exchange to remain competitive with other exchanges that offer similar fee cap programs.

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.

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 Act [10] and subparagraph (f)(2) of Rule 19b–4 [11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2010–025 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–2010–025. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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 publicly available. All submissions should refer to File Number SR–CBOE–2010–025 and should be submitted on or before April 6, 2010.

[4] A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend.

[5] A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

[6] A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

[7] The Strategy Fee Cap pilot program is similar to fee cap pilot programs at other exchanges that were recently made permanent. *See* Securities Exchange Act Release No. 59566 (March 12, 2009), 74 FR 11793 (March 19, 2009) (SR–PHLX–2009–18); and Securities Exchange Act Release No. 59478 (February 27, 2009), 74 FR 9857 (March 6, 2009) (SR–NYSEALTR–2009–19).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5658 Filed 3–15–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61680; File No. SR–CHX–2009–18]

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change To Amend Its Co-Location Fees

March 10, 2010.

I. Introduction

On December 22, 2009, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to charges for co-location services. The proposed rule change was published for comment in the **Federal Register** on January 14, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description

As described more fully in the Notice, CHX states that it makes space available at its data center for the storage of Participants' and non-Participants' computer hardware and the maintenance of connections equipment to the CHX network, services generally referred to as "co-location."[4] Since 2004, the Exchange has charged fees for its co-location services.[5] These fees cover the physical space associated with co-locating computer hardware and network equipment on the Exchange's premises, equipment that generally is used for the transmission of order and execution messages and market data information between co-locaters and the Exchange's trading facilities or other destinations. Charges for space are based upon the number of "U" (a commonly accepted unit of measurement of data center space) of shelf space used to store the equipment. Additionally, CHX charges a co-location fee for the network connections equipment used to connect to the CHX network. According to CHX, these charges are intended to offset, at least in part, the costs borne by the Exchange for rent, utilities and maintenance of the space occupied by the co-located equipment.[6] In its filing, CHX proposes to increase the periodic charge for co-location of network connections equipment from $50 per month to $100 per month.

According to CHX, co-location services are offered on an equal and non-discriminatory basis. Although the Exchange acknowledges that those who co-locate would normally expect lower latencies and faster message turnaround times because of the physical proximity of their equipment to CHX systems, the Exchange represents that, as far as possible, it has architected its systems to eliminate or reduce differences between co-located users and other co-located users, and between co-located users and non co-located users. Further, CHX notes that Participants that enter orders through co-located equipment access its network via the same common connections or gateway as Participants that do not co-locate.[7] Finally, the Exchange represents that it has sufficient space at its data center to accommodate all requests to co-locate computer equipment and that it will continue to do so for the foreseeable future. If for some reason the Exchange's capacity were exceeded, CHX represents that it would file a rule proposal with the Commission seeking to adopt a fair and neutral policy to accommodate requests to co-locate.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change 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 persons using its facilities, and with Section 6(b)(5) of the Act,[10] which requires, among other things, that 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 believes that the proposed co-location fees are reasonable and equitably allocated insofar as they are designed to offset the Exchange's expenses involved in providing co-location services and are applied on the same terms to similarly-situated market participants. In addition, the Commission believes that the co-location services described in the proposed rule change are not unfairly discriminatory because: (1) Co-location services are offered to all interested market participants who request them and pay the appropriate fees; (2) as represented by CHX, the Exchange has architected its systems so as to, as much as possible, reduce or eliminate differences among users of its systems, whether co-located or not; and (3) the Exchange has stated that it has sufficient space to accommodate new co-locaters and would file a proposed rule change to adopt a fair and neutral policy to allocate space should it become limited in the future.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–2009–18) be, and hereby is, approved.

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61304 (January 6, 2010), 75 FR 2175 ("Notice").

[4] A "Participant" means any Participant Firm that holds a valid Trading Permit and any person associated with a Participant Firm who is registered with the Exchange under Article VI as a floor broker, co-specialist or market maker. *See* CHX Article 1, Rule 1(s).

[5] *See* Securities Exchange Act Release No. 49728 (May 19, 2004), 69 FR 29988 (May 26, 2004) (SR–CHX–2004–15) (establishing fees for co-located computer hardware and network equipment); *see also* Securities Exchange Act Release No. 54657 (October 26, 2006), 71 FR 64590 (November 4, 2006) (SR–CHX–2006–29) (broadening the scope of such fees).

[6] The CHX does not separately charge for the electricity used to power the Participant's equipment, or rent and other utilities associated with the space.

[7] This description applies equally to both inbound messages (*e.g.,* new orders) and outbound messages (*e.g.,* execution reports).

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5659 Filed 3–15–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61681; File No. SR–NASDAQ–2010–033]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 3121 To Reflect Changes To Corresponding FINRA Rule and a Clerical Change to NASDAQ's Rules

March 10, 2010.

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 March 5, 2010, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange 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 Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend NASDAQ Rule 3121 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"), and to make clerical corrections to the NASDAQ rulebook. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also proposes to initiate a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rule numbers, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses NASDAQ Rule 3121, which formerly corresponded to NASD Rule 3121. In SR–FINRA–2009–080,[4] FINRA redesignated NASD Rule 3121 as FINRA Rule 4570 with minor technical changes. FINRA Rule 4570 requires a member to designate, as the custodian of its required books and records on Form BDW, a person who is associated with the firm at the time Form BDW is filed. The rule is intended to enhance the SRO's ability to obtain required books and record [sic] from firms that are no longer conducting business and to ensure that the custodian of the books and records has been subject to certain background checks. The FINRA Rule 4570 text makes minor technical changes by adopting terminology consistent with that used in Form BDW.

NASDAQ is adopting the new FINRA rule in full, and redesignating NASDAQ Rule 3121 to be NASDAQ Rule 4570, so as to correspond to the new FINRA rule number.

NASDAQ is also proposing to make a clerical correction to the NASDAQ rulebook. Specifically, NASDAQ proposes to renumber NASDAQ Rule 2310 to NASDAQ Rule 2310A. This change will correct an error in a prior rule filing,[5] which inadvertently did not include the intended "A" in the rule number and text, resulting in two rules labeled as Rule 2310 in NASDAQ's rulebook.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(5) of the Act,[7] 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. The proposed changes will conform NASDAQ Rule 3121 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards. The proposed change to NASDAQ Rule 2310 will correct a clerical error in the NASDAQ rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Securities Exchange Act Release No. 61332 (January 12, 2010), 75 FR 12 [sic] (January 20, 2010) (SR–FINRA–2009–080).

[5] Securities Exchange Act Release No. 61321 (January 8, 2010), 75 FR 14 [sic] (January 22, 2010)(SR–NASDAQ–2010–002).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

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) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will allow these changes to be implemented as of the date of filing of the proposed rule change with the Commission, thereby minimizing any potential confusion.[12] Therefore, the Commission designates the proposal as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NASDAQ–2010–033 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–2010–033. 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 web site viewing and printing in the Commission's Public Reference Room. 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–2010–033 and should be submitted on or before April 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5660 Filed 3–15–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12). [sic]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61682; File No. SR–NASDAQ–2010–030]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide an Additional Option to the DOTI Routing Strategy

March 10, 2010.

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 March 1, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to amend Rule 4758 to add an additional option to the DOTI routing strategy available in the NASDAQ Market Center ("System"). The text of the proposed rule change is below. Proposed new language is in italics and proposed deletions are in brackets.[3]

* * * * *

4758. Order Routing

(a) Order Routing Process

(1) The Order Routing Process shall be available to Participants from 7 a.m. until 8 p.m. Eastern Time, and shall route orders as described below. All routing of orders shall comply with Rule 611 of Regulation NMS under the Exchange Act.

(A) No Change.

(i) No Change.

(ii) *a.* DOTI is a routing option for orders that the entering firm wishes to direct to the NYSE or NYSE Amex without returning to the Nasdaq Market Center. DOTI orders check the System for available shares and then are sent to destinations on the System routing table before being sent to NYSE or NYSE Amex, as appropriate. DOTI orders do not return to the Nasdaq Market Center book after routing.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://nasdaqomx.cchwallstreet.com.*

b. The entering firm may alternatively elect to have DOTI orders check the System for available shares and thereafter be directly sent to NYSE or NYSE Amex as appropriate.

(iii) through (viii) No Change.

(B) No Change.

(b) and (c) Not applicable.

* * * * *

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 is amending Rule 4758, to add an additional voluntary option to the DOTI routing strategy. Currently, DOTI orders check the System for available shares and then are sent to destinations on the System routing table before being sent to NYSE or NYSE Amex, as appropriate. DOTI orders do not return to the NASDAQ Market Center book after routing.

NASDAQ is proposing to provide an additional alternative version of DOTI that will first check the System for available shares and thereafter be immediately sent to NYSE or NYSE Amex as appropriate. NASDAQ notes that all of its routing options are voluntary and believes that the additional version of DOTI will provide additional flexibility for market participants that ultimately wish to have their orders be sent to the NYSE or NYSE Amex.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(5) of the Act,[5] 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. The proposed change will provide market participants with greater flexibility in routing orders to the NYSE or NYSE Amex.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] 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 and Rule 19b–4(f)(6)(iii) thereunder.[8]

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]

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–NASDAQ–2010–030 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–2010–030. 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,[10] 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 Web site viewing and printing 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–2010–030 and

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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.

[9] 15 U.S.C. 78s(b)(3)(C).

[10] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

should be submitted on or before April 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5661 Filed 3–15–10; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35095]

Alaska Railroad Corporation—Construction and Operation Exemption—A Rail Line Extension to Port Mackenzie, AK

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Availability of Draft Environmental Impact Statement, Notice of Public Meetings.

SUMMARY: On December 5, 2008, Alaska Railroad Corporation (ARRC) filed a petition with the Surface Transportation Board (Board) pursuant to 49 United States Code (U.S.C.) 10502 and 10901 for the authority to construct and operate approximately 30 to 45 miles of new rail line. The proposed rail line would connect the Port MacKenzie District in Matanuska-Susitna Borough (MSB) to a point on the existing ARRC main line between Wasilla and just north of Willow, Alaska. Implementation of the proposed rail line would extend ARRC's existing freight rail service to the Port MacKenzie area, and would include construction of related structures, such as communications towers and sidings. Because construction and operation of this proposed rail line has the potential to result in significant environmental impacts, the Board's Section of Environmental Analysis (SEA) and three cooperating agencies prepared a Draft Environmental Impact Statement (Draft EIS). The cooperating agencies include the U.S. Army Corps of Engineers, Alaska District; Federal Railroad Administration; and U.S. Coast Guard, Seventeenth District.

The purpose of this Notice of Availability is to notify individuals and agencies interested in or affected by the proposed action of the availability of the Draft EIS for review and comment, and of public meetings on the Draft EIS. The Draft EIS analyzes the potential environmental impacts of the proposed action and alternatives, including the no-action alternative. The Draft EIS addresses environmental issues and concerns identified during the scoping process. It also contains SEA's preliminary recommendations for environmental mitigation measures, and ARRC's voluntary mitigation measures.

Public Meetings: SEA and the cooperating agencies are holding six public meetings on the Draft EIS during which interested parties may make oral comments in a formal setting and/or submit written comments. SEA will begin each meeting with a brief overview of the proposed action and environmental review process. The overview will be followed by a formal comment period during which each interested individual will be given several minutes to address the meeting participants and convey his or her oral comments. A court reporter will be present to record these oral comments. If time permits, the court reporter will be available at the conclusion of the formal segment of the meeting to record oral comments from individuals not interested in addressing the meeting as a whole. The dates, locations and times of the public meetings are shown below:

- April 6, 2010, 6:30–8:30 p.m. at Wilda Marston Theater, 3600 Denali Street, Anchorage, AK.
- April 7, 2010, 6:30–8:30 p.m. at Big Lake Elementary School, 3808 South Big Lake Road, Big Lake, AK.
- April 8, 2010, 6:30–8:30 p.m. at Menard Sports Center, 1001 S Mack Drive, Wasilla, AK.
- April 12, 2010, 6:30–8:30 p.m. at Houston Middle School, 12801 W. Hawk Lane, Houston, AK.
- April 13, 2010, 6:30–8:30 p.m., at Willow Community Center, Mile 70 Parks Highway, Willow, AK.
- April 14, 2010, 6:30–8:30 p.m. at Knik Elementary School Gym, 6350 Hollywood Boulevard, Wasilla, AK.

Next Steps: Following the close of the comment period on the Draft EIS (May 10, 2010), SEA and the cooperating agencies will issue a Final Environmental Impact Statement (Final EIS) that considers comments on the Draft EIS. The Board will then issue a final decision based on the Draft and Final EISs and all public and agency comments in the public record for this proceeding. The final decision will address the transportation merits of the proposed project and the entire environmental record. That final decision will take one of three actions: approve the proposed project, deny it, or approve it with mitigation conditions, including environmental conditions.

Written Comments: Any interested party may submit written comments on the Draft EIS regardless of whether they participate in any of the six public meetings and provide oral comments. The procedures for submitting written comments are outlined below:

Mail: Written comments should be mailed to: David Navecky, STB Finance Docket No. 35095, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423.

Electronically: Written comments on the Draft EIS may also be filed electronically on the Board's Web site, *http://www.stb.dot.gov,* by clicking on the "E-FILING" link. Then select "Environmental Comments," which does not require a Login Account. It is not necessary to mail written comments that have been filed electronically.

DATES: Written comments on the Draft EIS, which was served March 16, 2010, must be postmarked by May 10, 2010. Electronically filed comments must be received by May 10, 2010.

FOR FURTHER INFORMATION CONTACT: David Navecky by mail at the address above, by telephone at 202–245–0294 [FIRS for the hearing impaired (1–800–877–8339)], or by e-mail at *naveckyd@stb.dot.gov.* Further information about the project is also available by calling SEA's toll-free number at 1–888–257–7560, and at the Board's project-specific Web site at *http://www.stbportmacraileis.com.*

By the Board.

Victoria Rutson,

Chief, Section of Environmental Analysis.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–5565 Filed 3–15–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 321X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption in Hamilton County, OH

On February 24, 2010, Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over 5.70 miles of railroad between milepost CT 2.10 and milepost CT 7.80, in Hamilton County, OH. The line traverses United States Postal Service Zip Codes 45209, 45212, 45227, and 45229, and includes the stations of Hyde Park and Mariemont.

[11] 17 CFR 200.30–3(a)(12).

NSR states that the line does not contain federally granted rights-of-way. Any documentation in NSR's possession concerning this matter will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 14, 2010.

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).[1]

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 321X), and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423–0001; and (2) Daniel G. Kruger, Norfolk Southern Railway Corporation, Three Commercial Place, Norfolk, VA 23510. Replies to NSR's petition are due on or before April 5, 2010.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 10, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–5652 Filed 3–15–10; 8:45 am]

BILLING CODE 4915–01–P

[1] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8.

Federal Register

Tuesday,
March 16, 2010

Part II

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 17, 223, and 224

Endangered and Threatened Species; Proposed Listing of Nine Distinct Population Segments of Loggerhead Sea Turtles as Endangered or Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 100104003–0004–01]

RIN 0648–AY49

Endangered and Threatened Species; Proposed Listing of Nine Distinct Population Segments of Loggerhead Sea Turtles as Endangered or Threatened

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Fish and Wildlife Service (USFWS), Interior.

ACTION: Proposed rules; 12-month petition findings; request for comments.

SUMMARY: We (NMFS and USFWS; also collectively referred to as the Services) have determined that the loggerhead sea turtle (*Caretta caretta*) is composed of nine distinct population segments (DPSs) that qualify as "species" for listing as endangered or threatened under the Endangered Species Act (ESA), and we propose to list two as threatened and seven as endangered. This also constitutes the 12-month findings on a petition to reclassify loggerhead turtles in the North Pacific Ocean as a DPS with endangered status and designate critical habitat, and a petition to reclassify loggerhead turtles in the Northwest Atlantic as a DPS with endangered status and designate critical habitat. We will propose to designate critical habitat, if found to be prudent and determinable, for the two loggerhead sea turtle DPSs occurring within the United States in a subsequent **Federal Register** notice.

DATES: Comments on this proposal must be received by June 14, 2010. Public hearing requests must be received by June 1, 2010.

ADDRESSES: You may submit comments, identified by the RIN 0648–AY49, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal.
- *Mail:* NMFS National Sea Turtle Coordinator, Attn: Loggerhead Proposed Listing Rule, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13657, Silver Spring, MD 20910 or USFWS National Sea Turtle Coordinator, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.
- *Fax:* To the attention of NMFS National Sea Turtle Coordinator at 301–713–0376 or USFWS National Sea Turtle Coordinator at 904–731–3045.

Instructions: 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 (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS and USFWS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The proposed rule is available electronically at *http://www.nmfs.noaa.gov/pr.*

FOR FURTHER INFORMATION CONTACT: Barbara Schroeder, NMFS (ph. 301–713–1401, fax 301–713–0376, e-mail *barbara.schroeder@noaa.gov*), Sandy MacPherson, USFWS (ph. 904–731–3336, e-mail *sandy_macpherson@fws.gov*), Marta Nammack, NMFS (ph. 301–713–1401, fax 301–713–0376, e-mail *marta_nammack@noaa.gov*), or Emily Bizwell, USFWS (ph. 404–679–7149, fax 404–679–7081, e-mail *emily_bizwell@fws.gov*). Persons who use a Telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit public comment on this proposed listing determination. We intend that any final action resulting from this proposal will be as accurate and as effective as possible and informed by the best available scientific and commercial information. Therefore, we request comments or information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are seeking information and comments on whether the nine proposed loggerhead sea turtle DPSs qualify as DPSs and, if so, whether they should be classified as threatened or endangered as described in the "Listing Determinations Under the ESA" section provided below. Specifically, we are soliciting information in the following areas relative to loggerhead turtles within the nine proposed DPSs: (1) Historical and current population status and trends, (2) historical and current distribution, (3) migratory movements and behavior, (4) genetic population structure, (5) current or planned activities that may adversely impact loggerhead turtles, and (6) ongoing efforts to protect loggerhead turtles. We are also soliciting information and comment on the status and effectiveness of conservation efforts and the approach that should be used to weigh the risk of extinction of each DPS. Comments and new information will be considered in making final determinations whether listing of each DPS is warranted and if so whether it is threatened or endangered. We request that all data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications.

Background

We issued a final rule listing the loggerhead sea turtle as threatened throughout its worldwide range on July 28, 1978 (43 FR 32800). On July 12, 2007, we received a petition to list the "North Pacific populations of loggerhead sea turtle" as an endangered species under the ESA. NMFS published a notice in the **Federal Register** on November 16, 2007 (72 FR 64585), concluding that the petitioners (Center for Biological Diversity and Turtle Island Restoration Network) presented substantial scientific information indicating that the petitioned action may be warranted. Also, on November 15, 2007, we received a petition to list the "Western North Atlantic populations of loggerhead sea turtle" as an endangered species under the ESA. NMFS published a notice in the **Federal Register** on March 5, 2008 (73 FR 11849), concluding that the petitioners (Center for Biological Diversity and Oceana) presented substantial scientific information indicating that the petitioned action may be warranted.

On March 12, 2009, the petitioners (Center for Biological Diversity, Turtle Island Restoration Network, and Oceana) sent a 60-day notice of intent to sue to the Services for failure to make 12-month findings on the petitions. The statutory deadlines for the 12-month findings were July 16, 2008, for the North Pacific petition and November 16, 2008, for the Northwest Atlantic petition. On May 28, 2009, the petitioners filed a Complaint for

Declaratory and Injunctive Relief to compel the Services to complete the 12-month findings. On October 8, 2009, the petitioners and the Services reached a settlement in which the Services agreed to submit to the **Federal Register** a 12-month finding on the two petitions on or before February 19, 2010. On February 16, 2010, the United States District Court for the Northern District of California modified the February 19, 2010 deadline to March 8, 2010.

In early 2008, NMFS assembled a Loggerhead Biological Review Team (BRT) to complete a status review of the loggerhead sea turtle. The BRT was composed of biologists from NMFS, USFWS, the Florida Fish and Wildlife Conservation Commission, and the North Carolina Wildlife Resources Commission. The BRT was charged with reviewing and evaluating all relevant scientific information relating to loggerhead population structure globally to determine whether DPSs exist and, if so, to assess the status of each DPS. The findings of the BRT, which are detailed in the "Loggerhead Sea Turtle (*Caretta caretta*) 2009 Status Review under the U.S. Endangered Species Act" (Conant *et al.,* 2009; hereinafter referred to as the Status Review), addressed DPS delineations, extinction risks to the species, and threats to the species. The Status Review underwent independent peer review by nine scientists with expertise in loggerhead sea turtle biology, genetics, and modeling. The Status Review is available electronically at *http://www.nmfs.noaa.gov/pr/species/statusreviews.htm.*

This **Federal Register** document announces 12-month findings on the petitions to list the North Pacific populations and the Northwest Atlantic populations of the loggerhead sea turtle as DPSs with endangered status and includes a proposed rule to designate nine loggerhead DPSs worldwide.

Policies for Delineating Species Under the ESA

Section 3 of the ESA defines "species" as including "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." The term "distinct population segment" is not recognized in the scientific literature. Therefore, the Services adopted a joint policy for recognizing DPSs under the ESA (DPS Policy; 61 FR 4722) on February 7, 1996. Congress has instructed the Secretary of the Interior or of Commerce to exercise this authority with regard to DPSs "* * * sparingly and only when the biological evidence indicates such action is warranted." The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon (an organism or group of organisms) as a consequence of physical, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA (*i.e.,* inadequate regulatory mechanisms).

If a population segment is found to be discrete under one or both of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the discrete population segment differs markedly from other population segments of the species in its genetic characteristics.

Listing Determinations Under the ESA

The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range (sections 3(6) and 3(20), respectively). The statute requires us to determine whether any species is endangered or threatened because of any of the following five factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A–E)). We are to make this determination based solely on the best available scientific and commercial data available after conducting a review of the status of the species and taking into account any efforts being made by States or foreign governments to protect the species.

Biology and Life History of Loggerhead Turtles

A thorough account of loggerhead biology and life history may be found in the Status Review, which is incorporated here by reference. The following is a succinct summary of that information.

The loggerhead occurs throughout the temperate and tropical regions of the Atlantic, Pacific, and Indian Oceans (Dodd, 1988). However, the majority of loggerhead nesting is at the western rims of the Atlantic and Indian Oceans. The most recent reviews show that only two loggerhead nesting aggregations have greater than 10,000 females nesting per year: Peninsular Florida, United States, and Masirah Island, Oman (Baldwin *et al.,* 2003; Ehrhart *et al.,* 2003; Kamezaki *et al.,* 2003; Limpus and Limpus, 2003; Margaritoulis *et al.,* 2003). Nesting aggregations with 1,000 to 9,999 females nesting annually are Georgia through North Carolina (United States), Quintana Roo and Yucatan (Mexico), Brazil, Cape Verde Islands (Cape Verde), Western Australia (Australia), and Japan. Smaller nesting aggregations with 100 to 999 nesting females annually occur in the Northern Gulf of Mexico (United States), Dry Tortugas (United States), Cay Sal Bank (The Bahamas), Tongaland (South Africa), Mozambique, Arabian Sea Coast (Oman), Halaniyat Islands (Oman), Cyprus, Peloponnesus (Greece), Zakynthos (Greece), Crete (Greece), Turkey, and Queensland (Australia). In contrast to determining population size on nesting beaches, determining population size in the marine environment has been very localized. A summary of information on distribution and habitat by ocean basin follows.

Pacific Ocean

Loggerheads can be found throughout tropical to temperate waters in the Pacific; however, their breeding grounds include a restricted number of sites in the North Pacific and South Pacific. Within the North Pacific, loggerhead nesting has been documented only in Japan (Kamezaki *et al.,* 2003), although

low level nesting may occur outside of Japan in areas surrounding the South China Sea (Chan *et al.,* 2007). In the South Pacific, nesting beaches are restricted to eastern Australia and New Caledonia and, to a much lesser extent, Vanuatu and Tokelau (Limpus and Limpus, 2003).

Based on tag-recapture studies, the East China Sea has been identified as the major habitat for post-nesting adult females (Iwamoto *et al.,* 1985; Kamezaki *et al.,* 1997; Balazs, 2006), while satellite tracking of juvenile loggerheads indicates the Kuroshio Extension Bifurcation Region to be an important pelagic foraging area for juvenile loggerheads (Polovina *et al.,* 2006). Other important juvenile turtle foraging areas have been identified off the coast of Baja California Sur, Mexico (Pitman, 1990; Peckham and Nichols, 2006).

Nesting females tagged on the coast of eastern Australia have been recorded foraging in New Caledonia; Queensland, New South Wales, and Northern Territory, Australia; Solomon Islands; Papua New Guinea; and Indonesia (Limpus and Limpus, 2003). Foraging Pacific loggerheads originating from nesting beaches in Australia are known to migrate to Chile and Peru (Alfaro-Shigueto *et al.,* 2004, 2008a; Donoso and Dutton, 2006; Boyle *et al.,* 2009).

Indian Ocean

In the North Indian Ocean, Oman hosts the vast majority of loggerhead nesting. The majority of the nesting in Oman occurs on Masirah Island, on the Al Halaniyat Islands, and on mainland beaches south of Masirah Island all the way to the Oman-Yemen border (IUCN—The World Conservation Union, 1989a, 1989b; Salm, 1991; Salm and Salm, 1991). In addition, nesting probably occurs on the mainland of Yemen on the Arabian Sea coast, and nesting has been confirmed on Socotra, an island off the coast of Yemen (Pilcher and Saad, 2000). Limited information exists on the foraging habitats of North Indian Ocean loggerheads; however, foraging individuals have been reported off the southern coastline of Oman (Salm *et al.,* 1993). Satellite telemetry studies of post-nesting migrations of loggerheads nesting on Masirah Island, Oman, have revealed extensive use of the waters off the Arabian Peninsula, with the majority of telemetered turtles traveling southwest, following the shoreline of southern Oman and Yemen, and circling well offshore in nearby oceanic waters (Environment Society of Oman and Ministry of Environment and Climate Change, Oman, unpublished data). A minority traveled north as far as the western Persian (Arabian) Gulf or followed the shoreline of southern Oman and Yemen as far west as the Gulf of Aden and the Bab-el-Mandab.

The only verified nesting beaches for loggerheads on the Indian subcontinent are found in Sri Lanka. A small number of nesting females use the beaches of Sri Lanka every year (Deraniyagala, 1939; Kar and Bhaskar, 1982; Dodd, 1988); however, there are no records indicating that Sri Lanka has ever been a major nesting area for loggerheads (Kapurusinghe, 2006). No confirmed nesting occurs on the mainland of India (Tripathy, 2005; Kapurusinghe, 2006). The Gulf of Mannar provides foraging habitat for juvenile and post-nesting adult turtles (Tripathy, 2005; Kapurusinghe, 2006).

In the East Indian Ocean, western Australia hosts all known loggerhead nesting (Dodd, 1988). Nesting distributions in western Australia span from the Shark Bay World Heritage Area northward through the Ningaloo Marine Park coast to the North West Cape and to the nearby Muiron Islands (Baldwin *et al.,* 2003). Nesting individuals from Dirk Hartog Island have been recorded foraging within Shark Bay and Exmouth Gulf, while other adults range much farther (Baldwin *et al.,* 2003).

In the Southwest Indian Ocean, loggerhead nesting occurs on the southeastern coast of Africa, from the Paradise Islands in Mozambique southward to St. Lucia in South Africa, and on the south and southwestern coasts of Madagascar (Baldwin *et al.,* 2003). Foraging habitats are only known for post-nesting females from Tongaland, South Africa; tagging data show these loggerheads migrating eastward to Madagascar, northward to Mozambique, Tanzania, and Kenya, and southward to Cape Agulhas at the southernmost point of Africa (Baldwin *et al.,* 2003; Luschi *et al.,* 2006).

Atlantic Ocean

In the Northwest Atlantic, the majority of loggerhead nesting is concentrated along the coasts of the United States from southern Virginia through Alabama. Additional nesting beaches are found along the northern and western Gulf of Mexico, eastern Yucatan Peninsula, at Cay Sal Bank in the eastern Bahamas (Addison and Morford, 1996; Addison, 1997), on the southwestern coast of Cuba (F. Moncada-Gavilan, personal communication, cited in Ehrhart *et al.,* 2003), and along the coasts of Central America, Colombia, Venezuela, and the eastern Caribbean Islands. In the Southwest Atlantic, loggerheads nest in significant numbers only in Brazil. In the eastern Atlantic, the largest nesting population of loggerheads is in the Cape Verde Islands (L.F. Lopez-Jurado, personal communication, cited in Ehrhart *et al.,* 2003), and some nesting occurs along the West African coast (Fretey, 2001).

As post-hatchlings, Northwest Atlantic loggerheads use the North Atlantic Gyre and enter Northeast Atlantic waters (Carr, 1987). They are also found in the Mediterranean Sea (Carreras *et al.,* 2006; Eckert *et al.,* 2008). In these areas, they overlap with animals originating from the Northeast Atlantic and the Mediterranean Sea (Laurent *et al.,* 1993, 1998; Bolten *et al.,* 1998; LaCasella *et al.,* 2005; Carreras *et al.,* 2006; Monzon-Arguello *et al.,* 2006; Revelles *et al.,* 2007; Eckert *et al.,* 2008). The oceanic juvenile stage in the North Atlantic has been primarily studied in the waters around the Azores and Madeira (Bolten, 2003). In Azorean waters, satellite telemetry data and flipper tag returns suggest a long period of residency (Bolten, 2003), whereas turtles appear to be moving through Madeiran waters (Dellinger and Freitas, 2000). Preliminary genetic analyses indicate that juvenile loggerheads found in Moroccan waters are of western Atlantic origin (M. Tiwari, NMFS, and A. Bolten, University of Florida, unpublished data). Other concentrations of oceanic juvenile turtles exist in the Atlantic (*e.g.,* in the region of the Grand Banks off Newfoundland). Genetic information indicates the Grand Banks are foraging grounds for a mixture of loggerheads from all the North Atlantic rookeries (LaCasella *et al.,* 2005; Bowen *et al.,* 2005), and a large size range is represented (Watson *et al.,* 2004, 2005).

After departing the oceanic zone, neritic juvenile loggerheads in the Northwest Atlantic inhabit continental shelf waters from Cape Cod Bay, Massachusetts, south through Florida, The Bahamas, Cuba, and the Gulf of Mexico (neritic refers to the inshore marine environment from the surface to the sea floor where water depths do not exceed 200 meters).

Habitat preferences of Northwest Atlantic non-nesting adult loggerheads in the neritic zone differ from the juvenile stage in that relatively enclosed, shallow water estuarine habitats with limited ocean access are less frequently used. Areas such as Pamlico Sound and the Indian River Lagoon in the United States, regularly used by juvenile loggerheads, are only rarely frequented by adults. In comparison, estuarine areas with more open ocean access, such as Chesapeake Bay in the U.S. mid-Atlantic, are also regularly used by juvenile loggerheads, as well as by adults primarily during

warmer seasons. Shallow water habitats with large expanses of open ocean access, such as Florida Bay, provide year-round resident foraging areas for significant numbers of male and female adult loggerheads. Offshore, adults primarily inhabit continental shelf waters, from New York south through Florida, The Bahamas, Cuba, and the Gulf of Mexico. The southern edge of the Grand Bahama Bank is important habitat for loggerheads nesting on the Cay Sal Bank in The Bahamas, but nesting females are also resident in the bights of Eleuthera, Long Island, and Ragged Islands as well as Florida Bay in the United States, and the north coast of Cuba (A. Bolten and K. Bjorndal, University of Florida, unpublished data). Moncada *et al.* (in press) reported the recapture in Cuban waters of five adult female loggerheads originally flipper tagged in Quintana Roo, Mexico, indicating that Cuban shelf waters likely also provide foraging habitat for adult females that nest in Mexico.

In the Northeast Atlantic, satellite telemetry studies of post-nesting females from Cape Verde identified two distinct dispersal patterns; larger individuals migrated to benthic foraging areas off the northwest Africa coast and smaller individuals foraged primarily oceanically off the northwest Africa coast (Hawkes *et al.,* 2006). Monzon-Arguello *et al.* (2009) conducted a mixed stock analysis of juvenile loggerheads sampled from foraging areas in the Canary Islands, Madeira, Azores, and Andalusia and concluded that while juvenile loggerheads from the Cape Verde population were distributed among these four sites, a large proportion of Cape Verde juvenile turtles appear to inhabit as yet unidentified foraging areas.

In the South Atlantic, relatively little is known about the at-sea behavior of loggerheads originating from nesting beaches in Brazil. Recaptures of tagged juvenile turtles and nesting females have shown movement of animals up and down the coast of South America (Almeida *et al.,* 2000; Marcovaldi *et al.,* 2000; Laporta and Lopez, 2003; Almeida *et al.,* 2007). Juvenile loggerheads, presumably of Brazilian origin, have also been captured on the high seas of the South Atlantic (Kotas *et al.,* 2004; Pinedo and Polacheck, 2004) and off the coast of Atlantic Africa (Bal *et al.,* 2007; Petersen, 2005; Petersen *et al.,* 2007) suggesting that loggerheads of the South Atlantic may undertake transoceanic developmental migrations (Bolten *et al.,* 1998; Peckham *et al.,* 2007).

Mediterranean Sea

Loggerhead turtles are widely distributed in the Mediterranean Sea. However, nesting is almost entirely confined to the eastern Mediterranean basin, with the main nesting concentrations in Cyprus, Greece, and Turkey (Margaritoulis *et al.,* 2003). Preliminary surveys in Libya suggested nesting activity comparable to Greece and Turkey, although a better quantification is needed (Laurent *et al.,* 1999). Minimal to moderate nesting also occurs in other countries throughout the Mediterranean including Egypt, Israel, Italy (southern coasts and islands), Lebanon, Syria, and Tunisia (Margaritoulis *et al.,* 2003). Recently, isolated nesting events have been recorded in the western Mediterranean basin, namely in Spain, Corsica (France), and in the Tyrrhenian Sea (Italy) (Tomas *et al.,* 2002; Delaugerre and Cesarini, 2004; Bentivegna *et al.,* 2005).

Important neritic habitats have been suggested for the large continental shelves of: (1) Tunisia-Libya, (2) northern Adriatic Sea, (3) Egypt, and (4) Spain (Margaritoulis, 1988; Argano *et al.,* 1992; Laurent and Lescure, 1994; Lazar *et al.,* 2000; Gomez de Segura *et al.,* 2006; Broderick *et al.,* 2007; Casale *et al.,* 2007b; Nada and Casale, 2008). At least the first three constitute shallow benthic habitats for adults (including post-nesting females). Some other neritic foraging areas include Amvrakikos Bay in western Greece, Lakonikos Bay in southern Greece, and southern Turkey. Oceanic foraging areas for small juvenile loggerheads have been identified in the south Adriatic Sea (Casale *et al.,* 2005b), Ionian Sea (Deflorio *et al.,* 2005), Sicily Strait (Casale *et al.,* 2007b), and western Mediterranean (Spain) (*e.g.,* Camiñas *et al.,* 2006). In addition, tagged juvenile loggerheads have been recorded crossing the Mediterranean from the eastern to the western basin and vice versa, as well as in the Eastern Atlantic (Argano *et al.,* 1992; Casale *et al.,* 2007b).

Reproductive migrations have been confirmed by flipper tagging and satellite telemetry. Female loggerheads, after nesting in Greece, migrate primarily to the Gulf of Gabès and the northern Adriatic (Margaritoulis, 1988; Margaritoulis *et al.,* 2003; Lazar *et al.,* 2004; Zbinden *et al.,* 2008). Loggerheads nesting in Cyprus migrate to Egypt and Libya, exhibiting fidelity in following the same migration route during subsequent nesting seasons (Broderick *et al.,* 2007). In addition, directed movements of juvenile loggerheads have been confirmed through flipper tagging (Argano *et al.,* 1992; Casale *et al.,* 2007b) and satellite tracking (Rees and Margaritoulis, 2009).

Overview of Information Used To Identify DPSs

In the Status Review, the BRT considered a vast array of information to assess whether there are any loggerhead population segments that satisfy the DPS criteria of both discreteness and significance. First, the BRT examined whether there were any loggerhead population segments that were discrete. Data relevant to the discreteness question included physical, ecological, behavioral, and genetic data. Given the physical separation of ocean basins by continents, the BRT evaluated these data by ocean basin (Pacific Ocean, Indian Ocean, and Atlantic Ocean). This was not to preclude any larger or smaller DPS delineation, but to aid in data organization and assessment. The BRT then evaluated genetic information by ocean basin. The genetic data consisted of results from studies using maternally inherited mitochondrial DNA (mtDNA) and biparentally inherited nuclear DNA microsatellite markers. Next, tagging data (both flipper and PIT tags) and telemetry data were reviewed. Additional information, such as potential differences in morphology, was also evaluated. Finally, the BRT considered whether the available information on loggerhead population segments was bounded by any oceanographic features (*e.g.,* current systems) or geographic features (*e.g.,* land masses).

In accordance with the DPS policy, the BRT also reviewed whether the population segments identified in the discreteness analysis were significant. If a population segment is considered discrete, its biological and ecological significance must then be considered. NMFS and USFWS must consider available scientific evidence of the discrete segment's importance to the taxon to which it belongs. Data relevant to the significance question include morphological, ecological, behavioral, and genetic data, as described above. The BRT considered the following factors, listed in the DPS policy, in determining whether the discrete population segments were significant: (a) Persistence of the discrete segment in an ecological setting unusual or unique for the taxon; (b) evidence that loss of the discrete segment would result in a significant gap in the range of the taxon; (c) evidence that the discrete segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced

population outside its historical range; and (d) evidence that the discrete segment differs markedly from other populations of the species in its genetic characteristics.

A discrete population segment needs to satisfy only one of these criteria to be considered significant. The DPS policy also allows for consideration of other factors if they are appropriate to the biology or ecology of the species. As described below, the BRT evaluated the available information and considered items (a), (b) and (d), as noted above, to be most applicable to loggerheads.

Discreteness Determination

As described in the Status Review, the loggerhead sea turtle is present in all tropical and temperate ocean basins, and has a life history that involves nesting on coastal beaches and foraging in neritic and oceanic habitats, as well as long-distance migrations between and within these areas. As with other globally distributed marine species, today's global loggerhead population has been shaped by a sequence of isolation events created by tectonic and oceanographic shifts over geologic time scales, the result of which is population substructuring in many areas (Bowen *et al.,* 1994; Bowen, 2003). Globally, loggerhead turtles comprise a mosaic of populations, each with unique nesting sites and in many cases possessing disparate demographic features (*e.g.,* mean body size, age at first reproduction) (Dodd, 1988). However, despite these differences, loggerheads from different nesting populations often mix in common foraging areas during certain life stages (Bolten and Witherington, 2003), thus creating unique challenges when attempting to delineate distinct population segments for management or listing purposes.

Bowen *et al.* (1994) examined the mtDNA sequence diversity of loggerheads across their global distribution and found a separation of loggerheads in the Atlantic-Mediterranean basins from those in the Indo-Pacific basins since the Pleistocene period. The divergence between these two primary lineages corresponds to approximately three million years (2 percent per million years; Dutton *et al.,* 1996; Encalada *et al.,* 1996). Geography and climate appear to have shaped the evolution of these two matriarchal lineages with the onset of glacial cycles, the appearance of the Panama Isthmus creating a land barrier between the Atlantic and eastern Pacific, and upwelling of cold water off southern Africa creating an oceanographic barrier between the Atlantic and Indian Oceans (Bowen, 2003). Recent warm temperatures during interglacial periods allowed bi-directional invasion by the temperate-adapted loggerheads into the respective basins (Bowen *et al.,* 1994; J.S. Reece, Washington University, personal communication, 2008). Today, it appears that loggerheads within a basin are effectively isolated from populations in the other basin, but some dispersal from the Tongaland rookery in the Indian Ocean into feeding and developmental habitat in the South Atlantic is possible via the Agulhas Current (G.R. Hughes, unpublished data, cited in Bowen *et al.,* 1994). In the Pacific, extensive mtDNA studies show that the northern loggerhead populations are isolated from the southern Pacific populations, and that juvenile loggerheads from these distinct genetic populations do not disperse across the equator (Hatase *et al.,* 2002a; Dutton, 2007, unpublished data).

Mitochondrial DNA data indicate that regional turtle rookeries within an ocean basin have been strongly isolated from one another over ecological timescales (Bowen *et al.,* 1994; Bowen and Karl, 2007). These same data indicate strong female natal homing and suggest that each regional nesting population is an independent demographic unit (Bowen and Karl, 2007). It is difficult to determine the precise boundaries of these demographically independent populations in regions, such as the eastern U.S. coast, where rookeries are close to each other and range along large areas of a continental coastline. There appear to be varying levels of connectivity between proximate rookeries facilitated by imprecise natal homing and male mediated gene flow (Pearce, 2001; Bowen, 2003; Bowen *et al.,* 2005). Regional genetic populations often are characterized by allelic frequency differences rather than fixed genetic differences.

Through the evaluation of genetic data, tagging data, telemetry, and demography, the BRT determined that there are at least nine discrete population segments of loggerhead sea turtles globally. These discrete population segments are markedly separated from each other as a consequence of physical, ecological, behavioral, and oceanographic factors, and given the genetic evidence, the BRT concluded that each regional population identified is discrete from other populations of loggerheads. Information considered by the BRT in its delineation of discrete population segments is presented below by ocean basin.

Pacific Ocean

In the North Pacific Ocean, the primary loggerhead nesting areas are found along the southern Japanese coastline and Ryukyu Archipelago (Kamezaki *et al.,* 2003), although low level nesting may occur outside Japan in areas surrounding the South China Sea (Chan *et al.,* 2007). Loggerhead turtles hatching on Japanese beaches undertake extensive developmental migrations using the Kuroshio and North Pacific Currents (Balazs, 2006; Kobayashi *et al.,* 2008), and some turtles reach the vicinity of Baja California in the eastern Pacific (Uchida and Teruya, 1988; Bowen *et al.,* 1995; Peckham *et al.,* 2007). After spending years foraging in the central and eastern Pacific, loggerheads return to their natal beaches for reproduction (Resendiz *et al.,* 1998; Nichols *et al.,* 2000) and remain in the western Pacific for the remainder of their life cycle (Iwamoto *et al.,* 1985; Kamezaki *et al.,* 1997; Sakamoto *et al.,* 1997; Hatase *et al.,* 2002c).

