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

WHEN: Tuesday, September 15, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 315 and 316

RIN 3206–AL73

Noncompetitive Appointment of Certain Military Spouses

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing final regulations which establish a noncompetitive hiring authority for certain military spouses to positions in the competitive service. These regulations implement Executive Order 13473 dated September 25, 2008, which authorizes noncompetitive appointments in the civil service for spouses of certain members of the armed forces. The intended effect of this rule is to facilitate the entry of military spouses into the Federal civil service as part of an effort to recruit and retain skilled and experienced members of the armed forces and to recognize and honor the service of members injured, disabled, or killed in connection with their service.

DATES: This rule is effective September 11, 2009.

FOR FURTHER INFORMATION CONTACT: Jacquelyn A. Carrington at (202) 606–0960, FAX at (202) 606–2329, TDD at (202) 418–3134, or e-mail at *jacquelyn.carrington@opm.gov*.

SUPPLEMENTARY INFORMATION: On December 5, 2008, OPM issued proposed regulations in the **Federal Register** at 73 FR 74071 to regulate the noncompetitive appointment of certain military spouses in parts 315 and 316 of title 5, Code of Federal Regulations (CFR). We requested comments on the proposed rule to be submitted by January 5, 2009.

OPM received comments from 43 individuals, 10 Federal agencies, and 1 military family organization that were pertinent to the proposed changes. A discussion of the comments we received is categorized below into the following areas: Agency Authority, Definitions, Eligibility, Conditions, Proof of Eligibility, Acquisition of Competitive Status, and Miscellaneous.

Agency Authority

An individual asked OPM to explain the circumstances under which eligible spouses can be appointed under this authority. The circumstances under which spouses may be appointed are listed at § 315.612(a). Agencies may use this authority to noncompetitively appoint to the competitive service eligible spouses to temporary, term, or permanent positions consistent with the provisions of § 315.612 and 5 CFR part 316. For more specifics concerning the use of this authority, OPM will issue supplemental guidance on the use of this authority, which will be available at *http://www.opm.gov.*

Definitions

One agency commented that the Merit Systems Protection Board decision in *Edward Thomas Hesse* v. *Department of the Army* (104 M.S.P.R. 647, 2007) may impact the definition of ''active duty'' in § 315.612(b)(1). OPM does not agree with the agency's comment. The *Hesse* decision related to the definition of ''disabled veteran'' under 5 U.S.C. 2108(2). The term ''active duty'' in § 315.612(b) is defined using the language from Executive Order 13473. Neither the Executive Order nor the regulation changes the statutory definition of ''disabled veteran.''

Two agencies suggested revising the definition of ''member of the armed forces or service member'' in § 315.612(b)(4)(ii) to clarify that a service member's 100 percent disability must be military-related or service-connected. OPM agrees clarification is needed and we have amended section 315.612(b)(4)(ii) accordingly.

One agency suggested that OPM modify the definition of ''member of the armed forces or service member'' in section 315.612(b)(4)(ii) to include the spouse of a military member who has been declared catastrophically injured by his or her attending physician, but whose formal disability rating is not yet finalized. OPM cannot adopt this suggestion because section 2(e) of E.O. 13473 defines a totally disabled veteran as having a disability rating of 100 percent from the appropriate military entity.

A national military family association suggested that OPM expand section 315.612(b)(4)(i) to include a service member who receives follow-on orders to a military command in the same geographic area to which he or she is already stationed. OPM is not adopting this suggestion because E.O. 13473 does not authorize noncompetitive appointment eligibility for service members who receive follow-on orders.

The same organization suggested that OPM expand section 315.612(b)(4)(i) to include the spouse of a National Guard or Reserve service member activated for more than 180 days who did not receive permanent change of station (PCS) orders when activated. OPM cannot adopt this suggestion because section 3(a) of E.O. 13473 limits eligibility under this authority to spouses of service members in receipt of PCS orders (except in cases in which the service member incurs a 100 percent service-connected disability or is killed while on active duty).

One individual suggested OPM delete the provision in section 315.612(b)(ii) requiring a 100 percent disability rating for certain service members with a service-connected disability. OPM cannot adopt this suggestion because section 2(e)(i) of E.O. 13473 specifies that a 100 percent disability is required for an individual with a service-connected disability.

An individual suggested that OPM delete the period at the end of section 315.612(b)(4)(ii) to better clarify the definition of a ''member of the armed services or service member.'' We agree that clarity is needed and have modified the punctuation in section 315.612(b)(4) to make clear that a ''member of the armed services or service member'' means an individual who meets any of the three criteria contained in the definition instead of having to meet all three criteria.