Despite the long-distance developmental movements of loggerheads in the North Pacific, current scientific evidence, based on genetic analysis, flipper tag recoveries, and satellite telemetry, indicates that individuals originating from Japan remain in the North Pacific for their entire life cycle, never crossing the equator or mixing with individuals from the South Pacific (Hatase *et al.,* 2002a; LeRoux and Dutton, 2006; Dutton, 2007, unpublished data). This apparent, almost complete separation of two adjacent populations most likely results from: (1) The presence of two distinct Northern and Southern Gyre (current flow) systems in the Pacific (Briggs, 1974), (2) near-passive movements of post-hatchlings in these gyres that initially move them farther away from areas of potential mixing among the two populations along the equator, and (3) the nest-site fidelity of adult turtles that prevents turtles from returning to non-natal nesting areas.

Pacific loggerheads are further partitioned evolutionarily from other loggerheads throughout the world based on additional analyses of mtDNA. The haplotypes (a haplotype refers to the genetic signature, coded in mtDNA, of an individual) from both North and South Pacific loggerheads are distinguished by a minimum genetic distance (d) equal to 0.017 from other conspecifics, which indicates isolation of approximately one million years (Bowen, 2003).

Within the Pacific, Bowen *et al.* (1995) used mtDNA to identify two genetically distinct nesting populations in the Pacific—a northern hemisphere population nesting in Japan and a southern hemisphere population nesting primarily in Australia. This study also

suggested that some loggerheads sampled as bycatch in the North Pacific might be from the Australian nesting population (Bowen *et al.,* 1995). However, more extensive mtDNA rookery data from Japan (Hatase *et al.,* 2002a) taken together with preliminary results from microsatellite (nuclear) analysis confirms that loggerheads inhabiting the North Pacific actually originate from nesting beaches in Japan (P. Dutton, NMFS, unpublished data). LeRoux *et al.* (2008) reported additional genetic variation in North Pacific loggerheads based on analyses using new mtDNA primers designed to target longer mtDNA sequences, and suggested finer scale population structure in North Pacific loggerheads may be present.

Although these studies indicate genetic distinctness between loggerheads nesting in Japan versus those nesting in Australia, Bowen *et al.* (1995) did identify individuals with the common Australian haplotype at foraging areas in the North Pacific, based on a few individuals sampled as bycatch in the North Pacific. More recently, Hatase *et al.* (2002a) detected this common haplotype at very low frequency at Japanese nesting beaches. However, the presence of the common Australian haplotype does not preclude the genetic distinctiveness of Japanese and Australian nesting populations, and is likely the result of rare gene flow events occurring over geologic time scales.

The discrete status of loggerheads in the North Pacific is further supported by results from flipper tagging in the North Pacific. Flipper tagging of loggerheads has been widespread throughout this region, occurring on adults nesting in Japan and bycaught in the coastal pound net fishery (Y. Matsuzawa, Sea Turtle Association of Japan, personal communication, 2006), juvenile turtles reared and released in Japan (Uchida and Teruya, 1988; Hatase *et al.,* 2002a), juvenile turtles foraging near Baja California, Mexico (Nichols, 2003; Seminoff *et al.,* 2004), and juvenile and adult loggerheads captured in and tagged from commercial fisheries platforms in the North Pacific high seas (NMFS, unpublished data). To date, there have been at least three transPacific tag recoveries showing east-west and west-east movements (Uchida and Teruya, 1988; Resendiz *et al.,* 1998; W.J. Nichols, Ocean Conservancy, and H. Peckham, Pro Peninsula, unpublished data) and several recoveries of adults in the western Pacific (Iwamoto *et al.,* 1985; Kamezaki *et al.,* 1997). However, despite the more than 30,000 marked individuals, not a single tag recovery has been reported outside the North Pacific.

A lack of movements by loggerheads south across the equator has also been supported by extensive satellite telemetry. As with flipper tagging, satellite telemetry has been conducted widely in the North Pacific, with satellite transmitters being placed on adult turtles departing nesting beaches (Sakamoto *et al.,* 1997; Japan Fisheries Resource Conservation Association, 1999; Hatase *et al.,* 2002b, 2002c), on adult and juvenile turtles bycaught in pound nets off the coast of Japan (Sea Turtle Association of Japan, unpublished data), on headstarted juvenile turtles released in Japan (Balazs, 2006), on juvenile and adult turtles bycaught in the eastern and central North Pacific (*e.g.,* Kobayashi *et al.,* 2008), and on juvenile turtles foraging in the eastern Pacific (Nichols, 2003; Peckham *et al.,* 2007; J. Seminoff, NMFS, unpublished data). Of the nearly 200 loggerheads tracked using satellite telemetry in the North Pacific, none have moved south of the equator. These studies have demonstrated the strong association loggerheads show with oceanographic mesoscale features such as the Transition Zone Chlorophyll Front or the Kuroshio Current Bifurcation Region (Polovina *et al.,* 2000, 2001, 2004, 2006; Etnoyer *et al.,* 2006; Kobayashi *et al.,* 2008). Kobayashi *et al.* (2008) demonstrated that loggerheads strongly track these zones even as they shift in location, suggesting that strong habitat specificity during the oceanic stage also contributes to the lack of mixing. Telemetry studies in foraging areas of the eastern Pacific, near Baja California, Mexico (Nichols, 2003; Peckham *et al.,* 2007; H. Peckham, Pro Peninsula, unpublished data) and Peru (J. Mangel, Pro Delphinus, unpublished data) similarly showed a complete lack of long distance north or south movements.

The North Pacific population of loggerheads appears to occupy an ecological setting distinct from other loggerheads, including those of the South Pacific population. This is the only known population of loggerheads to be found north of the equator in the Pacific Ocean, foraging in the eastern Pacific as far south as Baja California Sur, Mexico (Seminoff *et al.,* 2004; Peckham *et al.,* 2007) and in the western Pacific as far south as the Philippines (Limpus, 2009) and the mouth of Mekong River, Vietnam (Sadoyama *et al.,* 1996). Pelagic juvenile turtles spend much of their time foraging in the central and eastern North Pacific Ocean. The Kuroshio Extension Current, lying west of the international date line, serves as the dominant physical and biological habitat in the North Pacific and is highly productive, likely due to unique features such as eddies and meanders that concentrate prey and support food webs. Juvenile loggerheads originating from nesting beaches in Japan exhibit high site fidelity to an area referred to as the Kuroshio Extension Bifurcation Region, an area with extensive meanders and mesoscale eddies (Polovina *et al.,* 2006). Juvenile turtles also were found to correlate strongly with areas of surface chlorophyll a levels in an area known as the Transition Zone Chlorophyll Front, an area concentrating surface prey for loggerheads (Polovina *et al.,* 2001; Parker *et al.,* 2005; Kobayashi *et al.,* 2008). Another area found ecologically unique to the North Pacific population of loggerheads, likely because of the high density of pelagic red crabs (*Pleuronocodes planipes*), is located off the Pacific coast of the Baja California Peninsula, Mexico, where researchers have documented a foraging area for juvenile turtles based on aerial surveys and satellite telemetry (Seminoff *et al.,* 2006; Peckham *et al.,* 2007). Tag returns show post-nesting females migrating into the East China Sea off South Korea, China, and the Philippines, and the nearby coastal waters of Japan (Iwamoto *et al.,* 1985; Kamezaki *et al.,* 1997, 2003). Clearly, the North Pacific population of loggerheads is uniquely adapted to the ecological setting of the North Pacific Ocean and serves as an important part of the ecosystem it inhabits.

In summary, loggerheads inhabiting the North Pacific Ocean are derived primarily, if not entirely, from Japanese beaches (although low level nesting may occur outside Japan in areas surrounding the South China Sea), with the possible exception of rare waifs over evolutionary time scales. Further, nesting colonies of Japanese loggerheads are found to be genetically distinct based on mtDNA analyses, and when compared to much larger and more genetically diverse loggerhead populations in the Atlantic and Mediterranean, Pacific loggerheads have likely experienced critical bottlenecks (in Hatase *et al.,* 2002a), underscoring the importance of conservation and management to retain this genetically distinct population.

In the South Pacific Ocean, loggerhead turtles nest primarily in Queensland, Australia, and, to a lesser extent, New Caledonia and Vanuatu (Limpus and Limpus, 2003; Limpus *et al.,* 2006; Limpus, 2009). Loggerheads from these rookeries undertake an oceanic developmental migration,

traveling to habitats in the central and southeastern Pacific Ocean where they may reside for several years prior to returning to the western Pacific for reproduction. Loggerheads in this early life history stage differ markedly from those originating from western Australia beaches in that they undertake long west-to-east migrations, likely using specific areas of the pelagic environment of the South Pacific Ocean. An unknown portion of these loggerheads forage off Chile and Peru, and preliminary genetic information from foraging areas in the southeastern Pacific confirms that the haplotype frequencies among juvenile turtles in these areas closely match those found at nesting beaches in eastern Australia (Alfaro-Shigueto *et al.,* 2004; Donoso and Dutton, 2006, 2007; Boyle *et al.,* 2009). Large juvenile and adult loggerheads generally remain in the western South Pacific, inhabiting neritic and oceanic foraging sites during non-nesting periods (Limpus *et al.,* 1994; Limpus, 2009).

Loggerheads from Australia and New Caledonia apparently do not travel north of the equator. Flipper tag recoveries from nesting females have been found throughout the western Pacific, including sites north of Australia, the Torres Straight, and the Gulf of Carpentaria (Limpus, 2009). Of approximately 1,000 (adult and juvenile; male and female) loggerheads that have been tagged in eastern Australian feeding areas, only two have been recorded nesting outside of Australia; both traveled to New Caledonia (Limpus, 2009). Flipper tagging programs in Peru and Chile tagged approximately 500 loggerheads from 1999 to 2006, none of which have been reported from outside of the southeastern Pacific (Alfaro-Shigueto *et al.,* 2008a; S. Kelez, Duke University Marine Laboratory, unpublished data; M. Donoso, ONG Pacifico Laud—Chile, unpublished data). Limited satellite telemetry data from 12 turtles in the area show a similar trend (J. Mangel, Pro Delphinus, unpublished data).

The spatial separation between the North Pacific and South Pacific loggerhead populations has contributed to substantial differences in the genetic profiles of the nesting populations in these two regions. Whereas the dominant mtDNA haplotypes among loggerheads nesting in Japan are CCP2 and CCP3 (equivalent to B and C respectively in Bowen *et al.,* 1995 and Hatase *et al.,* 2002a; LeRoux *et al.,* 2008; P. Dutton, NMFS, unpublished data), loggerheads nesting in eastern Australia have a third haplotype (CCP1, previously A) which is dominant (98 percent of nesting females) (Bowen *et al.,* 1994; FitzSimmons *et al.,* 1996; Boyle *et al.,* 2009). Further, preliminary genetic analysis using microsatellite markers (nuclear DNA) indicates genetic distinctiveness between nesting populations in the North versus South Pacific (P. Dutton, NMFS, personal communication, 2008).

The separateness between nesting populations in eastern Australia (in the South Pacific Ocean) and western Australia (in the East Indian Ocean) is less clear, although these too are considered to be genetically distinct from one another (Limpus, 2009). For example, mtDNA haplotype CCP1, which is the overwhelmingly dominant haplotype among eastern Australia nesting females (98 percent), is also found in western Australia, although at much lower frequency (33 percent) (FitzSimmons *et al.,* 1996, 2003). The remaining haplotype for both regions was the CCP5 haplotype. Further, FitzSimmons (University of Canberra, unpublished data) found significant differences in nuclear DNA microsatellite loci from females nesting in these two regions. Estimates of gene flow between eastern and western Australian populations was an order of magnitude less than gene flow within regions. These preliminary results based on nuclear DNA indicate that male-mediated gene flow between eastern and western Australia may be insignificant, which, when considered in light of the substantial disparity in mtDNA haplotype frequencies between these two regions, provides further evidence of population separation.

At present, there is no indication from genetic studies that the loggerhead turtles nesting in eastern Australia are distinct from those nesting in New Caledonia. Of 27 turtles sequenced from New Caledonia, 93 percent carried the CCP1 haplotype and the remaining had the CCP5 haplotype; similar to eastern Australia (Boyle *et al.,* 2009).

The South Pacific population of loggerheads occupies an ecological setting distinct from other loggerheads, including the North Pacific population; however, less is known about the ecosystem on which South Pacific oceanic juvenile and adult loggerheads depend. Sea surface temperature and chlorophyll frontal zones in the South Pacific have been shown to dramatically affect the movements of green turtles, *Chelonia mydas* (Seminoff *et al.,* 2008) and leatherback turtles, *Dermochelys coriacea* (Shillinger *et al.,* 2008), and it is likely that loggerhead distributions are also affected by these mesoscale oceanographic features.

Loggerheads in the South Pacific are substantially impacted by periodic environmental perturbations such as the El Niño Southern Oscillation (ENSO). This 3- to 6-year cycle within the coupled ocean-atmosphere system of the tropical Pacific brings increased surface water temperatures and lower primary productivity, both of which have profound biological consequences (Chavez *et al.,* 1999). Loggerheads are presumably adversely impacted by the reduced food availability that often results from ENSO events, although data on this subject are lacking. Although ENSO may last for only short periods and thus not have a long-term effect on loggerheads in the region, recent studies by Chaloupka *et al.* (2008) suggested that long-term increases in sea surface temperature within the South Pacific may influence the ability of the Australian nesting population to recover from historic population declines.

Loggerheads originating from nesting beaches in the western South Pacific are the only population of loggerheads to be found south of the equator in the Pacific Ocean. As post-hatchlings, they are generally swept south by the East Australian Current (Limpus *et al.,* 1994), spend a large portion of time foraging in the oceanic South Pacific Ocean, and some migrate to the southeastern Pacific Ocean off the coasts of Peru and Chile as juvenile turtles (Alfaro-Shigueto *et al.,* 2004; Donoso *et al.,* 2000; Boyle *et al.,* 2009). As large juveniles and adults, these loggerheads' foraging range encompasses the eastern Arafura Sea, Gulf of Carpentaria, Torres Strait, Gulf of Papua, Coral Sea, and western Tasman Sea to southern New South Wales including the Great Barrier Reef, Hervey Bay, and Moreton Bay. The outer extent of this range includes the coastal waters off eastern Indonesia northeastern Papua New Guinea, northeastern Solomon Islands, and New Caledonia (in Limpus, 2009).

In summary, all loggerheads inhabiting the South Pacific Ocean are derived from beaches in eastern Australia and a lesser known number of beaches in southern New Caledonia, Vanuatu, and Tokelau (Limpus and Limpus, 2003; Limpus, 2009). Furthermore, nesting colonies of the South Pacific population of loggerheads are found to be genetically distinct from loggerheads in the North Pacific and Indian Ocean.

Given the information presented above, the BRT concluded, and we concur, that two discrete population segments exist in the Pacific Ocean: (1) North Pacific Ocean and (2) South Pacific Ocean. These two population segments are markedly separated from

each other and from population segments within the Indian Ocean and Atlantic Ocean basins as a consequence of physical, ecological, behavioral, and oceanographic factors. Information supporting this conclusion includes genetic analysis, flipper tag recoveries, and satellite telemetry, which indicate that individuals originating from Japan remain in the North Pacific for their entire life cycle, never crossing the equator or mixing with individuals from the South Pacific (Hatase *et al.,* 2002a; LeRoux and Dutton, 2006; Dutton, 2007, unpublished data). This apparent, almost complete separation most likely results from: (1) The presence of two distinct Northern and Southern Gyre (current flow) systems in the Pacific (Briggs, 1974), (2) near-passive movements of post-hatchlings in these gyres that initially move them farther away from areas of potential mixing along the equator, and (3) the nest-site fidelity of adult turtles that prevents turtles from returning to non-natal nesting areas. The separation of the Pacific Ocean population segments from population segments within the Indian Ocean and Atlantic Ocean basins is believed to be the result of land barriers and oceanographic barriers. Based on mtDNA analysis, Bowen *et al.* (1994) found a separation of loggerheads in the Atlantic-Mediterranean basins from those in the Indo-Pacific basins since the Pleistocene period. Geography and climate appear to have shaped the evolution of these two matriarchal lineages with the onset of glacial cycles, the appearance of the Panama Isthmus creating a land barrier between the Atlantic and eastern Pacific, and upwelling of cold water off southern Africa creating an oceanographic barrier between the Atlantic and Indian Oceans (Bowen, 2003).

Indian Ocean

Similar to loggerheads in the Pacific and Atlantic, loggerheads in the Indian Ocean nest on coastal beaches, forage in neritic and oceanic habitats, and undertake long-distance migrations between and within these areas. The distribution of loggerheads in the Indian Ocean is limited by the Asian landmass to the north (approximately 30° N latitude); distributions east and west are not restricted by landmasses south of approximately 38° S latitude.

Historical accounts of loggerhead turtles in the Indian Ocean are found in Smith (1849), who described the species in South Africa, and Deraniyagala (1933, 1939) who described Indian Ocean loggerheads within the subspecies *C. c. gigas.* Hughes (1974) argued that there was little justification for this separation.

In the North Indian Ocean, Oman hosts the vast majority of loggerhead nesting. The largest nesting assemblage is at Masirah Island, Oman, in the northern tropics at 21° N latitude (Baldwin *et al.,* 2003). Other key nesting assemblages occur on the Al Halaniyat Islands, Oman (17° S latitude) and on Oman's Arabian Sea mainland beaches south of Masirah Island to the Oman-Yemen border (17–20° S latitude) (IUCN—The World Conservation Union, 1989a, 1989b; Salm, 1991; Salm and Salm, 1991; Baldwin *et al.,* 2003). In addition, nesting probably occurs on the mainland of Yemen on the Arabian Sea coast, and nesting has been confirmed on Socotra, an island off the coast of Yemen (Pilcher and Saad, 2000).

Outside of Oman, loggerhead nesting is rare in the North Indian Ocean. The only verified nesting beaches for loggerheads on the Indian subcontinent are found in Sri Lanka (Deraniyagala, 1939; Kar and Bhaskar, 1982; Dodd, 1988; Kapurusinghe, 2006). Reports of regular loggerhead nesting on the Indian mainland are likely misidentifications of olive ridleys (*Lepidochelys olivacea*) (Tripathy, 2005; Kapurusinghe, 2006). Although loggerheads have been reported nesting in low numbers in Myanmar, these data may not be reliable because of misidentification of species (Thorbjarnarson *et al.,* 2000).

Limited information exists on foraging locations of North Indian Ocean loggerheads. Foraging individuals have been reported off the southern coastline of Oman (Salm *et al.,* 1993) and in the Gulf of Mannar, between Sri Lanka and India (Tripathy, 2005; Kapurusinghe, 2006). Satellite telemetry studies of post-nesting migrations of loggerheads nesting on Masirah Island, Oman, have revealed extensive use of the waters off the Arabian Peninsula, with the majority of telemetered turtles (15 of 20) traveling southwest, following the shoreline of southern Oman and Yemen, and circling well offshore in nearby oceanic waters (Environment Society of Oman and Ministry of Environment and Climate Change, Oman, unpublished data). A minority traveled north as far as the western Persian (Arabian) Gulf (3 of 20) or followed the shoreline of southern Oman and Yemen as far west as the Gulf of Aden and the Bab-el-Mandab (2 of 20). These preliminary data suggest that post-nesting migrations and adult female foraging areas may be centered within the region (Environment Society of Oman and Ministry of Environment and Climate Change, Oman, unpublished data). No tag returns or satellite tracks indicated that loggerheads nesting in Oman traveled south of the equator.

In the East Indian Ocean, western Australia hosts all known loggerhead nesting (Dodd, 1988). Nesting distributions in western Australia span from the Shark Bay World Heritage Area northward through the Ningaloo Marine Park coast to the North West Cape and to the nearby Muiron Islands (Baldwin *et al.,* 2003). Nesting individuals from Dirk Hartog Island have been recorded foraging within Shark Bay and Exmouth Gulf, while other adults range into the Gulf of Carpentaria (Baldwin *et al.,* 2003). At the eastern extent of this apparent range, there is possible overlap with loggerheads that nest on Australia's Pacific coast (Limpus, 2009). However, despite extensive tagging at principal nesting beaches on Australia's Indian Ocean and Pacific coasts, no exchange of females between nesting beaches has been observed (Limpus, 2009).

Loggerhead nesting in the Southwest Indian Ocean includes the southeastern coast of Africa from the Paradise Islands in Mozambique southward to St. Lucia in South Africa, and on the south and southwestern coasts of Madagascar (Baldwin *et al.,* 2003). Foraging habitats are only known for the Tongaland, South Africa, adult female loggerheads. Returns of flipper tags describe a range that extends eastward to Madagascar, northward to Mozambique, Tanzania, and Kenya, and southward to Cape Agulhas at the southernmost point of Africa (Baldwin *et al.,* 2003). Four post-nesting loggerheads satellite tracked by Luschi *et al.* (2006) migrated northward, hugging the Mozambique coast and remained in shallow shelf waters off Mozambique for more than 2 months. Only one post-nesting female from the Southwest Indian Ocean population (South Africa) has been documented migrating north of the equator (to southern Somalia) (Hughes and Bartholomew, 1996).

The available genetic information relates to connectivity and broad evolutionary relationships between ocean basins. There is a lack of genetic information on population structure among rookeries within the Indian Ocean. Bowen *et al.* (1994) described mtDNA sequence diversity among eight loggerhead nesting assemblages and found one of two principal branches in the Indo-Pacific basins. Using additional published and unpublished data, Bowen (2003) estimated divergence between these two lineages to be approximately three million years. Bowen pointed out evidence for more recent colonizations (12,000–250,000 years ago) between the Indian Ocean and the Atlantic-

Mediterranean. For example, the sole mtDNA haplotype (among eight samples) identified by Bowen *et al.* (1994) at Masirah Island, Oman, is known from the Atlantic and suggests some exchange between oceans some 250,000 years ago. The other principal Indian Ocean haplotype reported by Bowen *et al.* (1994) was seen in all loggerheads sampled (n=15) from Natal, South Africa. Encalada *et al.* (1998) reported that this haplotype was common throughout the North Atlantic and Mediterranean, thus suggesting a similar exchange between the Atlantic and Indian Oceans as recently as 12,000 years ago (Bowen *et al.,* 1994). Bowen (2003) speculated that Indian-Atlantic Ocean exchanges took place via the temperate waters south of South Africa and became rare as the ocean shifted to cold temperate conditions in this region.

To estimate loggerhead gene flow in and out of the Indian Ocean, J.S. Reece (Washington University, personal communication, 2008) examined 100 samples from Masirah Island, 249 from Atlantic rookeries (from Encalada *et al.,* 1998), and 311 from Pacific rookeries (from Hatase *et al.,* 2002a and Bowen *et al.,* 1995). Reece estimated that gene flow, expressed as number of effective migrants, or exchanges of breeding females between Indian Ocean rookeries and those from the Atlantic or Pacific occurred at the rate of less than 0.1 migrant per generation. Reece estimated gene flow based on coalescence of combined mtDNA and nuclear DNA data to be approximately 0.5 migrants per generation. These unpublished results, while somewhat theoretical, may indicate that there is restricted gene flow into and out of the Indian Ocean. The low level of gene flow most likely reflects the historical connectivity over geological timescales rather than any contemporary migration, and is consistent with Bowen's hypothesis that exchange occurred most recently over 12,000–3,000,000 years ago, and has been restricted over recent ecological timescales.

The discrete status of three loggerhead populations in the Indian Ocean is primarily supported by observations of tag returns and satellite telemetry. The genetic information currently available based on mtDNA sequences does not allow for a comprehensive analysis of genetic population structure analysis for Indian Ocean rookeries, although Bowen *et al.* (1994) indicated the Oman and South African rookeries are genetically distinct, and once sequencing studies are completed for these rookeries, it is likely that they will also be genetically distinct from the rookeries in western Australia. Based on multiple lines of evidence, discrete status is supported for the North Indian Ocean, Southeast Indo-Pacific Ocean, and Southwest Indian Ocean loggerhead populations. Although there is not a sufficiently clear picture of gene flow between these regions, significant vicariant barriers likely exist between these three Indian Ocean populations that would prevent migration of individuals on a time scale relative to management and conservation efforts. These vicariant barriers are the oceanographic phenomena associated with Indian Ocean equatorial waters, and the large expanse between continents in the South Indian Ocean without suitable benthic foraging habitat.

Given the information presented above, the BRT concluded, and we concur, that three discrete population segments exist in the Indian Ocean: (1) North Indian Ocean, (2) Southeast Indo-Pacific Ocean, and (3) Southwest Indian Ocean. These three population segments are markedly separated from each other and from population segments within the Pacific Ocean and Atlantic Ocean basins as a consequence of physical, ecological, behavioral, and oceanographic factors. Information supporting this conclusion is primarily based on observations of tag returns and satellite telemetry. The genetic information currently available based on mtDNA sequences does not allow for a comprehensive analysis of genetic population structure for Indian Ocean rookeries; however, the Oman and South African rookeries are genetically distinct, and once sequencing studies are completed for these rookeries, it is likely that they will also be determined genetically distinct from the rookeries in western Australia (Bowen *et al.* 1994). Furthermore, significant vicariant barriers (*i.e.,* oceanographic phenomena associated with Indian Ocean equatorial waters, and the large expanse between continents in the South Indian Ocean without suitable benthic foraging habitat) likely exist between these three Indian Ocean populations that would prevent migration of individuals on a time scale relative to management and conservation efforts. The separation of the Indian Ocean population segments from population segments within the Pacific Ocean and Atlantic Ocean basins is believed to be the result of land barriers and oceanographic barriers. Based on mtDNA analysis, Bowen *et al.* (1994) found a separation of loggerheads in the Atlantic-Mediterranean basins from those in the Indo-Pacific basins since the Pleistocene period. Geography and climate appear to have shaped the evolution of these two matriarchal lineages with the onset of glacial cycles, the appearance of the Panama Isthmus creating a land barrier between the Atlantic and eastern Pacific, and upwelling of cold water off southern Africa creating an oceanographic barrier between the Atlantic and Indian Oceans (Bowen, 2003). In the East Indian Ocean, although there is possible overlap with loggerheads that nest on Australia's Indian Ocean and Pacific Ocean coasts, extensive tagging at the principal nesting beaches on both coasts has revealed no exchange of females between these nesting beaches (Limpus, 2009).

Atlantic Ocean and Mediterranean Sea

Within the Atlantic Ocean, loss and re-colonization of nesting beaches over evolutionary time scales has been influenced by climate, natal homing, and rare dispersal events (Encalada *et al.,* 1998; Bowen and Karl, 2007). At times, temperate beaches were too cool to incubate eggs and nesting could have succeeded only on tropical beaches. Thus, the contemporary distribution of nesting is the product of colonization events from the tropical refugia during the last 12,000 years. Apparently, turtles from the Northwest Atlantic colonized the Mediterranean and at least two matrilines were involved (Schroth *et al.,* 1996); these rookeries became isolated from the Atlantic populations in the last 10,000 years (Encalada *et al.,* 1998). A similar colonization event appears to have populated the Northeast Atlantic (C. Monzon-Arguello, Instituto Canario de Ciencias Marinas—Spain, personal communication, 2008).

Nesting in the western South Atlantic occurs primarily along the mainland coast of Brazil from Sergipe south to Rio de Janeiro, with peak concentrations in northern Bahia, Espírito Santo, and northern Rio de Janeiro (Marcovaldi and Chaloupka, 2007). In the eastern South Atlantic, diffuse nesting may occur along the mainland coast of Africa (Fretey, 2001), with more than 200 loggerhead nests reported for Rio Longa beach in central Angola in 2005 (Brian, 2007). However, other researchers have been unable to confirm nesting by loggerheads in the last decade anywhere along the south Atlantic coast of Africa, including Angola (Fretey, 2001; Weir *et al.,* 2007). There is the possibility that reports of nesting loggerheads from Angola and Namibia (Márquez M., 1990; Brian, 2007) may have arisen from misidentified olive ridley turtles (Brongersma, 1982; Fretey, 2001). At the current time, it is not possible to confirm that regular, if any, nesting of

loggerheads occurs along the Atlantic coast of Africa, south of the equator.

Genetic surveys of loggerheads have revealed that the Brazilian rookeries have a unique mtDNA haplotype (Encalada *et al.,* 1998; Pearce, 2001). The Brazilian mtDNA haplotype, relative to North Atlantic haplotypes, indicates isolation of South Atlantic loggerheads from North Atlantic loggerheads on a scale of 250,000–500,000 years ago, and microsatellite DNA results show divergence on the same time scale (Bowen, 2003). Brazil's unique haplotype has been found only in low numbers in foraging populations of juvenile loggerheads of the North Atlantic (Bass *et al.,* 2004). Other lines of evidence support a deep division between loggerheads from the South Atlantic and from the North Atlantic, including: (1) A nesting season in Brazil that peaks in the austral summer around December-January (Marcovaldi and Laurent, 1996), as opposed to the April–September nesting season in the southeastern United States in the northern hemisphere (Witherington *et al.,* 2009); and (2) no observations of tagged loggerheads moving across the equator in the Atlantic, except a single case of a captive-reared animal that was released as a juvenile from Espírito Santo and was recaptured 3 years later in the Azores (Bolten *et al.,* 1990). Post-nesting females from Espírito Santo, Brazil, moved either north or south along the coast, but remained between 10° S latitude and 30° S latitude (Projeto TAMAR, unpublished data).

Relatively little is known about the at-sea behavior of loggerheads originating from nesting beaches in Brazil. Recaptures of tagged juvenile turtles and nesting females have shown movement of animals up and down the coast of South America (Almeida *et al.,* 2000; Marcovaldi *et al.,* 2000; Laporta and Lopez, 2003; Almeida *et al.,* 2007). Juvenile loggerheads, presumably of Brazilian origin, have also been captured on the high seas of the South Atlantic (Kotas *et al.,* 2004; Pinedo and Polacheck, 2004) and off the coast of Atlantic Africa (Petersen, 2005; Petersen *et al.,* 2007; Weir *et al.,* 2007) suggesting that, like their North Pacific and Northwest Atlantic counterparts, loggerheads of the South Atlantic may undertake transoceanic developmental migrations (Bolten *et al.,* 1998; Peckham *et al.,* 2007).

The mean size of reproductive female loggerheads in Brazil is 92.9 cm straight carapace length (SCL), which is comparable to the size of nesting females in the Northwest Atlantic, but larger than nesting females in the Northeast Atlantic and Mediterranean (Tiwari and Bjorndal, 2000; Margaritoulis *et al.,* 2003; Varo Cruz *et al.,* 2007). Egg size and mass of Brazilian loggerheads are smaller than those from the Northwest Atlantic, but larger than those of the Mediterranean (Tiwari and Bjorndal, 2000).

Within the Northwest Atlantic, the majority of nesting activity occurs from April through September, with a peak in June and July (Williams-Walls *et al.,* 1983; Dodd, 1988; Weishampel *et al.,* 2006). Nesting occurs within the Northwest Atlantic along the coasts of North America, Central America, northern South America, the Antilles, and The Bahamas, but is concentrated in the southeastern United States and on the Yucatan Peninsula in Mexico (Sternberg, 1981; Ehrhart, 1989; Ehrhart *et al.,* 2003; NMFS and USFWS, 2008). Many nesting beaches within the Northwest Atlantic have yet to be sampled for genetic analysis. Five recovery units (subpopulations) have been identified based on genetic differences and a combination of geographic distribution of nesting densities and geographic separation. These recovery units are: Northern Recovery Unit (Florida/Georgia border through southern Virginia), Peninsular Florida Recovery Unit (Florida/Georgia border through Pinellas County, Florida), Northern Gulf of Mexico Recovery Unit (Franklin County, Florida, through Texas), Greater Caribbean Recovery Unit (Mexico through French Guiana, The Bahamas, Lesser Antilles, and Greater Antilles), and Dry Tortugas Recovery Unit (islands located west of Key West, Florida) (NMFS and USFWS, 2008). There is limited exchange of nesting females among these recovery units (Encalada *et al.,* 1998; Foote *et al.,* 2000; J. Richardson personal communication cited in NMFS, 2001; Hawkes *et al.,* 2005). Based on the number of haplotypes, the highest level of loggerhead mtDNA genetic diversity in the Atlantic has been observed in females of the Greater Caribbean Recovery Unit that nest at Quintana Roo, Mexico (Encalada *et al.,* 1999; Nielsen *et al.,* in press). However, genetic diversity should be evaluated further using haplotype and nucleotide diversity calculated similarly for each recovery unit. Genetic data are not available for all the nesting assemblages in the region, including a key nesting assemblage in Cuba. New genetic markers have recently been developed, including primers that produce additional mtDNA sequence data (Abreu-Grobois *et al.,* 2006; LeRoux *et al.,* 2008), and an array of microsatellite markers (Shamblin *et al.,* 2008) that will enable finer resolution of population boundaries.

Loggerheads in the Northwest Atlantic display complex population structure based on life history stages. Based on mtDNA, oceanic juveniles show no structure, neritic juveniles show moderate structure, and nesting colonies show strong structure (Bowen *et al.,* 2005). In contrast, a survey using microsatellite (nuclear DNA) markers showed no significant population structure among nesting populations (Bowen *et al.,* 2005), indicating that while females exhibit strong philopatry, males may provide an avenue of gene flow between nesting colonies in this region. However, the power to detect structure with the nuclear markers used in this study may have been limited due to the few markers used and small sample sizes. Nevertheless, Bowen *et al.* (2005) argued that male-mediated gene flow within the Northwest Atlantic does not detract from the classification of breeding areas as independent populations (*e.g.,* recovery units) because the production of progeny depends on female nesting success. All Northwest Atlantic recovery units are reproductively isolated from populations within the Northeast Atlantic, South Atlantic, and Mediterranean Sea.

As oceanic juveniles, loggerheads from the Northwest Atlantic use the North Atlantic Gyre and often are associated with *Sargassum* communities (Carr, 1987). They also are found in the Mediterranean Sea. In these areas, they overlap with animals originating from the Northeast Atlantic and the Mediterranean Sea (Laurent *et al.,* 1993, 1998; Bolten *et al.,* 1998; Bowen *et al.,* 2005; LaCasella *et al.,* 2005; Carreras *et al.,* 2006; Monzon-Arguello *et al.,* 2006; Revelles *et al.,* 2007). In the western Mediterranean, they tend to be associated with the waters off the northern African coast and the northeastern Balearic Archipelago, areas generally not inhabited by turtles of Mediterranean origin (Carreras *et al.,* 2006; Revelles *et al.,* 2007; Eckert *et al.,* 2008). As larger neritic juveniles, they show more structure and tend to inhabit areas closer to their natal origins (Bowen *et al.,* 2004), but some do move to and from oceanic foraging grounds throughout this life stage (Mansfield, 2006; McClellan and Read, 2007), and some continue to use the Mediterranean Sea (Casale *et al.,* 2008a; Eckert *et al.,* 2008). Adult populations are highly structured with no overlap in distribution among adult loggerheads from the Northwest Atlantic, Northeast Atlantic, South Atlantic, and

Mediterranean. Carapace epibionts suggest the adult females of different subpopulations use different foraging habitats (Caine, 1986). In the Northwest Atlantic, based on satellite telemetry studies and flipper tag returns, non-nesting adult females from the Northern Recovery Unit reside primarily off the east coast of the United States; movement into the Bahamas or the Gulf of Mexico is rare (Bell and Richardson, 1978; Williams and Frick, 2001; Mansfield, 2006; Turtle Expert Working Group, 2009). Adult females of the Peninsular Florida Recovery Unit are distributed throughout eastern Florida, The Bahamas, Greater Antilles, the Yucatan Peninsula of Mexico, and the Gulf of Mexico, as well as along the Atlantic seaboard of the United States (Meylan, 1982; Meylan *et al.,* 1983; Foley *et al.,* 2008; Turtle Expert Working Group, 2009). Adult females from the Northern Gulf of Mexico Recovery Unit remained in the Gulf of Mexico, including off the Yucatan Peninsula of Mexico, based on satellite telemetry and flipper tag returns (Foley *et al.,* 2008; Turtle Expert Working Group, 2009; M. Lamont, Florida Cooperative Fish and Wildlife Research Unit, personal communication, 2009; M. Nicholas, National Park Service, personal communication, 2009).

Nesting in the Northeast Atlantic is concentrated in the Cape Verde Archipelago, with some nesting occurring on most of the islands, and the highest concentration on the beaches of Boa Vista Island (Lopez-Jurado *et al.,* 2000; Varo Cruz *et al.,* 2007; Loureiro, 2008). On mainland Africa, there is minor nesting on the coasts of Mauritania to Senegal (Brongersma, 1982; Arvy *et al.,* 2000; Fretey, 2001). Earlier reports of loggerhead nesting in Morocco (Pasteur and Bons, 1960) have not been confirmed in recent years (Tiwari *et al.,* 2001). Nesting has not been reported from Macaronesia (Azores, Madeira Archipelago, The Selvagens Islands, and the Canary Islands), other than in the Cape Verde Archipelago (Brongersma, 1982). In Cape Verde, nesting begins in mid June and extends into October (Cejudo *et al.,* 2000), which is somewhat later than when nesting occurs in the Northwest Atlantic.

Based on an analysis of mtDNA of 196 nesting females from Boa Vista Island, the Cape Verde nesting assemblage is genetically distinct from other studied rookeries (C. Monzon-Arguello, Instituto Canario de Ciencias Marinas—Spain, personal communication, 2008; Monzon-Arguello *et al.,* 2009). The results also indicate that despite the close proximity of the Mediterranean, the Boa Vista rookery is most closely related to the rookeries of the Northwest Atlantic.

The distribution of juvenile loggerheads from the Northeast Atlantic is largely unknown but they have been found on the oceanic foraging grounds of the North Atlantic (A. Bolten, University of Florida, personal communication, 2008, based on Bolten *et al.,* 1998 and LaCasella *et al.,* 2005; Monzon-Arguello *et al.,* 2009; M. Tiwari, NMFS, and A. Bolten, University of Florida, unpublished data) and in the western and central Mediterranean (A. Bolten, University of Florida, personal communication, 2008, based on Carreras *et al.,* 2006), along with small juvenile loggerheads from the Northwest Atlantic. The size of nesting females in the Northeast Atlantic is comparable to those in the Mediterranean (average 72–80 cm SCL; Margaritoulis *et al.,* 2003) and smaller than those in the Northwest Atlantic or the South Atlantic; 91 percent of the nesting turtles are less than 86.5 cm curved carapace length (CCL) (Hawkes *et al.,* 2006) and nesting females average 77.1 cm SCL (Cejudo *et al.,* 2000). Satellite-tagged, post-nesting females from Cape Verde foraged in coastal waters along northwest Africa or foraged oceanically, mostly between Cape Verde and the African shelf from Mauritania to Guinea Bissau (Hawkes *et al.,* 2006).

In the Mediterranean, nesting occurs throughout the central and eastern basins on the shores of Italy, Greece, Cyprus, Turkey, Syria, Lebanon, Israel, the Sinai, Egypt, Libya, and Tunisia (Sternberg, 1981; Margaritoulis *et al.,* 2003; SWOT, 2007). Sporadic nesting also has been reported in the western Mediterranean on Corsica (Delaugerre and Cesarini, 2004), southwestern Italy (Bentivegna *et al.,* 2005), and on the Spanish Mediterranean coast (Tomas *et al.,* 2003, 2008). Nesting in the Mediterranean is concentrated between June and early August (Margaritoulis *et al.,* 2003).

Within the Mediterranean, a recent study of mitochondrial and nuclear DNA in nesting assemblages from Greece to Israel indicated genetic structuring, philopatry by both females and males, and limited gene flow between assemblages (Carreras *et al.,* 2007). Genetic differentiation based on mtDNA indicated that there are at least four independent nesting subpopulations within the Mediterranean and usually they are characterized by a single haplotype: (1) Mainland Greece and the adjoining Ionian Islands, (2) eastern Turkey, (3) Israel, and (4) Cyprus. There is no evidence of adult female exchange among these four subpopulations (Carreras *et al.,* 2006). In studies of the foraging grounds in the western and central Mediterranean, seven of the 17 distinct haplotypes detected had not yet been described, indicating that nesting beach data to describe the natal origins of juveniles exploiting the western Mediterranean Sea are incomplete (Carreras *et al.,* 2006; Casale *et al.,* 2008a). Gene flow among the Mediterranean rookeries estimated from nuclear DNA was significantly higher than that calculated from mtDNA, consistent with the scenario of female philopatry maintaining isolation between rookeries, offset by male-mediated gene flow. Nevertheless, the nuclear data show there was a higher degree of substructuring among Mediterranean rookeries compared to those in the Northwest Atlantic (Bowen *et al.,* 2005; Carreras *et al.,* 2007).

Small oceanic juveniles from the Mediterranean Sea use the eastern basin (defined as inclusive of the central Mediterranean, Ionian, Adriatic, and Aegean Seas) and the western basin (defined as inclusive of the Tyrrhenian Sea) along the European coast (Laurent *et al.,* 1998; Margaritoulis *et al.,* 2003; Carreras *et al.,* 2006; Revelles *et al.,* 2007). Larger juveniles also use the eastern Atlantic and the eastern Mediterranean, especially the Tunisia-Libya shelf and the Adriatic Sea (Laurent *et al.,* 1993; Margaritoulis *et al.,* 2003; Monzón-Argüllo *et al.,* 2006; Revelles *et al.,* 2007). Adults appear to forage closer to the nesting beaches in the eastern basin; most tag recoveries from females nesting in Greece have occurred in the Adriatic Sea and off Tunisia (Margaritoulis *et al.,* 2003; Lazar *et al.,* 2004).

Loggerheads nesting in the Mediterranean were significantly smaller than loggerheads nesting in the Northwest Atlantic and the South Atlantic. Within the Mediterranean, straight carapace lengths ranged from 58 to 95 cm SCL (Margaritoulis *et al.,* 2003). Greece's loggerheads averaged 77–80 cm SCL (Tiwari and Bjorndal, 2000; Margaritoulis *et al.,* 2003), whereas Turkey's loggerheads averaged 72–73 cm SCL (Margaritoulis *et al.,* 2003). The Greece turtles also produced larger clutches (relative to body size) than those produced by Florida or Brazil nesters (Tiwari and Bjorndal, 2000). The authors suggested that sea turtles in the Mediterranean encounter environmental conditions significantly different from those experienced by populations elsewhere in the Atlantic Ocean basin.

Given the information presented above, the BRT concluded, and we concur, that four discrete population

segments exist in the Atlantic Ocean/Mediterranean: (1) Northwest Atlantic Ocean, (2) Northeast Atlantic Ocean, (3) South Atlantic Ocean, and (4) Mediterranean Sea. These four population segments are markedly separated from each other and from population segments within the Pacific Ocean and Indian Ocean basins as a consequence of physical, ecological, behavioral, and oceanographic factors. Information supporting this conclusion includes genetic analysis, flipper tag recoveries, and satellite telemetry. Genetic studies have shown that adult populations are highly structured with no overlap in distribution among adult loggerheads in these four population segments (Bowen *et al.,* 1994; Encalada *et al.,* 1998; Pearce, 2001; Carerras *et al.,* 2007; C. Monzon-Arguello, Instituto Canario de Ciencias Marinas-Spain, personal communication, 2008; Monzon-Arguello *et al.,* 2009). Although loggerheads from the Northwest Atlantic, Northeast Atlantic, and Mediterranean Sea population segments may comingle on oceanic foraging grounds as juveniles, adults are apparently isolated from each other; they also differ demographically. Data from satellite telemetry studies and flipper tag returns have shown that nesting females from the Northwest Atlantic return to the same nesting areas; they reveal no evidence of movement of adults south of the equator or east of 40° W longitude. Similarly, there is no evidence of movement of Northeast Atlantic adults south of the equator, west of 40° W longitude, or east of the Strait of Gibraltar, a narrow strait that connects the Atlantic Ocean to the Mediterranean Sea. Also, there is no evidence of movement of adult Mediterranean Sea loggerheads west of the Strait of Gibraltar. With regard to South Atlantic loggerheads, there have been no observations of tagged loggerheads moving across the equator in the Atlantic, except a single case of a captive-reared animal that was released as a juvenile from Espírito Santo and was recaptured 3 years later in the Azores (Bolten *et al.,* 1990). The separation of the Atlantic Ocean/Mediterranean Sea population segments from population segments within the Indian Ocean and Pacific Ocean basins is believed to be the result of land barriers and oceanographic barriers. Based on mtDNA analysis, Bowen *et al.* (1994) found a separation of loggerheads in the Atlantic-Mediterranean basins from those in the Indo-Pacific basins since the Pleistocene period. Geography and climate appear to have shaped the evolution of these two matriarchal lineages with the onset of glacial cycles, the appearance of the Panama Isthmus creating a land barrier between the Atlantic and eastern Pacific, and upwelling of cold water off southern Africa creating an oceanographic barrier between the Atlantic and Indian Oceans (Bowen, 2003).

Significance Determination

As stated in the preceding section, the BRT identified nine discrete population segments. As described below by ocean basin, the BRT found that each of the nine discrete population segments is biologically and ecologically significant. They each represent a large portion of the species range, sometimes encompassing an entire hemispheric ocean basin. The range of each discrete population segment represents a unique ecosystem, influenced by local ecological and physical factors. The loss of any individual discrete population segment would result in a significant gap in the loggerhead's range. Each discrete population segment is genetically unique, often identified by unique mtDNA haplotypes, and the BRT indicated that these unique haplotypes could represent adaptive differences; the loss of any one discrete population segment would represent a significant loss of genetic diversity. Therefore, the BRT concluded, and we concur, that these nine population segments are both discrete from other conspecific population segments and significant to the species to which they belong, *Caretta caretta.*

The geographic delineations given below for each discrete population segment were determined primarily based on nesting beach locations, genetic evidence, oceanographic features, thermal tolerance, fishery bycatch data, and information on loggerhead distribution and migrations from satellite telemetry and flipper tagging studies. With rare exception, adults from discrete population segments remain within the delineated boundaries. In some cases, juvenile turtles from two or more discrete population segments may mix on foraging areas and therefore, their distribution and migrations may extend beyond the geographic boundaries delineated below for each discrete population segment (*e.g.,* juvenile turtles from the Northwest Atlantic Ocean, Northeast Atlantic Ocean, and Mediterranean Sea discrete population segments share foraging habitat in the western Mediterranean Sea).

Pacific Ocean

The BRT considered 60° N latitude and the equator as the north and south boundaries, respectively, of the North Pacific Ocean population segment based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the North Pacific Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The North Pacific Ocean population segment encompasses an entire hemispheric ocean basin and its loss would result in a significant gap in the range of the taxon. There is no evidence or reason to believe that female loggerheads from South Pacific nesting beaches would repopulate the North Pacific nesting beaches should those nesting assemblages be lost (Bowen *et al.,* 1994; Bowen, 2003). Tagging studies show that the vast majority of nesting females return to the same nesting area. As summarized by Hatase *et al.* (2002a), of 2,219 tagged nesting females from Japan, only five females relocated their nesting sites. In addition, flipper tag and satellite telemetry research, as described in detail in the Discreteness Determination section above, has shown no evidence of north-south movement of loggerheads across the equator. This discrete population segment is genetically unique (*see* Discreteness Determination section above) and the BRT indicated that these unique haplotypes could represent adaptive differences; thus, the loss of this discrete population segment would represent a significant loss of genetic diversity. Based on this information, the BRT concluded, and we concur, that the North Pacific Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

The BRT considered the equator and 60° S latitude as the north and south boundaries, respectively, and 67° W longitude and 139° E longitude as the east and west boundaries, respectively, of the South Pacific Ocean population segment based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the South Pacific Ocean discrete population segment is biologically and ecologically significant because the loss

of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The South Pacific Ocean population segment encompasses an entire hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. The South Pacific Ocean population is the only population of loggerheads found south of the equator in the Pacific Ocean and there is no evidence or reason to believe that female loggerheads from North Pacific nesting beaches would repopulate the South Pacific nesting beaches should those nesting assemblages be lost (Bowen *et al.,* 1994; Bowen, 2003). In addition, flipper tag and satellite telemetry research, as described in detail in the Discreteness Determination section above, has shown no evidence of north-south movement of loggerheads across the equator. The BRT also stated that it does not expect that recolonization from Indian Ocean loggerheads would occur in eastern Australia within ecological time frames. Despite evidence of foraging in the Gulf of Carpentaria by adult loggerheads from the nesting populations in eastern Australia (South Pacific Ocean population segment) and western Australia (Southeast Indo-Pacific Ocean population segment), the nesting females from these two regions are considered to be genetically distinct from one another (Limpus, 2009). In addition to a substantial disparity in mtDNA haplotype frequencies between these two populations, FitzSimmons (University of Canberra, unpublished data) found significant differences in nuclear DNA microsatellite loci between females nesting in these two regions, indicating separation between the South Pacific Ocean and the Southeast Indo-Pacific Ocean population segments. Long-term studies show a high degree of site fidelity by adult females in the South Pacific, with most females returning to the same beach within a nesting season and in successive nesting seasons (Limpus, 1985, 2009; Limpus *et al.,* 1994). This has been documented as characteristic of loggerheads from various rookeries throughout the world (Schroeder *et al.,* 2003). This discrete population segment is genetically unique and the BRT indicated that these unique haplotypes could represent adaptive differences. Thus, the loss of this discrete population segment would represent a significant loss of genetic diversity. Based on this information, the BRT concluded, and we concur, that the South Pacific Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

Indian Ocean

The BRT considered 30° N latitude and the equator as the north and south boundaries, respectively, of the North Indian Ocean population segment based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the North Indian Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The North Indian Ocean population segment encompasses an entire hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. Genetic information currently available for Indian Ocean populations indicates that the Oman rookery in the North Indian Ocean and the South African rookery in the Southwest Indian Ocean are genetically distinct, and once sequencing studies are completed for these rookeries, it is likely that they will also be determined to be genetically distinct from the western Australia rookeries in the Southeast Indo-Pacific Ocean (Bowen *et al.,* 1994). In addition, oceanographic phenomena associated with Indian Ocean equatorial waters exist between the North Indian Ocean population segment and the two population segments in the South Indian Ocean, which likely prevent migration of individuals across the equator on a time scale relative to management and conservation efforts (Conant *et al.,* 2009). Therefore, there is no evidence or reason to believe that female loggerheads from the Southwest Indian Ocean or Southeast Indo-Pacific Ocean would repopulate the North Indian Ocean nesting beaches should those populations be lost (Bowen *et al.,* 1994; Bowen, 2003). Based on this information, the BRT concluded, and we concur, that the North Indian Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

The BRT considered the equator and 60° S latitude as the north and south boundaries, respectively, and 20° E longitude at Cape Agulhas on the southern tip of Africa and 80° E longitude as the east and west boundaries, respectively, of the Southwest Indian Ocean population segment based on oceanographic features, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the Southwest Indian Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The Southwest Indian Ocean population segment encompasses half of an hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. Genetic information currently available for Indian Ocean populations indicates that the Oman rookery in the North Indian Ocean and the South African rookery in the Southwest Indian Ocean are genetically distinct, and once sequencing studies are completed for these rookeries, it is likely that they will also be determined to be genetically distinct from the western Australia rookeries in the Southeast Indo-Pacific Ocean (Bowen *et al.,* 1994). In addition, vicariant barriers (*i.e.,* oceanographic phenomena associated with Indian Ocean equatorial waters, and the large expanse between continents in the South Indian Ocean without suitable benthic foraging habitat) likely exist between the three Indian Ocean populations that would prevent migration of individuals between populations on a time scale relative to management and conservation efforts (Conant *et al.,* 2009). Therefore, there is no evidence or reason to believe that female loggerheads from the North Indian Ocean or Southeast Indo-Pacific Ocean would repopulate the Southwest Indian Ocean nesting beaches should those populations be lost (Bowen *et al.,* 1994; Bowen, 2003). There is also no evidence of movement of adult Southwest Indian Ocean loggerheads west of 20° E longitude at Cape Agulhas, the southernmost point on the African continent, or east of 80° E longitude within the Indian Ocean. Based on this information, the BRT concluded, and we concur, that the Southwest Indian Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

The BRT considered the equator and 60° S latitude as the north and south boundaries, respectively, and 139° E

longitude and 80° E longitude as the east and west boundaries, respectively, of the Southeast Indo-Pacific Ocean population segment based on oceanographic features, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the Southeast Indo-Pacific Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The Southeast Indo-Pacific Ocean population segment encompasses half of an hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. Genetic information currently available for Indian Ocean populations indicates that the Oman rookery in the North Indian Ocean and the South African rookery in the Southwest Indian Ocean are genetically distinct, and once sequencing studies are completed for these rookeries, it is likely that they will also be determined to be genetically distinct from the western Australia rookeries in the Southeast Indo-Pacific Ocean (Bowen *et al.,* 1994). In addition, vicariant barriers (*i.e.,* oceanographic phenomena associated with Indian Ocean equatorial waters, and the large expanse between continents in the South Indian Ocean without suitable benthic foraging habitat) likely exist between the three Indian Ocean populations that would prevent migration of individuals between populations on a time scale relative to management and conservation efforts (Conant *et al.,* 2009). Therefore, there is no evidence or reason to believe that female loggerheads from the North Indian Ocean or Southwest Indian Ocean would repopulate the Southeast Indo-Pacific Ocean nesting beaches should those populations be lost (Bowen *et al.,* 1994; Bowen, 2003). There is also no evidence of movement of adult Southeast Indo-Pacific Ocean loggerheads west of 80° E longitude within the Indian Ocean. Despite evidence of foraging in the Gulf of Carpentaria by adult loggerheads from the nesting populations in eastern Australia (South Pacific Ocean population segment) and western Australia (Southeast Indo-Pacific Ocean population segment), the nesting females from these two regions are considered to be genetically distinct from one another (Limpus, 2009). In addition to a substantial disparity in mtDNA haplotype frequencies between these two regions, FitzSimmons (University of Canberra, unpublished data) found significant differences in nuclear DNA microsatellite loci from females nesting in these two regions, indicating separation between the South Pacific Ocean population segment and the Southeast Indo-Pacific Ocean population segment. Based on this information, the BRT concluded, and we concur, that the Southeast Indo-Pacific Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

Atlantic Ocean and Mediterranean Sea

The BRT considered 60° N latitude and the equator as the north and south boundaries, respectively, and 40° W longitude as the east boundary of the Northwest Atlantic Ocean population segment based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the Northwest Atlantic Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The Northwest Atlantic Ocean population segment encompasses half of an hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. Genetic studies have shown that adult populations are highly structured with no overlap in distribution among adult loggerheads from the Northwest Atlantic, Northeast Atlantic, South Atlantic, and Mediterranean Sea (Bowen *et al.,* 1994; Encalada *et al.,* 1998; Pearce, 2001; Carerras *et al.,* 2007; C. Monzon-Arguello, Instituto Canario de Ciencias Marinas—Spain, personal communication, 2008; Monzon-Arguello *et al.,* 2009). There is no evidence or reason to believe that female loggerheads from the Northeast Atlantic, Mediterranean Sea, or South Atlantic nesting beaches would repopulate the Northwest Atlantic nesting beaches should these populations be lost (Bowen *et al.,* 1994; Bowen, 2003). Data from satellite telemetry studies and flipper tag returns, as described in detail in the Discreteness Determination section above, have shown that the vast majority of nesting females from the Northwest Atlantic return to the same nesting area; they reveal no evidence of movement of adults south of the equator or east of 40° W longitude. This discrete population segment is genetically unique (*see* Discreteness Determination section above) and the BRT indicated that these unique haplotypes could represent adaptive differences; thus, the loss of this discrete population segment would represent a significant loss of genetic diversity. Based on this information, the BRT concluded, and we concur, that the Northwest Atlantic Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

The BRT considered 60° N latitude and the equator as the north and south boundaries, respectively, and 40° W longitude as the west boundary of the Northeast Atlantic Ocean population segment. The BRT considered the boundary between the Northeast Atlantic Ocean and Mediterranean Sea population segments as 5°36′ W longitude (Strait of Gibraltar). These boundaries are based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the Northeast Atlantic Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The Northeast Atlantic Ocean population segment encompasses half of an hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. Genetic studies have shown that adult populations are highly structured with no overlap in distribution among adult loggerheads from the Northwest Atlantic, Northeast Atlantic, South Atlantic, and Mediterranean Sea (Bowen *et al.,* 1994; Encalada *et al.,* 1998; Pearce, 2001; Carerras *et al.,* 2007; C. Monzon-Arguello, Instituto Canario de Ciencias Marinas—Spain, personal communication, 2008; Monzon-Arguello *et al.,* 2009). There is no evidence or reason to believe that female loggerheads from the Northwest Atlantic, Mediterranean Sea, or South Atlantic nesting beaches would repopulate the Northeast Atlantic nesting beaches should these populations be lost (Bowen *et al.,* 1994; Bowen, 2003). There is also no evidence

of movement of Northeast Atlantic adults west of 40° W longitude or east of the Strait of Gibraltar (5°36′ W longitude). This discrete population segment is genetically unique (*see* Discreteness Determination section above) and the BRT indicated that these unique haplotypes could represent adaptive differences; thus, the loss of this discrete population segment would represent a significant loss of genetic diversity. Based on this information, the BRT concluded, and we concur, that the Northeast Atlantic Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

The BRT considered the Mediterranean Sea west to 5°36′ W longitude (Strait of Gibraltar) as the boundary of the Mediterranean Sea population segment based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the Mediterranean Sea discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The Mediterranean Sea population segment encompasses the entire Mediterranean Sea basin, and its loss would result in a significant gap in the range of the taxon. Genetic studies have shown that adult populations are highly structured with no overlap in distribution among adult loggerheads from the Northwest Atlantic, Northeast Atlantic, South Atlantic, and Mediterranean Sea (Bowen *et al.,* 1994; Encalada *et al.,* 1998; Pearce, 2001; Carerras *et al.,* 2007; C. Monzon-Arguello, Instituto Canario de Ciencias Marinas—Spain, personal communication, 2008; Monzon-Arguello *et al.,* 2009). There is no evidence or reason to believe that female loggerheads from the Northwest Atlantic, Northeast Atlantic, or South Atlantic nesting beaches would repopulate the Mediterranean Sea nesting beaches should these populations be lost (Bowen *et al.,* 1994; Bowen, 2003). As previously described, adults from the Mediterranean Sea population segment appear to forage closer to the nesting beaches in the eastern basin, and most flipper tag recoveries from females nesting in Greece have occurred in the Adriatic Sea and off Tunisia (Margaritoulis *et al.,* 2003; Lazar *et al.,* 2004). There is no evidence of movement of adult Mediterranean Sea loggerheads west of the Strait of Gibraltar (5°36' W longitude). This discrete population segment is genetically unique (*see* Discreteness Determination section above) and the BRT indicated that these unique haplotypes could represent adaptive differences; thus, the loss of this discrete population segment would represent a significant loss of genetic diversity. Based on this information, the BRT concluded, and we concur, that the Mediterranean Sea population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

The BRT considered the equator and 60° S latitude as the north and south boundaries, respectively, and 20° E longitude at Cape Agulhas on the southern tip of Africa and 67° W longitude as the east and west boundaries, respectively, of the South Atlantic Ocean population segment based on oceanographic features, loggerhead sightings, thermal tolerance, fishery bycatch data, and information on loggerhead distribution from satellite telemetry and flipper tagging studies. The BRT determined that the South Atlantic Ocean discrete population segment is biologically and ecologically significant because the loss of this population segment would result in a significant gap in the range of the taxon, and the population segment differs markedly from other population segments of the species in its genetic characteristics. The South Atlantic Ocean population segment encompasses an entire hemispheric ocean basin, and its loss would result in a significant gap in the range of the taxon. Genetic studies have shown that adult populations are highly structured with no overlap in distribution among adult loggerheads from the Northwest Atlantic, Northeast Atlantic, South Atlantic, and Mediterranean Sea (Bowen *et al.,* 1994; Encalada *et al.,* 1998; Pearce, 2001; Carerras *et al.,* 2007; C. Monzon-Arguello, Instituto Canario de Ciencias Marinas-Spain, personal communication, 2008; Monzon-Arguello *et al.,* 2009). There is no evidence or reason to believe that female loggerheads from the Northwest Atlantic, Northeast Atlantic, or Mediterranean Sea nesting beaches would repopulate the South Atlantic nesting beaches should these populations be lost (Bowen *et al.,* 1994; Bowen, 2003). This discrete population segment is genetically unique (*see* Discreteness Determination section above) and the BRT indicated that these unique haplotypes could represent adaptive differences; thus, the loss of this discrete population segment would represent a significant loss of genetic diversity. Based on this information, the BRT concluded, and we concur, that the South Atlantic Ocean population segment is significant to the taxon to which it belongs, and, therefore, that it satisfies the significance element of the DPS policy.

In summary, based on the information provided in the Discreteness Determination and Significance Determination sections above, the BRT identified nine loggerhead DPSs distributed globally: (1) North Pacific Ocean DPS, (2) South Pacific Ocean DPS, (3) North Indian Ocean DPS, (4) Southeast Indo-Pacific Ocean DPS, (5) Southwest Indian Ocean DPS, (6) Northwest Atlantic Ocean DPS, (7) Northeast Atlantic Ocean DPS, (8) Mediterranean Sea DPS, and (9) South Atlantic Ocean DPS. We concur with the findings and application of the DPS policy described by the BRT and conclude that the nine DPSs identified by the BRT warrant delineation as DPSs (*i.e.,* they are discrete and significant).

Significant Portion of the Range

We have determined that the range of each DPS contributes meaningfully to the conservation of the DPS and that populations that may contribute more or less to the conservation of each DPS throughout a portion of its range cannot be identified due to the highly migratory nature of the listed entity.

The loggerhead sea turtle is highly migratory and crosses multiple domestic and international geopolitical boundaries. Depending on the life stage, they may occur in oceanic waters or along the continental shelf of landmasses, or transit back and forth between oceanic and neritic habitats. Protection and management of both the terrestrial and marine environments is essential to recovering the listed entity. Management measures implemented by any State, foreign nation, or political subdivision likely would only affect individual sea turtles during certain stages and seasons of the life cycle. Management measures implemented by any State, foreign nation, or political subdivision may also affect individuals from multiple DPSs because juvenile turtles from disparate DPSs can overlap on foraging grounds or migratory corridors (*e.g.,* Northwest Atlantic, Northeast Atlantic, and Mediterranean Sea DPSs). The "significant" term in "significant portion of the range" refers to the contribution of the population(s)

in a portion of the range to the conservation of the listable entity being considered. The BRT was unable to identify any particular portion of the range of any of the DPSs that was more significant to the DPS than another portion of the same range because of the migratory nature of the loggerhead turtle and the fact that different life stages undergo threats and benefit from conservation efforts throughout the geographic range of each DPS. The next section describes our evaluation of the status of each DPS throughout its range.

Status of the Nine Loggerhead DPSs

Abundance estimates across all life stages do not exist for the nine DPSs. Within the global range of the species, and within each DPS, the primary data available are collected on nesting beaches, either as counts of nests or counts of nesting females, or a combination of both (either direct or extrapolated). Information on abundance and trends away from the nesting beaches is limited or non-existent, primarily because these data are, relative to nesting beach studies, logistically difficult and expensive to obtain. Therefore, the primary information source for directly evaluating status and trends of the nine DPSs is nesting beach data.

North Pacific Ocean DPS

In the North Pacific, loggerhead nesting is essentially restricted to Japan where monitoring of loggerhead nesting began in the 1950s on some beaches, and expanded to include most known nesting beaches since approximately 1990. Kamezaki *et al.* (2003) reviewed census data collected from most of the Japanese nesting beaches. Although most surveys were initiated in the 1980s and 1990s, some data collection efforts were initiated in the 1950s. Along the Japanese coast, nine major nesting beaches (greater than 100 nests per season) and six "submajor" beaches (10–100 nests per season) were identified. Census data from 12 of these 15 beaches provide composite information on longer-term trends in the Japanese nesting assemblage. Using information collected on these beaches, Kamezaki *et al.* (2003) concluded a substantial decline (50–90 percent) in the size of the annual loggerhead nesting population in Japan in recent decades. Snover (2008) combined nesting data from the Sea Turtle Association of Japan and data from Kamezaki *et al.* (2002) to provide a recent 18-year time series of nesting data from 1990–2007. Nesting declined from an initial peak of approximately 6,638 nests in 1990–1991, followed by a steep decline to a low of 2,064 nests in 1997. During the past decade, nesting increased gradually to 5,167 nests in 2005, declined and then rose again to a high of just under 11,000 nests in 2008. Estimated nest numbers for 2009 are on the order of 7,000–8,000 nests. While nesting numbers have gradually increased in recent years and the number for 2009 is similar to the start of the time series in 1990, historical evidence indicates that there has been a substantial decline over the last half of the 20th century.

South Pacific Ocean DPS

In the South Pacific, loggerhead nesting is almost entirely restricted to eastern Australia (primarily Queensland) and New Caledonia, with the majority of nesting occurring in eastern Australia, a population that has been well studied. The size of the annual breeding population (females only) has been monitored at numerous rookeries in Australia since 1968 (Limpus and Limpus, 2003), and these data constitute the primary measure of the current status of the DPS. The total nesting population for Queensland was approximately 3,500 females in the 1976–1977 nesting season (Limpus, 1985; Limpus and Reimer, 1994). Little more than two decades later, Limpus and Limpus (2003) estimated this nesting population at less than 500 females in the 1999–2000 nesting season. There has been a marked decline in the number of females breeding annually since the mid-1970s, with an estimated 50 to 80 percent decline in the number of breeding females at various Australian rookeries up to 1990 (Limpus and Reimer, 1994) and a decline of approximately 86 percent by 1999 (Limpus and Limpus, 2003). Comparable nesting surveys have not been conducted in New Caledonia however. Information from pilot surveys conducted in 2005, combined with oral history information collected, suggest that there has been a decline in loggerhead nesting (Limpus *et al.,* 2006). Based on data from the pilot study, only 60 to 70 loggerheads nested on the four surveyed New Caledonia beaches during the 2004–2005 nesting season (Limpus *et al.,* 2006).

Studies of eastern Australia loggerheads at their foraging areas provide some information on the status of non-breeding loggerheads of the South Pacific Ocean DPS. Chaloupka and Limpus (2001) determined that the resident loggerhead population on coral reefs of the southern Great Barrier Reef declined at 3 percent per year from 1985 to the late 1990s. The observed decline was hypothesized as a result of recruitment failure, given few anthropogenic impacts and constant high annual survivorship measured at this foraging habitat (Chaloupka and Limpus, 2001). Concurrently, a decline in new recruits was measured in these foraging areas (Limpus and Limpus, 2003).

North Indian Ocean DPS

The North Indian Ocean hosts the largest nesting assemblage of loggerheads in the eastern hemisphere; the vast majority of these loggerheads nest in Oman (Baldwin *et al.,* 2003). Nesting occurs in greatest density on Masirah Island; the number of emergences ranges from 27–102 per km nightly (Ross, 1998). Nesting densities have complicated the implementation of standardized nesting beach surveys, and more precise nesting data have only been collected since 2008. Extrapolations resulting from partial surveys and tagging in 1977–1978 provided broad estimates of 19,000–60,000 females nesting annually at Masirah Island, while a more recent partial survey in 1991 provides an estimate of 23,000 nesting females at Masirah Island (Baldwin, 1992; Ross, 1979, 1998; Ross and Barwani 1982). A reinterpretation of these estimates, assuming 50 percent nesting success (as compared to 100 percent in the original estimates), resulted in an estimate of 20,000 to 40,000 females nesting annually (Baldwin *et al.,* 2003). Reliable trends in nesting cannot be determined due to the lack of standardized surveys at Masirah Island prior to 2008. In 2008, about 50,000 nests were estimated based on daily surveys of the highest density nesting beaches and weekly surveys on all remaining island nesting beaches. Even using the low end of the 1977–1978 estimates of 20,000 nesting females at Masirah, this suggests a significant decline in the size of the nesting population and is consistent with observations by local rangers that the population has declined dramatically in the last three decades (E. Possardt, FWS, personal communication, 2008). If the higher estimates are accurate then the decline would be greater than 70 percent.

In addition to the nesting beaches on Masirah Island, over 3,000 nests per year have been recorded in Oman on the Al-Halaniyat Islands and, along the Oman mainland of the Arabian Sea, approximately 2,000 nests are deposited annually (Salm, 1991; Salm *et al.,* 1993). In Yemen, on Socotra Island, 50–100 loggerheads were estimated to have nested in 1999 (Pilcher and Saad, 2000). A time series of nesting data based on standardized surveys is not available to determine trends for these nesting sites.

Loggerhead nesting is rare elsewhere in the northern Indian Ocean and in some cases is complicated by inaccurate species identification (Shanker, 2004; Tripathy, 2005). A small number of nesting females use the beaches of Sri Lanka every year; however, there are no records that Sri Lanka has ever been a major nesting area for loggerheads (Kapurusinghe, 2006). Loggerheads have been reported nesting in low numbers in Myanmar; however, these data may not be reliable because of misidentification of species (Thorbjarnarson *et al.,* 2000).

Southeast-Indo Pacific Ocean DPS

In the eastern Indian Ocean, loggerhead nesting is restricted to western Australia (Dodd, 1988), and this nesting population is the largest in Australia (Wirsing *et al.,* unpublished data, cited in Natural Heritage Trust, 2005). Dirk Hartog Island hosts about 70–75 percent of nesting individuals in the eastern Indian Ocean (Baldwin *et al.,* 2003). Surveys have been conducted on the island for the duration of six nesting seasons between 1993/1994 and 1999/2000 (Baldwin *et al.,* 2003). An estimated 800–1,500 loggerheads nest annually on Dirk Hartog Island beaches (Baldwin *et al.,* 2003).

Fewer loggerheads (approximately 150–350 per season) are reported nesting on the Muiron Islands; however, more nesting loggerheads are reported here than on North West Cape (approximately 50–150 per season) (Baldwin *et al.,* 2003). Although data are insufficient to determine trends, evidence suggests the nesting population in the Muiron Islands and North West Cape region was depleted before recent beach monitoring programs began (Nishemura and Nakahigashi, 1990; Poiner *et al.,* 1990; Poiner and Harris, 1996).

Southwest Indian Ocean DPS

In the Southwest Indian Ocean, the highest concentration of nesting occurs on the coast of Tongaland, South Africa, where surveys and management practices were instituted in 1963 (Baldwin *et al.,* 2003). A trend analysis of index nesting beach data from this region from 1965 to 2008 indicates an increasing nesting population between the first decade of surveys, which documented 500–800 nests annually, and the last 8 years, which documented 1,100–1,500 nests annually (Nel, 2008). These data represent approximately 50 percent of all nesting within South Africa and are believed to be representative of trends in the region. Loggerhead nesting occurs elsewhere in South Africa, but sampling is not consistent and no trend data are available. The total number of females nesting annually in South Africa is estimated between 500–2,000 (Baldwin *et al.,* 2003). In Mozambique, surveys have been instituted much more recently; likely less than 100 females nest annually and no trend data are available (Baldwin *et al.,* 2003). Similarly, in Madagascar, loggerheads have been documented nesting in low numbers, but no trend data are available (Rakotonirina, 2001).

Northwest Atlantic Ocean DPS

Nesting occurs within the Northwest Atlantic along the coasts of North America, Central America, northern South America, the Antilles, and The Bahamas, but is concentrated in the southeastern U.S. and on the Yucatan Peninsula in Mexico (Sternberg, 1981; Ehrhart, 1989; Ehrhart *et al.,* 2003; NMFS and FWS, 2008). Collectively, the Northwest Atlantic Ocean hosts the most significant nesting assemblage of loggerheads in the western hemisphere and is one of the two largest loggerhead nesting assemblages in the world. NMFS and FWS (2008), Witherington *et al.* (2009), and TEWG (2009) provide comprehensive analyses of the status of the nesting assemblages within the Northwest Atlantic Ocean DPS using standardized data collected over survey periods ranging from 10 to 23 years. The results of these analyses, using different analytical approaches, were consistent in their findings—there has been a significant, overall nesting decline within this DPS.

NMFS and FWS (2008) identified five recovery units (nesting subpopulations) in the Northwest Atlantic Ocean: the Northern U.S. (Florida/Georgia border to southern Virginia); Peninsular Florida (Florida/Georgia border south through Pinellas County, excluding the islands west of Key West, Florida); Dry Tortugas (islands west of Key West, Florida); Northern Gulf of Mexico (Franklin County, Florida, west through Texas); and Greater Caribbean (Mexico through French Guiana, The Bahamas, Lesser and Greater Antilles). Declining trends in the annual number of nests were documented for all recovery units for which there were adequate data. The most significant declining trend has been documented for the Peninsular Florida Recovery Unit, where nesting declined 26 percent over the 20-year period from 1989–2008, and declined 41 percent over the period 1998–2008 (NMFS and FWS, 2008; Witherington *et al.,* 2009). The most standardized nest count from this recovery unit in 2009 recorded the fourth lowest loggerhead nesting in the 21-year monitoring period, reinforcing the assessment of nesting decline (B. Witherington, FWC, personal communication, 2010). The Peninsular Florida Recovery Unit represents approximately 87 percent of all nesting effort in the Northwest Atlantic Ocean DPS (Ehrhart *et al.,* 2003). The Northern U.S. Recovery Unit is the second largest recovery unit within the DPS and is declining significantly at 1.3 percent annually since 1983 (NMFS and FWS, 2008). The Greater Caribbean Recovery Unit is the third largest recovery unit within the Northwest Atlantic Ocean DPS, with the majority of nesting at Quintana Roo, Mexico. TEWG (2009) reported a greater than 5 percent annual decline in loggerhead nesting from 1995–2006 at Quintana Roo.

In an effort to evaluate loggerhead population status and trends beyond the nesting beach, NMFS and FWS (2008) and TEWG (2009) reviewed data from in-water studies within the range of the Northwest Atlantic Ocean DPS. NMFS and FWS (2008), in the Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle, summarized population trend data reported from nine in-water study sites, located between Long Island Sound, New York, and Florida Bay, Florida, where loggerheads were regularly captured and where efforts were made to provide local indices of abundance. The study periods for these nine sites varied. The earliest began in 1987, and the most recent were initiated in 2000. None included annual sampling. Results reported from four of the studies indicated no discernible trend, two studies reported declining trends, and two studies reported increasing trends. Trends at one study site, Mosquito Lagoon, Florida, indicated either no trend (all data) or a declining trend (more recent data), depending on whether all sample years were used or only the more recent, and likely more comparable sample years, were used. TEWG (2009) used raw data from six of the aforementioned nine in-water study sites to conduct trend analyses. Results from three of the four sites located in the southeast U.S. showed an increasing trend in the abundance of loggerheads, one showed no discernible trend, and the two sites located in the northeast U.S. showed a decreasing trend in abundance of loggerheads. Both NMFS and FWS (2008) and TEWG (2009) stress that population trend results currently available from in-water studies must be viewed with caution given the limited number of sampling sites, size of sampling areas, biases in sampling, and caveats associated with the analyses.

Northeast Atlantic Ocean DPS

In the northeastern Atlantic, the Cape Verde Islands support the only large nesting population of loggerheads in the region (Fretey, 2001). Nesting occurs at some level on most of the islands in the archipelago with the largest nesting numbers reported from the island of Boa Vista where studies have been ongoing since 1998 (Lazar and Holcer, 1998; Lopez-Jurado *et al.*, 2000; Fretey, 2001; Varo Cruz *et al.*, 2007; Loureiro, 2008; M. Tiwari, NMFS, personal communication, 2008). On Boa Vista Island, 833 and 1,917 nests were reported in 2001 and 2002 respectively from 3.1 km of beach (Varo Cruz *et al.*, 2007) and between 1998 and 2002 the local project had tagged 2,856 females (Varo Cruz *et al.*, 2007). More recently, in 2005, 5,396 nests and 3,121 females were reported from 9 km of beach on Boa Vista Island (Lopez-Jurado *et al.*, 2007). From Santiago Island, 66 nests were reported from four beaches in 2007 and 53 nests from five beaches in 2008 (*http://tartarugascaboverde.wordpress.com/santiago*). Due to limited data available, a population trend cannot currently be determined for the Cape Verde population; however, available information on the directed killing of nesting females suggests that this nesting population is under severe pressure and likely significantly reduced from historic levels. Loureiro (2008) reported a reduction in nesting from historic levels at Santiago Island, based on interviews with elders. Elsewhere in the northeastern Atlantic, loggerhead nesting is non-existent or occurs at very low levels. In Morocco, anecdotal reports indicated high numbers of nesting turtles in southern Morocco (Pasteur and Bons, 1960), but a few recent surveys of the Atlantic coastline have suggested a dramatic decline (Tiwari *et al.*, 2001, 2006). A few nests have been reported from Mauritania (Arvy *et al.*, 2000) and Sierra Leone (E. Aruna, Conservation Society of Sierra Leone, personal communication, 2008). Some loggerhead nesting in Senegal and elsewhere along the coast of West Africa has been reported; however, a more recent and reliable confirmation is needed (Fretey, 2001).

Mediterranean Sea DPS

Nesting occurs throughout the central and eastern Mediterranean in Italy, Greece, Cyprus, Turkey, Syria, Lebanon, Israel, the Sinai, Egypt, Libya, and Tunisia (Sternberg, 1981; Margaritoulis *et al.*, 2003; SWOT, 2007). In addition, sporadic nesting has been reported from the western Mediterranean, but the vast majority of nesting (greater than 80 percent) occurs in Greece and Turkey (Margaritoulis *et al.*, 2003). The documented annual nesting of loggerheads in the Mediterranean averages about 5,000 nests (Margaritoulis *et al.*, 2003). There is no discernible trend in nesting at the two longest monitoring projects in Greece, Laganas Bay (Margaritoulis, 2005) and southern Kyparissia Bay (Margaritoulis and Rees, 2001). However, the nesting trend at Rethymno Beach, which hosts approximately 7 percent of all documented loggerhead nesting in the Mediterranean, shows a highly significant declining trend (1990–2004) (Margaritoulis *et al.*, 2009). In Turkey, intermittent nesting surveys have been conducted since the 1970s with more consistent surveys conducted on some beaches only since the 1990s, making it difficult to assess trends in nesting. Ilgaz *et al.* (2007) reported a declining trend at Fethiye Beach from 1993–2004, this beach represents approximately 10 percent of loggerhead nesting in Turkey (Margaritoulis *et al.*, 2003).

South Atlantic Ocean DPS

In the South Atlantic nesting occurs primarily along the mainland coast of Brazil from Sergipe south to Rio de Janeiro, with peak concentrations in northern Bahia, Espírito Santo, and northern Rio de Janeiro with peak nesting along the coast of Bahia (Marcovaldi and Chaloupka, 2007). Prior to 1980, loggerhead nesting populations in Brazil were considered severely depleted. Recently, Marcovaldi and Chaloupka (2007) reported a long-term, sustained increasing trend in nesting abundance over a 16-year period from 1988 through 2003 on 22 surveyed beaches containing more than 75 percent of all loggerhead nesting in Brazil. A total of 4,837 nests were reported from these survey beaches for the 2003–2004 nesting season (Marcovaldi and Chaloupka, 2007).

Summary of Factors Affecting the Nine Loggerhead DPSs

Section 4 of the ESA (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Species. Under section 4(a) of the Act, we must determine if a species is threatened or endangered because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We have described the effects of various factors leading to the decline of the loggerhead sea turtle in the original listing determination (43 FR 32800; July 28, 1978) and other documents (NMFS and USFWS, 1998, 2007, 2008). In making this finding, information regarding the status of each of the nine loggerhead DPSs is considered in relation to the five factors provided in section 4(a)(1) of the ESA. The reader is directed to section 5 of the Status Review for a more detailed discussion of the factors affecting the nine identified loggerhead DPSs. In section 5.1., a general description of the threats that occur for all DPSs is presented under the relevant section 4(a)(1) factor. In section 5.2, threats that are specific to a particular DPS are presented by DPS under each section 4(a)(1) factor. That information is incorporated here by reference; the following is a summary of that information by DPS.

North Pacific Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Terrestrial Zone

Destruction and modification of loggerhead nesting habitat in the North Pacific result from coastal development and construction, placement of erosion control structures and other barriers to nesting, beachfront lighting, vehicular and pedestrian traffic, sand extraction, beach erosion, beach sand placement, beach pollution, removal of native vegetation, and planting of non-native vegetation (NMFS and USFWS, 1998). Beaches in Japan where loggerheads nest are extensively eroded due to dredging and dams constructed upstream, and are obstructed by seawalls as well. Unfortunately, no quantitative studies have been conducted to determine the impact to the loggerhead nesting populations (Kamezaki *et al.*, 2003). However, it is clear that loggerhead nesting habitat has been impacted by erosion and extensive beach use by tourists, both of which have contributed to unusually high mortality of eggs and pre-emergent hatchlings at many Japanese rookeries (Matsuzawa, 2006).

Maehama Beach and Inakahama Beach on Yakushima in Kagoshima Prefecture account for approximately 30 percent of loggerhead nesting in Japan (Kamezaki *et al.*, 2003), making Yakushima an important area for nesting beach protection. However, the

beaches suffer from beach erosion and light pollution, especially from passing cars, as well as from tourists encroaching on the nesting beaches (Matsuzawa, 2006). Burgeoning numbers of visitors to beaches may cause sand compaction and nest trampling. Egg and pre-emergent hatchling mortality in Yakushima has been shown to be higher in areas where public access is not restricted and is mostly attributed to human foot traffic on nests (Kudo *et al.*, 2003). Fences have been constructed around areas where the highest densities of nests are laid; however, there are still lower survival rates of eggs and pre-emergent hatchlings due to excessive foot traffic (Ohmuta, 2006).

Loggerhead nesting habitat also has been lost at important rookeries in Miyazaki due in part to port construction that involved development of a groin of 1 kilometer from the coast into the sea, a yacht harbor with breakwaters and artificial beach, and an airport, causing erosion of beaches on both sides of the construction zone. This once excellent nesting habitat for loggerheads is now seriously threatened by erosion (Takeshita, 2006).

Minabe-Senri beach, Wakayama Prefecture is a "submajor" nesting beach (in Kamezaki *et al.*, 2003), but is one of the most important rookeries on the main island of Japan (Honshu). Based on unpublished data, Matsuzawa (2006) reported hatching success of unwashed-out clutches at Minabe-Senri beach to be 24 percent in 1996, 50 percent in 1997, 53 percent in 1998, 48 percent in 1999, 62 percent in 2000, 41 percent in 2001, and 34 percent in 2002.

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the North Pacific Ocean include fishing practices, channel dredging, sand extraction, marine pollution, and climate change. Fishing methods not only incidentally capture loggerheads, but also deplete invertebrate and fish populations and thus alter ecosystem dynamics. In many cases loggerhead foraging areas coincide with fishing zones. For example, using aerial surveys and satellite telemetry, juvenile foraging hotspots have recently been identified off the coast of Baja California, Mexico; these hotspots overlap with intensive small-scale fisheries (Peckham and Nichols, 2006; Peckham *et al.*, 2007, 2008). Comprehensive data currently are unavailable to fully understand how intense harvesting of fish resources changes neritic and oceanic ecosystems. Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and/or distribution.

In summary, we find that the North Pacific Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Within Factor A, we find that coastal development and coastal armoring on nesting beaches in Japan are significant threats to the persistence of this DPS.

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

In Japan, the use of loggerhead meat for food is not popular except historically in local communities such as Kochi and Wakayama prefectures. In addition, egg collection was common in the coastal areas during times of hunger and later by those who valued loggerhead eggs as revitalizers or aphrodisiacs and acquired them on the black market (in Kamezaki *et al.*, 2003; Takeshita, 2006). Currently, due in large part to research and conservation efforts throughout the country, egg harvesting no longer represents a problem in Japan (Kamezaki *et al.*, 2003; Ohmuta, 2006; Takeshita, 2006). Laws were enacted in 1973 to prohibit egg collection on Yakushima, and in 1988, the laws were extended to the entire Kagoshima Prefecture, where two of the most important loggerhead nesting beaches are protected (Matsuzawa, 2006).

Despite national laws, in many other countries where loggerheads are found migrating through or foraging, the hunting of adult and juvenile turtles is still a problem, as seen in Baja California Sur, Mexico (Koch *et al.*, 2006). Sea turtles have been protected in Mexico since 1990, when a Federal law decreed the prohibition of the "extraction, capture and pursuit of all species of sea turtle in Federal waters or from beaches within national territory * * * [and a requirement that] * * * any species of sea turtle incidentally captured during the operations of any commercial fishery shall be returned to the sea, independently of its physical state, dead or alive" (in Garcia-Martinez and Nichols, 2000). Despite the ban, studies have shown that sea turtles continue to be caught, both indirectly in fisheries and by a directed harvest of juvenile turtles. Turtles are principally hunted using nets, longlines, and harpoons. While some are killed immediately, others are kept alive in pens and transported to market. The market for sea turtles consists of two types: the local market (consumed locally) and the export market (sold to restaurants in Mexico cities such as Tijuana, Ensenada, and Mexicali, and U.S. cities such as San Diego and Tucson). Consumption is highest during holidays such as Easter and Christmas (Wildcoast/Grupo Tortuguero de las Californias, 2003).