One individual and one national military family association asked whether eligibility under this authority is limited to spouses of injured service members or those killed while on active duty. Section 315.612(a) explains that eligibility under this authority, in accordance with the other provisions of

this rule, applies to the spouse of a service member serving on active duty in the armed forces who has received PCS orders; the spouse of a 100 percent disabled service member whose disability resulted from active duty in the armed forces; and, the un-remarried widow or widower of a service member who was killed while on active duty in the armed forces.

One commenter asked whether a service member must have been killed in combat, as opposed to being killed while on active duty but not in combat, in order for the spouse of that service member to be eligible under this authority. One agency asked whether the service member must have been performing actual duty or simply have been in an active duty status for the spouse to be eligible. Section 3(c) of the E.O. states that the unmarried widow or widower of a member of the Armed Forces who was killed while performing active duty are eligible for non-competitive appointment under this authority. Because the intent of the E.O. is to help widows and widowers of spouses killed in the service of our nation, OPM is applying the E.O. language broadly to include spouses of anyone killed while in active duty status (*i.e.,* the individual need not have been killed in ''combat'').

Two individuals and one national military family association suggested that an individual who marries after his or her military spouse receives PCS orders should be eligible for noncompetitive appointment under this authority. OPM is not adopting this suggestion. The intent of E.O. 13473 is to provide employment opportunities for individuals who are married to service members at the time these service members receive their orders to relocate, become 100 percent disabled, or are killed.

One individual suggested that this authority apply to spouses of individuals on training duty or who are attending military service schools. Section 2(c) of E.O. 13473 specifically excludes training duties and attendance at service schools from coverage under this authority.

Eligibility

One individual and two agencies recommended revising section 315.612(c)(3) to clarify that the geographical limitation applies only to the spouse of a member of the armed services or service member defined in section 315.612(b)(4)(i). We agree that clarification is needed and have modified section 315.612(c)(3) accordingly.

One individual and three agencies asked whether the spouse of a service member must relocate with the service member in order to be eligible for noncompetitive appointment under this authority, for example, if the service member goes on an unaccompanied tour. As stated in section 3(a) of the E.O., the spouse must relocate with the service member in order to be eligible for appointment under this authority.

Another individual recommended providing eligibility for the widow or widower of a service member who dies after separation or medical retirement as a result of injury sustained on active duty. OPM cannot adopt this recommendation because section 3(c) of E.O. 13473 specifies that eligibility is provided for service members who are killed while performing active duty.

One agency asked whether agencies can use this authority to appoint an individual whose service member spouse dies while assigned to an unaccompanied tour. Although the spouse was not eligible for appointment under section 315.612(c)(1) because the military member was on an unaccompanied tour, the spouse could become eligible under section 315.612(c)(3) as the un-remarried widow or widower of a service member killed while on active duty.

One agency recommended revising section 315. 612(c)(1) to provide eligibility for individuals who wait to marry until they have orders to relocate, or subsequently marry after the relocation. The agency suggests that the two-year eligibility period should be predicated on the military member's orders and proof of marriage, regardless of when or where the marriage takes place. OPM cannot adopt this recommendation. Section 3 of E.O. 13473 specifies that eligibility for appointment under this authority is limited to spouses who relocate to the service member's new permanent duty station. To be eligible for the noncompetitive appointment in this scenario, the spouse must accompany the military member on permanent change of station orders. In order to prove his or her eligibility, the spouse must present documentation authorizing him or her to accompany the service member to the new duty station along with a copy of the PCS orders. Military orders, however, only authorize dependent travel if the service member is married at the time the orders are processed. For this reason, individuals who wait to marry after their spouse relocates are not eligible for noncompetitive appointment under this authority.

Five agencies and one individual commented on the geographic limitation contained in section 315.612(c)(3). One of the agencies recommended revising the language in this paragraph to add that the agency head's designee at the Chief Human Capital Officer (CHCO) level, or comparable level in a non-CHCO agency, may waive the geographic limitation. OPM agrees that the head of the agency could delegate the waiver authority to his or her designee, and we have modified the language in paragraph (c)(3) accordingly.

The individual commenter suggested removing the geographic restriction from section 315.612(c)(3) because some spouses may not be able to relocate due to family obligations. OPM is not adopting this suggestion. Section 3(a) of E.O. 13473 specifically states spouses are eligible to be appointed under this authority provided that the spouse relocates to the member's new permanent duty station.