Based on a combination of analyses of stranding data, beach and sea surveys, tag-recapture studies, and extensive interviews, all carried out between June 1994 and January 1999, Nichols (2003) conservatively estimated the annual take of sea turtles by various fisheries and through direct harvest in the Baja California, Mexico, region. Sea turtle mortality data collected between 1994 and 1999 indicated that over 90 percent of sea turtles recorded dead were either green turtles (30 percent of total) or loggerheads (61 percent of total), and signs of human consumption were evident in over half of the specimens. These studies resulted in an estimated 1,950 loggerheads killed annually, affecting primarily juvenile size classes. The primary causes for mortality were the incidental take in a variety of fishing gears and direct harvest for consumption and [illegal] trade (Nichols, 2003).

From April 2000 to July 2003 throughout the Bahia Magdalena region (including local beaches and towns), researchers found 1,945 sea turtle carcasses, 44.1 percent of which were loggerheads. Of the sea turtle carcasses found, slaughter for human consumption was the primary cause of death for all species (63 percent for loggerheads). Over 90 percent of all turtles found were juvenile turtles (Koch *et al.*, 2006). As the population of green turtles has declined in Baja California Sur waters, poachers have switched to loggerheads (H. Peckham, Pro Peninsula, personal communication, 2006).

In summary, overutilization for commercial purposes in both Japan and Mexico likely was a factor that contributed to the historic declines of this DPS. Current illegal harvest of loggerheads in Baja California for human consumption continues as a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the North Pacific Ocean. As in other nesting locations, egg predation also exists in Japan, particularly by raccoon dogs (*Nyctereutes procyonoides*) and weasels (*Mustela itatsi*); however, quantitative data do not exist to evaluate the impact on loggerhead populations (Kamezaki *et*

al., 2003). Loggerheads in the North Pacific Ocean also may be impacted by harmful algal blooms.

In summary, although nest predation in Japan is known to occur, quantitative data are not sufficient to assess the degree of impact of nest predation on the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the North Pacific Ocean. The reader is directed to sections 5.1.4. and 5.2.1.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle 2002).

National Legislation and Protection

Fishery bycatch that occurs throughout the North Pacific Ocean is substantial (*see* Factor E). Although national and international governmental and non-governmental entities on both sides of the North Pacific are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced in the near future due to the challenges of mitigating illegal, unregulated, and unreported fisheries, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In addition to fishery bycatch, coastal development and coastal armoring on nesting beaches in Japan continues as a substantial threat (*see* Factor A). Coastal armoring, if left unaddressed, will become an even more substantial threat as sea level rises. Recently, the Japan Ministry of Environment has supported the local non-governmental organization conducting turtle surveys and conservation on Yakushima in establishing guidelines for surveys and minimizing impacts by humans encroaching on the nesting beaches. As of the 2009 nesting season, humans accessing Inakahama, Maehama, and Yotsuse beaches at night must comply with the established rules (Y. Matsuzawa, Sea Turtle Association of Japan, personal communication, 2009).

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of North Pacific Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threats from the inadequacy of existing regulatory mechanisms for fishery bycatch (Factor E) and coastal development and coastal armoring (Factor A) are significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Incidental Bycatch in Fishing Gear

Incidental capture in artisanal and commercial fisheries is a significant threat to the survival of loggerheads in the North Pacific. Sea turtles may be caught in pelagic and demersal longlines, drift and set gillnets, bottom and mid-water trawling, fishing dredges, pound nets and weirs, haul and purse seines, pots and traps, and hook and line gear.

Based on turtle sightings and capture rates reported in an April 1988 through March 1989 survey of fisheries research and training vessels and extrapolated to total longline fleet effort by the Japanese fleet in 1978, Nishemura and Nakahigashi (1990) estimated that 21,200 turtles, including greens, leatherbacks, loggerheads, olive ridleys, and hawksbills, were captured annually by Japanese tuna longliners in the western Pacific and South China Sea, with a reported mortality of approximately 12,300 turtles per year. Using commercial tuna longline logbooks, research vessel data, and questionnaires, Nishemura and Nakahigashi (1990) estimated that for every 10,000 hooks in the western Pacific and South China Sea, one turtle is captured, with a mortality rate of 42 percent. Although species-specific information on the bycatch is not available, vessels reported that 36 percent of the sightings of turtles in locations that overlap with these commercial fishing grounds were loggerheads.

Caution should be used in interpreting the results of Nishemura and Nakahigashi (1990), including estimates of sea turtle take rate (per number of hooks) and resultant mortality rate, and estimates of annual take by the fishery, for the following reasons: (1) The data collected were based on observations by training and research vessels, logbooks, and a questionnaire (*i.e.*, hypothetical), and do not represent actual, substantiated logged or observed catch of sea turtles by the fishery; (2) the authors assumed that turtles were distributed homogeneously; and (3) the authors used only one year (1978) to estimate total effort and distribution of the Japanese tuna longline fleet. Although the data and analyses provided by Nishemura and Nakahigashi (1990) are conjectural, longliners fishing in the Pacific have significantly impacted and, with the current level of effort, probably will continue to have significant impacts on sea turtle populations.

Foreign high-seas driftnet fishing in the North Pacific Ocean for squid, tuna, and billfish ended with a United Nations moratorium in December 1992. Except for observer data collected in 1990–1991, there is virtually no information on the incidental take of sea turtle species by the driftnet fisheries prior to the moratorium. The high-seas squid driftnet fishery in the North Pacific was observed in Japan, Korea, and Taiwan, while the large-mesh fisheries targeting tuna and billfish were observed in the Japanese fleet (1990–1991) and the Taiwanese fleet (1990). A combination of observer data and fleet effort statistics indicate that 2,986 loggerhead turtles were entangled by the combined fleets of Japan, Korea, and Taiwan from June 1990 through May 1991, when all fleets were monitored. Of these incidental entanglements, an estimated 805 loggerheads were killed (27 percent mortality rate) (Wetherall, 1997). Data on size composition of the turtles caught in the high-seas driftnet fisheries also were collected by observers. The majority of loggerheads measured by observers were juvenile (Wetherall, 1997). The cessation of high-seas driftnet fishing in 1992 should have reduced the incidental take of marine turtles. However, nations involved in driftnet fishing may have shifted to other gear types (*e.g.*, pelagic or demersal longlines, coastal gillnets); this shift in gear types could have resulted

in either similar or increased turtle bycatch and associated mortality.

These rough mortality estimates for a single fishing season provide only a narrow glimpse of the impacts of the driftnet fishery on sea turtles, and a full assessment of impacts would consider the turtle mortality generated by the driftnet fleets over their entire range. Unfortunately, comprehensive data are lacking, but the observer data do indicate the possible magnitude of turtle mortality given the best information available. Wetherall *et al.* (1993) speculate that the actual mortality of sea turtles may have been between 2,500 and 9,000 per year, with most of the mortalities being loggerheads taken in the Japanese and Taiwanese large-mesh fisheries.

While a comprehensive, quantitative assessment of the impacts of the North Pacific driftnet fishery on turtles is impossible without a better understanding of turtle population abundance, genetic identities, exploitation history, and population dynamics, it is likely that the mortality inflicted by the driftnet fisheries in 1990 and in prior years was significant (Wetherall *et al.*, 1993), and the effects may still be evident in sea turtle populations today. The high mortality of juvenile turtles and reproductive adults in the high-seas driftnet fishery has probably altered the current age structure (especially if certain age groups were more vulnerable to driftnet fisheries) and therefore diminished or limited the reproductive potential of affected sea turtle populations.

Extensive ongoing studies regarding loggerhead mortality and bycatch have been administered off the coast of Baja California Sur, Mexico. The location and timing of loggerhead strandings documented in 2003–2005 along a 43-kilometer beach (Playa San Lazaro) indicated bycatch in local small-scale fisheries. In order to corroborate this, in 2005, researchers observed two small-scale fleets operating closest to an area identified as a high-use area for loggerheads. One fleet, based out of Puerto Lopez-Mateos, fished primarily for halibut using bottom set gillnets, soaking from 20 to 48 hours. This fleet consisted of up to 75 boats in 2005, and, on a given day, 9 to 40 vessels fished the deep area (32–45 meter depths). During a 2-month period, 11 loggerheads were observed taken in 73 gillnet day-trips, with eight of those loggerheads landed dead (observed mortality rate of 73 percent). The other fleet, based in Santa Rosa, fished primarily for demersal sharks using bottom-set longlines baited with tuna or mackerel and left to soak for 20 to 48 hours. In 2005, the fleet numbered only five to six vessels. During the seven daylong bottom-set longline trips observed, 26 loggerheads were taken, with 24 of them landed dead (observed mortality rate of 92 percent). Based on these observations, researchers estimated that in 2005 at least 299 loggerheads died in the bottom-set gillnet fishery and at least 680 loggerheads died in the bottom-set longline fishery. This annual bycatch estimate of approximately 1,000 loggerheads is considered a minimum and is also supported by shoreline mortality surveys and informal interviews (Peckham *et al.*, 2007).

These results suggest that incidental capture at Baja California Sur is one of the most significant sources of mortality identified for the North Pacific loggerhead population and underscores the importance of reducing bycatch in small-scale fisheries.

In the U.S. Pacific, longline fisheries targeting swordfish and tuna and drift gillnet fisheries targeting swordfish have been identified as the primary fisheries of concern for loggerheads. Bycatch of loggerhead turtles in these fisheries has been significantly reduced as a result of time-area closures, required gear modifications, and hard caps imposed on turtle bycatch, with 100 percent observer coverage in certain areas.

The California/Oregon (CA/OR) drift gillnet fishery targets swordfish and thresher shark off the west coast of the United States. The fishery has been observed by NMFS since July 1990 and currently averages 20 percent. From July 1990 to January 2000, the CA/OR drift gillnet fishery was observed to incidentally capture 17 loggerheads (12 released alive, 1 injured, and 4 killed). Based on a worst-case scenario, NMFS estimated that a maximum of 33 loggerheads in a given year could be incidentally taken by the CA/OR drift gillnet fleet. Sea turtle mortality rates for hard-shelled species were estimated to be 32 percent (NMFS, 2000).

In 2000, analyses conducted under the mandates of the ESA showed that the CA/OR drift gillnet fishery was taking excessive numbers of sea turtles, such that the fishery "jeopardized the continued existence of" loggerheads and leatherbacks. In this case, the consulting agency (NMFS) was required to provide a reasonable and prudent alternative to the action (*i.e.*, the fishery). In order to reduce the likelihood of interactions with loggerhead sea turtles, NMFS has regulations in place to close areas to drift gillnet fishing off southern California during forecasted or occurring El Niño events from June 1 through August 31, when loggerheads are likely to move into the area from the Pacific coast of Baja California following a preferred prey species, pelagic red crabs.

Prior to 2000, the Hawaii-based longline fishery targeted highly migratory species north of Hawaii using gear largely used by fleets around the world. From 1994–1999, the fishery was estimated to take between 369 and 501 loggerheads per year, with between 64 and 88 mortalities per year (NMFS, 2000). Currently, the Hawaii-based shallow longline fishery targeting swordfish is strictly regulated such that an annual take of 17 loggerheads is authorized for the fishery, beginning in 2004, when the fishery was re-opened after being closed for several years. In 2004 and 2005, the fishing year was completed without reaching the turtle take levels (1 and 10 loggerheads were captured, respectively, with fleets operating with 100 percent observer coverage). However, in 2006, 17 loggerheads were taken, forcing the fishery to be shut down early. In 2007, 15 loggerheads were taken by the fishery. Most loggerheads were released alive (NMFS-Pacific Islands Regional Office, Observer Database Public Web site, 2008).

Recent investigations off the coast of Japan, particularly focused off the main islands of Honshu, Shikoku, and Kyushu, have revealed a major threat to the more mature stage classes of loggerheads (approximately 70–80 cm SCL) due to pound net fisheries set offshore of the nesting beaches and in the coastal foraging areas. While pound nets constitute the third largest fishery in terms of metric tons of fish caught in Japan, they account for the majority of loggerhead bycatch by Japanese fisheries. Open-type pound nets studied in an area off Shikoku were shown to take loggerheads as the most prevalent sea turtle species caught but had lower mortality rates (less than 15 percent), primarily because turtles could reach the surface to breathe. Middle layer and bottom-type pound nets in particular have high rates of mortality (nearly 100 percent), because the nets are submerged and sea turtles are unable to reach the surface. Estimates of loggerhead mortality in one area studied between April 2006 and September 2007 were on the order of 100 individuals. While the fishing industry has an interest in changing its gear to open-type, it is very expensive, and the support from the Japanese government is limited (T. Ishihara, Sea Turtle Association of Japan, personal communication, 2007). Nonetheless, the BRT recognizes that coastal pound net fisheries off Japan may pose a

significant threat to the North Pacific population of loggerheads.

Quantifying the magnitude of the threat of fisheries in the North Pacific Ocean on loggerhead sea turtles is very difficult given the low level of observer coverage or investigations into bycatch conducted by countries that have large fishing fleets. Efforts have been made to quantify the effect of pelagic longline fishing on loggerheads, and annual estimates of bycatch were on the order of over 10,000 sea turtles, with as many as 2,600 individual loggerheads killed annually through immediate or delayed mortality as a result of interacting with the gear (Lewison *et al.*, 2004).

Other Manmade and Natural Impacts

Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the North Pacific Ocean. For example, Matsuzawa *et al.* (2002) found heat-related mortality of pre-emergent hatchlings in Minabe Senri Beach and concluded that this population is vulnerable to even small temperature increases resulting from global warming because sand temperatures already exceed the optimal thermal range for incubation. Recently, Chaloupka *et al.* (2008) used generalized additive regression modeling and autoregressive-prewhitened cross-correlation analysis to consider whether changes in regional ocean temperatures affect long-term nesting population dynamics for Pacific loggerheads from primary nesting assemblages in Japan and Australia. Researchers chose four nesting sites with a generally long time series to model, two in Japan (Kamouda rookery, declining population, and Yakushima rookery, generally increasing in the last 20 years), and two in Australia (Woongarra rookery, generally declining through early 1990s and beginning to recover, and Wreck Island rookery, which is generally declining). Analysis of 51 years of mean annual sea surface temperatures around two core foraging areas off Japan and eastern Australia, showed a general warming of the oceans in these regions. In general, nesting abundance for all four rookeries was inversely related to sea surface temperatures; that is, higher sea surface temperatures during the previous year in the core foraging area resulted in lower summer season nesting at all rookeries. Given that cooler ocean temperatures are generally associated with increased productivity and that female sea turtles generally require at least 1 year to acquire sufficient fat stores for vitellogenesis to occur in the foraging grounds, as well as the necessary energy required for migration, any lag in productivity due to warmer temperatures has physiological basis. Over the long term, warming ocean temperatures could therefore lead to lower productivity and prey abundance, and thus reduced nesting and recruitment by Pacific loggerheads (Chaloupka *et al.,* 2008).

Other anthropogenic impacts include boat strikes, ingestion of and entanglement in marine debris, and entrainment in coastal power plants.

Natural environmental events, such as cyclones and hurricanes, may affect loggerheads in the North Pacific Ocean. Typhoons also have been shown to cause severe beach erosion and negatively affect hatching success at many loggerhead nesting beaches in Japan, especially in areas already prone to erosion. For example, during the 2004 season, the Japanese archipelago suffered a record number of typhoons and many nests were drowned or washed out. Extreme sand temperatures at nesting beaches also create highly skewed female sex ratios of hatchlings or threaten the health of hatchlings. Without human intervention to protect clutches against some of these natural threats, many of these nests would be lost (Matsuzawa, 2006).

In summary, we find that the North Pacific Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the North Pacific Ocean, including the coastal pound net fisheries off Japan, coastal fisheries impacting juvenile foraging populations off Baja California, Mexico, and undescribed fisheries likely affecting loggerheads in the South China Sea and the North Pacific Ocean, is a significant threat to the persistence of this DPS.

South Pacific Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

Destruction and modification of loggerhead nesting habitat in the South Pacific result from coastal development and construction, placement of erosion control structures and other barriers to nesting, beachfront lighting, vehicular traffic, beach erosion, beach pollution, removal of native vegetation, and planting of non-native vegetation (NMFS and USFWS, 1998; Limpus, 2009).

Removal or destruction of native dune vegetation, which enhances beach stability and acts as an integral buffer zone between land and sea, results in erosion of nesting habitat. Preliminary studies on nesting beaches in New Caledonia include local oral histories that attribute the decrease in loggerhead nesting to the removal of vegetation for construction purposes and subsequent beach erosion (Limpus *et al.,* 2006).

Beach armoring presents a barrier to nesting in the South Pacific. On the primary nesting beach in New Caledonia, a rock wall was constructed to prevent coastal erosion, and sea turtle nesting attempts have been unsuccessful. Local residents are seeking authorization to extend the wall further down the beach (Limpus *et al.,* 2006).

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the South Pacific Ocean include fishing practices, channel dredging, sand extraction, marine pollution, and climate change. Climate change, for instance, may result in future trophic changes, thus impacting loggerhead prey abundance and/or distribution.

In summary, we find that the South Pacific Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Within Factor A, we find that coastal armoring and removal of native dune vegetation on nesting beaches are significant threats to the persistence of this DPS.

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

Legislation in Australia outlaws the harvesting of loggerheads by indigenous peoples (Limpus *et al.,* 2006). Despite national laws, in many areas the poaching of eggs and hunting of adult and juvenile turtles is still a problem, and Limpus (2009) suggests that the harvest rate of loggerheads by indigenous hunters, both within Australia and in neighboring countries, is on the order of 40 turtles per year. Preliminary studies suggest that local harvesting in New Caledonia constitutes about 5 percent of the nesting population (Limpus *et al.,* 2006). Loggerheads also are consumed after being captured incidentally in high-seas fisheries of the southeastern Pacific (Alfaro-Shigueto *et al.,* 2006), and occasionally may be the product of illegal trade throughout the region.

In summary, current illegal harvest of loggerheads in Australia and New Caledonia for human consumption, as well as the consumption of loggerheads incidentally taken in high-seas fisheries,

continues as a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the South Pacific. While the prevalence of fibropapillomatosis in most loggerhead populations is thought to be small, an exception is in Moreton Bay, Australia, where 4.4 percent of the 320 loggerheads captured exhibited the disease during 1990–1992 (Limpus *et al.,* 1994). A subsequent study also found a high prevalence of fibropapillomatosis in the area (Quackenbush *et al.,* 2000).

Predation on nests and hatchlings by terrestrial vertebrates is a major problem at loggerhead rookeries in the South Pacific. At mainland rookeries in eastern Australia, for example, the introduced fox (*Vulpes vulpes*) has been the most significant predator on loggerhead eggs (Limpus, 1985, 2009). Although this has been minimized in recent years (to less than 5 percent; Limpus, 2009), researchers believe the earlier egg loss will greatly impact recruitment to this nesting population in the early 21st century (Limpus and Reimer, 1994). Predation on hatchlings by crabs and diurnal birds is also a threat (Limpus, 2009). In New Caledonia, feral dogs pose a predation threat to nesting loggerheads, and thus far no management has been implemented (Limpus *et al.,* 2006).

In summary, nest and hatchling predation likely was a factor that contributed to the historic decline of this DPS. Although current fox predation levels in eastern Australia are greatly reduced from historic levels, predation by other species still occurs, and predation by feral dogs in New Caledonia has not been addressed. In addition, a high prevalence of the fibropapillomatosis disease exists in Moreton Bay, Australia. Therefore, predation and disease are believed to be a significant threat to the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the South Pacific Ocean. The reader is directed to sections 5.1.4. and 5.2.2.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle, 2002).

National Legislation and Protection

Fishery bycatch that occurs throughout the South Pacific Ocean is substantial (*see* Factor E). Although national and international governmental and non-governmental entities on both sides of the South Pacific are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced in the near future due to the challenges of mitigating illegal, unregulated, and unreported fisheries, the continued expansion of artisanal fleets in the southeastern Pacific, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In addition to fishery bycatch, coastal armoring and erosion resulting from the removal of native dune vegetation on nesting beaches continues as a substantial threat (*see* Factor A). Coastal armoring, if left unaddressed, will become an even more substantial threat as sea level rises.

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of South Pacific Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for fishery bycatch (Factor E) and coastal armoring and removal of native dune vegetation (Factor A) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Incidental Bycatch in Fishing Gear

Incidental capture in artisanal and commercial fisheries is a significant threat to the survival of loggerheads throughout the South Pacific. The primary gear types involved in these interactions include longlines, driftnets, set nets, and trawl fisheries. These are employed by both artisanal and industrial fleets, and target a wide variety of species including tunas, sharks, sardines, swordfish, and mahi mahi.

In the southwestern Pacific, bottom trawling gear has been a contributing factor to the decline in the eastern Australian loggerhead population (Limpus and Reimer, 1994). The northern Australian prawn fishery (NPF) is made up of both a banana prawn fishery and a tiger prawn fishery, and extends from Cape York, Queensland (142° E) to Cape Londonberry, Western Australia (127° E). The fishery is one of the most valuable in all of Australia and in 2000 comprised 121 vessels fishing approximately 16,000 fishing days (Robins *et al.,* 2002a). In 2000, the use of turtle excluder devices (TEDs) in the NPF was made mandatory, due in part to several factors: (1) Objectives of the Draft Australian Recovery Plan for Marine Turtles, (2) requirement of the Australian Environment Protection and Biodiversity Conservation Act for Commonwealth fisheries to become ecologically sustainable, and (3) the 1996 U.S. import embargo on wild-caught prawns taken in a fishery without adequate turtle bycatch management practices (Robins *et al.,* 2002a). Data primarily were collected by volunteer fishers who were trained extensively in the collection of scientific data on sea turtles caught as bycatch in their fishery. Prior to the use of TEDs in this fishery, the NPF annually took between 5,000 and 6,000 sea turtles as bycatch, with a mortality rate of an estimated 40 percent due to drowning, injuries, or being returned to the water comatose (Poiner and Harris, 1996). Since the mandatory use of TEDs has been in effect, the annual bycatch of sea turtles in the NPF has dropped to less than 200 sea turtles per year, with a mortality rate of approximately 22 percent (based on recent years). This lower mortality rate also may be based on better sea turtle handling techniques adopted by the fleet. In general, loggerheads were the third most common sea turtle taken in this fishery.

Loggerheads also are taken by longline fisheries operating out of

Australia (Limpus, 2009). For example, Robins *et al.* (2002b) estimate that approximately 400 turtles are killed annually in Australian pelagic longline fishery operations. Of this annual estimate, leatherbacks accounted for over 60 percent of this total, while unidentified hardshelled turtles accounted for the remaining species. Therefore, the effect of this longline fishery on loggerheads is unknown.

Loggerheads also have been the most common turtle species captured in shark control programs in Australia (Kidston *et al.,* 1992; Limpus, 2009). From 1998–2002, a total of 232 loggerheads was captured with 195 taken on drum lines and 37 taken in nets, both with a low level of direct mortality (Limpus, 2009).

In the southeastern Pacific, significant bycatch has been reported in artisanal gillnet and longline shark and mahi mahi fisheries operating out of Peru (Kelez *et al.,* 2003; Alfaro-Shigueto *et al.,* 2006) and, to a lesser extent, Chile (Donoso and Dutton, 2006). The fishing industry in Peru is the second largest economic activity in the country, and, over the past few years, the longline fishery has rapidly increased. Currently, nearly 600 longline vessels fish in the winter and over 1,300 vessels fish in the summer. During an observer program in 2003/2004, 588 sets were observed during 60 trips, and 154 sea turtles were taken as bycatch. Loggerheads were the species most often caught (73.4 percent). Of the loggerheads taken, 68 percent were entangled and 32 percent were hooked. Of the two fisheries, sea turtle bycatch was highest during the mahi mahi season, with 0.597 turtles/1,000 hooks, while the shark fishery caught 0.356 turtles/1,000 hooks (Alfaro-Shigueto *et al.,* 2008b). A separate study by Kelez *et al.* (2003) reported that approximately 30 percent of all turtles bycaught in Peru were loggerheads. In many cases, loggerheads are kept on board for human consumption; therefore, the mortality rate in this artisanal longline fishery is likely high because sea turtles are retained for future consumption or sale.

Data on loggerhead bycatch in Chile are limited to the industrial swordfish fleet. Since 1990, fleet size has ranged from 7 to 23 vessels with a mean of approximately 14 vessels per year. These vessels fish up to and over 1,000 nautical miles along the Chilean coast with mechanized sets numbering approximately 1,200 hooks (M. Donoso, ONG Pacifico Laud—Chile, personal communication, 2007). Loggerhead bycatch is present in Chilean fleets; however, the catch rate is substantially lower than that reported for Peru (P. Dutton, NMFS, and M. Donoso, ONG Pacifico Laud—Chile, unpublished data).

Other Manmade and Natural Impacts

Other threats such as debris ingestion, boat strikes, and port dredging also impact loggerheads in the South Pacific, although these threats have been minimized in recent years due to a variety of legislative actions (Limpus, 2009). Loggerhead mortality resulting from dredging of channels in Queensland is a persistent, albeit minor problem. From 1999–2002, the average annual reported mortality was 1.7 turtles per year (range = 1–3) from port dredging operations (Limpus, 2009). Climate change and sea level rise have the potential to impact loggerheads in the South Pacific Ocean, yet the impact of these threats has not been quantified.

Natural environmental events, such as cyclones or hurricanes, may affect loggerheads in the South Pacific Ocean. These types of events may disrupt loggerhead nesting activity, albeit on a temporary scale. Chaloupka *et al.* (2008) demonstrated that nesting abundance of loggerheads in Australia was inversely related to sea surface temperatures, and suggested that a long-term warming trend in the South Pacific may be adversely impacting the recovery potential of this population.

In summary, we find that the South Pacific Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the South Pacific Ocean is a significant threat to the persistence of this DPS.

North Indian Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

Destruction and modification of loggerhead nesting habitat in the North Indian Ocean result from coastal development and construction, beachfront lighting, vehicular and pedestrian traffic, beach pollution, removal of native vegetation, and planting of non-native vegetation (E. Possardt, USFWS, personal observation, 2008).

The primary loggerhead nesting beaches of this DPS are at Masirah Island, Oman, and are still relatively undeveloped but now facing increasing development pressures. Newly paved roads closely paralleling most of the Masirah Island coast are bringing newly constructed highway lights (E. Possardt, USFWS, personal observation, 2008) and greater access to nesting beaches by the public. Light pollution from the military installation at Masirah Island also is evident at the most densely nested northern end of the island and is a likely cause of hatchling misorientation and nesting female disturbance (E. Possardt, USFWS, personal observation, 2008). Beach driving occurs on most of the major beaches outside the military installation. This vehicular traffic creates ruts that obstruct hatchling movements (Mann, 1977; Hosier *et al.,* 1981; Cox *et al.,* 1994; Baldwin, 1992), tramples nests, and destroys vegetation and dune formation processes, which exacerbates light pollution effects. Free ranging camels, sheep, and goats overgraze beach vegetation, which impedes natural dune formation (E. Possardt, USFWS, personal observation, 2008). Development of a new hotel on a major loggerhead nesting beach at Masirah Island is near completion and, although not yet approved, there are plans for a major resort at an important loggerhead nesting beach on one of the Halaniyat Islands. Armoring structures common to many developed beaches throughout the world are not yet evident on the major loggerhead nesting beaches of this DPS.

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the North Indian Ocean include fishing practices, channel dredging, sand extraction, marine pollution, and climate change. Fishing methods not only incidentally capture loggerheads, but also deplete invertebrate and fish populations and thus alter ecosystem dynamics. In many cases loggerhead foraging areas coincide with fishing zones. There has been an apparent growth in artisanal and commercial fisheries in waters surrounding Masirah Island (Baldwin, 1992). Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and/or distribution.

In summary, we find that the North Indian Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Within Factor A, we find that coastal development, beachfront lighting, and vehicular beach driving on nesting beaches in Oman are significant threats to the persistence of this DPS.

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

The use of loggerhead meat for food in Oman is not legal or popular. However, routine egg collection on Masirah Island does occur (Baldwin, 1992). The extent of egg collection as estimated by Masirah rangers and local residents is approximately 2,000 clutches per year (less than 10 percent).

In summary, although the collection of eggs for human consumption is known to occur, it does not appear to be a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the North Indian Ocean. Natural egg predation on Oman loggerhead nesting beaches undoubtedly occurs, but is not well documented or believed to be significant. Predation on hatchlings by Arabian red fox (*Vulpes vulpes arabica*), ghost crabs (*Ocypode saratan*), night herons (*Nycticorax nycticorax*), and gulls (*Larus* spp.) likely occurs. While quantitative data do not exist to evaluate these impacts on the North Indian Ocean loggerhead population, they are not likely to be significant.

In summary, although nest predation is known to occur and hatchling predation is likely, quantitative data are not sufficient to assess the degree of impact of nest predation on the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the North Indian Ocean. The reader is directed to sections 5.1.4. and 5.2.3.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle 2002).

National Legislation and Protection

Impacts to loggerheads and loggerhead nesting habitat from coastal development, beachfront lighting, and vehicular beach driving on nesting beaches in Oman is substantial (*see* Factor A). In addition, fishery bycatch that occurs throughout the North Indian Ocean, although not quantified, is a likely substantial (*see* Factor E). Threats to nesting beaches are likely to increase, which would require additional and widespread nesting beach protection efforts (Factor A). Little is currently being done to monitor and reduce mortality from neritic and oceanic fisheries in the range of the North Indian Ocean DPS; this mortality is likely to continue and increase with expected additional fishing effort from commercial and artisanal fisheries (Factor E). Reduction of mortality would be difficult due to a lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of North Indian Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for fishery bycatch (Factor E) and coastal development, beachfront lighting, and vehicular beach driving (Factor A) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

The magnitude of the threat of incidental capture of sea turtles in artisanal and commercial fisheries in the North Indian Ocean is difficult to assess. A bycatch survey administered off the coast of Sri Lanka between September 1999 and November 2000 reported 5,241 total turtle entanglements, of which 1,310 were loggerheads, between Kalpitiya and Kirinda (Kapurusinghe and Saman, 2001; Kapurusinghe and Cooray, 2002). Sea turtle bycatch has been reported in driftnet and set gillnets, longlines, trawls, and hook and line gear (Kapurusinghe and Saman, 2001; Kapurusinghe and Cooray, 2002; Lewison *et al.,* 2004).

Quantifying the magnitude of the threat of fisheries on loggerheads in the North Indian Ocean is difficult given the low level of observer coverage or investigations into bycatch conducted by countries that have large fishing fleets. Efforts have been made to quantify the effects of pelagic longline fishing on loggerheads globally (Lewison *et al.,* 2004). While there were no turtle bycatch data available from the North Indian Ocean to use in their assessment, extrapolations that considered bycatch data for the Pacific and Atlantic basins gave a conservative estimate of 6,000 loggerheads captured in the Indian Ocean in the year 2000. Interviews with rangers at Masirah Island reveal that shark gillnets capture many loggerheads off nesting beaches during the nesting season. As many as 60 boats are involved in this fishery with up to 6 km of gillnets being fished daily from June through October along the Masirah Island coast. Rangers reported one example of 17 loggerheads in one net (E. Possardt, USFWS, personal communication, 2008).

Other Manmade and Natural Impacts

Other anthropogenic impacts, such as boat strikes and ingestion or entanglement in marine debris, as well as entrainment in coastal power plants, likely apply to loggerheads in the North Indian Ocean. Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the North Indian Ocean. This includes beach erosion and loss from rising sea levels, skewed hatchling sex ratios from rising beach incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle. Climate change impacts could have profound long-term impacts on nesting populations in the North Indian Ocean, but it is not possible to quantify the potential impacts at this point in time.

Natural environmental events, such as cyclones, tsunamis, and hurricanes, affect loggerheads in the North Indian Ocean. For example, during the 2007 season, Oman suffered a rare typhoon. In general, however, severe storm events are episodic and, although they may affect loggerhead hatchling production, the results are generally localized and they rarely result in whole-scale losses over multiple nesting seasons.

In summary, we find that the North Indian Ocean DPS of the loggerhead sea

turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the North Indian Ocean, although not quantified, is a likely a significant threat to the persistence of this DPS.

Southeast-Indo Pacific Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

The primary loggerhead nesting beaches for this DPS occur in Australia on Dirk Hartog Island and Murion Islands (Baldwin *et al.,* 2003), which are undeveloped. Dirk Hartog Island is soon to become part of the National Park System.

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the Southeast-Indo Pacific Ocean include fishing practices, channel dredging, sand extraction, marine pollution, and climate change. Fishing methods not only incidentally capture loggerheads, but also deplete invertebrate and fish populations and thus alter ecosystem dynamics. In many cases, loggerhead foraging areas coincide with fishing zones. Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and/or distribution.

In summary, we find that the Southeast Indo-Pacific Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in its marine habitats as a result of land and water use practices as considered above in Factor A. However, sufficient data are not available to assess the significance of these threats to the persistence of this DPS.

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

Legislation in Australia outlaws the harvesting of loggerheads by indigenous peoples (Limpus *et al.,* 2006). Dirk Hartog Island and Murion Islands are largely uninhabited, and poaching of eggs and turtles is likely negligible.

In summary, harvest of eggs and turtles is believed to be negligible and does not appear to be a threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the Southeast Indo-Pacific Ocean. On the North West Cape and the beaches of the Ningaloo coast of mainland Australia, a long established feral European red fox (*Vulpes vulpes*) population preyed heavily on eggs and is thought to be responsible for the lower numbers of nesting turtles on the mainland beaches (Baldwin *et al.,* 2003). The fox populations have been eradicated on Dirk Hartog Island and Murion Islands (Baldwin *et al.,* 2003).

In summary, nest predation likely was a factor that contributed to the historic decline of this DPS. However, foxes have been eradicated on Dirk Hartog Island and Murion Islands, and current fox predation levels on mainland beaches in western Australia are greatly reduced from historic levels. Therefore, predation no longer appears to be a significant threat to the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the Southeast Indo-Pacific Ocean. The reader is directed to sections 5.1.4. and 5.2.4.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle 2002).

National Legislation and Protection

Fishery bycatch that occurs throughout the Southeast Indo-Pacific Ocean, although not quantified, is a likely substantial (*see* Factor E). With the exception of efforts to reduce loggerhead bycatch in the northern Australian prawn fishery, little is currently being done to monitor and reduce mortality from neritic and oceanic fisheries in the range of the Southeast Indo-Pacific Ocean DPS. This mortality is likely to continue and increase with expected additional fishing effort from commercial and artisanal fisheries (Factor E). Although national and international governmental and non-governmental entities are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced in the near future due to the challenges of mitigating illegal, unregulated, and unreported fisheries, the continued expansion of artisanal fleets, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of Southeast Indo-Pacific Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for fishery bycatch (Factor E) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

The extent of the threat of incidental capture of sea turtles in artisanal and commercial fisheries in the Southeast Indo-Pacific Ocean is unknown. Sea turtles are caught in pelagic and demersal longlines, gillnets, trawls, seines, and pots and traps (Environment Australia, 2003). There is evidence of significant historic bycatch from prawn fisheries, which may have depleted nesting populations long before nesting surveys were initiated in the 1990s (Baldwin *et al.,* 2003).

Quantifying the magnitude of the threat of fisheries on loggerheads in the Southeast Indo-Pacific Ocean is very difficult given the low level of observer coverage or investigations into bycatch conducted by countries that have large fishing fleets. Efforts have been made to quantify the effects of pelagic longline fishing on loggerheads globally (Lewison *et al.,* 2004). While there were no turtle bycatch data available from the Southeast Indo-Pacific Ocean to use in their assessment, extrapolations that considered bycatch data for the Pacific and Atlantic basins gave a conservative estimate of 6,000 loggerheads captured

in the Indian Ocean in the year 2000. Loggerheads are known to be taken by Japanese longline fisheries operating off of Western Australia (Limpus, 2009). The effect of the longline fishery on loggerheads in the Indian Ocean is largely unknown (Lewison *et al.,* 2004).

The northern Australian prawn fishery (NPF) is made up of both a banana prawn fishery and a tiger prawn fishery, and extends from Cape York, Queensland (142° E) to Cape Londonberry, Western Australia (127° E). The fishery is one of the most valuable in all of Australia and in 2000 comprised 121 vessels fishing approximately 16,000 fishing days (Robins *et al.,* 2002a). In 2000, the use of turtle excluder devices in the NPF was made mandatory, due in part to several factors: (1) Objectives of the Draft Australian Recovery Plan for Marine Turtles, (2) requirement of the Australian Environment Protection and Biodiversity Conservation Act for Commonwealth fisheries to become ecologically sustainable, and (3) the 1996 U.S. import embargo on wild-caught prawns taken in a fishery without adequate turtle bycatch management practices (Robins *et al.,* 2002a). Data primarily were collected by volunteer fishers who were trained extensively in the collection of scientific data on sea turtles caught as bycatch in their fishery. Prior to the use of TEDs in this fishery, the NPF annually took between 5,000 and 6,000 sea turtles as bycatch, with a mortality rate of an estimated 40 percent, due to drowning, injuries, or being returned to the water comatose (Poiner and Harris, 1996). Since the mandatory use of TEDs has been in effect, the annual bycatch of sea turtles in the NPF has dropped to less than 200 sea turtles per year, with a mortality rate of approximately 22 percent (based on recent years). This lower mortality rate also may be based on better sea turtle handling techniques adopted by the fleet. In general, loggerheads were the third most common sea turtle taken in this fishery.

Loggerheads also have been the most common turtle species captured in shark control programs in Pacific Australia (Kidston *et al.,* 1992; Limpus, 2009); however, the Western Australian demersal longline fishery for sharks has no recorded interaction with loggerheads. From 1998–2002, a total of 232 loggerheads were captured, with 195 taken on drum lines and 37 taken in nets, both with a low level of direct mortality (Limpus, 2009).

Other Manmade and Natural Impacts

Other anthropogenic impacts, such as boat strikes and ingestion or entanglement in marine debris, likely apply to loggerheads in the Southeast Indo-Pacific Ocean. Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the Southeast Indo-Pacific Ocean. This includes beach erosion and loss from rising sea levels, skewed hatchling sex ratios from rising beach incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle. Climate change impacts could have profound long-term impacts on nesting populations in the Southeast Indo-Pacific Ocean, but it is not possible to quantify the potential impacts at this point in time.

Natural environmental events, such as cyclones and hurricanes, may affect loggerheads in the Southeast Indo-Pacific Ocean. In general, however, severe storm events are episodic and, although they may affect loggerhead hatchling production, the results are generally localized and they rarely result in whole-scale losses over multiple nesting seasons.

In summary, we find that the Southeast Indo-Pacific Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch, particularly from the northern Australian prawn fishery, was a factor that contributed to the historic decline of this DPS. Although loggerhead bycatch has been greatly reduced in the northern Australian prawn fishery, bycatch that occurs elsewhere in the Southeast Indo-Pacific Ocean, although not quantified, is likely a significant threat to the persistence of this DPS.

Southwest Indian Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

All nesting beaches within South Africa are within protected areas (Baldwin *et al.*, 2003). In Mozambique, nesting beaches in the Maputo Special Reserve (approximately 60 km of nesting beach) and in the Paradise Islands are within protected areas (Baldwin *et al.*, 2003; Costa *et al.*, 2007). There are no protected areas for loggerheads in Madagascar (Baldwin *et al.*, 2003).

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the Southwest Indian Ocean DPS include fishing practices, channel dredging, sand extraction, marine pollution, and climate change. Fishing methods not only incidentally capture loggerheads, but also deplete invertebrate and fish populations and thus alter ecosystem dynamics. In many cases, loggerhead foraging areas coincide with fishing zones. Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and/or distribution.

In summary, we find that the Southwest Indian Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in its marine habitats as a result of land and water use practices as considered above in Factor A. However, sufficient data are not available to assess the significance of these threats to the persistence of this DPS.

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

In the Southwest Indian Ocean, on the east coast of Africa, subsistence hunting by local people is a continued threat to loggerheads (Baldwin *et al.*, 2003). Illegal hunting of marine turtles and egg harvesting remains a threat in Mozambique as well (Louro *et al.*, 2006).

In summary, harvest of loggerheads and eggs for human consumption on the east coast of Africa, although not quantified, is likely a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the Southwest Indian Ocean. Side striped jackals (*Canis adustus*) and honey badgers (*Melivora capensis*) are known to depredate nests (Baldwin *et al.*, 2003).

In summary, although nest predation is known to occur, quantitative data are not sufficient to assess the degree of impact of nest predation on the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the Southwest Indian Ocean. The reader is directed to sections 5.1.4. and 5.2.5.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address

sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle, 2002).

National Legislation and Protection

Fishery bycatch that occurs throughout the Southwest Indian Ocean, although not quantified, is likely substantial (*see* Factor E). This mortality is likely to continue and may increase with expected additional fishing effort from commercial and artisanal fisheries. Reduction of mortality would be difficult due to a lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of Southwest Indian Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for fishery bycatch (Factor E) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

The full extent of the threat of incidental capture of sea turtles in artisanal and commercial fisheries in the Southwest Indian Ocean is unknown. Sea turtles are caught in demersal and pelagic longlines, trawls, gillnets, and seines (Petersen, 2005; Louro *et al.*, 2006; Petersen *et al.*, 2007, 2009; Costa *et al.*, 2007; Fennessy and Isaksen, 2007). There is evidence of significant historic bycatch from prawn fisheries, which may have depleted nesting populations long before nesting surveys were initiated in the 1990s (Baldwin *et al.*, 2003).

Quantifying the magnitude of the threat of fisheries on loggerheads in the Southwest Indian Ocean is very difficult given the low level of observer coverage or investigations into bycatch conducted by countries that have large fishing fleets. Efforts have been made to quantify the effects of pelagic longline fishing on loggerheads globally (Lewison *et al.*, 2004). While there were no turtle bycatch data available from the Southwest Indian Ocean to use in their assessment, extrapolations that considered bycatch data for the Pacific and Atlantic basins gave a conservative estimate of 6,000 loggerheads captured in the Indian Ocean in the year 2000. The effect of the longline fishery on loggerheads in the Indian Ocean is largely unknown (Lewison *et al.*, 2004).

Other Manmade and Natural Impacts

Other anthropogenic impacts, such as boat strikes and ingestion or entanglement in marine debris, likely apply to loggerheads in the Southwest Indian Ocean. Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the Southwest Indian Ocean. This includes beach erosion and loss from rising sea levels, skewed hatchling sex ratios from rising beach incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle. Climate change impacts could have profound long-term impacts on nesting populations in the Southwest Indian Ocean, but it is not possible to quantify the potential impacts at this point in time.

Natural environmental events, such as cyclones, tsunamis and hurricanes, may affect loggerheads in the Southwest Indian Ocean. In general, however, severe storm events are episodic and, although they may affect loggerhead hatchling production, the results are generally localized and they rarely result in whole-scale losses over multiple nesting seasons.

In summary, we find that the Southwest Indian Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the Southwest Indian Ocean, although not quantified, is likely a significant threat to the persistence of this DPS.

Northwest Atlantic Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

Destruction and modification of loggerhead nesting habitat in the Northwest Atlantic results from coastal development and construction, placement of erosion control structures and other barriers to nesting, placement of nearshore shoreline stabilization structures, beachfront lighting, vehicular and pedestrian traffic, beach erosion, beach sand placement, removal of native vegetation, and planting of non-native vegetation (NMFS and USFWS, 2008).

Numerous beaches in the southeastern United States are eroding due to both natural (*e.g.*, storms, sea level changes, waves, shoreline geology) and anthropogenic (*e.g.*, construction of armoring structures, groins, and jetties; coastal development; inlet dredging) factors. Such shoreline erosion leads to a loss of nesting habitat for sea turtles.

In the southeastern United States, numerous erosion control structures (*e.g.*, bulkheads, seawalls, soil retaining walls, rock revetments, sandbags, geotextile tubes) that create barriers to nesting have been constructed. The proportion of coastline that is armored is approximately 18 percent (239 km) in Florida (Clark, 1992; Schroeder and Mosier, 2000; Witherington *et al.*, 2006), 9 percent (14 km) in Georgia (M. Dodd, GDNR, personal communication, 2009), 12 percent (29 km) in South Carolina (D. Griffin, SCDNR, personal communication, 2009), and 3 percent (9 km) in North Carolina (M. Godfrey, North Carolina Wildlife Resources Commission, 2009). These estimates of armoring extent do not include structures that are also barriers to sea turtle nesting but do not fit the definition of armoring, such as dune crossovers, cabanas, sand fences, and recreational equipment. Jetties have been placed at many ocean inlets along the U.S. Atlantic coast to keep transported sand from closing the inlet channel. Witherington *et al.* (2005) found a significant negative relationship between loggerhead nesting density and distance from the nearest of 17 ocean inlets on the Atlantic coast of Florida. The effect of inlets in lowering nesting density was observed both updrift and downdrift of the inlets, leading researchers to propose that beach instability from both erosion and accretion may discourage loggerhead nesting.

Stormwater and other water source runoff from coastal development, including beachfront parking lots, building rooftops, roads, decks, and draining swimming pools adjacent to the beach, is frequently discharged directly onto Northwest Atlantic beaches and dunes either by sheet flow, through stormwater collection system outfalls, or through small diameter

pipes. These outfalls create localized erosion channels, prevent natural dune establishment, and wash out sea turtle nests (Florida Fish and Wildlife Conservation Commission, unpublished data). Contaminants contained in stormwater, such as oils, grease, antifreeze, gasoline, metals, pesticides, chlorine, and nutrients, are also discharged onto the beach and have the potential to affect sea turtle nests and emergent hatchlings. The effects of these contaminants on loggerheads are not yet understood. As a result of natural and anthropogenic factors, beach nourishment is a frequent activity, and many beaches are on a periodic nourishment schedule. On severely eroded sections of beach, where little or no suitable nesting habitat previously existed, beach nourishment has been found to result in increased nesting (Ernest and Martin, 1999). However, on most beaches in the southeastern United States, nesting success typically declines for the first year or two following construction, even though more nesting habitat is available for turtles (Trindell *et al.*, 1998; Ernest and Martin, 1999; Herren, 1999).

Coastal development also contributes to habitat degradation by increasing light pollution. Both nesting and hatchling sea turtles are adversely affected by the presence of artificial lighting on or near the beach (Witherington and Martin, 1996). Experimental studies have shown that artificial lighting deters adult female turtles from emerging from the ocean to nest (Witherington, 1992). Witherington (1986) also noted that loggerheads aborted nesting attempts at a greater frequency in lighted areas. Because adult females rely on visual brightness cues to find their way back to the ocean after nesting, those turtles that nest on lighted beaches may become disoriented (unable to maintain constant directional movement) or misoriented (able to maintain constant directional movement but in the wrong direction) by artificial lighting and have difficulty finding their way back to the ocean. In some cases, misdirected nesting females have crawled onto coastal highways and have been struck and killed by vehicles (FFWCC, unpublished data).

Hatchlings exhibit a robust sea-finding behavior guided by visual cues (Witherington and Bjorndal 1991; Salmon *et al.*, 1992; Lohmann *et al.*, 1997; Witherington and Martin, 1996; Lohmann and Lohmann, 2003); direct and timely migration from the nest to sea is critical to their survival. Hatchlings have a tendency to orient toward the brightest direction as integrated over a broad horizontal area. On natural undeveloped beaches, the brightest direction is commonly away from elevated shapes (*e.g.*, dune, vegetation, *etc.*) and their silhouettes and toward the broad open horizon of the sea. On developed beaches, the brightest direction is often away from the ocean and toward lighted structures. Hatchlings unable to find the ocean, or delayed in reaching it, are likely to incur high mortality from dehydration, exhaustion, or predation (Carr and Ogren, 1960; Ehrhart and Witherington, 1987; Witherington and Martin, 1996). Hatchlings lured into lighted parking lots or toward streetlights are often crushed by passing vehicles (McFarlane, 1963; Philibosian, 1976; Peters and Verhoeven, 1994; Witherington and Martin, 1996). Uncommonly intense artificial lighting can even draw hatchlings back out of the surf (Daniel and Smith, 1947; Carr and Ogren, 1960; Ehrhart and Witherington, 1987).

Reports of hatchling disorientation events in Florida alone describe several hundred nests each year and are likely to involve tens of thousands of hatchlings (Nelson *et al.*, 2002); however, this number calculated is likely a vast underestimate. Independent of these reports, Witherington *et al.* (1996) surveyed hatchling orientation at nests located at 23 representative beaches in six counties around Florida in 1993 and 1994 and found that, by county, approximately 10 to 30 percent of nests showed evidence of hatchlings disoriented by lighting. From this survey and from measures of hatchling production (Florida Fish and Wildlife Conservation Commission, unpublished data), the number of hatchlings disoriented by lighting in Florida is calculated in the range of hundreds of thousands per year.

In the United States, vehicular driving is allowed on certain beaches in northeast Florida (Nassau, Duval, St. Johns, and Volusia Counties), northwest Florida (Walton and Gulf Counties), Georgia (Cumberland, Little Cumberland, and Sapelo Islands), North Carolina (Fort Fisher State Recreation Area, Carolina Beach, Freeman Park, Onslow Beach, Emerald Isle, Indian Beach/Salter Path, Pine Knoll Shores, Atlantic Beach, Cape Lookout National Seashore, Cape Hatteras National Seashore, Nag's Head, Kill Devil Hills, Town of Duck, and Currituck Banks), Virginia (Chincoteague NWR and Wallops Island), and Texas (the majority of beaches except for a highly developed section of South Padre Island and Padre Island National Seashore, San Jose Island, Matagorda Island, and Matagorda Peninsula where driving is not allowed or is limited to agency personnel, land owners, and/or researchers). Beach driving has been found to reduce the quality of loggerhead nesting habitat in several ways. In the southeastern U.S., vehicle ruts on the beach have been found to prevent or impede hatchlings from reaching the ocean following emergence from the nest (Mann, 1977; Hosier *et al.*, 1981; Cox *et al.*, 1994; Hughes and Caine, 1994). Sand compaction by vehicles has been found to hinder nest construction and hatchling emergence from nests (Mann, 1977). Vehicle lights and vehicle movement on the beach after dark results in reduced habitat suitability, which can deter females from nesting and disorient hatchlings. Additionally, vehicle traffic on nesting beaches contributes to erosion, especially during high tides or on narrow beaches where driving is concentrated on the high beach and foredune.

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the Northwest Atlantic Ocean include fishing practices, channel dredging, sand extraction, oil exploration and development, marine pollution, and climate change. Fishing methods not only incidentally capture loggerheads, but also deplete invertebrate and fish populations and thus alter ecosystem dynamics. Although anthropogenic disruptions of natural ecological interactions have been difficult to discern, a few studies have been focused on the effects of these disruptions on loggerheads. For instance, Youngkin (2001) analyzed gut contents from hundreds of loggerheads stranded in Georgia over a 20-year period. His findings point to the probability of major effects on loggerhead diet from activities such as shrimp trawling and dredging. Lutcavage and Musick (1985) found that horseshoe crabs strongly dominated the diet of loggerheads in Chesapeake Bay in 1980–1981. Subsequently, fishermen began to harvest horseshoe crabs, primarily for use as bait in the eel and whelk pot fisheries, using several gear types. Atlantic coast horseshoe crab landings increased by an order of magnitude (0.5 to 6.0 million pounds) between 1980 and 1997, and in 1998 the Atlantic States Marine Fisheries Commission implemented a horseshoe crab fishery management plan to curtail catches (Atlantic States Marine Fisheries Commission, 1998). The decline in horseshoe crab availability has apparently caused a diet shift in juvenile loggerheads, from

predominantly horseshoe crabs in the early to mid-1980s to blue crabs in the late 1980s and early 1990s, to mostly finfish in the late 1990s and early 2000s (Seney, 2003; Seney and Musick, 2007). These data suggest that turtles are foraging in greater numbers in or around fishing gears and on discarded bycatch (Seney, 2003).

Periodic dredging of sediments from navigational channels is carried out at large ports to provide for the passage of large commercial and military vessels. In addition, sand mining (dredging) for beach renourishment and construction projects occurs in the Northwest Atlantic along the U.S., Mexico, Central American, Colombia, and Venezuela coasts. Although directed studies have not been conducted, dredging activities, which occur regularly in the Northwest Atlantic, have the potential to destroy or degrade benthic habitats used by loggerheads. Channelization of inshore and nearshore habitat and the subsequent disposal of dredged material in the marine environment can destroy or disrupt resting or foraging grounds (including grass beds and coral reefs) and may affect nesting distribution by altering physical features in the marine environment (Hopkins and Murphy, 1980). Oil exploration and development on live bottom areas may disrupt foraging grounds by smothering benthic organisms with sediments and drilling muds (Coston-Clements and Hoss, 1983). The effects of benthic habitat alteration on loggerhead prey abundance and distribution, and the effects of these potential changes on loggerhead populations, have not been determined but are of concern. Climate change also may result in trophic changes, thus impacting loggerhead prey abundance and/or distribution.

In summary, we find that the Northwest Atlantic Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Within Factor A, we find that coastal development, beachfront lighting, and coastal armoring and other erosion control structures on nesting beaches in the United States are significant threats to the persistence of this DPS. We also find that anthropogenic disruptions of natural ecological interactions as a result of fishing practices, channel dredging, and oil exploration and development are likely a significant threat to the persistence of this DPS.

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

Deliberate hunting of loggerheads for their meat, shells, and eggs is reduced from previous exploitation levels, but still exists. In the Caribbean, 12 of 29 (41 percent) countries/territories allow the harvest of loggerheads (NMFS and USFWS, 2008; *see* Appendix 3; A. Bolten, University of Florida, personal communication, 2009); this takes into account the September 2009 ban on the harvest of sea turtles in The Bahamas. Loggerhead harvest in the Caribbean is generally restricted to the non-nesting season with the exception of St. Kitts and Nevis, where turtle harvest is allowed annually from March 1 through September 30, and the Turks and Caicos Islands, where turtle harvest is allowed year-round. Most countries/territories that allow harvest have regulations that favor the harvest of large juvenile and adult turtles, the most reproductively valuable members of the population. Exceptions include the Cayman Islands, which mandates maximum size limits, and Haiti and Trinidad and Tobago, which have no size restrictions. All North, Central, and South American countries in the Northwest Atlantic have enacted laws that mandate complete protection of loggerheads from harvest in their territorial waters with the exception of Guyana. Despite national laws, in many countries the poaching of eggs and hunting of adult and juvenile turtles still occurs at varying levels (NMFS and USFWS, 2008; *see* Appendix 3).

In summary, harvest of loggerheads in the Caribbean for human consumption has been and continues to be a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the Northwest Atlantic. Viral diseases have not been documented in free-ranging loggerheads, with the possible exception of sea turtle fibropapillomatosis, which may have a viral etiology (Herbst and Jacobson, 1995; George, 1997). Although fibropapillomatosis reaches epidemic proportions in some wild green turtle populations, the prevalence of this disease in most loggerhead populations is thought to be small. An exception is Florida Bay where approximately 9.5 percent of the loggerheads captured exhibit fibropapilloma-like external lesions (B. Schroeder, NMFS, personal communication, 2006). Mortality levels and population-level effects associated with the disease are still unknown. Heavy infestations of endoparasites may cause or contribute to debilitation or mortality in loggerhead turtles. Trematode eggs and adult trematodes were recorded in a variety of tissues including the spinal cord and brain of debilitated loggerheads during an epizootic in South Florida, USA, during late 2000 and early 2001. These endoparasites were implicated as a possible cause of the epizootic (Jacobson *et al.*, 2006). Although many health problems have been described in wild populations through the necropsy of stranded turtles, the significance of diseases on the ecology of wild loggerhead populations is not known (Herbst and Jacobson, 1995).

Predation of eggs and hatchlings by native and introduced species occurs on almost all nesting beaches throughout the Northwest Atlantic. The most common predators at the primary nesting beaches in the southeastern United States are ghost crabs (*Ocypode quadrata*), raccoons (*Procyon lotor*), feral hogs (*Sus scrofa*), foxes (*Urocyon cinereoargenteus* and *Vulpes vulpes*), coyotes (*Canis latrans*), armadillos (*Dasypus novemcinctus*), and red fire ants (*Solenopsis invicta*) (Stancyk, 1982; Dodd, 1988). In the absence of well managed nest protection programs, predators may take significant numbers of eggs; however, nest protection programs are in place at most of the major nesting beaches in the Northwest Atlantic.

Non-native vegetation has invaded many coastal areas and often outcompetes native plant species. Exotic vegetation may form impenetrable root mats that can invade and desiccate eggs, as well as trap hatchlings. The Australian pine (*Casuarina equisetifolia*) is particularly harmful to sea turtles. Dense stands have taken over many coastal areas throughout central and south Florida. Australian pines cause excessive shading of the beach that would not otherwise occur. Studies in Florida suggest that nests laid in shaded areas are subjected to lower incubation temperatures, which may alter the natural hatchling sex ratio (Marcus and Maley, 1987; Schmelz and Mezich, 1988; Hanson *et al.*, 1998). Fallen Australian pines limit access to suitable nest sites and can entrap nesting females (Austin, 1978; Reardon and Mansfield, 1997). The shallow root network of these pines can interfere with nest construction (Schmelz and Mezich, 1988). Davis and Whiting (1977) reported that nesting activity declined in Everglades National Park where dense stands of Australian pine took over native dune vegetation on a

remote nesting beach. Beach vitex (*Vitex rotundifolia*) is native to countries in the western Pacific and was introduced to the horticulture trade in the southeastern United States in the mid-1980s and is often sold as a "dune stabilizer." Its presence on North Carolina and South Carolina beaches has a negative effect on sea turtle nesting as its dense mats interfere with sea turtle nesting and hatchling emergence from nests (Brabson, 2006). This exotic plant is crowding out the native species, such as sea oats and bitter panicum, and can colonize large areas in just a few years. Sisal, or century plant (*Agave americana*), is native to arid regions of Mexico. The plant was widely grown in sandy soils around Florida in order to provide fiber for cordage. It has escaped cultivation in Florida and has been purposely planted on dunes. Although the effects of sisal on sea turtle nesting are uncertain, thickets with impenetrable sharp spines are occasionally found on developed beaches.

Harmful algal blooms, such as a red tide, also affect loggerheads in the Northwest Atlantic. In Florida, the species that causes most red tides is *Karenia brevis*, a dinoflagellate that produces a toxin (Florida Marine Research Institute, 2003) and can cause mortality in birds, marine mammals, and sea turtles. During four red tide events along the west coast of Florida, sea turtle stranding trends indicated that these events were acting as a mortality factor (Redlow *et al.*, 2003). Furthermore, brevetoxin concentrations supportive of intoxication were detected in biological samples from dead and moribund sea turtles during a mortality event in 2005 and in subsequent events (Fauquier *et al.*, 2007). The population level effects of these events are not yet known.

In summary, nest and hatchling predation likely was a factor that contributed to the historic decline of this DPS. Although current predation levels in the United States are greatly reduced from historic levels, predation still occurs in the United States, as well as in Mexico, and can be significant in the absence of well managed protection efforts. Although diseases and parasites are known to impact loggerheads in this DPS, the significance of these threats is not known. Overall, however, predation and disease are believed to be a significant threat to the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the Northwest Atlantic Ocean (Conant *et al.,* 2009). Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations.

National Legislation and Protection

Fishery bycatch that occurs throughout the North Atlantic Ocean is substantial (*see* Factor E). Although national and international governmental and non-governmental entities on both sides of the North Atlantic are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the diversity and magnitude of the fisheries operating in the North Atlantic, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of Northwest Atlantic Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for fishery bycatch (Factor E) and coastal development, beachfront lighting, and coastal armoring and other erosion control structures on nesting beaches in the United States (Factor A) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

Bycatch of loggerheads in commercial and recreational fisheries in the Northwest Atlantic is a significant threat facing the species in this region. A variety of fishing gears that incidentally capture loggerhead turtles are employed including gillnets, trawls, hook and line, longlines, seines, dredges, pound nets, and various types of pots/traps. Among these, gillnets, longlines, and trawl gear contribute to the vast majority of bycatch mortality of loggerheads annually throughout their range in the Atlantic Ocean and Gulf of Mexico (Epperly *et al.,* 1995; NMFS, 2002, 2004, 2007, 2008; Lewison *et al.,* 2003, 2004; Richards, 2007; NMFS, unpublished data). Considerable effort has been expended since the 1980s to document and address fishery bycatch, especially in the United States and Mexico. Observer programs have been implemented in some fisheries to collect turtle bycatch data, and efforts to reduce bycatch and mortality of loggerheads in certain fishing operations have been undertaken and implemented or partially implemented. These efforts include developing gear solutions to prevent or reduce captures or to allow turtles to escape without harm (*e.g.,* TEDs, circle hooks and bait combinations), implementing time and area closures to prevent interactions from occurring (*e.g.,* prohibitions on gillnet fishing along the mid-Atlantic coast during the critical time of northward migration of loggerheads), implementation of careful release protocols (*e.g.,* requirements for careful release of turtles captured in longline fisheries), prohibitions of gillnetting in some U.S. State waters), and/or modifying gear (*e.g.,* requirements to reduce mesh size in the leaders of pound nets in certain U.S. coastal waters to prevent entanglement).

The primary bycatch reduction focus in the Northwest Atlantic, since the 1978 ESA listing of the loggerhead, has been on bycatch reduction in shrimp trawls. The United States has required the use of turtle excluder devices (TEDs) throughout the year since the mid-1990s, with modifications required and implemented as necessary (52 FR 24244; June 29, 1987; 57 FR 57348; December 4, 1992). Most notably, in 2003, NMFS implemented new requirements for TEDs in the shrimp trawl fishery to ensure that large loggerheads could escape through TED openings (68 FR 8456; February 21, 2003). Significant effort has been expended to transfer this technology to other shrimping fleets in the Northwest Atlantic; however, not all nations where loggerheads occur require the device be used. Enforcement of TED regulations is difficult and compliance is not believed to be complete. Because

TEDs are not 100 percent effective, a significant number of loggerheads are estimated to still be killed annually in shrimp trawls throughout the Northwest Atlantic. In the U.S. Southeast food shrimp trawl fishery, NMFS estimated the annual mortality of loggerheads in the Gulf of Mexico and southeastern U.S. Atlantic Ocean as 3,948 individuals (95 percent confidence intervals, 1,221–8,498) (NMFS, 2002). Shrimping effort in the southeastern United States has reportedly declined; a revised estimate of annual loggerhead mortality for the Gulf of Mexico segment of the Southeast food shrimp trawl fishery is 647 individuals (NMFS, unpublished data).

Other trawl fisheries operating in Northwest Atlantic waters that are known to capture sea turtles include, but are not limited to, summer flounder, calico scallop, sea scallop, blue crab, whelk, cannonball jellyfish, horseshoe crab, and mid-Atlantic directed finfish trawl fisheries and the *Sargassum* fishery. In the United States, the summer flounder fishery is the only trawl fishery (other than the shrimp fishery) with Federally mandated TED use (in certain areas). Loggerhead annual bycatch estimates in 2004 and 2005 in U.S. mid-Atlantic scallop trawl gear ranged from 81 to 191 turtles, depending on the estimation methodology used (Murray, 2007). Estimated average annual bycatch of loggerheads in other mid-Atlantic Federally managed bottom otter trawl fisheries during 1996–2004 was 616 turtles (Murray, 2006). The harvest of *Sargassum* by trawlers can result in incidental capture of post-hatchlings and habitat destruction (Schwartz, 1988; Witherington, 2002); however, this fishery is not currently active.

Dredge fishing gear is the predominant gear used to harvest sea scallops off the mid- and northeastern United States Atlantic coast. Turtles can be struck and injured or killed by the dredge frame and/or captured in the bag where they may drown or be further injured or killed when the catch and heavy gear are dumped on the vessel deck. Total estimated bycatch of loggerhead turtles in the U.S. sea scallop dredge fishery operating in the mid-Atlantic region (New York to North Carolina) from June through November is on the order of several hundred turtles per year (Murray, 2004, 2005, 2007). The impact of the sea scallop dredge fishery on loggerheads in U.S. waters of the Northwest Atlantic remains a serious concern.

Incidental take of oceanic-stage loggerheads in pelagic longline fisheries has recently received significant attention (Balazs and Pooley, 1994; Bolten *et al.*, 1994, 2000; Aguilar *et al.*, 1995; Laurent *et al.*, 1998; Long and Schroeder, 2004; Watson *et al.*, 2005). Large-scale commercial longline fisheries operate throughout the pelagic range of the Northwest Atlantic loggerhead, including the western Mediterranean. The largest size classes in the oceanic stage are the size classes impacted by the swordfish longline fishery in the Azores (Bolten, 2003) and on the Grand Banks off Newfoundland (Watson *et al.*, 2005), and this is likely the case for other nation's fleets operating in the region, including but not limited to, the European Union, United States, Japan, and Taiwan. The demographic consequences relative to population recovery of the increased mortality of these size classes have been discussed (Crouse *et al.*, 1987; *see* also Heppell *et al.*, 2003 and Chaloupka, 2003). Estimates derived from data recorded by the international observer program (IOP) suggest that thousands of mostly juvenile loggerheads have been captured in the Canadian pelagic longline fishery in the western North Atlantic since 1999 (Brazner and McMillan, 2008). NMFS (2004) estimates that 635 loggerheads (143 lethal) will be taken annually in the U.S. pelagic longline fishery.

Incidental capture of neritic-stage loggerheads in demersal longline fishing gear has also been documented. Richards (2007) estimated total annual bycatch of loggerheads in the Southeast U.S. Atlantic and U.S. Gulf of Mexico commercial directed shark bottom longline fishery from 2003–2005 as follows: 2003: 302–1,620 (CV 0.45); 2004: 95–591 (CV 0.49); and 2005: 139–778 (CV 0.46). NMFS (2009) estimated the total number of captures of hardshell turtles in the U.S. Gulf of Mexico reef fish fishery (demersal longline fishery) from July 2006–December 2008 as 861 turtles (95 percent confidence intervals, 383–1934). These estimates are not comprehensive across this gear type (*i.e.,* pelagic and demersal longline) throughout the Northwest Atlantic Ocean. Cumulatively, the bycatch and mortality of Northwest Atlantic loggerheads in longline fisheries is significant.

Gillnet fisheries may be the most ubiquitous of fisheries operating in the neritic range of the Northwest Atlantic loggerhead. Comprehensive estimates of bycatch in gillnet fisheries do not yet exist and, while this precludes a quantitative analysis of their impacts on loggerhead populations, the cumulative mortality of loggerheads in gillnet fisheries is likely high. In the U.S. mid-Atlantic, the average annual estimated bycatch of loggerheads from 1995–2006 was 350 turtles (CV= 0.20., 95 percent confidence intervals over the 12-year period: 234 to 504) (Murray, 2009). In the United States, some States (*e.g.*, South Carolina, Georgia, Florida, Louisiana, and Texas) have prohibited gillnets in their waters, but there remain active gillnet fisheries in other U.S. States, in U.S. Federal waters, Mexico waters, Central and South America waters, and the Northeast Atlantic.

Pound nets are fixed gear composed of a series of poles driven into the bottom upon which netting is suspended. Pound nets basically operate like a trap with the pound constructed of a series of funnels leading to a bag that is open at the top, and a long leader of netting that extends from shallow to deeper water where the pound is located. In some configurations, the leader is suspended from the surface by a series of stringers or vertical lines. Sea turtles incidentally captured in the open top pound, which is composed of small mesh webbing, are usually safe from injury and may be released easily when the fishermen pull the nets (Mansfield *et al.*, 2002). However, sea turtle mortalities have been documented in the leader of certain pound nets. Large mesh leaders (greater than 12-inch stretched mesh) may act as a gillnet, entangling sea turtles by the head or foreflippers (Bellmund *et al.*, 1987) or may act as a barrier against which turtles may be impinged (NMFS, unpublished data). Nets with small mesh leaders (less than 8 inches stretched mesh) usually do not present a mortality threat to loggerheads, but some mortalities have been reported (Morreale and Standora, 1998; Epperly *et al.*, 2000, 2007; Mansfield *et al.*, 2002). In 2002, the United States prohibited, in certain areas within the Chesapeake Bay and at certain times, pound net leaders having mesh greater than or equal to 12 inches and leaders with stringers (67 FR 41196; June 17, 2002). Subsequent regulations have further restricted the use of certain pound net leaders in certain geographic areas and established pound net leader gear modifications (69 FR 24997; May 5, 2004; 71 FR 36024; June 23, 2006).

Pots/traps are commonly used to target crabs, lobsters, whelk, and reef fishes. These traps vary in size and configuration, but all are attached to a surface float by means of a vertical line leading to the trap. Entanglement and mortality of loggerheads has been documented in various pot/trap fisheries in the U.S. Atlantic and Gulf of Mexico. Data from the U.S. Sea Turtle Stranding and Salvage Network indicate that 82 loggerheads (dead and rescued alive) were documented by the

stranding network in various pot/trap gear from 1996–2005, of these approximately 30–40 percent were adults and the remainder juvenile turtles (NMFS, unpublished data). Without intervention it is likely that the majority of the live, entangled turtles would die. Additionally, documented strandings represent only a portion of total interactions and mortality. Recently, a small number of loggerhead entanglements also have been recorded in whelk pot bridles in the U.S. Mid-Atlantic (M. Fagan, Virginia Institute of Marine Science, personal communication, 2008). However, no dedicated observer programs exist to provide estimates of take and mortality from pot/trap fisheries; therefore, comprehensive estimates of loggerhead interactions with pot/trap gear are not available, but the gear is widely used throughout the range of the DPS, and poses a continuing threat.

Other Manmade and Natural Impacts

Propeller and collision injuries from boats and ships are becoming more common in sea turtles. In the U.S. Atlantic, from 1997 to 2005, 14.9 percent of all stranded loggerheads were documented as having sustained some type of propeller or collision injuries (NMFS, unpublished data). The incidence of propeller wounds observed in sea turtles stranded in the United States has risen from approximately 10 percent in the late 1980s to a record high of 20.5 percent in 2004 (NMFS, unpublished data). In the United States, propeller wounds are greatest in Southeast Florida; during some years, as many as 60 percent of the loggerhead strandings found in these areas had propeller wounds (Florida Fish and Wildlife Conservation Commission, unpublished data). As the number of vessels increases, in concert with increased coastal development, especially in nearshore waters, propeller and vessel collision injuries are also expected to rise.

Several activities associated with offshore oil and gas production, including oil spills, water quality (operational discharge), seismic surveys, explosive platform removal, platform lighting, and noise from drillships and production activities, are known to impact loggerheads (National Research Council, 1996; Minerals Management Service, 2000; Gregg Gitschlag, NMFS, personal communication, 2007; Viada *et al.*, 2008). Currently, there are 3,443 Federally regulated offshore platforms in the Gulf of Mexico dedicated to natural gas and oil production. Additional State-regulated platforms are located in State waters (Texas and Louisiana). There are currently no active leases off the Atlantic coast.

Oil spills also threaten loggerheads in the Northwest Atlantic. Two oil spills that occurred near loggerhead nesting beaches in Florida were observed to affect eggs, hatchlings, and nesting females. Approximately 350,000 gallons of fuel oil spilled in Tampa Bay in August 1993 and was carried onto nesting beaches in Pinellas County. Observed mortalities included 31 hatchlings and 176 oil-covered nests; an additional 2,177 eggs and hatchlings were either exposed to oil or disturbed by response activities (Florida Department of Environmental Protection *et al.*, 1997). Another spill near the beaches of Broward County in August 2000 involved approximately 15,000 gallons of oil and tar (National Oceanic and Atmospheric Administration and Florida Department of Environmental Protection, 2002). Models estimated that approximately 1,500 to 2,000 hatchlings and 0 to 1 adults were injured or killed. Annually about 1 percent of all sea turtle strandings along the U.S. east coast have been associated with oil, but higher rates of 3 to 6 percent have been observed in South Florida and Texas (Teas, 1994; Rabalais and Rabalais, 1980; Plotkin and Amos, 1990).

In addition to the destruction or degradation of habitat, periodic dredging of sediments from navigational channels can also result in incidental mortality of sea turtles. Direct injury or mortality of loggerheads by dredges has been well documented in the southeastern and mid-Atlantic United States (National Research Council, 1990). Solutions, including modification of dredges and time/area closures, have been successfully implemented to reduce mortalities and injuries in the United States (NMFS, 1991, 1995, 1997; Nelson and Shafer, 1996).

The entrainment and entrapment of loggerheads in saltwater cooling intake systems of coastal power plants has been documented in New Jersey, North Carolina, Florida, and Texas (Eggers, 1989; National Research Council, 1990; Carolina Power and Light Company, 2003; FPL and Quantum Resources, Inc., 2005; Progress Energy Florida, Inc., 2003). Average annual incidental capture rates for most coastal plants from which captures have been reported amount to several turtles per plant per year. One notable exception is the St. Lucie Nuclear Power Plant located on Hutchinson Island, Florida. During the first 15 years of operation (1977–1991), an average of 128 loggerheads per year was captured in the intake canal with a mortality rate of 6.4 percent. During 1991–2005, loggerhead captures more than doubled (average of 308 per year), while mortality rates decreased to 0.3 percent per year (FPL and Quantum Resources, Inc., 2005).

Although not a major source of mortality, cold stunning of loggerheads has been reported at several locations in the United States, including Cape Cod Bay, Massachusetts (Still *et al.*, 2002); Long Island Sound, New York (Meylan and Sadove, 1986; Morreale *et al.*, 1992); the Indian River system, Florida (Mendonca and Ehrhart, 1982; Witherington and Ehrhart, 1989); and Texas inshore waters (Hildebrand, 1982; Shaver, 1990). Cold stunning is a phenomenon during which turtles become incapacitated as a result of rapidly dropping water temperatures (Witherington and Ehrhart, 1989; Morreale *et al.*, 1992). As temperatures fall below 8–10° C, turtles may lose their ability to swim and dive, often floating to the surface. The rate of cooling that precipitates cold stunning appears to be the primary threat, rather than the water temperature itself (Milton and Lutz, 2003). Sea turtles that overwinter in inshore waters are most susceptible to cold stunning, because temperature changes are most rapid in shallow water (Witherington and Ehrhart, 1989).

Another natural factor that has the potential to affect recovery of loggerhead turtles is aperiodic hurricanes. In general, these events are episodic and, although they may affect loggerhead hatchling production, the results are generally localized and they rarely result in whole-scale losses over multiple nesting seasons. The negative effects of hurricanes on low-lying and/or developed shorelines may be longer-lasting and a greater threat overall.

Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the Northwest Atlantic. This includes beach erosion and loss from rising sea levels, repeated inundation of nests, skewed hatchling sex ratios from rising beach incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle.

In summary, we find that the Northwest Atlantic Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the North Atlantic Ocean, particularly bycatch mortality of loggerheads from gillnet, longline, and trawl fisheries throughout their range in the Atlantic Ocean and Gulf of Mexico, is a significant threat to the persistence of this DPS. In addition, boat strikes are

becoming more common and are likely also a significant threat to the persistence of this DPS.

Northeast Atlantic Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Terrestrial Zone

Destruction and modification of loggerhead nesting habitat in the Northeast Atlantic result from coastal development and construction, placement of erosion control structures and other barriers to nesting, beachfront lighting, vehicular and pedestrian traffic, sand extraction, beach erosion, and beach pollution (Formia *et al.*, 2003; Loureiro, 2008).

In the Northeast Atlantic, the only loggerhead nesting of note occurs in the Cape Verde Islands. The Cape Verde government's plans to develop Boa Vista Island, the location of the main nesting beaches, could increase the terrestrial threats to loggerheads (van Bogaert, 2006). Sand extraction on Santiago Island, Cape Verde, may be responsible for the apparent decrease in nesting there (Loureiro, 2008). Both sand extraction and beachfront lighting have been identified as serious threats to the continued existence of a nesting population on Santiago Island (Loureiro, 2008). Scattered and infrequent nesting occurs in western Africa, where much industrialization is located on the coast and population growth rates fluctuate between 0.8 percent (Cape Verde) and 3.8 percent (Côte D'Ivoire) (Abe *et al.*, 2004; Tayaa *et al.*, 2005). Land mines on some of the beaches of mainland Africa, within the reported historical range of nesting by loggerheads (*e.g.*, the Western Sahara region), would be detrimental to nesters and are an impediment to scientific surveys of the region (Tiwari *et al.*, 2001). Tiwari *et al.* (2001) noted a high level of human use of many of the beaches in Morocco—enough that any evidence of nesting activity would be quickly erased. Garbage litters many developed beaches (Formia *et al.*, 2003). Erosion is a problem along the long stretches of high energy ocean shoreline of Africa and is further exacerbated by sand mining and harbor building (Formia *et al.*, 2003); crumbling buildings claimed by the sea may present obstructions to nesting females.

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the Northeast Atlantic Ocean include fishing practices, marine pollution and climate change. Ecosystem alterations have occurred due to the tremendous human pressure on the environment in the region. Turtles, including loggerheads, usually are included in ecosystem models of the region (*see* Palomares and Pauly, 2004). In the Canary Current Large Marine Ecosystem (LME), the area is characterized by the Global International Waters Assessment as severely impacted in the area of modification or loss of ecosystems or ecotones and health impacts, but these impacts are decreasing (*http://www.lme.noaa.gov*). The Celtic-Biscay Shelf LME is affected by alterations to the seabed, agriculture, and sewage (Valdés and Lavin, 2002). The Gulf of Guinea has been characterized as severely impacted in the area of solid wastes by the Global International Waters Assessment; this and other pollution indicators are increasing (*http://www.lme.noaa.gov*). Marine pollution, such as oil and debris, has been shown to negatively impact loggerheads and represent a degradation of the habitat (Orós *et al.*, 2005, 2009; Calabuig Miranda and Liria Loza, 2007). Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and/or distribution.

Additionally, fishing is a major source of ecosystem alteration of the neritic and oceanic habitats of loggerhead turtles in the region. Fishing effort off the western African coast is increasing and record low biomass has been recorded for exploited resources, representing a 13X decline in biomass since 1960 (*see* Palomares and Pauly, 2004). Throughout the North Atlantic, fishery landings fell by 90 percent during the 20th century, foreboding a trophic cascade and a change in food-web competition (Pauly *et al.,* 1998; Christensen *et al.,* 2003). For a description of the exploited marine resources in the region, *see* Lamboeuf (1997). The Celtic-Biscay Shelf LME, the Iberian Coastal Ecosystem LME, the Canary Current LME, and the Guinea Current LME all are severely overfished, and effort now is turning to a focus on pelagic fisheries, whereas historically there were demersal fisheries. The impacts continue to increase in the Guinea Current LME despite efforts throughout the region to reduce fishing pressure (*http://www.lme.noaa.gov*).

The threats to bottom habitat for loggerheads include modification of the habitat through bottom trawling. Trawling occurs off the European coast and the area off Northwest Africa is one of the most intensively trawled areas in the world (Zeeberg *et al.,* 2006). Trawling has been banned in the Azores, Madeira, and Canary Islands to protect cold-water corals (Lutter, 2005). Although illegal, trawling also occurs in the Cape Verde Islands (Lopez-Jurado *et al.,* 2003). The use of destructive fishing practices, such as explosives and toxic chemicals, has been reported in the Canary Current area, causing serious damage to both the resources and the habitat (Tayaa *et al.,* 2005).

In summary, we find that the Northeast Atlantic Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Within Factor A, we find that sand extraction and beachfront lighting on nesting beaches are significant threats to the persistence of this DPS. We also find that anthropogenic disruptions of natural ecological interactions as a result of fishing practices and marine pollution are likely a significant threat to the persistence of this DPS.

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

Deliberate hunting of loggerheads for their meat, shells, and eggs still exists and remains the most serious threat facing nesting turtles in the Northeast Atlantic. Historical records indicate turtles were harvested throughout Macaronesia (*see* Lopez-Jurado, 2007). Intensive exploitation has been cited for the extirpation of the loggerhead nesting colony in the Canary Islands (Lopez-Jurado, 2007), and heavy human predation on nesting and foraging animals occurred on Santiago Island, Cape Verde, the first in the Archipelago to be settled (Loureiro, 2008), as well as on Sal and Sao Vicente islands (Lopez-Jurado, 2007). Nesting loggerheads and eggs are still harvested at Boa Vista, Cape Verde (Cabrera *et al.,* 2000; Lopez-Jurado *et al.,* 2003). In 2007, over 1,100 (36 percent) of the nesting turtles were hunted, which is about 15 percent of the estimated adult female population (Marco *et al.,* in press). In 2008, the military protected one of the major nesting beaches on Boa Vista where in 2007 55 percent of the mortality had occurred; with the additional protection, only 17 percent of the turtles on that beach were slaughtered (Roder *et al.,* in press). On Sal Island, 11.5 percent of the emergences on unprotected beaches ended with mortality, whereas mortality was 3 percent of the emergences on protected beaches (Cozens *et al.,* in press). The slaughter of nesting turtles is a problem wherever turtles nest in the Cape Verde Islands and may approach 100 percent in some places (C. Roder, Turtle Foundation, Münsing, Germany,

personal communication, 2009; Cozens, in press). The meat and eggs are consumed locally as well as traded among the archipelago (C. Roder, Turtle Foundation, Münsing, Germany, personal communication, 2009). Hatchlings are collected on Sal Island, but this activity appears to be rare on other islands of the archipelago (J. Cozens, SOS Tartarugas, Santa Maria, Sal Island, Cape Verde, personal communication, 2009). Additionally, free divers target turtles for consumption of meat, often selectively taking large males (Lopez-Jurado *et al.,* 2003). Turtles are harvested along the African coast and, in some areas, are considered a significant source of food and income due to the poverty of many residents along the African coast (Formia *et al.,* 2003). Loggerhead carapaces are sold in markets in Morocco and Western Sahara (Fretey, 2001; Tiwari *et al.,* 2001; Benhardouze *et al.,* 2004).

In summary, overutilization for human consumption likely was a factor that contributed to the historic decline of this DPS. Current harvest of loggerhead turtles and eggs for human consumption in both Cape Verde and along the African coast, as well as the sale of loggerhead carapaces in markets in Africa, are a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the Northeast Atlantic Ocean. Spontaneous diseases documented in the Northeast Atlantic include pneumonia, hepatitis, meningitis, septicemic processes, and neoplasia (Orós *et al.,* 2005). Pneumonia could result from the aspiration of water from forced submergence in fishing gear. The authors also reported nephritis, esophagitis, nematode infestation, and eye lesions. Fibropapillomatosis does not appear to be an issue in the Northeast Atlantic.

Nest depredation by ghost crabs (*Ocypode cursor*) occurs in Cape Verde (Lopez-Jurado *et al.,* 2000). The ghost crabs feed on both eggs and hatchlings. Arvy *et al.* (2000) reported predation of loggerhead eggs in two nests in Mauritania by golden jackals (*Canis aureus*); a loggerhead turtle creating a third nest also had been killed, with meat and eggs eaten, but the predator was not identified.

Loggerheads in the Northeast Atlantic also may be impacted by harmful algal blooms, which have been reported infrequently in the Canary Islands and the Iberian Coastal LME (Ramos *et al.,* 2005; Akin-Oriola *et al.,* 2006; Amorim and Dale, 2006; Moita *et al.,* 2006; *http://www.lme.noaa.gov*).

In summary, although disease and predation are known to occur, quantitative data are not sufficient to assess the degree of impact of these threats on the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the Northeast Atlantic Ocean. The reader is directed to sections 5.1.4. and 5.2.7.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle 2002).

National Legislation and Protection

Ongoing directed lethal take of nesting females and eggs (Factor B), low hatching and emergence success (Factors A, B, and C), and mortality of juvenile and adult turtles from fishery bycatch (Factor E) that occurs throughout the Northeast Atlantic Ocean is substantial. Currently, conservation efforts to protect nesting females are growing, and a reduction in this source of mortality is likely to continue in the near future. Although national and international governmental and non-governmental entities in the Northeast Atlantic are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the lack of bycatch reduction in high seas fisheries operating within the range of this DPS, lack of bycatch reduction in coastal fisheries in Africa, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of Northeast Atlantic Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for harvest of turtles and eggs for human consumption (Factor B), fishery bycatch (Factor E), and sand extraction and beachfront lighting on nesting beaches (Factor A) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Incidental Bycatch in Fishing Gear

Loggerhead turtles strand throughout the Northeast Atlantic (Fretey, 2001; Tiwari *et al.,* 2001; Duguy *et al.,* 2004, 2005; Witt *et al.,* 2007), and there are indications that the turtles become entangled in nets and monofilament and swallow hooks in the region (Orós *et al.,* 2005; Calabuig Miranda and Liria Loza, 2007). On the European coasts, most stranded loggerheads are small (mean of less than 30 cm SCL), but a few are greater than 60 cm SCL (Witt *et al.,* 2007). Similarly, Tiwari *et al.* (2001) and Benhardouze *et al.* (2004) indicated that the animals they viewed in Morocco and Western Sahara were small juveniles and preliminary genetic analyses of stranded turtles indicate that they are of western Atlantic origin (M. Tiwari, NMFS, and A. Bolten, University of Florida, unpublished data), whereas Fretey (2001) reported that loggerheads captured and stranded in Mauritania were both juvenile and adult-sized animals.