Two of the agencies suggested the term ''geographic area'' be further defined, e.g., by establishing a mileage standard as the basis for determining the geographic area within which the noncompetitive appointing authority will apply. OPM is not adopting these suggestions. Establishing a definitive mileage standard may adversely affect certain spouses' eligibility for appointment. We believe the agency is in the best position to determine the reasonableness of commuting distance within its location. In fact, most agencies have defined ''commuting area'' in their merit promotion plans established under 5 CFR part 335. Also, the parameters in section 315.612(c)(3) specify that the geographic limit is based on the duty station specified on the service member's PCS orders. (OPM notes that we have clarified language in paragraph (c)(3) to specify the geographic limitation applies only to spouses who relocated with their spouses and are eligible for appointment under section 315.612(b)(1).)

One of these same agencies recommended modifying section 315.612(c)(3) to waive the geographic limitation if no Federal agency exists in the geographic area to which the military member is relocated or there are none that employs the occupational specialty for which the spouse qualifies, *e.g.,* a nursing assistant or health care information technology specialist. OPM is not adopting this suggestion. The intent of these provisions is to provide employment opportunities for individuals negatively impacted by their military spouse's relocation, not to provide employment opportunities

within the spouse's occupational specialty.

The other agency suggested OPM provide guidance on applying the geographic limitation. OPM will address this concern in supplemental guidance material which will be available on the OPM Web site at *http://www.opm.gov.*

Conditions

Five individuals, ten agencies, and one national military family organization suggested the 2-year eligibility period specified in section 315.612(d)(1) should be eliminated or extended. OPM is not adopting this suggestion because the intent of this hiring authority is to provide employment access for certain individuals negatively impacted by their military spouses' relocation, incapacitation, or death. We believe 2 years is a reasonable time period for affected individuals to obtain Federal employment via this authority. We note that spouses of 100 percent disabled service members and service members killed while on active duty will have a veterans' preference entitlement in addition to eligibility under this appointing authority.

Two agencies asked whether the 2 year time limit specified under section 315.612(d)(1) is extended if the eligible individual is appointed to a temporary or term appointment. The 2 year time limit cannot be extended for individuals appointed to temporary or term positions under this authority. The intent of this hiring authority is to provide employment access for certain individuals. The 2 year time limit is consistent with other noncompetitive appointing authorities. We also note again that spouses of 100 percent disabled service members and service members killed while on active duty will have a veterans' preference entitlement in addition to eligibility under this appointing authority.

One agency commented that the date in section 315.612(d)(1)(i) should be revised from 2 years from the date of the service member's PCS orders to 2 years from the reporting or effective date stated in the orders, to eliminate any confusion, as some may think this is the issuance date. OPM is not adopting this suggestion. We believe a 2 year period from the date the orders are issued provides consistency and equitable treatment of affected individuals because individuals' reporting times may vary.

Two agencies and one individual commented on section 315.612(d)(3), which would have provided eligibility to spouses who relocated with a service member within 1 year prior to the effective date of the final regulations. One of these agencies recommended removing this retroactive eligibility. The other agency recommended extending the period to 2 years, and the individual commenter suggested extending the period back to September 11, 2001. OPM is adopting the recommendation to delete this provision from the final regulation. The separate 1-year retroactive provision is not needed for spouses who have already relocated with the service member because their eligibility has been established under section 315.612(d)(1). This section provides eligibility for 2 years from the date of the member's PCS orders. E.O. 13473 does not contain a grandfather provision for service members who may have met the eligibility criteria in prior years. We have replaced the language in paragraph (d)(3) with the language in paragraph (d)(4) of the proposed regulations and deleted paragraph (d)(4).

One agency asked if there is a limit on the number of noncompetitive appointments a spouse of a 100 percent disabled or deceased service member may receive. There is no limit on the number of appointments a spouse of a 100 percent disabled veteran or the widow or widower of a deceased service member may receive under this authority; however, these spouses remain subject to the 2-year period specified in section 315.612(d)(1)(ii). Spouses of relocating service members are limited to only one appointment under this authority per PCS order.

Three agencies asked whether the 2-year eligibility period specified in section 315.612(d)(1) begins on the date of the PCS orders or the date the eligible spouse relocates to the new duty station. Section 315.612(d)(1)(i) states that the 2-year eligibility period begins on the date of the service member's PCS orders.

One agency and one individual suggested OPM eliminate the requirement in section 315.612(d)(2), which limits an individual's eligibility to one appointment per PCS relocation. OPM is not adopting this suggestion because the intent of this rule is to provide employment opportunities to individuals negatively impacted by a PCS move.