Incidental capture of sea turtles in artisanal and commercial fisheries is a threat to the survival of loggerheads in the Northeast Atlantic. Sea turtles may be caught in a multitude of gears deployed in the region: Pelagic and demersal longlines, drift and set gillnets, bottom and mid-water trawling, weirs, haul and purse seines, pots and traps, cast nets, and hook and line gear (*see* Pascoe and Gréboval, 2003; Bayliff *et al.,* 2005; Tayaa *et al.,* 2005; Dossa *et al.,* 2007). Fishing effort off the western African coast has been increasing (*see* Palomares and Pauly, 2004). Impacts

continue to increase in the Guinea Current LME, but, in contrast, the impacts are reported to be decreasing in the Canary Current LME (*http://www.lme.noaa.gov*). Throughout the region, fish stocks are depleted and management authorities are striving to reduce the fishing pressure.

In the Northeast Atlantic, loggerheads, particularly the largest size classes in the oceanic environment (most of which are small juveniles), are captured in surface longline fisheries targeting swordfish (*Ziphias gladius*) and tuna (*Thunnus* spp.) (Ferreira *et al.,* 2001; Bolten, 2003). Bottom longlines in Madeira Island targeting black-scabbard (*Aphanopus carbo*) capture and kill small juvenile loggerhead turtles as the fishing depth does not allow hooked turtles to surface (Dellinger and Encarnaçâo, 2000; Delgado *et al.,* in press).

In United Kingdom and Irish waters, loggerhead bycatch is uncommon but has been noted in pelagic driftnet fisheries (Pierpoint, 2000; Rogan and Mackey, 2007). Loggerheads have not been captured in pelagic trawls, demersal trawls, or gillnets in United Kingdom and Irish waters (Pierpoint, 2000), but have been captured in nets off France (Duguy *et al.,* 2004, 2005).

International fleets of trawl fisheries operate in Mauritania and have been documented to capture sea turtles, including loggerheads (Zeeberg *et al.,* 2006). Despite being illegal, trawling occurs in the Cape Verde Islands and has the potential to capture and kill loggerhead turtles; one piece of abandoned trawl net washed ashore with eight live and two dead loggerheads (Lopez-Jurado *et al.,* 2003). Longlines, seines, and hook and line have been documented to capture loggerheads 35–73 cm SCL off the northwestern Moroccan coast (Benhardouze, 2004).

Other Manmade and Natural Impacts

Other anthropogenic impacts, such as boat strikes and ingestion or entanglement in marine debris, also apply to loggerheads in the Northeast Atlantic. Propeller and boat strike injuries have been documented in the Northeast Atlantic (Oros *et al.,* 2005; Calabuig Miranda and Liria Loza, 2007). Exposure to crude oil is also of concern. Loggerhead strandings in the Canary Islands have shown evidence of hydrocarbon exposure as well as ingestion of marine debris, such as plastic and monofilament (Oros *et al.,* 2005; Calabuig Miranda and Liria Loza, 2007), and in the Azores and elsewhere plastic debris is found both on the beaches and floating in the waters (Barrerios and Barcelos, 2001; Tiwari *et al.,* 2001). Pollution from heavy metals is a concern for the seas around the Iberian Peninsula (European Environmental Agency, 1998) and in the Guinea Current LME (Abe *et al.,* 2004). Bioaccumulation of metals in loggerheads has been measured in the Canary Islands and along the French Atlantic Coast (Caurant *et al.,* 1999; Torrent *et al.,* 2004). However, the consequences of long-term exposure to heavy metals are unknown (Torrent *et al.,* 2004).

Natural environmental events, such as climate change, could affect loggerheads in the Northeast Atlantic. Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the Northeast Atlantic, and the changes may be further exacerbated by the burning of fossil fuels and deforestation. These effects include flooding of nesting beaches, shifts in ocean currents, ecosystem shifts in prey distribution and abundance, and a shift in the sex ratio of the population if rookeries do not migrate concurrently (*e.g.,* northward in the case of global warming) or if nesting phenology does not change (*see* Doody *et al.,* 2006). Tropical and sub-tropical storms occasionally strike the area and could have a negative impact on nesting, although such an impact would be of limited duration.

In summary, we find that the Northeast Atlantic Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the Northeast Atlantic Ocean, particularly bycatch mortality of loggerheads from longline and trawl fisheries, is a significant threat to the persistence of this DPS.

Mediterranean Sea DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

In the Mediterranean, some areas known to host nesting activity in the past have been lost to turtles (*e.g.,* Malta) or severely degraded (*e.g.,* Israel) (Margaritoulis *et al.,* 2003). Destruction and modification of loggerhead nesting habitat in the Mediterranean result from coastal development and construction, placement of erosion control structures and other barriers to nesting, beachfront lighting, vehicular and pedestrian traffic, sand extraction, beach erosion, beach sand placement, beach pollution, removal of native vegetation, and planting of non-native vegetation (Baldwin, 1992; Margaritoulis *et al.,* 2003). These activities may directly impact the nesting success of loggerheads and survivability of eggs and hatchlings. Nesting in the Mediterranean almost exclusively occurs in the Eastern basin, with the main concentrations found in Cyprus, Greece, Turkey, and Libya (Margaritoulis *et al.,* 2003; Laurent *et al.,* 1999); therefore, the following threats to the nesting habitat are concentrated in these areas.

The Mediterranean experiences a large influx of tourists during the summer months, coinciding with the nesting season. Margaritoulis *et al.* (2003) stated that extensive urbanization of the coastline, largely a result of tourism and recreation, is likely the most serious threat to loggerhead nesting areas. The large numbers of tourists that use Mediterranean beaches result in an increase in umbrellas, chairs, garbage, and towels, as well as related hotels, restaurants, and stationary (*e.g.,* street lights, hotels) and moving (*e.g.,* cars) lighting, all which can impact sea turtle nesting success (Demetropoulos, 2000). Further, the eastern Mediterranean is exposed to high levels of pollution and marine debris, in particular the nesting beaches of Cyprus, Turkey, and Egypt (Camiñas, 2004).

Construction and infrastructure development also have the potential to alter nesting beaches and subsequently impact nesting success. The construction of new buildings on or near nesting beaches has been a problem in Greece and Turkey (Camiñas, 2004). The construction of a jetty and waterworks around Mersin, Turkey, has contributed significantly to the continuous loss of adjacent beach (Camiñas, 2004).

Beach erosion and sand extraction also pose a problem for sea turtle nesting sites. The noted decline of the nesting population at Rethymno, Island of Crete, Greece, is partly attributed to beach erosion caused by construction on the high beach and at sea (*e.g.,* groins) (Margaritoulis *et al.,* 2009). A 2001 survey of Lebanese nesting beaches found severe erosion on beaches where previous nesting had been reported, and in some cases the beaches had disappeared completely (Venizelos *et al.,* 2005). Definitive causes of this erosion were found to be sand extraction, offshore sand dredging, and sediment removal from river beds for construction and military purposes. Beach erosion also may occur from natural changes, with the same deleterious effects to loggerhead nesting.

On Patara, Turkey, beach erosion and subsequent inundation by waves and shifting sand dunes are responsible for about half of all loggerhead nest losses (Camiñas, 2004). Erosion can further be exacerbated when native dune vegetation, which enhances beach stability and acts as an integral buffer zone between land and sea, is degraded or destroyed. This in turn often leaves insufficient nesting opportunities above the high tide line, and nests may be washed out. In contrast, the planting or invasion of less stabilizing, non-native plants can lead to increased erosion and degradation of suitable nesting habitat. Finally, sand extraction has been a serious problem on Mediterranean nesting beaches, especially in Turkey (Türkozan and Baran, 1996), Cyprus (Godley *et al.,* 1996; Demetropoulos and Hadjichristophorou, 1989), and Israel (Levy, 2003).

While the most obvious effect of nesting beach destruction and modification may be to the existence of the actual nests, hatchlings are also threatened by habitat alteration. In the Mediterranean, disorientation of hatchlings due to artificial lighting has been recorded mainly in Greece (Rees, 2005; Margaritoulis *et al.,* 2007, 2009), Turkey (Türkozan and Baran, 1996), and Lebanon (Newbury *et al.,* 2002). Additionally, vehicle traffic on nesting beaches may disrupt the natural beach environment and contribute to erosion, especially during high tides or on narrow beaches where driving is concentrated on the high beach and foredune. On Zakynthos Island in Greece, Venizelos *et al.* (2006) reported that vehicles drove along the beach and sand dunes throughout the tourist season on East Laganas and Kalamaki beaches, leaving deep ruts in the sand, disturbing sea turtles trying to nest, and impacting hatchlings trying to reach the sea.

Neritic/Oceanic Zones

Threats to habitat in the loggerhead neritic and oceanic zones in the Mediterranean Sea include fishing practices, channel dredging, sand extraction, marine pollution, and climate change. Trawling occurs throughout the Mediterranean, most notably in areas off Albania, Algeria, Croatia, Egypt, France, Greece, Italy, Libya, Morocco, Slovenia, Spain, Tunisia, and Turkey (Gerosa and Casale, 1999; Camiñas, 2004; Casale, 2008). This fishing practice has the potential to destroy bottom habitat in these areas. Fishing methods affect neritic zones by not only impacting bottom habitat and incidentally capturing loggerheads but also depleting fish populations, and thus altering ecosystem dynamics. For example, depleted fish stocks in Zakynthos, Greece, likely contributed to predation of adult loggerheads by monk seals (*Monachus monachus*) (Margaritoulis *et al.,* 1996). Further, by depleting fish populations, the trophic dynamics will be altered, which may then in turn affect the ability of loggerheads to find prey resources. If loggerheads are not able to forage on the necessary prey resources, their long-term survivability may be impacted. Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and/or distribution.

Marine pollution, including direct contamination and structural habitat degradation, can affect loggerhead neritic and oceanic habitat. As the Mediterranean is an enclosed sea, organic and inorganic wastes, toxic effluents, and other pollutants rapidly affect the ecosystem (Camiñas, 2004). The Mediterranean has been declared a "special area" by the MARPOL Convention, in which deliberate petroleum discharges from vessels are banned, but numerous repeated offenses are still thought to occur (Pavlakis *et al.,* 1996). Some estimates of the amount of oil released into the region are as high as 1,200,000 metric tons (Alpers, 1993). Direct oil spill events also occur as happened in Lebanon in 2006 when 10,000 to 15,000 tons of heavy fuel oil spilled into the eastern Mediterranean (United Nations Environment Programme, 2007).

Destruction and modification of loggerhead habitat also may occur as a result of other activities. For example, underwater explosives have been identified as a key threat to loggerhead habitat in internesting areas in the Mediterranean (Margaritoulis *et al.,* 2003). Further, the Mediterranean is a site of intense tourist activity, and corresponding boat anchoring also may impact loggerhead habitat in the neritic environment.

In summary, we find that the Mediterranean Sea DPS of the loggerhead sea turtle is negatively affected by ongoing changes in both its terrestrial and marine habitats as a result of land and water use practices as considered above in Factor A. Within Factor A, we find that coastal development, placement of barriers to nesting, beachfront lighting, and erosion resulting from sand extraction, offshore sand dredging, and sediment removal from river beds are significant threats to the persistence of this DPS.

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

Mediterranean turtle populations were subject to severe exploitation until the mid-1960s (Margaritoulis *et al.,* 2003). Deliberate hunting of loggerheads for their meat, shells, and eggs is reduced from previous exploitation levels, but still exists. For example, Nada and Casale (2008) found that egg collection (for individual consumption) still occurs in Egypt. In some areas of the Mediterranean, like on the Greek Island of Zakynthos, nesting beaches are protected (Panagopoulou *et al.,* 2008), so egg harvest by humans in those areas is likely negligible.

Exploitation of juveniles and adults still occurs in some Mediterranean areas. In Tunisia, clandestine trade for local consumption is still recorded, despite prohibition of the sale of turtles in fish markets in 1989 (Laurent *et al.,* 1996). In Egypt, turtles are sold in fish markets despite prohibitive laws; of 71 turtles observed at fish markets in 1995 and 1996, 68 percent were loggerheads (Laurent *et al.,* 1996). Nada (2001) reported 135 turtles (of which 85 percent were loggerheads) slaughtered at the fish market of Alexandria in 6 months (December 1998–May 1999). Based on observed sea turtle slaughters in 1995 and 1996, Laurent *et al.* (1996) estimated that several thousand sea turtles were probably killed each year in Egypt. More recently, a study found that the open selling of sea turtles in Egypt generally has been curtailed due to enforcement efforts, but a high level of intentional killing for the black market or for direct personal consumption still exists (Nada and Casale, 2008). Given the high numbers of turtles caught in this area, several hundred turtles are currently estimated to be slaughtered each year in Egypt (Nada and Casale, 2008). This estimate likely includes both juvenile and adult loggerheads, as Egyptian fish markets have been documented selling different sized sea turtles. While the mean sea turtle size was 65.7 cm CCL (range 38–86.3 cm CCL; n=48), 37.5 percent of observed loggerhead samples were greater than 70 cm CCL (Laurent *et al.,* 1996).

In summary, overutilization for commercial purposes likely was a factor that contributed to the historic declines of this DPS. Current illegal harvest of loggerheads in Egypt for human consumption continues as a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads

found in the Mediterranean. Endoparasites in loggerheads have been studied in the western Mediterranean. While the composition of the gastrointestinal community of sea turtles is expected to include digeneans, nematodes, and aspidogastreans, loggerheads in the Mediterranean were found to harbor only four digenean species typical of marine turtles (Aznar *et al.,* 1998). There have been no records of fibropapillomatosis in the Mediterranean. While there is the potential for disease in this area, information on the prevalence of such disease is lacking.

In the Mediterranean Sea, loggerhead hatchlings and eggs are subject to depredation by wild canids (*i.e.,* foxes (*Vulpes vulpes*), golden jackals (*Canis aureus*)), feral/domestic dogs, and ghost crabs (*Ocypode cursor*) (Margaritoulis *et al.,* 2003). Predators have caused the loss of 48.4 percent of loggerhead clutches at Kyparissia Bay, Greece (Margaritoulis, 1988), 70–80 percent at Dalyan Beach, Turkey (Erk'akan, 1993), 36 percent (includes green turtle clutches) in Cyprus (Broderick and Godley, 1996), and 44.8 percent in Libya (Laurent *et al.,* 1995). A survey of the Syrian coast in 1999 found 100 percent nest predation, mostly due to stray dogs and humans (Venizelos *et al.,* 2005). Loggerhead eggs are also depredated by insect larvae in Cyprus (McGowan *et al.,* 2001), Turkey (Özdemir *et al.,* 2004), and Greece (Lazou and Rees, 2006). Ghost crabs have been reported preying on loggerhead hatchlings in northern Cyprus and Egypt, suggesting 66 percent of emerging hatchlings succumb to this mortality source (Simms *et al.,* 2002). Predation also has been influenced by anthropogenic sources. On Zakynthos, Greece, a landfill site next to loggerhead nesting beaches has resulted in an artificially high level of seagulls (*Larus* spp.), which results in increased predation pressure on hatchlings (Panagopoulou *et al.,* 2008). Planting of non-native plants also can have a detrimental effect on nests in the form of roots invading eggs (*e.g.,* tamarisk tree (*Tamarix* spp.) roots invading eggs in Zakynthos, Greece) (Margaritoulis *et al.,* 2007).

Predation on adult and juvenile loggerheads has also been documented in the Mediterranean. Predation of nesting loggerheads by golden jackals has been recorded in Turkey (Peters *et al.,* 1994). During a 1995 survey of loggerhead nesting in Libya, two nesting females were found killed by carnivores, probably jackals (Laurent *et al.,* 1997). Off the sea turtle nesting beach of Zakynthos, Greece, adult loggerheads were found being predated upon by Mediterranean monk seals (*Monachus monachus*). Of the eight predated turtles observed or reported, 62.5 percent were adult males (Margaritoulis *et al.,* 1996). Further, stomach contents were examined from 24 Mediterranean white sharks (*Carcharodon carcharias*), and 17 percent contained remains of marine turtles, including two loggerheads, one green, and one unidentifiable turtle (Fergusson *et al.,* 2000). One of the loggerhead turtles ingested was a juvenile with a carapace length of approximately 60 cm (length not reported as either SCL or CCL). Fergusson *et al.* (2000) report that white shark interactions with sea turtles are likely rare east of the Ionian Sea, and while the impact of shark predation on turtle populations is unknown, it is probably small compared to other sources of mortality.

The Mediterranean is a low-productivity body of water, with high water clarity as a result. However, harmful algal blooms do occur in this area (*e.g.,* off Algeria in 2002), and the problem is particularly acute in enclosed ocean basins such as the Mediterranean. In the northern Adriatic Sea, fish kills have occurred as a result of noxious phytoplankton blooms and anoxic conditions (Mediterranean Sea LME). While fish may be more susceptible to these harmful algal blooms, loggerheads in the Mediterranean also may be impacted by such noxious or toxic phytoplankton to some extent.

In summary, nest and hatchling predation likely was a factor that contributed to the historic decline of this DPS. Current nest and hatchling predation on several Mediterranean nesting beaches is believed to be a significant threat to the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the Mediterranean Sea. The reader is directed to sections 5.1.4. and 5.2.8.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law and Policy: International Instruments and Marine Turtle Conservation (Hykle 2002).

National Legislation and Protection

Fishery bycatch that occurs throughout the Mediterranean Sea (*see* Factor E), as well as anthropogenic threats to nesting beaches (Factor A) and eggs/hatchlings (Factors A, B, C, and E), is substantial. Although conservation efforts to protect some nesting beaches are underway, more widespread and consistent protection is needed. Although national and international governmental and non-governmental entities in the Mediterranean Sea are currently working toward reducing loggerhead bycatch, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the lack of bycatch reduction in commercial and artisanal fisheries operating within the range of this DPS, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of Mediterranean Sea loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for fishery bycatch (Factor E) and impacts to nesting beach habitat (Factor A) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Other anthropogenic and natural factors affecting loggerhead survival include incidental bycatch in fisheries, vessel collisions, marine pollution, climate change, and cyclonic storm events. Fishing practices alone have been estimated to result in over 150,000 sea turtle captures per year, with

approximately 50,000 mortalities (Casale, 2008).

The only estimation of loggerhead survival probabilities in the Mediterranean was calculated by using capture-mark-recapture techniques from 1981–2003 (Casale *et al.,* 2007c). Of the 3,254 loggerheads tagged, 134 were recaptured at different sites throughout the Mediterranean. Most recaptured animals were juveniles (mean 54.4 cm CCL; range 25–88 cm CCL), but the study did not delineate between juvenile life stages. This research estimated a loggerhead annual survival probability of 0.73(95 percent confidence interval; 0.67–0.78), recognizing that there are methodological limitations of the technique used. Nonetheless, Casale *et al.* (2007a) stated that assuming a natural survivorship no higher than 0.95 and a tag loss rate of 0.1, a range of 0.1–0.2 appears reasonable for the additional human induced mortality (from all sources).

Incidental Bycatch in Fishing Gear

Incidental capture of sea turtles in artisanal and commercial fisheries is a significant threat to the survivability of loggerheads in the Mediterranean. Sea turtles may be caught in pelagic and demersal longlines, drift gillnets, set gillnets and trammel nets, bottom and mid-water trawls, seines, dredges, traps/pots, and hook and line gear. In a 2004 FAO Fisheries Report, Camiñas (2004) stated that the main fisheries affecting sea turtles in the Mediterranean Sea (at that time) were Spanish and Italian longline, North Adriatic Italian, Tunisian, and Turkish trawl, and Moroccan and Italian driftnet. Available information on sea turtle bycatch by gear type is discussed below. There is growing evidence that artisanal/small vessel fisheries (set gillnet, bottom longline, and part of the pelagic longline fishery) may be responsible for a comparable or higher number of captures with higher mortality rates than the commercial/large vessel fisheries (Casale, 2008) as previously suggested by indirect clues (Casale *et al.,* 2005a).

Mediterranean fish landings have increased steadily since the 1950s, but the FAO 10-year capture trend from 1990–1999 shows stable landings (Mediterranean LME, *http://www.lme.noaa.gov*). However, stable fish landings may result from stable fishing effort at the same catch rates, or higher fishing effort at lower catch rates. As fish stocks in the Mediterranean are being depleted (P. Casale, MTSG–IUCN Italy, personal communication, 2009), fishing effort in some areas may be increasing to catch the available fish. This trend has not yet been verified throughout the Mediterranean, but fishing pressures may be increasing even though landings appear stable.

Longline Fisheries

In the Mediterranean, pelagic longline fisheries targeting swordfish (*Ziphias gladius*) and albacore (*Thunnus alalunga*) may be the primary source of loggerhead bycatch. It appears that most of the incidental captures occur in the western and central portions of the area (Demetropoulos and Hadjichristophorou, 1995). The most severe bycatch in the Mediterranean occurs around the Balearic Islands where 1,950–35,000 juveniles are caught annually in the surface longline fishery (Mayol and Castelló Mas, 1983; Camiñas, 1988, 1997; Aguilar *et al.,* 1995). Specifically, the following regions have reported annual estimates of total turtle bycatch from pelagic longlines: Spain—17,000 to 35,000 turtles (Aguilar *et al.,* 1995; Camiñas *et al.,* 2003); Italy (Ionian Sea)—1,084 to 4,447 turtles (Deflorio *et al.,* 2005); Morocco—3,000 turtles (Laurent, 1990); Greece—280 to 3,310 turtles (Panou *et al.,* 1999; Kapantagakis and Lioudakis, 2006); Italy (Lampedusa)—2,100 turtles (Casale *et al.,* 2007a); Malta—1,500 to 2,500 turtles (Gramentz, 1989); South Tunisia (Gulf of Gabès)—486 turtles (Jribi *et al.,* 2008); and Algeria—300 turtles (Laurent, 1990).

For the entire Mediterranean pelagic longline fishery, an extrapolation resulted in a bycatch estimate of 60,000 to 80,000 loggerheads in 2000 (Lewison *et al.,* 2004). Further, a more recent paper used the best available information to estimate that Spain, Morocco, and Italy have the highest level of sea turtle bycatch, with over 10,000 turtle captures per year for each country, and Greece, Malta, Libya, and Tunisia each catch 1,000 to 3,000 turtles per year (Casale, 2008). Available data suggest the annual number of loggerhead sea turtle captures by all Mediterranean pelagic longline fisheries may be greater than 50,000 (Casale, 2008). Note that these are not necessarily individual turtles, as the same sea turtle can be captured more than once.

Mortality estimates in the pelagic longline fishery at gear retrieval appear to be lower than in some other types of gear (*e.g.,* set gillnet). Although limited to observations of direct mortality at gear retrieval, Carreras *et al.* (2004) found mortality to be low (0–7.7 percent) in the longline fishery off the Balearic Islands, and Jribi *et al.* (2008) reported 0 percent direct mortality in the southern Tunisia surface longline fishery. These estimates are consistent with those found in other areas; direct mortality was estimated at 4.3 percent in Greece (n=23), 0 percent in Italy (n=214), and 2.6 percent in Spain (n=676) (Laurent *et al.,* 2001). However, considering injured turtles and those released with hooks, the potential for mortality is likely much higher. Based upon observations of hooked loggerhead turtles in captivity, Aguilar *et al.* (1995) estimated 20–30 percent of animals caught in longline gear may eventually die. More recently, Casale *et al.* (2008b) found, given variations in hook position affecting survivability, the mortality rate of turtles caught by pelagic longlines may be higher than 30 percent, which is greater than previously thought (17–42 percent; Lewison *et al.,* 2004). Considering direct and post-release mortality, Casale (2008) used a conservative approach to arrive at 40 percent for the average mortality from Mediterranean pelagic longlines. The result is an estimated 20,000 turtles killed per year by pelagic longlines (Casale, 2008).

In general, most of the turtles captured in the Mediterranean surface longline fisheries are juvenile animals (Aguilar *et al.,* 1995; Panou *et al.,* 1999; Camiñas *et al.,* 2003; Casale *et al.,* 2007a; Jribi *et al.,* 2008), but some adult loggerhead bycatch is also reported. Considering data from many Mediterranean areas and research studies, the average size of turtles caught by pelagic longlines was 48.9 cm CCL (range 20.5–79.2 cm CCL; n=1868) (Casale, 2008). Specifically, in the Spanish surface longline fishery, 13 percent of estimated carapace sizes (n=455) ranged from 75.36 to 107 cm CCL, considered to be adult animals (Camiñas *et al.,* 2003), and in the Ionian Sea, 15 percent of a total 157 loggerhead turtles captured in swordfish longlines were adult animals (estimated size at greater than or equal to 75 cm) (Panou *et al.,* 1999).

Bottom longlines are also fished in the Mediterranean, but specific capture rates for loggerheads are largely unknown for many areas. The countries with the highest number of documented captures (in the thousands per year) are Tunisia, Libya, Greece, Turkey, Egypt, Morocco, and Italy (Casale, 2008). Available data suggest the annual number of loggerhead sea turtle captures (not necessarily individual turtles) by all Mediterranean demersal longliners may be greater than 35,000 (Casale, 2008). Given available information and using a conservative approach, mortality from bottom longlines may be at least equal to pelagic longline mortality (40

percent; Casale, 2008). The result is an estimated 14,000 turtles killed per year in Mediterranean bottom longlines (Casale, 2008). It is likely that these animals represent mostly juvenile loggerheads, Casale (2008) reported an average turtle size of 51.8 cm CCL (n=35) in bottom longlines based on available data throughout the Mediterranean.

Artisanal longline fisheries also have the potential to take sea turtles. A survey of 54 small boat (4–10 meter length) artisanal fishermen in Cyprus and Turkey resulted in an estimated minimum bycatch of over 2,000 turtles per year, with an estimated 10 percent mortality rate (Godley *et al.,* 1998a). These small boats fished with a combination of longlines and trammel/gillnets. However, note that it is likely that a proportion (perhaps a large proportion) of the turtle bycatch estimated in this study are green turtles.

Set Net (Gillnet) Fisheries

As in other areas, sea turtles have the potential to interact with set nets (gillnets or trammel nets) in the Mediterranean. Mediterranean set nets refer to gillnets (a single layer of net) and trammel nets, which consist of three layers of net with different mesh size. Casale (2008) estimated that the countries with the highest number of loggerhead captures (in the thousands per year) are Tunisia, Libya, Greece, Turkey, Cyprus, and Croatia. Italy, Morocco, Egypt, and France likely have high capture rates as well. Available information suggests the annual number of loggerhead captures by Mediterranean set nets may be greater than 30,000 (Casale, 2008).

Due to the nature of the gear and fishing practices (*e.g.,* relatively long soak times), incidental capture in gillnets is among the highest source of direct sea turtle mortality. An evaluation of turtles tagged then recaptured in gillnets along the Italian coast found 14 of 19 loggerheads (73.7 percent) to be dead (Argano *et al.,* 1992). Gillnets off France were observed to capture six loggerheads with a 50 percent mortality rate (Laurent, 1991). Six loggerheads were recovered in gillnets off Croatia between 1993 and 1996; 83 percent were found dead (Lazar *et al.,* 2000). Off the Balearic Islands, 196 sea turtles were estimated to be captured in lobster trammel nets in 2001, with a CPUE of 0.17 turtles per vessel (Carreras *et al.,* 2004). Mortality estimates for this artisanal lobster trammel net fishery ranged from 78 to 100 percent. Given this mortality rate and the number of turtles reported in lobster trammel nets, Carreras *et al.* (2004) estimate that a few thousand loggerhead turtles are killed annually by lobster trammel nets in the whole western Mediterranean. Considering data throughout the entire Mediterranean, as well as a conservative approach, Casale (2008) considered mortality by set nets to be 60 percent, with a resulting estimate of 16,000 turtles killed per year. Most of these animals are likely juveniles; Casale (2008) evaluated available set net catch data throughout the Mediterranean and found an average size of 45.4 cm CCL (n=74).

As noted above, artisanal set net fisheries also may capture numerous sea turtles, as observed off Cyprus and Turkey (Godley *et al.,* 1998a).

Driftnet Fisheries

Historically, driftnet fishing in the Mediterranean caught large numbers of sea turtles. An estimated 16,000 turtles were captured annually in the Ionian Sea driftnet fishery in the 1980s (De Metrio and Megalofonou, 1988). The United Nations established a worldwide moratorium on driftnet fishing effective in 1992, but unregulated driftnetting continued to occur in the Mediterranean. For instance, a bycatch estimate of 236 loggerhead turtles was developed for the Spanish swordfish driftnet fishery in 1994 (Silvani *et al.,* 1999). While the Spanish fleet curtailed activity in 1994, the Moroccan, Turkish, French, and Italian driftnet fleets continued to operate. Tudela *et al.* (2005) presented bycatch rates for driftnet fisheries in the Alboran Sea and off Italy. The Moroccan Alboran Sea driftnet fleet bycatch rate ranged from 0.21 to 0.78 loggerheads per haul, whereas the Italian driftnet fleet had a lower bycatch rate of 0.046 to 0.057 loggerheads per haul (Di Natale, 1995; Caminas, 1997; Silvani *et al.,* 1999). The use of driftnets in the Mediterranean continues to be illegal: the General Fisheries Commission for the Mediterranean prohibited driftnet fishing in 1997; a total ban on driftnet fishing by the European Union fleet in the Mediterranean went into effect in 2002; and the International Commission for the Conservation of Atlantic Tunas (ICCAT) banned driftnets in 2003. Nevertheless, there are an estimated 600 illegal driftnet vessels operating in the Mediterranean, including fleets based in Algeria, France, Italy, Morocco, and Turkey (Environmental Justice Foundation, 2007). In particular, the Moroccan fleet, operating in the Alboran Sea and Straits of Gibraltar, comprises the bulk of Mediterranean driftnetting, and has been found responsible for high bycatch, including loggerhead turtles (Environmental Justice Foundation, 2007; Aksissou *et al.,* in press). Driftnet fishing in the Mediterranean, and accompanying threats to loggerhead turtles, continues to occur.

Trawl Fisheries

Sea turtles are known to be incidentally captured in trawls in Albania, Algeria, Croatia, Egypt, France, Greece, Italy, Libya, Morocco, Slovenia, Spain, Tunisia, and Turkey (Gerosa and Casale, 1999; Camiñas, 2004; Casale, 2008). Laurent *et al.* (1996) estimated that approximately 10,000 to 15,000 sea turtles (most of which are loggerheads) are captured by bottom trawling in the entire Mediterranean. More recently, Casale (2008) compiled available trawl bycatch data throughout the Mediterranean and reported that Italy and Tunisia have the highest level of sea turtle bycatch, potentially over 20,000 captures per year combined, and Croatia, Greece, Turkey, Egypt, and Libya each catch more than 2,000 turtles per year. Further, Spain and Albania may each capture a few hundred sea turtles per year (Casale, 2008). Available data suggest the annual number of sea turtle captures by all Mediterranean trawlers may be greater than 40,000 (Casale, 2008). Note that these are capture events and not necessarily individual turtles.

Although juveniles are incidentally captured in trawl gear in many areas of the Mediterranean (Casale *et al.,* 2004, 2007a; Jribi *et al.,* 2007), adult turtles are also found. In Egypt, 25 percent of loggerheads captured in bottom trawl gear (n=16) were greater than or equal to 70 cm CCL, and in Tunisia, 26.2 percent (n=62) were of this larger size class (Laurent *et al.,* 1996). Off Lampedusa Island, Italy, the average size of turtles caught by bottom trawlers was 51.8 cm CCL (range 22–87 cm CCL; n=368), and approximately 10 percent of the animals measured greater than 75 cm CCL (Casale *et al.,* 2007a). For all areas of the Mediterranean, Casale (2008) reported that medium to large turtles are generally caught by bottom trawl gear (mean 53.9 cm CCL; range 22–87 cm CCL; n=648).

While there is a notable interaction rate in the Mediterranean, it appears that the mortality associated with trawling is relatively low. Incidents of mortality have ranged from 3.3 percent (n=60) in Tunisia (Jribi *et al.,* 2007) and 3.3 percent (n=92) in France (Laurent, 1991) to 9.4 percent (n=32) in Italy (Casale *et al.,* 2004). Casale *et al.* (2004) found that mortality would be higher if all comatose turtles were assumed to die. It also should be noted that the mortality rate in trawls depends on the

duration of the haul, with longer haul durations resulting in higher mortality rates (Henwood and Stuntz, 1987; Sasso and Epperly, 2006). Jribi *et al.* (2007) stated that the low recorded mortality in the Gulf of Gabès is likely due to the short haul durations in this area. Based on available information from multiple areas of the Mediterranean, and assuming that comatose animals die if released in that condition, the overall average mortality rate for bottom trawlers was estimated to be 20 percent (Casale, 2008). This results in at least 7,400 turtles killed per year by bottom trawlers in all of the Mediterranean, but the number is likely more than 10,000 (Casale, 2008).

Mid-water trawling may have less total impact on sea turtles found in the Mediterranean than some other gear types, but interactions still occur. Casale *et al.* (2004) found that while no turtles were caught on observed mid-water trawl trips in the North Adriatic Sea, vessel captains reported 13 sea turtles captured from April to September. Considering total fishing effort, these reports resulted in a minimum total catch estimate of 161 turtles/year in the Italian mid-water trawl fishery. Off Turkey, 71 loggerheads were captured in mid-water trawls from 1995–1996, while 43 loggerheads were incidentally taken in bottom trawls (Oruç, 2001). In this same study, of a total 320 turtles captured in mid-water trawls (loggerheads and greens combined), 95 percent were captured alive and apparently healthy. While the total catch numbers throughout the Mediterranean have not been estimated, mid-water trawl fisheries do present a threat to loggerhead sea turtles.

Other Gear Types

Seine, dredge, trap/pot, and hook and line fisheries operate in Mediterranean waters and may affect loggerhead turtles, although incidental captures in these gear types are largely unknown (Camiñas, 2004). Artisanal fisheries using a variety of gear types also have the potential for sea turtle takes, but the effects of most artisanal gear types on sea turtles have not been estimated.

Other Manmade and Natural Impacts

Other anthropogenic threats, such as interactions with recreational and commercial vessels, marine pollution, and intentional killing, also impact loggerheads found in the Mediterranean. Propeller and collision injuries from boats and ships are becoming more common in sea turtles, although it is unclear as to whether the events are increasing or just the reporting of the injuries. Speedboat impacts are of particular concern in areas of intense tourist activity, such as Greece and Turkey. Losses of nesting females from vessel collisions have been documented in Zakynthos and Crete in Greece (Camiñas, 2004). In the Gulf of Naples, 28.1 percent of loggerheads recovered from 1993–1996 had injuries attributed to boat strikes (Bentivegna and Paglialonga, 1998). Along the Greece coastline from 1997–1999, boat strikes were reported as a seasonal phenomenon in stranded turtles (Kopsida *et al.,* 2002), but numbers were not presented.

Direct or indirect disposal of anthropogenic debris introduces potentially lethal materials into loggerhead foraging habitats. Unattended or discarded nets, floating plastics and bags, and tar balls are of particular concern (Camiñas, 2004; Margaritoulis, 2007). Monofilament netting appears to be the most dangerous waste produced by the fishing industry (Camiñas, 2004). In the Mediterranean, 20 of 99 loggerhead turtles examined from Maltese fisheries were found contaminated with plastic or metal litter and hydrocarbons, with crude oil being the most common pollutant (Gramentz, 1988). Of 54 juvenile loggerhead turtles incidentally caught by fisheries in Spanish Mediterranean waters, 79.6 percent had debris in their digestive tracts (Tomas *et al.,* 2002). In this study, plastics were the most frequent type of marine debris observed (75.9 percent), followed by tar (25.9 percent). However, an examination of stranded sea turtles in Northern Cyprus and Turkey found that only 3 of 98 animals were affected by marine debris (Godley *et al.,* 1998b).

Pollutant waste in the marine environment may impact loggerheads, likely more than other sea turtle species. Omnivorous loggerheads stranded in Cyprus, Greece, and Scotland had the highest organochlorine contaminant concentrations, as compared to green and leatherback turtles (Mckenzie *et al.,* 1999). In northern Cyprus, Godley *et al.* (1999) found heavy metal concentrations (mercury, cadmium, and lead) to be higher in loggerheads than green turtles. Even so, concentrations of contaminants from sea turtles in Mediterranean waters were found to be comparable to other areas, generally with levels lower than concentrations shown to cause deleterious effects in other species (Godley *et al.,* 1999; Mckenzie *et al.,* 1999). However, lead concentrations in some Mediterranean loggerhead hatchlings were at levels known to cause toxic effects in other vertebrate groups (Godley *et al.,* 1999).

As in other areas of the world, intentional killing or injuring of sea turtles has been reported to occur in the Mediterranean. Of 524 strandings in Greece, it appeared that 23 percent had been intentionally killed or injured (Kopsida *et al.,* 2002). While some turtles incidentally captured are used for consumption, it has been reported that some fishermen kill the sea turtles they catch for a variety of other reasons, including non-commercial use, hostility, prejudice, recovery of hooks, and ignorance (Laurent *et al.,* 1996; Godley *et al.,* 1998a; Gerosa and Casale, 1999; Casale, 2008).

Natural environmental events also may affect loggerheads in the Mediterranean. Cyclonic storms that closely resemble tropical cyclones in satellite images occasionally form over the Mediterranean Sea (Emanuel, 2005). While hurricanes typically do not occur in the Mediterranean, researchers have suggested that climate change could trigger hurricane development in this area in the future (Gaertner *et al.,* 2007). Any significant storm event that may develop could disrupt loggerhead nesting activity and hatchling production, but the results are generally localized and rarely result in whole-scale losses over multiple nesting seasons.

Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the Mediterranean. Over the long term, Mediterranean turtle populations could be threatened by the alteration of thermal sand characteristics (from global warming), resulting in the reduction or cessation of female hatchling production (Camiñas, 2004). Further, a significant rise in sea level would restrict loggerhead nesting habitat in the eastern Mediterranean.

In summary, we find that the Mediterranean Sea DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch that occurs throughout the Mediterranean Sea, particularly bycatch mortality of loggerheads from pelagic and bottom longline, set net, driftnet, and trawl fisheries, is a significant threat to the persistence of this DPS. In addition, boat strikes are becoming more common and are likely also a significant threat to the persistence of this DPS.

South Atlantic Ocean DPS

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Terrestrial Zone

Destruction and modification of loggerhead nesting habitat in the South Atlantic result from coastal development and construction, placement of erosion control structures and other barriers to nesting, beachfront lighting, vehicular and pedestrian traffic, sand extraction, beach erosion, beach sand placement, beach pollution, removal of native vegetation, and planting of non-native vegetation (D'Amato and Marczwski, 1993; Marcovaldi and Marcovaldi, 1999; Naro-Maciel *et al.,* 1999; Marcovaldi *et al.,* 2002b, 2005; Marcovaldi, 2007).

The primary nesting areas for loggerheads in the South Atlantic are in the states of Sergipe, Bahia, Espírito Santo, and Rio de Janeiro in Brazil (Marcovaldi and Marcovaldi, 1999). These primary nesting areas are monitored by Projeto TAMAR, the national sea turtle conservation program in Brazil. Since 1980, Projeto TAMAR has worked to establish legal protection for nesting beaches (Marcovaldi and Marcovaldi, 1999). As such, human activities, including sand extraction, beach nourishment, seawall construction, beach driving, and artificial lighting, that can negatively impact sea turtle nesting habitat, as well as directly impact nesting turtles and their eggs and hatchlings during the reproductive season, are restricted by various State and Federal laws (Marcovaldi and Marcovaldi, 1999; Marcovaldi *et al.*, 2002b, 2005). Nevertheless, tourism development in coastal areas in Brazil is high, and Projeto TAMAR works toward raising awareness of turtles and their conservation needs through educational and informational activities at their Visitor Centers that are dispersed throughout the nesting areas (Marcovaldi *et al.*, 2005).

In terms of non-native vegetation, the majority of nesting beaches in northern Bahia, where loggerhead nesting density is highest in Brazil (Marcovaldi and Chaloupka, 2007), have coconut plantations dating back to the 17th century backing them (Naro-Maciel *et al.,* 1999). It is impossible to assess whether this structured habitat has resulted in long-term changes to the loggerhead nesting rookery in northern Bahia.

Neritic/Oceanic Zones

Human activities that impact bottom habitat in the loggerhead neritic and oceanic zones in the South Atlantic Ocean include fishing practices, channel dredging, sand extraction, marine pollution, and climate change (*e.g.*, Ibe, 1996; Silva *et al.*, 1997). General human activities have altered ocean ecosystems, as identified by ecosystem models (*http://www.lme.noaa.gov*). On the western side of the South Atlantic, the Brazil Current LME region is characterized by the Global International Waters Assessment as suffering severe impacts in the areas of pollution, coastal habitat modification, and overexploitation of fish stocks (Marques *et al.*, 2004). The Patagonian Shelf LME is moderately affected by pollution, habitat modification, and overfishing (Mugetti *et al.*, 2004). On the eastern side of the South Atlantic, the Benguela Current LME has been characterized as moderately impacted in the area of overfishing, with future conditions expected to worsen by the Global International Waters Assessment (Prochazka *et al.*, 2005). Climate change also may result in future trophic changes, thus impacting loggerhead prey abundance and/or distribution.

In summary, we find that the South Atlantic Ocean DPS of the loggerhead sea turtle is negatively affected by ongoing changes in its marine habitats as a result of land and water use practices as considered above in Factor A. However, sufficient data are not available to assess the significance of these threats to the persistence of this DPS.

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

Deliberate hunting of loggerheads for their meat, shells, and eggs is reduced from previous exploitation levels, but still exists. Limited numbers of eggs are taken for human consumption in Brazil, but the relative amount is considered minor when compared to historical rates of egg collection (Marcovaldi and Marcovaldi, 1999; Marcovaldi *et al.*, 2005; Almeida and Mendes, 2007). Use of sea turtles including loggerheads for medicinal purposes occasionally occurs in northeastern Brazil (Alves and Rosa, 2006). Use of bycaught loggerheads for subsistence and medicinal purposes is likely to occur in southern Atlantic Africa, based on information from central West Africa (Fretey, 2001; Fretey *et al.,* 2007).

In summary, the harvest of loggerheads in Brazil for their meat, shells, and eggs likely was a factor that contributed to the historic decline of this DPS. However, current harvest levels are greatly reduced from historic levels. Although harvest is known to still occur in Brazil and southern Atlantic Africa, it no longer appears to be a significant threat to the persistence of this DPS.

C. Disease or Predation

The potential exists for diseases and endoparasites to impact loggerheads found in the South Atlantic Ocean. There have been five confirmed cases of fibropapillomatosis in loggerheads in Brazil (Baptistotte, 2007). There is no indication that this disease poses a major threat for this species in the eastern South Atlantic (Formia *et al.,* 2007).

Eggs and nests in Brazil experience depredation, primarily by foxes (Marcovaldi and Laurent, 1996). Nests laid by loggerheads in the southern Atlantic African coastline, if any, likely experience similar predation pressures to those on nests of other species laid in the same area (*e.g.,* jackals depredate green turtle nests in Angola; Weir *et al.*, 2007).

Loggerheads in the South Atlantic also may be impacted by harmful algal blooms (Gilbert *et al.*, 2005).

In summary, although disease and predation are known to occur, quantitative data are not sufficient to assess the degree of impact of these threats on the persistence of this DPS.

D. Inadequacy of Existing Regulatory Mechanisms

International Instruments

The BRT identified several regulatory mechanisms that apply to loggerhead sea turtles globally and within the South Atlantic Ocean. The reader is directed to sections 5.1.4. and 5.2.9.4. of the Status Review for a discussion of these regulatory mechanisms. Hykle (2002) and Tiwari (2002) have reviewed the effectiveness of some of these international instruments. The problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations. The ineffectiveness of international treaties and national legislation is oftentimes due to the lack of motivation or obligation by countries to implement and enforce them. A thorough discussion of this topic is available in a special 2002 issue of the Journal of International Wildlife Law

and Policy: International Instruments and Marine Turtle Conservation (Hykle 2002).

National Legislation and Protection

Fishery bycatch that occurs throughout the South Atlantic Ocean is substantial (*see* Factor E). Although national and international governmental and non-governmental entities on both sides of the South Atlantic are currently working toward reducing loggerhead bycatch in the South Atlantic, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the diversity and magnitude of the commercial and artisanal fisheries operating in the South Atlantic, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In summary, our review of regulatory mechanisms under Factor D demonstrates that although regulatory mechanisms are in place that should address direct and incidental take of South Atlantic Ocean loggerheads, these regulatory mechanisms are insufficient or are not being implemented effectively to address the needs of loggerheads. We find that the threat from the inadequacy of existing regulatory mechanisms for fishery bycatch (Factor E) is significant relative to the persistence of this DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Incidental Bycatch in Fishing Gear

Incidental capture of sea turtles in artisanal and commercial fisheries is a significant threat to the survivability of loggerheads in the South Atlantic. Sea turtles may be caught in pelagic and demersal longlines, drift and set gillnets, bottom and mid-water trawling, fishing dredges, pound nets and weirs, haul and purse seines, pots and traps, and hook and line gear. In the western South Atlantic, there are various efforts aimed at mitigating bycatch of sea turtles in various fisheries. In Brazil, there is the *National Action Plan to Reduce Incidental Capture of Sea Turtles in Fisheries*, coordinated by Projeto TAMAR (Marcovaldi *et al.*, 2006). This action plan focuses on both artisanal and commercial fisheries, and collects data directly from fishers as well as on-board observers. Although loggerheads have been observed as bycatch in all fishing gear and methods identified above, Marcovaldi *et al.* (2006) have identified longlining as the major source of incidental capture of loggerhead turtles. Reports of loggerhead bycatch by pelagic longlines come mostly from the southern portion of the Brazilian Exclusive Economic Zone, between 20° S and 35° S latitude. Bugoni *et al.* (2008) reported a loggerhead bycatch rate of 0.52 juvenile turtles/1000 hooks by surface longlines targeting dolphinfish. Pinedo *et al.* (2004) reported seasonal variation in bycatch of juvenile loggerheads (and other sea turtle species) by pelagic longlines in the same region of Brazil, with the highest rates (1.85 turtles/1000 hooks) in the austral spring. Kotas *et al.* (2004) reported the highest rates of loggerhead bycatch (greater than 10 turtles/1000 hooks) by pelagic longlines in the austral summer/fall months. A study based on several years found that the highest rate of loggerhead bycatch in pelagic longlines off Uruguay and Brazil was in the late austral summer month of February: 2.72 turtles/1000 hooks (Lopez-Medilaharsu *et al.*, 2007). Sales *et al.* (2008) reported a loggerhead bycatch rate of 0.87/1000 hooks near the Rio Grande Elevacao do Rio Grande, about 600 nautical miles off the coast of southern Brazil. In Uruguayan waters, the primary fisheries with loggerhead bycatch are bottom trawlers and longlines (Domingo *et al.,* 2006). Domingo *et al.* (2008) reported bycatch rates of loggerheads of 0.9–1.3/1000 hooks by longline deployed south of 30° S latitude. In waters off Argentina, bottom trawlers also catch some loggerheads (Domingo *et al.*, 2006).

In the eastern South Atlantic, sea turtle bycatch in fisheries has been documented from Gabon to South Africa (Fretey, 2001). Limited data are available on bycatch of loggerheads in coastal fisheries, although loggerheads are known (or strongly suspected) to occur in coastal waters from Gabon to South Africa (Fretey, 2001; Bal *et al.*, 2007; Weir *et al.*, 2007). Coastal fisheries implicated in bycatch of loggerheads and other turtles include gillnets, beach seines, and trawlers (Bal *et al.*, 2007).

In the high seas, longlines are used by fishing boats targeting tuna and swordfish in the eastern South Atlantic. A recent study by Honig *et al.* (2008) estimates 7,600–120,000 sea turtles are incidentally captured by commercial longlines fishing in the Benguela Current LME; 60 percent of these are loggerheads. Petersen *et al.* (2007, 2009) reported that the rate of loggerhead bycatch in South African longliners was around 0.02 turtles/1000 hooks, largely in the Benguela Current LME. In the middle of the South Atlantic, loggerhead bycatch by longlines was reported to be low, relative to other regions in the Atlantic (Mejuto *et al.*, 2008).

Other Manmade and Natural Impacts

Other anthropogenic impacts, such as boat strikes and ingestion or entanglement in marine debris, also apply to loggerheads in the South Atlantic. Bugoni *et al.* (2001) have suggested the ingestion of plastic and oil may contribute to loggerhead mortality on the southern coast of Brazil. Plastic marine debris in the eastern South Atlantic also may pose a problem for loggerheads and other sea turtles (Ryan, 1996). Similar to other areas of the world, climate change and sea level rise have the potential to impact loggerheads in the South Atlantic.

Oil reserve exploration and extraction activities also may pose a threat for sea turtles in the South Atlantic. Seismic surveys in Brazil and Angola have recorded sea turtle occurrences near the seismic work (Gurjao *et al.*, 2005; Weir *et al.*, 2007). While no sea turtle takes were directly observed on these surveys, increased equipment and presence in the water that is associated with these activities also increases the likelihood of sea turtle interactions (Weir *et al.*, 2007).

Natural environmental events may affect loggerheads in the South Atlantic. However, while a rare hurricane hit Brazil in March 2004, typically hurricanes do not occur in the South Atlantic (McTaggart-Cowan *et al.*, 2006). This is generally due to higher windspeeds aloft, preventing the storms from gaining height and therefore strength.

In summary, we find that the South Atlantic Ocean DPS of the loggerhead sea turtle is negatively affected by both natural and manmade impacts as described above in Factor E. Within Factor E, we find that fishery bycatch, particularly bycatch mortality of loggerheads from pelagic longline fisheries, is a significant threat to the persistence of this DPS.

Extinction Risk Assessments

In addition to the status evaluation and listing factor analysis provided above, the BRT conducted two independent analyses to assess extinction risks of the nine identified DPSs. These analyses provided additional insights into the status of the nine DPSs. The first analysis used the diffusion approximation approach based on time series of counts of nesting females (Lande and Orzack, 1988; Dennis *et al.*, 1991; Holmes, 2001; Snover and Heppell, 2009). This

analysis provided a metric (susceptibility to quasi-extinction or SQE) to determine if the probability of a population's risk of quasi-extinction is high enough to warrant a particular listing status (Snover and Heppell, 2009). The term "quasi-extinction" is defined by Ginzburg *et al.* (1982) as the minimum number of individuals (often females) below which the population is likely to be critically and immediately imperiled. The diffusion approximation approach is based on stochastic projections of observed trends and variability in the numbers of mature females at various nesting beaches. The second approach used a deterministic stage-based population model that focused on determining the effects of known anthropogenic mortalities on each DPS with respect to the vital rates of the species. Anthropogenic mortalities were added to natural mortalities and possible ranges of population growth rates were computed as another metric of population health. Because this approach is based on matrix models, the BRT referred to it as a threat matrix analysis. This approach focused on how additional mortalities may affect the future growth and recovery of a loggerhead turtle DPS. The first approach (SQE) was solely based on the available time-series data on the numbers of nests at nesting beaches, whereas the second approach (threat matrix analysis) was based on the known biology of the species, natural mortality rates, and anthropogenic mortalities, independent of observed nesting beach data.

The BRT found that for three of five DPSs with sufficient data to conduct the SQE analysis (North Pacific Ocean, South Pacific Ocean, and Northwest Atlantic Ocean), these DPSs were at risk of declining to levels that are less than 30 percent of the current numbers of nesting females (quasi-extinction thresholds < 0.30). The BRT found that for the other two DPSs with sufficient data to conduct the SQE analysis (Southwest Indian Ocean and South Atlantic Ocean), the risk of declining to any level of quasi-extinction is negligible using the SQE analysis because of the observed increases in the nesting females in both DPSs. There were not enough data to conduct the SQE analysis for the North Indian Ocean, Southeast Indo-Pacific Ocean, Northeast Atlantic Ocean, and Mediterranean Sea DPSs.

According to the threat matrix analysis using experts' opinions in the matrix model framework, the BRT determined that all loggerhead turtle DPSs have the potential to decline in the future. Although some DPSs are indicating increasing trends at nesting beaches (Southwest Indian Ocean and South Atlantic Ocean), available information about anthropogenic threats to juvenile and adult loggerheads in neritic and oceanic environments indicate possible unsustainable additional mortalities. According to the threat matrix analysis, the potential for future decline is greatest for the North Indian Ocean, Northwest Atlantic Ocean, Northeast Atlantic Ocean, Mediterranean Sea, and South Atlantic Ocean DPSs.

The BRT's approach to the risk analysis presented several important points. First, the lack of precise estimates of age at first reproduction hindered precise assessment of the status of any DPS. Within the range of possible ages at first reproduction of the species, however, some DPSs could decline rapidly regardless of the exact age at first reproduction because of high anthropogenic mortality.

Second, the lack of precise estimates of anthropogenic mortalities resulted in a wide range of possible status using the threat matrix analysis. For the best case scenario, a DPS may be considered healthy, whereas for the worst case scenario the same DPS may be considered as declining rapidly. The precise prognosis of each DPS relies on obtaining precise estimates of anthropogenic mortality and vital rates.

Third, the assessment of a population without the information on natural and anthropogenic mortalities is difficult. Because of the longevity of the species, loggerhead turtles require high survival rates throughout their life to maintain a population. Anthropogenic mortality on the species occurs at every stage of their life, where the exact magnitude of the mortality is often unknown. As described in the Status Review, the upper end of natural mortality can be computed from available information.

Nesting beach count data for the North Pacific Ocean DPS indicated a decline of loggerhead turtle nesting in the last 20 years. The SQE approach reflected the observed decline. However, in the threat matrix analysis, the asymptotic population growth rates (λ) with anthropogenic mortalities ranged from less than one to greater than one, indicating a large uncertainty about the future of the DPS. Fishery bycatch along the coast of the Baja Peninsula and the nearshore waters of Japan are the main known sources of mortalities. Mortalities in the high-seas, where a large number of juvenile loggerhead turtles reside (Kobayashi *et al.*, 2008), from fishery bycatch are still unknown.

The SQE approach indicated that, based on nest count data for the past 3 decades, the South Pacific Ocean DPS is at risk and thus likely to decline in the future. These results were based on recently published nesting census data for loggerhead turtles at index beaches in eastern Australia (Limpus, 2009). The threat matrix analysis provided uncertain results: in the case of the lowest anthropogenic threats, the South Pacific Ocean DPS may recover, but in the worst-case scenario, the DPS may substantially decline in the future. These results are largely driven by the ongoing threats to juvenile and adult loggerheads from fishery bycatch that occur throughout the South Pacific Ocean and the uncertainty in estimated mortalities.

For the North Indian Ocean DPS, there were no nesting beach data available to conduct the SQE analysis. The threat matrix analysis indicated a decline of the DPS in the future, primarily as a result of fishery bycatch in neritic habitats. Cumulatively, substantial threats may exist for eggs/hatchlings. Because of the lack of precise estimates of bycatch, however, the range of possible λ values was large.

Similar to the North Indian Ocean DPS, no nesting beach data were available for the Southeast Indo-Pacific Ocean DPS. The level of anthropogenic mortalities is low for the Southeast Indo-Pacific Ocean DPS, based on the best available information, resulting in relatively large Pλ (the proportion of λ values greater than 1) and a narrow range. The greatest threats for the Southeast Indo-Pacific Ocean DPS exist for the first year of the life stages (eggs and hatchlings).

For the Southwest Indian Ocean DPS, the SQE approach, based on a 37-year time series of nesting female counts at Tongaland, South Africa (1963–1999), indicated this segment of the population, while small, has increased, and the likelihood of quasi-extinction is negligible. The threat matrix analysis, on the other hand, provided a wide range of results: in the best case scenario, the DPS would grow slowly, whereas in the worst case scenario, the DPS would decline in the future. The results of the threat matrix analysis were driven by uncertainty in anthropogenic mortalities in the neritic environment and the eggs/hatchlings stage.

Within the Northwest Atlantic Ocean DPS, four of the five identified recovery units have adequate time series data for applying the SQE analysis; these were the Northern, Peninsular Florida, Northern Gulf of Mexico, and Greater Caribbean Recovery Units. The SQE analysis indicated differences in SQEs

among these four recovery units. Although the Northern Gulf of Mexico Recovery Unit indicated the worst result among the four recovery units assessed the length of the time series was shortest (12 data points). The other three recovery units, however, appeared to show similar declining trends, which were also indicated through the SQE approach. The threat matrix analysis indicated a likely decline of the DPS in the future. The greatest threats to the DPS result from cumulative fishery bycatch in neritic and oceanic habitats.

Sufficient nesting beach data for the Northeast Atlantic Ocean DPS were not available to conduct the SQE analysis. The high likelihood of the predicted decline of the Northeast Atlantic Ocean DPS from the threat matrix analysis is largely driven by the ongoing harvest of nesting females, low hatchling and emergence success, and mortality of juvenile and adult turtles from fishery bycatch throughout the Northeast Atlantic Ocean. The threat matrix analysis indicated a consistently pessimistic future for the DPS.

Representative nesting beach data for the Mediterranean Sea DPS were not available to conduct the SQE analysis. The threat matrix analysis indicated the DPS is likely to decline in the future. The primary threats are fishery bycatch in neritic and oceanic habitats.

The two approaches for determining risks to the South Atlantic Ocean DPS provided different, although not incompatible, results. The SQE approach indicated that, based on nest count data for the past 2 decades, the population was unlikely to decline in the future. These results were based on recently published nesting beach trend analyses by Marcovaldi and Chaloupka (2007) and this QET analysis was consistent with their conclusions. However, the SQE approach was based on past performance of the DPS, specifically only nesting beach data, and did not address ongoing or future threats to segments of the DPS that might not have been or might not yet be reflected by nest count data. The threat matrix approach indicated that the South Atlantic Ocean DPS is likely to decline in the future. These results were largely driven by the ongoing mortality threats to juvenile turtles from fishery bycatch that occurs throughout the South Atlantic Ocean. Although conservation efforts by national and international groups in the South Atlantic are currently working toward mitigating bycatch in the South Atlantic, it is unlikely that this source of mortality can be greatly reduced in the near future, largely due to inadequate funding and knowledge gaps that together inhibit implementation of large-scale management actions (Domingo *et al.*, 2006).

Conservation Efforts

When considering the listing of a species, section 4(b)(1)(A) of the ESA requires us to consider efforts by any State, foreign nation, or political subdivision of a State or foreign nation to protect the species. Such efforts would include measures by Native American Tribes and organizations. Also, Federal, Tribal, State, and foreign recovery actions (16 U.S.C. 1533(f)), and Federal consultation requirements (16 U.S.C. 1536) constitute conservation measures. In addition to identifying these efforts, under the ESA and our policy implementing this provision (68 FR 15100; March 28, 2003) we must evaluate the certainty of an effort's effectiveness on the basis of whether the effort or plan establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; is likely to be implemented; and is likely to improve the species' viability at the time of the listing determination.

North Pacific Ocean DPS

NMFS has formalized two conservation actions to protect foraging loggerheads in the North Pacific Ocean, both of which were implemented to reduce loggerhead bycatch in U.S. fisheries. Prior to 2001, the Hawaii-based longline fishery had annual interaction levels of 300 to 500 loggerhead turtles. The temporary closure of the shallow-set swordfish fishery in 2001 in large part over concerns of turtle interactions brought about the immediate need to develop effective solutions to reduce turtle interactions while maintaining the viability of the industry. Since the reopening of the swordfish sector in 2004, the fishery has operated under strict management measures, including the use of large circle hooks and fish bait, restricted annual effort, annual caps on loggerhead interactions (17 annually), and 100 percent onboard observer coverage (50 CFR 665.3). As a result of these measures, loggerhead interactions in the swordfish fishery have been reduced by over 90 percent (Gilman *et al.*, 2007). Furthermore, in 2003, NMFS implemented a time/area closure in southern California during forecasted or existing El Niño-like conditions to reduce the take of loggerheads in the California/Oregon drift gillnet fishery (68 FR 69963, December 16, 2003). While this closure has not been implemented since the passage of these regulations due to the lack of conditions occurring in the area, such a closure is expected to reduce interactions between the large-mesh gillnet fishery and loggerheads by over 70 percent.

Loggerhead interactions and mortalities with coastal fisheries in Mexico and Japan are of concern and are considered a major threat to North Pacific loggerhead recovery. NMFS and U.S. non-governmental organizations have worked with international entities to: (1) Assess bycatch mortality through systematic stranding surveys in Baja California Sur, Mexico; (2) reduce interactions and mortalities in two bottom-set fisheries in Mexico; (3) conduct gear mitigation trials to reduce bycatch in Japanese pound nets; and (4) convey information to fishers and other stakeholders through participatory activities, events and outreach.

In 2003, the Grupo Tortuguero's ProCaguama (Operation Loggerhead) was initiated to partner directly with fishermen to assess and mitigate their bycatch while maintaining fisheries sustainability in Baja California, Mexico. ProCaguama's fisher-scientist team discovered the highest turtle bycatch rates documented worldwide and has made considerable progress in mitigating anthropogenic mortality in Mexican waters (Peckham *et al.*, 2007, 2008). As a result of the 2006 and 2007 tri-national fishermen's exchanges run by ProCaguama, Sea Turtle Association of Japan, and the Western Pacific Fisheries Management Council, in 2007 a prominent Baja California Sur fleet retired its bottom-set longlines. Prior to this closure, the longline fleet interacted with an estimated 2,000 loggerheads annually, with nearly all (approximately 90 percent) of the takes resulting in mortalities (Peckham *et al.*, 2008). Because this fishery no longer exists, conservation efforts have resulted in the continued protection of nearly 2,000 juvenile loggerheads annually.

Led by the Mexican wildlife service (Vida Silvestre), a Federal loggerhead bycatch reduction task force was organized in 2008 to ensure loggerheads the protection they are afforded by Mexican law. The task force is comprised of Federal and State agencies, in addition to non-governmental organizations, to solve the bycatch problem, meeting ProCaguama's bottom-up initiatives with complementary top-down management and enforcement resources. In 2009, while testing a variety of potential solutions, ProCaguama's fisher-scientist

team demonstrated the commercial viability of substituting bycatch-free hook fishing for gillnet fishing. Local fishers are interested in adoption of this gear because the technique results in higher quality catch offering access to higher-value markets and potentially higher sustainability with zero bycatch. From 2010 forward ProCaguama, in coordination with the task force, will engineer a market-based bycatch solution consisting of hook substitution, training to augment ex-vessel fish value, development of fisheries infrastructure, linkage of local fleets with regional and international markets, and concurrent strengthening of local fisheries management.

The U.S. has also funded non-governmental organizations to convey bycatch solutions to local fishers as well as to educate communities on the protection of all sea turtles (*i.e.,* reduce directed harvest). Over 3,500 coastal citizens are reached through festivals and local outreach activities, over 45 local leaders and dozens of fishermen are empowered to reduce bycatch and promote sustainable fishing, and 15 university and high school students are trained in conservation science. The effectiveness of these efforts is difficult to quantify without several post-outreach years of documenting reductions in sea turtle strandings, directed takes, or bycatch in local fisheries.

Due to concerns of high adult loggerhead mortality in mid-water pound nets, as documented in 2006, Sea Turtle Association of Japan researchers began to engage the pound net operators in an effort to study the impact and reduce sea turtle bycatch. This work was expanded in 2008 with U.S. support and, similar to outreach efforts in Mexico, is intended to engage local fishermen in conservation throughout several Japanese prefectures. Research opportunities will be developed with and for local fishermen in order to assess and mitigate bycatch.

Since 2003, with the assistance of the U.S., the Sea Turtle Association of Japan and, in recent years with the Grupo Tortuguero, has conducted nesting beach monitoring and management at several major loggerhead nesting beaches, with the intent of increasing the number of beaches surveyed and protected. Due to logistical problems and costs, the Sea Turtle Association of Japan's program had been limited to five primary rookeries. At these areas, hatchling production has been augmented through: (1) Relocation of doomed nests; and (2) protection of nests *in situ* from trampling, desiccation, and predation. Between 2004 and 2008, management activities have been successful with over 160,000 hatchlings released from relocated nests that would have otherwise been lost to inundation or erosion, with many more hatchlings produced from *in situ* nests.

The U.S. plans to continue supporting this project in the foreseeable future, increasing relocation activities at other high-density nesting beaches, implementing predator control activities to reduce predation by raccoon dogs and raccoons, and assessing the effects of light pollution at a major nesting beach (Maehama Beach). Determination of hatching success will also be initiated at several key nesting beaches (Inakahama, Maehama, Yotsuse, and Kurio, all in Yakushima) to provide information to support the removal of armoring structures and to evaluate the success of relocation and other nest protection activities. Outreach and education activities in coastal cities will increase public awareness of problems with foot traffic, light pollution, and armoring.

Egg harvest was common in Japan until the 1970s, when several of the major nesting areas (notably Yakushima and Miyazaki) led locally based efforts to ban or eliminate egg harvest. As a result, egg harvest at Japanese nesting beaches was eliminated by the early 1980s.

The establishment of the Sea Turtle Association of Japan in 1990 created a network of individuals and organizations conducting sea turtle monitoring and conservation activities in Japan for the first time. The Sea Turtle Association of Japan also served to standardize data collection methods (for tagging and measuring). The Association greatly depends on its members around Japan to gather nesting data as well as to conduct various conservation measures.

Shoreline erosion and bycatch are some of the major concerns dealt by the Sea Turtle Association of Japan today. Much of Japan's coastline is "armored" using concrete structures to prevent and minimize impacts to coastal communities from natural disasters. These structures have resulted in a number of nesting beaches losing sand suitable for sea turtle nesting, and nests are often relocated to safe areas or hatcheries to protect them from further erosion and inundation. In recent years, a portion of the concrete structures at a beach in Toyohashi City, Aichi Prefecture, was experimentally removed to create better nesting habitat. The Sea Turtle Association of Japan, along with various other organizations in Japan, are carrying out discussions with local and Federal government agencies to develop further solutions to the beach erosion issue and to maintain viable nesting sites. Beach erosion and armament still remain one of the most significant threats to nesting beaches in Japan.

While conservation efforts for the North Pacific Ocean DPS are substantive and improving and may be reflected in the recent increases in the number of nesting females, they still remain inadequate to ensure the long-term viability of the population. For example, while most of the major nesting beaches are monitored, some of the management measures in place are inadequate and may be inappropriate. On some beaches, hatchling releases are coordinated with the tourist industry or nests are being trampled on or are unprotected. The largest threat on the nesting beach, reduced availability of habitat due to heavy armament and subsequent erosion, is just beginning to be addressed but without immediate attention may ultimately result in the demise of the highest density beaches. Efforts to reduce loggerhead bycatch in known coastal fisheries off Baja California, Mexico, and Japan is encouraging, but concerns remain regarding the mortalities of adult and juvenile turtles in mid-water pound nets and the high costs that may be involved in replacing and/or mitigating this gear. With these coastal fishery threats still emerging, there has not yet been sufficient time—or a nationwide understanding of the threat—to develop appropriate conservation strategies or work to fully engage with the government of Japan. Greater international cooperation and implementation of the use of circle hooks in longline fisheries operating in the North Pacific Ocean is necessary, as well as understanding fishery related impacts in the South China Sea. Further, it is suspected that there are substantial impacts from illegal, unreported, and unregulated fishing, which we are unable to mitigate without additional fisheries management efforts and international collaborations. While conservation projects for this population have been in place since 2004 for some important areas, efforts in other areas are still being developed to address major threats, including fisheries bycatch and long-term nesting habitat protection.

South Pacific Ocean DPS

The New Caledonia Aquarium and NMFS have collaborated since 2007 to address and influence management measures of the regional fishery management organization. Their intent is to reduce pelagic fishery interactions with sea turtles through increased understanding of pelagic habitat use by

South Pacific loggerheads using satellite telemetry, oceanographic analysis, and juvenile loggerheads reared at the Aquarium. NMFS augments this effort by supporting animal husbandry, education and outreach activities coordinated through the New Caledonia Aquarium to build capacity, and public awareness regarding turtle conservation in general.

The U.S. has collaborated on at-sea conservation of sea turtles with Chile under the U.S.-Chile Fisheries Cooperation Agreement, and with Peru under a collaboration with El Instituto del Mar del Peru and local non-governmental organizations. Research from this collaboration showed that loggerheads of southwestern Pacific stock origin interact with commercial and artisanal longline fisheries off the South American coast. NMFS has supported efforts by Chile to reduce bycatch and mortality by placing observers on vessels who have been trained and equipped to dehook, resuscitate, and release loggerheads. Chile also has closed the northernmost sector since 2002, where the loggerheads interactions occur, to longline fishing (Miguel Donoso, Pacifico Laud, personal communication, 2009). Local non-governmental organizations, such as Pacifico Laud (Chile), Associacion Pro Delphinus (Peru), and Areas Costeras y Recursos Marinos (Peru), have been engaged in outreach and conservation activities promoting loggerhead bycatch reduction, with support from NMFS.

Coastal trawl fisheries also threaten juvenile and adult loggerheads foraging off eastern Australia, particularly the northern Australian prawn fishery (estimated to take between 5,000 and 6,000 turtles annually in the late 1980s/early 1990s). However, since the introduction and requirement for these fisheries to use turtle excluder devices in 2000, that threat has been drastically reduced, to an estimated 200 turtles/year (Robins *et al.,* 2002a). Turtle excluder devices were also made mandatory in the Queensland East Coast trawl fisheries (2000), the Torres Strait prawn fishery (2002), and the Western Australian prawn and scallop fisheries (2002) (Limpus, 2009).

Predation of loggerhead eggs by foxes was a major threat to nests laid in eastern Australia through the late 1970s, particularly on Mon Repos and Wreck Rock. Harassment by local residents and researchers, as well as baiting and shooting, discouraged foxes from encroaching on the nesting beach at Mon Repos so that by the mid-1970s, predation levels had declined to trivial levels. At Wreck Rock, fox predation was intense through the mid-1980s, with a 90–95 percent predation rate documented. Fox baiting was introduced at Wreck Rock and some adjacent beaches in 1987, and has been successful at reducing the predation rate to low levels by the late 1990s (Limpus, 2009). To reduce the risk of hatchling disorientation due to artificial lighting inland of the nesting beaches adjacent to Mon Repos and Heron Island, low pressure sodium vapor lights have been installed or, where lighting has not been controlled, eggs are relocated to artificial nests on nearby dark beaches. Limpus (2009) reported that hatchling mortality due to altered light horizons on the Woongara coast has been reduced to a handful of clutches annually.

While most of the conservation efforts for the South Pacific Ocean DPS are long-term, substantive, and improving, given the low number of nesting females, the declining trends, and major threats that are just beginning to be addressed, they still remain inadequate to ensure the long-term viability of the population. The use of TEDs in most of the major trawl fisheries in Australia has certainly reduced the bycatch of juvenile and adult turtles, as has the reduction in fox predation on important nesting beaches. However, the intense effort by longline fisheries in the South Pacific, particularly from artisanal fleets operating out of Peru, and its estimated impact on this loggerhead population, particularly oceanic juveniles, remains a significant threat that is just beginning to be addressed by most participating countries, including the regional fishery management council(s) that manage many of these fleets. Modeling by Chaloupka (2003) showed the impact of this fleet poses a greater risk than either fox predation at major nesting beaches (90 percent egg loss per year during unmanaged periods) or past high mortalities in coastal trawl fisheries. The recent sea turtle conservation resolution by the Western and Central Pacific Fisheries Commission, requiring longline fleets to use specific gear and collect information on bycatch, is encouraging but took effect in January 2010, so improvement in the status of this population may not be realized for many years. Potentially important pelagic foraging habitat in areas of high fishing intensity remains poorly studied but is improving through U.S. and international collaborations. While a comprehensive conservation program for this population has been in place for important nesting beaches, efforts in other areas are still being developed to address major threats, including fisheries bycatch.

North Indian Ocean DPS

The main threats to North Indian Ocean loggerheads are fishery bycatch and nesting beach habitat loss and degradation. Royal Decree 53/81 prohibits the hunting of turtles and eggs in Oman. The Ministry of Environment and Climate Affairs (MECA) and Environmental Society of Oman (ESO) are collaborating to carry out a number of conservation measures at Masirah Island for the nesting loggerhead population. First and foremost are standardized annual nesting surveys to monitor population trends. Standardized surveys were first implemented in 2008. Less complete nesting surveys have been conducted in some previous years beginning in 1977, but the data have yet to be adequately analyzed to determine their usefulness in determining population size and trends. Nine kilometers of nesting habitat within the Masirah Air Force Base is largely protected from tourist development but remains subject to light pollution from military operations. The remaining 50 kilometers of loggerhead nesting beaches are not protected from egg harvest, lighting, or beach driving. Currently, MECA is in the process of developing a protected area proposal for Masirah Island that will address needed protection of nesting beaches, including protection from egg collection and beach driving. In the meantime, development is continuing and it is uncertain how much, when, and if nesting habitat will receive adequate protection. MECA is beginning to regulate artificial lighting in new development. In 2010, a major outreach effort in the form of a Turtle Celebration Day is planned at Masirah Island to raise greater awareness of the local communities about the global importance of the Masirah Island loggerhead nesting population and to increase community involvement in conservation efforts. Nesting surveys are also being conducted on the Halaniyat Islands. There are no specific efforts underway to designate Halaniyat nesting beaches as Protected Areas in the face of proposed development plans. Although important management actions are underway on the nesting beaches, their effectiveness has yet to be determined and the potential for strong habitat protection and restoration of degraded nesting habitat remains uncertain. At present, hatchling production is not measured.

The only research that has been conducted on the nesting population to date was a study of internesting and post-nesting movements conducted in 2006 when 20 nesting females were

instrumented with satellite transmitters. This research identified important inter-seasonal foraging grounds but is considered incomplete, and additional nesting females will be satellite tagged in 2010–2012 to assess clutch frequency, interactions with local fisheries, and inter-nesting and post-nesting movements. In 2009, efforts to investigate loggerhead bycatch in gillnet fisheries at Masirah were initiated, and some fisherman have agreed to cooperate and document bycatch in 2010.

While conservation efforts for the North Indian Ocean loggerhead DPS are substantive and improving, they still remain inadequate to ensure the long-term viability of the population. For example, there is currently no assessment of hatchling production on the main nesting beaches, no efforts underway to restore the largely degraded nesting habitat on the major nesting beaches, and little understanding or knowledge of foraging grounds for juveniles or adults and the extent of their interactions with fisheries. There is no information on bycatch from fisheries off the main nesting beaches other than reports that this bycatch occurs. A comprehensive conservation program for this population is under development, but is incomplete relative to fisheries bycatch and long-term nesting habitat protection.

Southeast Indo-Pacific Ocean DPS

The level of anthropogenic mortalities is low for the Southeast Indo-Pacific Ocean DPS, based on the best available information. However, there are many known opportunities for conservation efforts that would aid recovery. Some significant conservation efforts are underway.

One of the principal nesting beaches for this DPS, Australia's Dirk Hartog Island, is part of the Shark Bay World Heritage Area and was recently announced to become part of Australia's National Park System. This designation may facilitate monitoring of nesting beaches and enforcement of prohibitions on direct take of loggerheads and their eggs. Loggerheads are listed as Endangered under Australia's Environment Protection and Biodiversity Conservation Act of 1999.

Conservation efforts on nesting beaches have included invasive predator control. On the North West Cape and the beaches of the Ningaloo coast of mainland Australia, a long established feral European red fox (*Vulpes vulpes*) population preyed heavily on eggs and is thought to be responsible for the lower numbers of nesting turtles on the mainland beaches (Baldwin *et al.,* 2003). Fox populations have been eradicated on Dirk Hartog Island and Murion Islands (Baldwin *et al.,* 2003), and threat abatement plans have been implemented for the control of foxes (1999) and feral pigs (2005).

The international regulatory mechanisms described in Section 5.1.4. of the Status Review apply to loggerheads found in the Southeast Indo-Pacific Ocean. In addition, loggerheads of this DPS benefit from the Indian Ocean-South-East Asian Marine Turtle Memorandum of Understanding (IOSEA). Efforts facilitated by IOSEA have focused on reducing threats, conserving important habitat, exchanging scientific data, increasing public awareness and participation, promoting regional cooperation, and seeking resources for implementation. Currently, there are 30 IOSEA signatory states.

In 2000, the use of turtle excluder devices in the Northern Australian Prawn Fishery (NPF) was made mandatory. Prior to the use of TEDs in this fishery, the NPF annually took between 5,000 and 6,000 sea turtles as bycatch, with a mortality rate estimated to be 40 percent (Poiner and Harris, 1996). Since the mandatory use of TEDs has been in effect, the annual bycatch of sea turtles in the NPF has dropped to less than 200 sea turtles per year, with a mortality rate of approximately 22 percent (based on recent years). Beginning progress has been made to measure the threat of incidental capture of sea turtles in other artisanal and commercial fisheries in the Southeast Indo-Pacific Ocean (Lewison *et al.,* 2004; Limpus, 2009), however, the data remain inadequate for stock assessment.

As in other DPSs, persistent marine debris poses entanglement and ingestion hazards to loggerheads. In 2009, Australia's Department of the Environment, Water, Heritage and the Arts published a threat abatement plan for the impacts of marine debris on vertebrate marine life.

In spite of these conservation efforts, considerable uncertainty in the status of this DPS lies with inadequate efforts to measure bycatch in the region, a short time-series of monitoring on nesting beaches, and missing vital rates data necessary for population assessments.

Southwest Indian Ocean DPS

The Southwest Indian Ocean DPS is small but has experienced an increase in numbers of nesting females. Although there is considerable uncertainty in anthropogenic mortalities, especially in the water, the DPS may have benefitted from important conservation efforts at the nesting beaches.

All principal nesting beaches, centered in South Africa, are within protected areas (Baldwin *et al.,* 2003). In Mozambique, nesting beaches in the Maputo Special Reserve (approximately 60 kilometers of nesting beach) and in the Paradise Islands are also within protected areas (Baldwin *et al.,* 2003; Costa *et al.,* 2007).

The international regulatory mechanisms described in Section 5.1.4. of the Status Review apply to loggerheads found in the Southwest Indian Ocean. In addition, loggerheads of this DPS benefit from the Indian Ocean-South-East Asian Marine Turtle Memorandum of Understanding (IOSEA) and the Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region.

In spite of these conservation efforts, caution in the status of this DPS lies with its small population size, inadequate efforts to measure bycatch in the region, and missing vital rates data necessary for population assessments.

Northwest Atlantic Ocean DPS

The main threats to Northwest Atlantic Ocean loggerheads include fishery bycatch mortality, particularly in gillnet, longline, and trawl fisheries; nesting beach habitat loss and degradation (*e.g.,* beachfront lighting, coastal armoring); and ingestion of marine debris during the epipelagic lifestage. In addition, mortality from vessel strikes is increasing and likely also a significant threat to this DPS.

Mortality resulting from domestic and international commercial fishing ranks among the most significant threats to Northwest Atlantic loggerheads. Fishing gear types include gillnets, trawls, hook and line (*e.g.,* longlines), seines, dredges, and various types of pots/traps. Among these, gillnets, longlines, and trawl gear collectively result in tens of thousands of Northwest Atlantic loggerhead deaths annually throughout their range (*see* for example, Lewison *et al.,* 2004; NMFS, 2002, 2004).

Considerable effort has been expended since the 1980s to document and reduce commercial fishing bycatch mortality. NMFS has implemented observer programs in many Federally managed and some State-managed fisheries to collect turtle bycatch data and estimate mortality. NMFS, working with industry and other partners, has reduced bycatch in some fisheries by developing technological solutions to prevent capture or to allow most turtles to escape without harm (*e.g.,* TEDs), by

implementing time and area closures to prevent interactions from occurring (*e.g.,* prohibitions on gillnet fishing along the mid-Atlantic coast during the periods of high loggerhead abundance), and by modifying gear (*e.g.,* requirements to reduce mesh size in the leaders of pound nets to prevent entanglement, requirements to use large circle hooks with certain bait types in segments of the pelagic longline fishery). NMFS is currently working to implement a coastwide, comprehensive strategy to reduce bycatch of sea turtles in State and Federal fisheries in the U.S. Atlantic and Gulf of Mexico. This approach was developed to address sea turtle bycatch issues on a per-gear basis, with a goal of developing and implementing coastwide solutions for reducing turtle bycatch inshore, nearshore, and offshore.

The development and implementation of TEDs in the shrimp trawl fishery is arguably the most significant conservation accomplishment for Northwest Atlantic loggerheads in the marine environment since their listing. In the southeast U.S. and Gulf of Mexico, TEDs have been mandatory in shrimp and flounder trawls for over a decade. However, TEDs are not required in all trawl fisheries, and significant loggerhead mortality continues in some trawl fisheries. In addition, enforcement of TED regulations depends on available resources, and illegal or improperly installed TEDs continue to contribute to mortality.

Gillnets of various mesh sizes are used extensively to harvest fish in the Atlantic Ocean and Gulf of Mexico. All size classes of loggerheads in coastal waters are prone to entanglement in gillnets, and, generally, the larger the mesh size the more likely that turtles will become entangled. State resource agencies and NMFS have been addressing this issue on several fronts. In the southeast U.S., gillnets are prohibited in the State waters of South Carolina, Georgia, Florida, and Texas and are restricted to fishing for pompano and mullet in saltwater areas of Louisiana. Reducing bycatch of loggerheads in the remaining State and Federally regulated gillnet fisheries of the U.S. Atlantic and Gulf of Mexico has not been fully accomplished. NMFS has addressed the issue for several Federally managed fisheries, such as the large-mesh gillnet fishery (primarily for monkfish) along the Atlantic coast, where gillnets larger than 8-inch stretched mesh are now regulated in North Carolina and Virginia through rolling closures timed to match the northward migration of loggerheads along the mid-Atlantic coast in late spring and early summer. The State of North Carolina, working with NMFS through the ESA section 10 process, has been making some progress in reducing bycatch of loggerheads in gillnet fisheries operating in Pamlico Sound. The large mesh driftnet fishery for sharks off the Atlantic coast of Florida and Georgia remains a concern as do gillnet fisheries operating elsewhere in the range of the DPS, including Mexico and Cuba.

Observer programs have documented significant bycatch of loggerheads in the U.S. longline fishery operating in the Atlantic Ocean and Gulf of Mexico. In recent years, NMFS has dedicated significant funding and effort to address this bycatch issue. In partnership with academia and industry, NMFS has funded and conducted field experiments in the Northwest Atlantic Ocean to develop gear modifications that eliminate or significantly reduce loggerhead bycatch. As a result of these experiments, NMFS now requires the use of circle hooks fleet wide and larger circle hooks in combination with whole finfish bait in the Northeast Distant area (69 FR 40734, June 1, 2004).

The incidental capture and mortality of loggerheads by international longline fleets operating in the North Atlantic Ocean and Mediterranean Sea is of great concern. The U.S. has been attempting to work through Regional Fisheries Management Organizations, such as the International Commission for the Conservation of Atlantic Tunas, to encourage member nations to adopt gear modifications (*e.g.,* large circle hooks) that have been shown to significantly reduce loggerhead bycatch. To date, limited success in reducing loggerhead bycatch has been achieved in these international forums.

Although numerous efforts are underway to reduce loggerhead bycatch in fisheries, and many positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the diversity and magnitude of the fisheries operating in the North Atlantic, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies.

In the southeast U.S., nest protection efforts have been implemented on the majority of nesting beaches, and progress has been made in reducing mortality from human-related impacts on the nesting beach. A key effort has been the acquisition of Archie Carr National Wildlife Refuge in Florida, where nesting densities often exceed 600 nests per km (1,000 nests per mile). Over 60 percent of the available beachfront acquisitions for the Refuge have been completed as the result of a multi-agency land acquisition effort. In addition, 14 additional refuges, as well as numerous coastal national seashores, military installations, and State parks in the Southeast where loggerheads regularly nest are also provided protection. However, despite these efforts, alteration of the coastline continues, and outside of publicly owned lands, coastal development and associated coastal armoring remains a serious threat.

Efforts are also ongoing to reduce light pollution on nesting beaches. A significant number of local governments in the southeast U.S. have enacted lighting ordinances designed to reduce the effects of artificial lighting on sea turtles. However, enforcement of the lighting ordinances varies considerably.

With regard to marine debris, the MARPOL Convention (International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978) is the main international convention that addresses prevention of pollution (including oil, chemicals, harmful substances in packaged form, sewage, and garbage) of the marine environment by ships from operational or accidental causes. However, challenges remain to implementation and enforcement of the MARPOL Convention, and on its own the Convention does not suffice to prevent all instances of marine pollution.

The seriousness of the threat caused by vessel strikes to loggerheads in the Atlantic and Gulf of Mexico cannot be overstated. This growing problem is particularly difficult to address. In some cases, NMFS, through section 7 of the ESA, has worked with the U.S. Coast Guard in an attempt to reduce the probability of vessel strikes during permitted offshore race events. However, most vessel strikes occur outside of these venues and the growing number of licensed vessels, especially inshore and nearshore, exacerbates the conflict.