Proof of Eligibility

Two agencies suggested we modify section 315.612(e)(1)(c) to specify that documentation must verify an individual's current marriage to a service member. OPM is not adopting this suggestion because we do not believe this clarification is necessary. Section 315.612(b)(6) defines a spouse as the husband or wife of a member of the armed forces. This definition implies that a spouse is a current spouse. Agencies also commented that the regulations should ensure the currency and reliability of documentation of death or disability. OPM believes that the proof of eligibility requirements in section 315.612(e) is sufficiently detailed. It is incumbent on each agency to accept eligibility documents from military spouses seeking noncompetitive appointment that are as reliable as the eligibility documents submitted by applicants for veterans preference. See Instructions on Documentation Required accompanying the Standard Form 15, Application for 10-Point Veterans Preference, available at *http://www.opm.gov/forms*.

One of these agencies also suggested we modify the parenthetical examples in section 315.612(e)(1)(ii) and (iii) by changing the ''or'' to ''and'' in these examples. We are not adopting this suggestion because there are valid forms of documentation, other than a marriage license, which some individuals may be able to produce in lieu of a marriage license in order to prove their eligibility under this authority. Our intention is provide individuals with as much flexibility as possible when proving their eligibility.

One agency asked whether the documentation of 100 percent service-connected disability rating applies regardless of how long the member has been retired from active duty. The amount of time a member has been separated or retired from active duty due to service-connected disability is not a factor when considering a spouse's eligibility under this authority.

One agency recommended revising section 315.612(e)(2)(ii) to add at the end, ''resulting from active duty'' to ensure the disability resulted from active duty, a military-related cause, and not another cause. OPM is not adopting this suggestion because the documentation specified in paragraph (b)(4)(ii) is sufficient to prove a service-connected disability.

Acquisition of Competitive Status and Tenure on Appointment

One agency asked for confirmation that the noncompetitive appointing authority does not apply to appointments made under the Federal Career Intern Program (FCIP) because section 315.612 requires a career-conditional appointment, unless the appointee has already completed the service requirements for career tenure. The agency is correct. Appointments under the FCIP authority are made in the excepted service.

One agency asked whether spouses convert to career appointments after 1 year or 3 years of appointment under this authority because section 315.612(g) specifies that an eligible military spouse hired under this authority has a career-conditional appointment until the employee fulfills the requirements for career tenure. The agency misread the requirement. Section 315.612(g) reads: ''An appointment under paragraph (a) of this section is career-conditional *unless* the appointee has already satisfied the requirements for career tenure or is exempt from the service requirement pursuant to § 315.201.''

Miscellaneous

One agency asked whether agencies must rate and rank eligible spouses when making appointments using this authority. Because this is a noncompetitive hiring authority, agencies are not required to rate and rank individuals when using this authority. Agencies must evaluate eligible spouses to determine whether they meet the qualifications for the positions being filled.

One individual asked whether this appointing authority applies only to positions being filled in the competitive service. Similarly, one agency asked if it is correct to say that the authority under section 315.612 is no different than a VRA or the Student Employment Education Program and other Schedule A appointing authorities. A noncompetitive appointment is an appointment to, or placement in, a position in the competitive service that is not made by selection from an open competitive examination and that is usually based on current or prior Federal service. This authority applies only to positions being filled in the competitive service.

One individual commented that this authority is not necessary because there is already an Executive order for family members returning from overseas appointments. The hiring authority provided by section 315.608 for certain former overseas employees is a separate noncompetitive hiring authority established under Executive Order 11219. The new authority provided by section 315.612 established under Executive Order 13473 does not affect or take precedence over other available appointing authorities.

One individual suggested that OPM change the rules pertaining to citizenship requirements for Federal employment to allow foreign military spouses to be eligible under this appointing authority. Executive Order 11935, signed on September 2, 1976, restricts the employment of non-citizens in competitive service positions covered by title 5 of the U.S. Code. Executive Order 13473, which provides for the noncompetitive appointment of certain military spouses, does not amend E.O. 11935, nor does it provide OPM with any authority to supersede the citizenship requirement.

One commenter asked whether OPM will specify the qualifications requirements pertaining to the various positions agencies may fill under this authority. Agencies use Governmentwide qualification standards when filling positions in the competitive service. The qualification requirements will vary depending on the specific position an agency is seeking to fill. Agencies will identify the qualification requirements in the vacancy announcement advertising the specific position to be filled. This authority is not limited to specific positions, and may be used to fill any position in the competitive service.

The same individual asked whether agencies will be required to report, via Central Personnel Data File (CPDF), appointments made under this authority. Agencies must submit hiring activity reports for this authority to CPDF the same as when making other appointments. OPM will then capture this CPDF data on the use of this authority to monitor, on an ad hoc basis, the use of this authority.

Three agencies asked OPM to clarify whether agencies are required to post a Federal vacancy announcement prior to appointing individuals under this authority. If a vacancy announcement is required, two of these agencies suggested that OPM eliminate this requirement in conjunction with use of this appointing authority. Per 5 U.S.C. 3330(b), agencies must follow public notice requirements (i.e., posting of a vacancy announcement on the USAJOBS Web site) when using this authority to fill permanent or term positions, or temporary positions lasting more than 1-year. In addition, 5 CFR part 330 requires agencies to advertise jobs lasting more than 120 days. In response to a commenter's question, these vacancy announcement requirements apply to competitive service positions in the National Security Personnel System (NSPS). OPM will issue question and answer guidance which will include information on the use of this appointing authority for NSPS positions.

Another individual asked how eligible spouses can find out about employment opportunities under this authority. Spouses may find out about job opportunities under this authority on OPM's USAJOBS Web site (*http://www.usajobs.gov*). In addition, some agencies may choose to have information on their Web sites specific to positions being filled through this authority. Job seekers should, therefore, check the Web sites of agencies in which they may wish to work, in addition to USAJOBS.

Two individuals inquired about the type of vacancy announcements eligible spouses may respond to in applying for employment under this authority. Eligible spouses may apply for positions advertised as being open to the ''public,'' ''all sources,'' or ''status candidates.'' Use of this authority, however, is at the discretion of the hiring agency.

One individual asked whether this authority will have any affect on other veterans' hiring authorities, such as Veterans Recruitment Act (VRA) appointments. OPM cannot predict the impact of this appointing authority because use of this authority is at the discretion of hiring agencies.

One agency suggested that this noncompetitive hiring authority should not apply in overseas locations because of the possible difficulty in administering rotation programs. OPM is not adopting the suggestion to limit applicability of this authority. Depending on the circumstances surrounding the location of the position, use of any competitive service appointing authority may be problematic (for example, when a treaty with a host nation restricts appointing U.S. citizens abroad). As a noncompetitive hiring authority, this authority is available for agencies to use at their discretion.

One agency asked whether there is a selection priority if more than one eligible applies under this authority or if multiple candidates eligible for noncompetitive appointments apply for a position. Agencies have the discretion to select and appoint individuals under any available appointing authority. In accordance with 5 CFR 335.103(b)(4), agency merit promotion plans must provide for management's right to select from other appropriate sources. This authority is one among many other sources authorized and available to agencies, such as other noncompetitive authorities, competitive examining, merit promotion, and excepted authorities under 5 CFR part 213. OPM will issue question and answer guidance on the use of noncompetitive authorities generally. The guidance will address appropriate consideration of applicants who have eligibility for noncompetitive appointment, and who are also eligible

for consideration under competitive or merit promotion procedures.

One individual asked whether any mechanisms will be put in place to prevent personnel officers and military commanders from hiring their spouses regardless of whether the spouses are qualified. Another person suggested that oversight mechanisms were needed at military installations to safeguard against abuses by these entities when using this authority. Mechanisms such as nepotism rules, merit system principles, and prohibited personnel practices are currently in place to ensure administrative probity with respect to agencies' use of this appointing authority. Oversight at local military installations is the responsibility of the Installation Commander or his or her designee. In addition, OPM conducts periodic audits of agencies' hiring practices to ensure agencies are using the various appointing authorities appropriately and in a manner consistent with all applicable laws and regulations.

The same individual noted his belief that this authority provides a hiring preference for eligible military spouses. OPM disagrees with this assertion. This authority is a noncompetitive hiring mechanism; it does not establish or constitute a hiring preference for eligible spouses, nor does it create an entitlement to a Federal job for an eligible spouse. Use of this authority is completely at the discretion of hiring agencies. As a result, it is one of many hiring tools agencies may use to recruit needed individuals.

One individual and one agency asked whether an unmarried widow or widower (*i.e.*, eligible for appointment under section 315.612(c)(1)(ii)) who accepts an appointment under this authority and remarries after being employed under this authority will be permitted to remain employed. Yes, individuals eligible under section 315.612(c)(1)(ii) who remarry after becoming employed under this authority will not lose their jobs because of their remarriage.

One agency asked OPM to explain the effect of telework arrangements on the geographic limitations specified in section 315.612(c)(3). Spouses eligible under paragraph (b)(4)(i) of this section must relocate with their service member spouse per paragraph (c)(1)(ii). Upon relocation, these individuals are subject to the same agency workplace flexibility policies as are other employees of that agency. We wish to remind readers the intent of the proposal was to benefit individuals negatively impacted by their military spouses' relocation. Individuals eligible under paragraph (b)(4)(i) should not be allowed to leverage this authority unless they have actually relocated per the intent of E.O. 13473.