A number of regulatory instruments at international, regional, national, and local levels have been developed that provide legal protection for loggerhead sea turtles globally and within the Northwest Atlantic Ocean. The Status Review identifies and includes a discussion of these regulatory instruments (Conant *et al.,* 2009). The

problems with existing international treaties are often that they have not realized their full potential, do not include some key countries, do not specifically address sea turtle conservation, and are handicapped by the lack of a sovereign authority to enforce environmental regulations.

In summary, while conservation efforts for the Northwest Atlantic Ocean loggerhead DPS are substantive and improving, they remain inadequate to ensure the long-term viability of the population.

Northeast Atlantic Ocean DPS

Since 2002, all sea turtles and their habitats in Cape Verde have been protected by law (Decreto-Regulamentar n° 7/2002). The reality, however, is that the laws are not respected or enforced and that in recent years until 2008 up to 25–30 percent of nesting females were illegally killed for meat each year on the nesting beaches. Egg collection is also a serious threat on some of the islands. Other major threats include developments and commensurate light pollution behind one important nesting beach on Boa Vista and the most important nesting beach on Sal, as well as sand mining on many of the islands. Other planned and potential developments on these and other islands present future threats. Bycatch and directed take in coastal waters is likely a significant mortality factor to the population given the importance of the coastal waters as loggerhead foraging grounds and the extensive fisheries occurring there. Adult females nesting in Cape Verde have been found foraging along the mainland coast of West Africa as well as in the oceanic environment, thereby making them vulnerable to impacts from a wide range of fisheries (Hawkes *et al.,* 2006). Unfortunately, law enforcement on the nesting beaches and in the marine environment is lacking in Cape Verde.

Conservation efforts in Cape Verde began in the mid 1990s and focused on efforts to raise local, national, and international awareness of the importance of the Cape Verdian loggerhead population and the ongoing slaughter of nesting females. A field camp set up by the non-governmental organization Natura 2000 in 1999 on the 10-kilometer Ervatao Beach, the single most important nesting beach at Boa Vista, grew out of this initial effort. This camp established a presence to deter poaching and gather data on nesting and poaching activity. In 2008, The Turtle Foundation, another non-governmental organization began to work at Porto Ferreira Beach, the second most important nesting area on Boa Vista. The non-governmental organization SOS Tartarugas began conservation work on the important nesting beaches of Sal in 2008. In May 2009, USFWS funded a workshop in Cape Verde to bring together representatives from the three non-governmental organizations and the universities involved with loggerhead conservation in Cape Verde and government representatives from the Ministry of Environment, Military and Municipalities to discuss the threats, current conservation efforts, and priority actions needed. A Sea Turtle Network was established to better coordinate and expand conservation efforts throughout the Cape Verdean islands.

Natura 2000 has continued its efforts on Ervatao Beach and in 2009 assumed responsibility for work on Porto Ferreira Beach. Natura 2000 has reduced poaching to about 5 percent on these two important beaches, which represent 75 percent of the nesting on Boa Vista. The Turtle Foundation also conducts extensive public outreach on sea turtle conservation issues. The Turtle Foundation covered four other important beaches in 2009 with the assistance of the Cape Verdian military and likewise believes poaching was reduced to about 5 percent of nesting females on the beaches covered. The University of Algarve established a research project on Santiago Island in 2007; activities included nest monitoring and protection, collecting biological data and information on poaching, and outreach through the media and to the government representatives (Loureiro, 2008). This project minimized its efforts in 2009. The Turtle Foundation continued to focus its primary efforts on patrolling beaches to protect nesting females on Boa Vista with the assistance of the military. SOS Tartarugas has also been doing regular monitoring of beaches with support from the military, extensive public outreach on light pollution behind nesting beaches, and relocating nests to a hatchery to alleviate hatchling disorientation and misorientation, as well as assisting with training of turtle projects on the islands of Maio and Sao Nicolau.

In the last 2 years, new efforts to better coordinate and expand projects being conducted by the three non-governmental organizations, as well as engage the national and municipal governments, are dramatically decreasing the poaching of nesting turtles and with sustained and planned efforts may be able to reduce it to less than 1 percent in the next few years. The issues of light pollution, sand mining on nesting beaches, long-term protection of even the most important nesting beaches, law enforcement, and bycatch have not even begun to be addressed. While there is definite improvement in a once gloomy situation as recent as 2 years ago, the future of the population is tenuous.

Mediterranean Sea DPS

The main threats to Mediterranean Sea loggerheads include fishery bycatch, as well as pollution/debris, vessel collisions, and habitat destruction impacting eggs and hatchlings at nesting beaches. There are a number of existing international regulatory mechanisms specific to the Mediterranean Sea that contain provisions for the protection to sea turtles. The most important with respect to sea turtles are the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution (and the associated Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean); the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention); the Convention on the Conservation of Migratory Species of Wild Animals (CMS) (Bonn Convention); and the Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (EC Habitats Directive). More information on these mechanisms can be found at Conant *et al.* (2009), but a few specific applications are noted below.

Under the framework of the Barcelona Convention (to which all Mediterranean countries are parties), the Action Plan for the Conservation of Mediterranean Marine Turtles was adopted in 1989 and updated in 1999 and 2007. The objective of the Action Plan is the recovery of sea turtle populations through (1) appropriate protection, conservation, and management of turtle habitats, including nesting, feeding, wintering, and migrating areas; and (2) improvement of scientific knowledge by research and monitoring. Coordination of this Action Plan occurs through the Regional Activity Centre for Specially Protected Areas (RAC/SPA). To help implement the Action Plan objectives, the RAC/SPA has published guidelines for designing legislation and regulations to protect turtles; developing and improving rescue centers; and handling sea turtles by fishermen. To assess the degree of implementation of the Action Plan, RAC/SPA sent a survey to the National Focal Points for Specially Protected Areas (Demetropoulos, 2007). Of the 16 country responses received, 14 countries have enacted some form of legislation protecting sea turtles and more than half of the responders noted

their participation in tagging programs, development of public awareness programs, and beach inventories. The area with the fewest positive responses was the implementation of measures to reduce incidental catch (n=5). The 2007 Action Plan includes a revised list of important priority measures and an Implementation Timetable (UNEP MAP RAC/SPA 2007). The deadline for many of the actions is as soon as possible (*e.g.,* enforce legislation to eliminate deliberate killing, prepare National Action Plan), while others are 3 to 4 years after adoption (*e.g.,* restoration of damaged nesting habitats, implementation of fishing regulations in key areas). If all parties adopt all of the measures in the identified time period, there will be notable sea turtle conservation efforts in place in the Mediterranean. However, while priority actions for implementing the Action Plan have been adopted to some extent at both regional and national levels, the degree of expected implementation by each signatory and corresponding level of sea turtle protection are still relatively uncertain. As such, these efforts do not currently sufficiently mitigate the threats to and improve the status of loggerheads in the Mediterranean, and without specific commitment from each of the Barcelona Convention signatories, it is difficult to determine if the efforts will do so in the near future.

Under the Bern Convention, sea turtles are on the "strictly protected" list. Article 6 of this Convention notes the following prohibited acts for these strictly protected fauna species: all forms of deliberate capture and keeping and deliberate killing; the deliberate damage to or destruction of breeding or resting sites; the deliberate disturbance of wild fauna; and the deliberate destruction or taking or keeping of eggs from the wild. Most Mediterranean countries, with the exception of Algeria, Egypt, Israel, Lebanon, Libya, and Syria, are parties to this Convention, so these international protection measures are in place.

It is apparent that the international framework for sea turtle protection is present in the Mediterranean, but the efficacy of these actions is uncertain. The measures in most of these Conventions have been in place for years, and the threats to loggerhead turtles remain. As such, while laudable, the enforcement and follow up of many of these articles needs to occur before the sea turtle protection goals of the Conventions are achieved.

Most Mediterranean countries have developed national legislation to protect sea turtles and/or nesting habitats (Margaritoulis, 2007). These initiatives are also likely captured in the country responses to the survey detailed in Demetropoulos (2007) as discussed above. National protective legislation generally prohibits international killing, harassment, possession, trade, or attempts at these (Margaritoulis *et al.,* 2003). Some countries have site specific legislation for turtle habitat protection. In 1999, a National Marine Park was established on Zakynthos in western Greece, with the primary aim to provide protection to loggerhead nesting areas (Dimopoulos, 2001). Zakynthos represents approximately 43 percent of the average annual nesting effort of the major and moderate nesting areas in Greece (Margaritoulis *et al.,* 2003) and about 26 percent of the documented nesting effort in the Mediterranean (Touliatou *et al.,* 2009). It is noteworthy for conservation purposes that this site is legally protected. While park management has improved over the last several years, there are still some needed measures to improve and ensure sufficient protection at this Park (Panagopoulou *et al.,* 2008; Touliatou *et al.,* 2009).

In Turkey, five nesting beaches (Belek, Dalyan, Fethiye, Goksu Delta, and Patara) were designated Specially Protected Area status in the context of the Barcelona Convention (Margaritoulis *et al.,* 2003). Based on the average annual number of nests from the major nesting sites, these five beaches represent approximately 56 percent of nesting in Turkey (World Wildlife Fund, 2005). In Cyprus, the two nesting beaches of Lara and Toxeftra have been afforded protection through the Fisheries Regulation since 1989 (Margaritoulis, 2007), and Alagadi is a Specially Protected Area (World Wildlife Fund, 2005). Of the major Cyprus nesting sites included in the 2005 World Wildlife Fund Species Action Plan, the nesting beaches afforded protection represent 51 percent of the average annual number of nests in Cyprus. Note, however, that the annual nesting effort in Cyprus presented in Margaritoulis *et al.* (2003) includes additional sites, so the total proportion of protected nesting sites in Cyprus is much lower, potentially around 22 percent. In Italy, a reserve to protect nesting on Lampedusa was established in 1984 (Margaritoulis *et al.,* 2003). In summary, Mediterranean loggerhead nesting primarily occurs in Greece, Libya, Turkey, and Cyprus, and a notable proportion of nesting in those areas is protected through various mechanisms. It is important to recognize the success of these protected areas, but as the protection has been in place for some time and the threats to the species remain (particularly from increasing tourism activities), it is unlikely that the conservation measures discussed here will change the status of the species as outlined in Conant *et al.* (2009).

Protection of marine habitats is at the early stages in the Mediterranean, as in other areas of the world. Off Zakynthos, the National Marine Park established in 1999 also included maritime zones. The marine area of Laganas Bay is divided into three zones controlling maritime traffic from May 1 to October 31: Zone A—no boating activity; Zone B—speed limit of 6 knots, no anchoring; Zone C—speed limit of 6 knots. The restraints on boating activity are particularly aimed at protecting the internesting area surrounding the Zakynthos Laganas Bay nesting area. However, despite the regulations, there has been insufficient enforcement (especially of the 6 knot speed limit), and a high density of speedboats and recorded violations within the marine area of the Park have been reported. In 2009, 13 of 28 recorded strandings in the area of the National Marine Park bore evidence of watercraft injuries and fishing gear interactions, and four live turtles were found with fishing gear lines/hooks. Another marine zone occurs in Cyprus; off the nesting beaches of Lara and Toxeftra, a maritime zone extends to the 20 meter isobath as delineated by the Fisheries Regulation (Margaritoulis, 2007).

The main concern to loggerheads in the Mediterranean includes incidental capture in fisheries. While there are country specific fishery regulations that may limit fishing effort to some degree (to conserve the fishery resource), little, if anything, has been undertaken to reduce sea turtle bycatch and associated mortality in Mediterranean fisheries. Given the lack of conservation efforts to address fisheries and the limited in-water protection provided to turtles to reduce the additional impacts of vessel collisions and pollution/debris interactions, it is unlikely that the status of the species will change given the measures discussed here.

It should be reiterated that it appears that international and national laws are not always enforced or followed. This minimizes the potential success of these conservation efforts. For example, in Egypt, international and national measures to protect turtles were not immediately adhered to, but in recent years, there has been a notable effort to enforce laws and regulations that prohibit the trade of sea turtles at fish markets. However, the illegal trade of turtles in the Alexandria fish market has

persisted and a black market has been created (Nada and Casale, 2008). This is an example of ineffective sea turtle protection and continuing threat to the species, even with conservation efforts in place.

South Atlantic Ocean DPS

The only documented and confirmed nesting locations for loggerhead turtles in the South Atlantic occur in Brazil, and major nesting beaches are found in the states of Rio de Janeiro, Espirito Santo, Bahia, and Sergipe (Marcovaldi and Marcovaldi, 1999). Protection of nesting loggerheads and their eggs in Brazil is afforded by national law that was established in 1989 and most recently reaffirmed in 2008. Illegal practices, such as collecting eggs or nesting females for consumption or sale, are considered environmental crimes and are punishable by law. Other State or Federal laws have been established in Brazil to protect reproductive females, incubating eggs, emergent hatchlings, and nesting habitat, including restricting nighttime lighting adjacent to nesting beaches during the nesting/hatching seasons and prohibiting vehicular traffic on beaches. Projeto TAMAR, a semi-governmental organization, is responsible for sea turtle conservation in Brazil. In general, nesting beach protection in Brazil is considered to be effective and successful for loggerheads and other species of nesting turtles (*e.g.,* Marcovaldi and Chaloupka, 2007; da Silva *et al.,* 2008; Thome *et al.,* 2008). Efforts at protecting reproductive turtles, their nests, hatchlings and their nesting beaches have been supplemented by the establishment of Federally mandated protected areas that include major loggerhead nesting populations: Reserva Biologica de Santa Isabel (established in 1988 in Sergipe) and Reserva Biologica de Comboios (established in 1984 in Espirto Santo); at the State level, Environmental Protection Areas have been established for many loggerhead nesting beaches in Bahia and Espirito Santo (Marcovaldi *et al.,* 2005). In addition, Projeto TAMAR has initiated several high-profile public awareness campaigns, which have focused national attention on the conservation of loggerheads and other marine turtles in Brazil.

Loggerhead turtles of various sizes and life stages occur throughout the South Atlantic, although density/observations are more limited in equatorial waters (Ehrhart *et al.,* 2003). Within national waters of specific countries, various laws and actions have been instituted to mitigate threats to loggerheads and other species of sea turtles; less protection is afforded in the high seas of the South Atlantic. Overall, the principal in-water threat to loggerheads in the South Atlantic is incidental capture in fisheries. In the southwest Atlantic, the South Atlantic Association is a multinational group that includes representatives from Brazil, Uruguay, and Argentina, and meets biannually to share information and develop regional action plans to address threats including bycatch (*http://www.tortugasaso.org/*). At the national level, Brazil has developed a national plan for the reduction of incidental capture of sea turtles that was initiated in 2001 (Marcovaldi *et al.,* 2002a). This national plan includes various activities to mitigate bycatch, including time-area restrictions of fisheries, use of bycatch reduction devices, and working with fishermen to successfully release live-captured turtles. In Uruguay, all sea turtles are protected from human impacts, including fisheries bycatch, by presidential decree (Decreto presidencial 144/98). The Karumbe conservation project in Uruguay has been working on assessing in-water threats to loggerheads and marine turtles for several years (*see http://www.seaturtle.org/promacoda*), with the objective of developing mitigation plans in the future. In Argentina, various conservation organizations are working toward assessing bycatch of loggerheads and other sea turtle species in fisheries, with the objective of developing mitigation plans for this threat (*see http://www.prictma.com.ar*). Overall, more effort to date has been expended on evaluating and assessing levels of fisheries bycatch of loggerhead turtles, than concretely reducing bycatch in the Southwest Atlantic, but this information is necessary for developing adequate mitigation plans. In the southeastern Atlantic, efforts have been directed toward assessing the distribution and levels of bycatch of loggerheads in coastal waters of southwestern Africa (Weir *et al.,* 2007; Petersen *et al.,* 2007, 2009). Bycatch of loggerheads has been documented in longline fisheries off the Atlantic coasts of Angola, Namibia, and South Africa (Petersen *et al.,* 2007), and several authors have highlighted the need to develop regional mitigation plans to reduce bycatch of loggerheads and other sea turtle species in coastal waters (Formia *et al.,* 2003; Weir *et al.,* 2007; Petersen *et al.,* 2009). On the high seas of the South Atlantic, little is known about exact bycatch levels, but there are some areas of higher concentration of longline effort that are likely to result in loggerhead bycatch (Lewison *et al.,* 2004).

Overall, conservation efforts for loggerhead turtles in the South Atlantic are dichotomous. On the nesting beaches (almost exclusively in Brazil), conservation actions are successful at protecting nesting females and their clutches, resulting in large numbers of hatchlings being released each year. In contrast, fisheries bycatch in coastal and oceanic waters remains a serious threat, despite regional emphasis on assessing bycatch rates in various fisheries on both sides of the South Atlantic. Comprehensive management actions to reduce or eliminate bycatch mortality are lacking in most areas, which is likely to result in a decline of this DPS in the future.

Finding

Regarding the petitions to (1) reclassify loggerhead turtles in the North Pacific Ocean as a DPS with endangered status and designate critical habitat and (2) reclassify loggerhead turtles in the Northwest Atlantic as a DPS with endangered status and designate critical habitat, we find that both petitioned entities qualify as DPSs (North Pacific Ocean DPS and Northwest Atlantic Ocean DPS, respectively) as described in this proposed rule. We also find that seven additional loggerhead sea turtle DPSs exist. We have carefully considered the best scientific and commercial data available regarding the past, present and future threats faced by the these nine loggerhead sea turtle DPSs. We believe that listing the North Pacific Ocean, South Pacific Ocean, North Indian Ocean, Southeast Indo-Pacific Ocean, Northwest Atlantic Ocean, Northeast Atlantic Ocean, and Mediterranean Sea DPSs of the loggerhead sea turtle as endangered and the Southwest Indian Ocean and South Atlantic Ocean DPSs as threatened is warranted for the reasons described below for each DPS.

North Pacific Ocean DPS

In the North Pacific, loggerhead nesting is essentially restricted to Japan where monitoring of loggerhead nesting began in the 1950s on some beaches, and expanded to include most known nesting beaches since approximately 1990. While nesting numbers have gradually increased in recent years and the number for 2009 is similar to the start of the time series in 1990, historical evidence indicates that there has been a substantial decline over the last half of the 20th century. In addition, based on nest count data for nearly the past 2 decades, the North Pacific population of loggerheads is small. The

SQE approach described in the Status of the Nine DPSs section suggested that the North Pacific Ocean DPS appears to be declining, is at risk, and is thus likely to decline in the future. The stage-based deterministic modeling approach suggested that the North Pacific Ocean DPS would grow slightly, but in the worst-case scenario, the model indicates that the population would be likely to substantially decline in the future. These results are largely driven by the mortality of juvenile and adult loggerheads from fishery bycatch that occurs throughout the North Pacific Ocean, including the coastal pound net fisheries off Japan, coastal fisheries impacting juvenile foraging populations off Baja California, Mexico, and undescribed fisheries likely affecting loggerheads in the South China Sea and the North Pacific Ocean (Factor E). Although national and international governmental and non-governmental entities on both sides of the North Pacific are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced in the near future due to the challenges of mitigating illegal, unregulated, and unreported fisheries, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. In addition to fishery bycatch, coastal development and coastal armoring on nesting beaches in Japan continues as a substantial threat (Factor A). Coastal armoring, if left unaddressed, will become an even more substantial threat as sea level rises. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. Therefore, we believe that the North Pacific Ocean DPS is in danger of extinction throughout all of its range, and propose to list this DPS as endangered.

South Pacific Ocean DPS

In the South Pacific, loggerhead nesting is almost entirely restricted to eastern Australia (primarily Queensland) and New Caledonia. In eastern Australia, there has been a marked decline in the number of females breeding annually since the mid-1970s, with an estimated 50 to 80 percent decline in the number of breeding females at various Australian rookeries up to 1990 and a decline of approximately 86 percent by 1999. Comparable nesting surveys have not been conducted in New Caledonia, however. Information from pilot surveys conducted in 2005, combined with oral history information collected, suggest that there has been a decline in loggerhead nesting (*see* the Status of the Nine DPSs section above for additional information). Similarly, studies of eastern Australia loggerheads at their foraging areas revealed a decline of 3 percent per year from 1985 to the late 1990s on the coral reefs of the southern Great Barrier Reef. A decline in new recruits was also measured in these foraging areas. The SQE approach described in the Status of the Nine DPSs section suggested that, based on nest count data for the past 3 decades, the population is at risk and thus likely to decline in the future. The stage-based deterministic modeling approach provided a wide range of results: In the case of the lowest anthropogenic mortality rates (or the best case scenario), the deterministic model suggests that the South Pacific Ocean DPS will grow slightly, but in the worst-case scenario, the model indicates that the population is likely to substantially decline in the future. These results are largely driven by mortality of juvenile and adult loggerheads from fishery bycatch that occurs throughout the South Pacific Ocean (Factor E). Although national and international governmental and non-governmental entities on both sides of the South Pacific are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced in the near future due to the challenges of mitigating illegal, unregulated, and unreported fisheries, the continued expansion of artisanal fleets in the southeastern Pacific, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. Therefore, we believe that the South Pacific Ocean DPS is in danger of extinction throughout all of its range, and propose to list this DPS as endangered.

North Indian Ocean DPS

In the North Indian Ocean, nesting occurs in greatest density on Masirah Island. Reliable trends in nesting cannot be determined due to the lack of standardized surveys at Masirah Island prior to 2008. However, a reinterpretation of the 1977–1978 and 1991 estimates of nesting females was compared to survey information collected since 2008 and results suggest a significant decline in the size of the nesting population, which is consistent with observations by local rangers that the population has declined dramatically in the last three decades. Nesting trends cannot be determined elsewhere in the northern Indian Ocean where loggerhead nesting occurs because the time series of nesting data based on standardized surveys is not available. The SQE approach described in the Status of the Nine DPSs section is based on nesting data; however, an adequate time series of nesting data for this DPS was not available. Therefore, we could not use this approach to evaluate extinction risk. The stage-based deterministic modeling approach indicated the North Indian Ocean DPS is likely to decline in the future. These results are driven by cumulative mortality from a variety of sources across all life stages. Threats to nesting beaches are likely to increase, which would require additional and widespread nesting beach protection efforts (Factor A). Little is currently being done to monitor and reduce mortality from neritic and oceanic fisheries in the range of the North Indian Ocean DPS; this mortality is likely to continue and increase with expected additional fishing effort from commercial and artisanal fisheries (Factor E). Reduction of mortality would be difficult due to a lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. Therefore, we believe that the North Indian Ocean DPS is in danger of extinction throughout all of its range, and propose to list this DPS as endangered.

Southeast Indo-Pacific Ocean DPS

In the Southeast Indo-Pacific Ocean, loggerhead nesting is restricted to

western Australia, with the greatest number of loggerheads nesting on Dirk Hartog Island. Loggerheads also nest on the Muiron Islands and North West Cape, but in smaller numbers. Although data are insufficient to determine trends, evidence suggests the nesting population in the Muiron Islands and North West Cape region was depleted before recent beach monitoring programs began. The SQE approach described in the Status of the Nine DPSs section is based on nesting data; however, an adequate time series of nesting data for this DPS was not available; therefore, we could not use this approach to evaluate extinction risk. The stage-based deterministic modeling approach provided a wide range of results: In the case of the lowest anthropogenic mortality rates, the deterministic model suggests that the Southeast Indo-Pacific Ocean DPS will grow slightly, but in the worst-case scenario, the model indicates that the population is likely to substantially decline in the future. These results are largely driven by mortality of juvenile and adult loggerheads from fishery bycatch that occurs throughout the region, as can be inferred from data from Australia's Pacific waters (Factor E). Although national and international governmental and non-governmental entities are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced in the near future due to the challenges of mitigating illegal, unregulated, and unreported fisheries, the continued expansion of artisanal fleets, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. Therefore, we believe that the Southeast Indo-Pacific Ocean DPS is in danger of extinction throughout all of its range, and propose to list this DPS as endangered.

Southwest Indian Ocean DPS

In the Southwest Indian Ocean, the highest concentration of nesting occurs on the coast of Tongaland, South Africa, where surveys and management practices were instituted in 1963. A trend analysis of index nesting beach data from this region from 1965 to 2008 indicates an increasing nesting population between the first decade of surveys and the last 8 years. These data represent approximately 50 percent of all nesting within South Africa and are believed to be representative of trends in the region. Loggerhead nesting occurs elsewhere in South Africa, but sampling is not consistent and no trend data are available. Similarly, in Madagascar, loggerheads have been documented nesting in low numbers, but no trend data are available. The SQE approach described in the Status of the Nine DPSs section, based on a 37-year time series of nesting female counts at Tongaland, South Africa (1963–1999), indicated this segment of the population, while small, has increased, and the likelihood of quasi-extinction is negligible. We note that the SQE approach we used is based on past performance of the DPS (nesting data from 1963–1999) and does not fully reflect ongoing and future threats to all life stages within the DPS. The stage-based deterministic modeling approach provided a wide range of results: In the case of the lowest anthropogenic mortality rates, the deterministic model suggests that the Southwest Indian Ocean DPS will grow slightly, but in the worst-case scenario, the model indicates that the population is likely to substantially decline in the future. These results are largely driven by mortality of juvenile loggerheads from fishery bycatch that occurs throughout the Southwest Indian Ocean (Factor E). This mortality is likely to continue and may increase with expected additional fishing effort from commercial and artisanal fisheries. Reduction of mortality would be difficult due to a lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. We have determined that although the Southwest Indian Ocean DPS is likely not currently in danger of extinction throughout all of its range, the extinction risk is likely to increase in the future. Therefore, we believe that the Southwest Indian Ocean DPS is likely to become an endangered species within the foreseeable future throughout all of its range, and propose to list this DPS as threatened.

Northwest Atlantic Ocean DPS

Nesting occurs within the Northwest Atlantic along the coasts of North America, Central America, northern South America, the Antilles, and The Bahamas, but is concentrated in the southeastern U.S. and on the Yucatan Peninsula in Mexico. The results of comprehensive analyses of the status of the nesting assemblages within the Northwest Atlantic Ocean DPS using standardized data collected over survey periods ranging from 10 to 23 years and using different analytical approaches were consistent in their findings—there has been a significant, overall nesting decline within this DPS. The SQE approach described in the Status of the Nine DPSs section suggested that, based on nest count data for the past 2 decades, the population is at risk and thus likely to decline in the future. These results are based on nesting data for loggerheads at index/standardized nesting survey beaches in the USA and the Yucatan Peninsula, Mexico. The stage-based deterministic modeling indicated the Northwest Atlantic Ocean DPS is likely to decline in the future, even under the scenario of the lowest anthropogenic mortality rates. These results are largely driven by mortality of juvenile and adult loggerheads from fishery bycatch that occurs throughout the North Atlantic Ocean (Factor E). Although national and international governmental and non-governmental entities on both sides of the North Atlantic are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the diversity and magnitude of the fisheries operating in the North Atlantic, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. Therefore, we believe that the Northwest Atlantic Ocean DPS is in danger of extinction throughout all of its range, and propose to list this DPS as endangered.

Northeast Atlantic Ocean DPS

In the Northeast Atlantic Ocean, the Cape Verde Islands support the only

large nesting population of loggerheads in the region. Nesting occurs at some level on most of the islands in the archipelago with the largest nesting numbers reported from the island of Boa Vista where studies have been ongoing since 1998. Due to limited data available, a population trend cannot currently be determined for the Cape Verde population; however, available information on the directed killing of nesting females suggests that this nesting population is under severe pressure and likely significantly reduced from historic levels. In addition, based on interviews with elders, a reduction in nesting from historic levels at Santiago Island has been reported. Elsewhere in the northeastern Atlantic, loggerhead nesting is non-existent or occurs at very low levels. The SQE approach described in the Status of the Nine DPSs section is based on nesting data. However, we had insufficient nest count data over an appropriate time series for this DPS and could not use this approach to evaluate extinction risk. The stage-based deterministic modeling approach indicated the Northeast Atlantic Ocean DPS is likely to decline in the future, even under the scenario of the lowest anthropogenic mortality rates. These results are largely driven by the ongoing directed lethal take of nesting females and eggs (Factor B), low hatching and emergence success (Factors A, B, and C), and mortality of juveniles and adults from fishery bycatch (Factor E) that occurs throughout the Northeast Atlantic Ocean. Currently, conservation efforts to protect nesting females are growing, and a reduction in this source of mortality is likely to continue in the near future. Although national and international governmental and non-governmental entities in the Northeast Atlantic are currently working toward reducing loggerhead bycatch, and some positive actions have been implemented, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the lack of bycatch reduction in high seas fisheries operating within the range of this DPS, lack of bycatch reduction in coastal fisheries in Africa, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. Therefore, we believe that the Northeast Atlantic Ocean DPS is in danger of extinction throughout all of its range, and propose to list this DPS as endangered.

Mediterranean Sea DPS

Nesting occurs throughout the central and eastern Mediterranean in Italy, Greece, Cyprus, Turkey, Syria, Lebanon, Israel, the Sinai, Egypt, Libya, and Tunisia. In addition, sporadic nesting has been reported from the western Mediterranean, but the vast majority of nesting (greater than 80 percent) occurs in Greece and Turkey. There is no discernible trend in nesting at the two longest monitoring projects in Greece, Laganas Bay and southern Kyparissia Bay. However, the nesting trend at Rethymno Beach, which hosts approximately 7 percent of all documented loggerhead nesting in the Mediterranean, shows a highly significant declining trend (1990–2004). In Turkey, intermittent nesting surveys have been conducted since the 1970s with more consistent surveys conducted on some beaches only since the 1990s, making it difficult to assess trends in nesting. A declining trend (1993–2004) has been reported at Fethiye Beach, which represents approximately 10 percent of loggerhead nesting in Turkey. The SQE approach described in the Status of the Nine DPSs section is based on nesting data; however, region-wide nesting data for this DPS were not available. Therefore, we could not use this approach to evaluate extinction risk. The stage-based deterministic modeling approach indicated the Mediterranean Sea DPS is likely to decline in the future, even under the scenario of the lowest anthropogenic mortality rates. These results are largely driven by mortality of juvenile and adult loggerheads from fishery bycatch that occurs throughout the Mediterranean Sea (Factor E), as well as anthropogenic threats to nesting beaches (Factor A) and eggs/hatchlings (Factors A, B, C, and E). Although conservation efforts to protect some nesting beaches are underway, more widespread and consistent protection is needed. Although national and international governmental and non-governmental entities in the Mediterranean Sea are currently working toward reducing loggerhead bycatch, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the lack of bycatch reduction in commercial and artisanal fisheries operating within the range of this DPS, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities, limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. Therefore, we believe that the Mediterranean Sea DPS is in danger of extinction throughout all of its range, and propose to list this DPS as endangered.

South Atlantic Ocean DPS

In the South Atlantic nesting occurs primarily along the mainland coast of Brazil from Sergipe south to Rio de Janeiro. Prior to 1980, loggerhead nesting populations in Brazil were considered severely depleted. More recently, a long-term, sustained increasing trend in nesting abundance has been observed over a 16-year period from 1988 through 2003 on 22 surveyed beaches containing more than 75 percent of all loggerhead nesting in Brazil. The SQE approach described in the Status of the Nine DPSs section suggested that, based on nest count data for the past 2 decades, the population is unlikely to decline in the future. These results are consistent with Marcovaldi and Chaloupka's (2007) nesting beach trend analyses. We note that the SQE approach is based on past performance of the DPS (nesting data) and does not fully reflect ongoing and future threats to all life stages within the DPS. The stage-based deterministic modeling approach indicated the South Atlantic Ocean DPS is likely to decline in the future, even under the scenario of the lowest anthropogenic mortality rates. This result is largely driven by mortality of juvenile loggerheads from fishery bycatch that occurs throughout the South Atlantic Ocean (Factor E). Although national and international governmental and non-governmental entities on both sides of the South Atlantic are currently working toward reducing loggerhead bycatch in the South Atlantic, it is unlikely that this source of mortality can be sufficiently reduced across the range of the DPS in the near future because of the diversity and magnitude of the commercial and artisanal fisheries operating in the South Atlantic, the lack of comprehensive information on fishing distribution and effort, limitations on implementing demonstrated effective conservation measures, geopolitical complexities,

limitations on enforcement capacity, and lack of availability of comprehensive bycatch reduction technologies. It is highly uncertain whether the actions identified in the Conservation Efforts section above will be fully implemented in the near future or that they will be sufficiently effective. We have determined that although the South Atlantic Ocean DPS is not currently in danger of extinction throughout all of its range, the extinction risk is likely to increase substantially in the future. Therefore, we believe that the South Atlantic Ocean DPS is likely to become an endangered species within the foreseeable future throughout all of its range, and propose to list this DPS as threatened.

Critical Habitat

Section 4(b)(2) of the ESA requires us to designate critical habitat for threatened and endangered species "on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat." This section grants the Secretary of the Interior or of Commerce discretion to exclude an area from critical habitat if he determines "the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat." The Secretary may not exclude areas if exclusion "will result in the extinction of the species." In addition, the Secretary may not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation (*see* section 318(a)(3) of the National Defense Authorization Act, Pub. L. 108–136).

The ESA defines critical habitat under section 3(5)(A) as: "(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * *, upon a determination by the Secretary that such areas are essential for the conservation of the species."

Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure they do not fund, authorize, or carry out any actions that will destroy or adversely modify that habitat. This requirement is in addition to the other principal section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of listed species.

The Services have not designated critical habitat for the loggerhead sea turtle. Critical habitat will be proposed, if found to be prudent and determinable, in a separate rulemaking.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review, establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. We obtained independent peer review of the scientific information compiled in the 2009 Status Review (Conant *et al.,* 2009) that supports this proposal to list nine DPSs of the loggerhead sea turtle as endangered or threatened.

On July 1, 1994, the Services published a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, we will solicit the expert opinions of three qualified specialists, concurrent with the public comment period. Independent specialists will be selected from the academic and scientific community, Federal and State agencies, and the private sector.

References

A complete list of the references used in this proposed rule is available upon request (*see* **ADDRESSES**).

Classification

National Environmental Policy Act

Proposed ESA listing decisions are exempt from the requirement to prepare an environmental assessment (EA) or environmental impact statement (EIS) under the National Environmental Policy Act of 1969 (NEPA) (NOAA Administrative Order 216–6.03(e)(1); *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981)). Thus, we have determined that the proposed listing determinations for the nine loggerhead DPSs described in this notice are exempt from the requirements of NEPA.

Information Quality Act

The Information Quality Act directed the Office of Management and Budget to issue government wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." Under the NOAA guidelines, this action is considered a Natural Resource Plan. It is a composite of several types of information from a variety of sources. Compliance of this document with NOAA guidelines is evaluated below.

- *Utility:* The information disseminated is intended to describe a management action and the impacts of that action. The information is intended to be useful to State and Federal agencies, non-governmental organizations, industry groups and other interested parties so they can understand the management action, its effects, and its justification.
- *Integrity:* No confidential data were used in the analysis of the impacts associated with this document. All information considered in this document and used to analyze the proposed action, is considered public information.
- *Objectivity:* The NOAA Information Quality Guidelines standards for Natural Resource Plans state that plans be presented in an accurate, clear, complete, and unbiased manner. NMFS and USFWS strive to draft and present proposed management measures in a clear and easily understandable manner with detailed descriptions that explain the decision making process and the implications of management measures on natural resources and the public. This document was reviewed by a variety of biologists, policy analysts, and attorneys from NMFS and USFWS.

Administrative Procedure Act

The Federal Administrative Procedure Act (APA) establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of the APA is to ensure public access to the Federal rulemaking process and to give the public notice and an opportunity to comment before

the agency promulgates new regulations.

Coastal Zone Management Act

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 requires that all Federal activities that affect any land or water use or natural resource of the coastal zone be consistent with approved State coastal zone management programs to the maximum extent practicable. NMFS and FWS have determined that this action is consistent to the maximum extent practicable with the enforceable policies of approved Coastal Zone Management Programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, California, Oregon, Washington, Hawaii, Puerto Rico, and the U.S. Virgin Islands. Letters documenting our determination, along with the proposed rule, are being sent to the coastal zone management program offices of these States. A list of the specific State contacts and a copy of the letters are available upon request.

Executive Order 13132 Federalism

Executive Order (E.O.) 13132, otherwise known as the Federalism E.O., was signed by President Clinton on August 4, 1999, and published in the **Federal Register** on August 10, 1999 (64 FR 43255). This E.O. is intended to guide Federal agencies in the formulation and implementation of "policies that have Federal implications." Such policies are regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, E.O. 13132 requires Federal agencies to have a process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. A Federal summary impact statement is also required for rules that have federalism implications.

Pursuant to E.O. 13132, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action and request comments from the appropriate official(s) in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, California, Oregon, Washington, Hawaii, Puerto Rico, and the U.S. Virgin Islands.

Environmental Justice

Executive Order 12898 requires that Federal actions address environmental justice in decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. The proposed listing determinations are not expected to have a disproportionate effect on minority or low-income communities.

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts shall not be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O. 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

List of Subjects

50 CFR Part 17

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

50 CFR Part 223

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

50 CFR Part 224

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

Dated: March 8, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: March 3, 2010.

Daniel M. Ashe,

Acting Director, U.S. Fish and Wildlife Service.

For the reasons set out in the preamble, 50 CFR parts 17, 223, and 224 are proposed to be amended as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) remove the entry for "Sea turtle, loggerhead", and add nine entries for "Sea turtle, loggerhead" in its place, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Sea turtle, loggerhead, Mediterranean Sea.	*Caretta caretta*	Mediterranean Sea Basin..	Mediterranean Sea east of 5°36′ W. Long.	E		NA	NA
Sea turtle, loggerhead, North Indian Ocean.	*Caretta caretta*	North Indian Ocean Basin..	North Indian Ocean north of the equator and south of 30° N. Lat.	E		NA	NA
Sea turtle, loggerhead, North Pacific Ocean.	*Caretta caretta*	North Pacific Ocean Basin..	North Pacific north of the equator and south of 60° N. Lat.	E		NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Sea turtle, loggerhead, Northeast Atlantic Ocean.	*Caretta caretta*	Northeast Atlantic Ocean Basin..	Northeast Atlantic Ocean north of the equator, south of 60° N. Lat., east of 40° W. Long., and west of 5°36′ W. Long.	E		NA	NA
Sea turtle, loggerhead, Northwest Atlantic Ocean.	*Caretta caretta*	Northwest Atlantic Ocean Basin..	Northwest Atlantic Ocean north of the equator, south of 60° N. Lat., and west of 40° W. Long.	E		NA	NA
Sea turtle, loggerhead, South Atlantic Ocean.	*Caretta caretta*	South Atlantic Ocean Basin..	South Atlantic Ocean south of the equator, north of 60° S. Lat., west of 20° E. Long., and east of 67° W. Long.	T		NA	NA
Sea turtle, loggerhead, South Pacific Ocean.	*Caretta caretta*	South Pacific Ocean Basin..	South Pacific south of the equator, north of 60° S. Lat., west of 67° W. Long., and east of 139° E. Long.	E		NA	NA
Sea turtle, loggerhead, Southeast Indo-Pacific Ocean.	*Caretta caretta*	Southeast Indian Ocean Basin; South Pacific Ocean Basin as far east as 139° E Long..	Southeast Indian Ocean south of the equator, north of 60° S. Lat., and east of 80° E. Long.; South Pacific Ocean south of the equator, north of 60° S. Lat., and west of 139° E. Long.	E		NA	NA
Sea turtle, loggerhead, Southwest Indian Ocean.	*Caretta caretta*	Southwest Indian Ocean Basin..	Southwest Indian Ocean north of the equator, south of 30° N. Lat., west of 20° E. Long., and east of 80° E. Long.	T		NA	NA
*	*	*	*	*	*	*	

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

4. Amend the table in § 223.102 by redesignating paragraph (b)(3) as paragraph (b)(4), and by removing the existing paragraph (b)(2), and by adding a new paragraph (b)(2) and (b)(3) to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(b) * * *

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	* *	* *	*	*
(2) Sea turtle, loggerhead, South Atlantic Ocean DPS.	*Caretta caretta*	South Atlantic Ocean south of the equator, north of 60° S. Lat., west of 20° E. Long., and east of 67° W. Long..	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA
(3) Sea turtle, loggerhead, Southwest Indian Ocean DPS.	*Caretta caretta*	Southwest Indian Ocean north of the equator, south of 30° N. Lat., west of 20° E. Long., and east of 80° E. Long..	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	* * *	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, *see* 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, *see* 56 FR 58612, November 20, 1991).

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

5. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

6. Amend § 224.101 by revising paragraph (c) to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(c) *Sea turtles.* The following table lists the common and scientific names of endangered sea turtles, the locations where they are listed, and the citations for the listings and critical habitat designations.

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(1) Sea turtle, loggerhead, Mediterranean Sea DPS.	*Caretta caretta*	Mediterranean Sea east of 5°36′ W. Long	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA
(2) Sea turtle, loggerhead, North Indian Ocean DPS.	*Caretta caretta*	North Indian Ocean north of the equator and south of 30° N. Lat.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA
(3) Sea turtle, loggerhead, North Pacific Ocean DPS.	*Caretta caretta*	North Pacific north of the equator and south of 60° N. Lat.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA
(4) Sea turtle, loggerhead, Northeast Atlantic Ocean DPS.	*Caretta caretta*	Northeast Atlantic Ocean north of the equator, south of 60° N. Lat., east of 40° W. Long., and west of 5°36′ W. Long.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA
(5) Sea turtle, loggerhead, Northwest Atlantic Ocean DPS.	*Caretta caretta*	Northwest Atlantic Ocean north of the equator, south of 60° N. Lat., and west of 40° W. Long.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA
(6) Sea turtle, loggerhead, South Pacific Ocean DPS.	*Caretta caretta*	South Pacific south of the equator, north of 60° S. Lat., west of 67° W. Long., and east of 139° E. Long.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA
(7) Sea turtle, loggerhead, Southeast Indo-Pacific Ocean DPS.	*Caretta caretta*	Southeast Indian Ocean south of the equator, north of 60° S. Lat., and east of 80° E. Long.; South Pacific Ocean south of the equator, north of 60° S. Lat., and west of 139° E. Long.	[INSERT FR CITATION WHEN PUBLISHED AS A FINAL RULE].	NA

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, *see* 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, *see* 56 FR 58612, November 20, 1991).

* * * * *

[FR Doc. 2010–5370 Filed 3–15–10; 8:45 am]

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