One individual asked whether there are any grade-level limitations for positions filled through this appointing authority. OPM is not imposing any grade-level limitation on positions filled through this hiring authority.

Another individual asked whether the spouse of a 100 percent disabled Vietnam Veteran has eligibility under this rule. Spouses of any 100 percent disabled veteran have a 2-year eligibility period from the date of the documentation verifying the service member is 100 percent disabled, per section 315.612(d)(1)(ii). Spouses of 100 percent disabled Vietnam Veterans who are not eligible under this appointing authority may be eligible for veterans' preference based on their military spouses' disability. For more information, we encourage such spouses to visit VETSINFO Guide at *http://www.opm.gov/veterans/html/vetsinfo.asp*.

One agency asked how agencies will know if the military spouse has used his or her eligibility and been selected for another position in the local commuting area. OPM advises agencies to ensure they ask potential appointees under this authority whether they have used the one-time eligibility under section 315.612(d)(3). OPM will address this issue further in the supplemental guidance.

One agency asked how spouses of relocated service members should be treated after they are appointed under this authority. This agency also asked whether the spouse would be available for a new excepted appointment if he or she resigned from an appointment under this authority and reapplied. OPM believes the regulation is clear as written. The authority under section 315.612(g) provides that a selectee is appointed under a career-conditional appointment, unless the selectee meets or is exempt from the service requirement for career tenure pursuant to section 315.201. Once appointed, the selectee is treated as any other career or career-conditional employee. Again, agencies appoint individuals selected under this authority to the competitive, not the excepted, service.

One agency commented that OPM needs to issue clear guidance on how human resources (HR) offices are to properly refer applicants who are eligible under multiple appointment authorities, particularly when one or more eligibilities afford/s an applicant veterans' preference and one or more do not. The agency also urged OPM to address separately general procedures to be followed by HR offices conducting recruitment for applicants with status and special appointment eligibility, and by HR offices conducting delegated examining. OPM agrees and will issue supplemental guidance, which will be available on the OPM Web site at *http://www.opm.gov*.

Another individual asked whether agencies are required to establish training programs in conjunction with filling positions using this hiring authority. OPM is not requiring agencies to establish or utilize training programs when filling positions under this authority. We remind readers this authority is simply a noncompetitive hiring mechanism for positions in the competitive service; it is not a training and development program for eligible spouses.

The same individual asked whether this authority would have any impact on agencies' use of mobility agreements. Use of this authority has no impact on an agency's decision to use mobility agreements (which are applicable to an agency's current employees, not those eligible under this rule).

Three individuals were opposed to the proposed rule because they are opposed to the policy reflected in E.O. 13473 One of these individuals only supports eligibility for noncompetitive appointment of only individuals defined in section 315.612(b)(4)(ii) and (iii). OPM cannot implement this comment because we are obligated to issue regulations that implement the E.O.

Three individuals commented only to support the proposed rule.

One individual asked when the proposed rule would become effective. The effective date of this rule will be 30 days from the date the final rules are published in the **Federal Register**.

One individual asked whether this rule applies to retired service members who are married to individuals serving on active duty. Prior military service, in and of itself, does not prohibit an individual from meeting the definition of ''spouse'' in section 315.612(b)(6). Provided they meet all applicable rules, such individuals are eligible under this authority.

The same individual asked whether agencies may use this authority to appoint eligible spouses who currently have a Federal job. Yes, agencies may use this authority to noncompetitively appoint eligible spouses who currently have a Federal job, consistent with all applicable provisions.

The same individual also asked whether agencies must apply veterans' preference when making appointments under this authority. When a

noncompetitive list is used in conjunction with a competitive list, there is no obligation to exhaust preference eligibles from the competitive list before making selections from the noncompetitive list. In addition, once an agency has determined to make the selection from the noncompetitive list, there is no ability to apply veterans' preference. Veterans' preference requirements apply only when positions are filled from a list prepared through a competitive hiring process or when positions are filled pursuant to part 302 of OPM's regulations.

One agency asked whether eligibles being considered under this authority may be appointed to the excepted service if they do not have all of the required documentation. The authority under section 315.612 is for appointments in the competitive service only.

OPM received 8 comments that were outside the scope of this regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

Paperwork Reduction Act

The information collection requirements contained in this final rule are currently approved by OMB under RIN 3206–AL73. This final regulation does not modify this approved collection.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 315 and 316

Government employees.

Office of Personnel Management.

John Berry,

Director.

■ Accordingly, OPM is issuing final regulations to amend title 5, Code of Federal Regulations, part 315, subpart F, and part 316, as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Subpart F—Career or Career-Conditional Appointment Under Special Authorities

■ 1. The authority citation for part 315 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473. Sec. 315.708 also issued under E.O. 13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

■ 2. Add § 315.612 to subpart F to read as follows:

§ 315.612 Noncompetitive appointment of certain military spouses.

(a) *Agency authority.* In accordance with the provisions of this section, an agency may appoint noncompetitively a spouse of a member of the armed forces serving on active duty who has orders specifying a permanent change of station (not for training), a spouse of a 100 percent disabled service member injured while on active duty, or the unremarried widow or widower of a service member who was killed while performing active duty.

(b) *Definitions.* (1) *Active duty* means full-time duty in the armed forces, including full-time National Guard duty, except that for Reserve Component members the term ''active duty'' does not include training duties or attendance at service schools.

(2) *Armed forces* has the meaning given that term in 10 U.S.C. 101.

(3) *Duty station* means the permanent location to which a member of the armed forces is assigned for duty as specified on the individual's permanent change of station (PCS) orders.

(4) *Member of the armed forces* or *service member* means an individual who:

(i) Is serving on active duty in the armed forces under orders specifying the individual is called or ordered to active duty for more than 180 consecutive days, has been issued orders for a permanent change of station, and is authorized for dependent travel (*i.e.*, the travel of the service member's family members) as part of the orders specifying the individual's permanent change of station;

(ii) Retired from active duty in the armed forces with a service-connected disability rating of 100 percent as documented by a branch of the armed forces, or retired or was released or discharged from active duty in the armed forces and has a disability rating of 100 percent as documented by the Department of Veterans Affairs; or

(iii) Was killed while serving on active duty in the armed forces.

(5) *Permanent change of station* means the assignment, reassignment, or transfer of a member of the armed forces from his or her present duty station or location without return to the previous duty station or location.

(6) *Spouse* means the husband or wife of a member of the armed forces.

(c) *Eligibility.* (1) A spouse of a member of the armed forces as defined in paragraph (b)(4)(i) of this section must have:

(i) Married the member of the armed forces on, or prior to, the date of the service member's orders authorizing a permanent change of station; and

(ii) Relocated with the member of the armed forces to the new duty station specified in the documentation ordering a permanent change of station.

(2) A spouse of a member of the armed forces as defined in paragraph (b)(4)(iii) of this section must be the unremarried widow or widower of the member of the armed forces killed on active duty in the armed forces.

(3) For spouses eligible under paragraph (b)(4)(i) of this section, noncompetitive appointment under this section is limited to the geographic area, as specified on the service member's permanent change of station orders. It includes the service member's duty station and the surrounding area from which people reasonably can be expected to travel daily to and from work. The head of an agency, or his or her designee, may waive this limitation (*i.e.*, accept applications from spouses) if no Federal agency exists in the spouse's geographic area. Spouses of active duty military members who are on retirement or separation PCS orders from active duty are not eligible to be appointed using this authority unless the service member is injured with a 100 percent disability.

(4) Spouses of retired or separated active duty members who have a 100 percent disability are not restricted to a geographical location.

(d) *Conditions.* (1) In accordance with the provisions of this section, spouses are eligible for noncompetitive appointment for a maximum of 2 years from the date of:

(i) The service member's permanent change of station orders;

(ii) Documentation verifying the member of the armed forces is 100 percent disabled; or

(iii) Documentation verifying the member of the armed forces was killed while on active duty.

(2) A spouse may receive only one noncompetitive appointment under this section to a permanent position per the service member's orders authorizing a permanent change of station.

(3) Any law, Executive order, or regulation that disqualifies an applicant for appointment also disqualifies a spouse for appointment under this section.

(e) *Proof of Eligibility.* (1) Prior to appointment, the spouse of a member of the armed forces as defined in paragraph (b)(4)(i) of this section must submit to the employing agency:

(i) A copy of the service member's active duty orders which authorize a permanent change of station. This authorization must include:

(A) A statement authorizing the service member's spouse to accompany the member to the new permanent duty station;

(B) The specific location to which the member of the armed forces is to be assigned, reassigned, or transferred pursuant to permanent change of station orders; and

(C) The effective date of the permanent change of station; and

(ii) Documentation verifying marriage to the member of the armed forces (*i.e.*, a marriage license or other legal documentation verifying marriage).

(2) Prior to appointment, the spouse of a member of the armed forces as defined in paragraph (b)(4)(ii) of this section must submit to the employing agency copies of:

(i) Documentation showing the member of the armed forces was released or discharged from active duty due to a service-connected disability;

(ii) Documentation showing the member of the armed forces retired, or was released or discharged from active duty, with a disability rating of 100 percent; and

(iii) Documentation verifying marriage to the member of the armed forces (*i.e.*, a marriage license or other legal documentation verifying marriage).

(3) Prior to appointment, the spouse of a member of the armed forces as defined in paragraph (b)(4)(iii) of this section must submit to the employing agency copies of:

(i) Documentation showing the individual was released or discharged from active duty due to his or her death while on active duty;

(ii) Documentation verifying the member of the armed forces was killed while serving on active duty; and

(iii) Documentation verifying marriage to the member of the armed forces (*i.e.*, a marriage license or other legal documentation verifying marriage); and

(iv) A statement certifying that he or she is the un-remarried widow or widower of the service member.

(f) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires competitive status automatically upon completion of probation.

(g) *Tenure on appointment.* An appointment under paragraph (a) of this section is career-conditional unless the appointee has already satisfied the requirements for career tenure or is exempt from the service requirement pursuant to § 315.201.

PART 316—TEMPORARY AND TERM EMPLOYMENT

■ 3. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

■ 4. Section 316.302(b)(3) is revised to read as follows:

§ 316.302 Selection of term employees.

* * * * *

(b) * * *

(3) Career-conditional appointment under § 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.612, or 315.711 of this chapter;

* * * * *

■ 5. Section 316.402(b)(3) is revised to read as follows:

§ 316.402 Procedures for making temporary appointments.

* * * * *

(b) * * *

(3) Career-conditional appointment under § 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.612, 315.703, or 315.711 of this chapter.

* * * * *

[FR Doc. E9–19340 Filed 8–11–09; 8:45 am]

BILLING CODE 6325–39–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1365]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation Z (Truth in Lending). The Board is required to adjust annually the dollar amount that triggers requirements for certain home mortgage loans bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 (HOEPA) sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. In keeping with the statute, the Board has annually adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index as reported on June 1st. The adjusted dollar amount for 2010 is $579.

DATES: *Effective Date:* January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Dana Miller, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601–1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions.

In 1995, the Board published amendments to Regulation Z implementing HOEPA, contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, contained in §§ 226.32 and 226.34 of the regulation, impose substantive limitations and additional disclosure requirements on certain closed-end home mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA rules if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual

percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. 15 U.S.C. 1602(aa)(3) and 12 CFR 226.32(a)(1)(ii). The Board adjusted the $400 amount to $583 for the year 2009.

The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The Board uses the CPI–U index, which is based on all urban consumers and represents approximately 87 percent of the U.S. population, as the index for adjusting the $400 dollar figure. The adjustment to the CPI–U index reported by the Bureau of Labor Statistics on May 15, 2009 was the CPI–U index in effect on June 1, and reflects the percentage change from April 2008 to April 2009. The adjustment to the $400 figure below reflects a 0.74 percent decrease in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

The fee trigger being adjusted in this **Federal Register** notice pursuant to TILA section 103(aa) is used in determining whether a loan is covered by section 226.32 of Regulation Z. Such loans have generally been known as ''HOEPA loans.'' In July 2008, the Board revised Regulation Z to adopt additional protections for ''higher-priced'' loans, using its authority under TILA section 129(l)(2). Those revisions define a class of dwelling-secured transactions, described in section 226.35 of Regulation Z, using a threshold based on average market rates that the Board publishes on a regular basis. The adjustment published today does not affect the triggers issued in July 2008 for higher-priced loans.

II. Adjustment and Commentary Revision

Effective January 1, 2010, for purposes of determining whether a home mortgage transaction is covered by 12 CFR 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $579 or 8 percent of the total loan amount. Comment 32(a)(1)(ii)–2, which lists the adjustments for each year, is amended to reflect the dollar adjustment for 2010. Because the timing and method of the adjustment is set by statute, the Board finds that notice and public comment on the change are unnecessary.

III. Regulatory Flexibility Analysis

The Board certifies that this amendment to Regulation Z will not have a significant economic impact on a substantial number of small entities. The only change is to lower the threshold for transactions requiring HOEPA disclosures. This change is mandated by statute.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

■ 2. In Supplement I to Part 226, under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under Paragraph 32(a)(1)(ii), paragraph 2. xv. is added.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

* * * * *

Paragraph 32(a)(1)(ii)

* * * * *

2. *Annual adjustment of $400 amount.*

* * * * *

xv. For 2010, $579, reflecting a 0.74 percent decrease in the CPI–U from June 2008 to June 2009, rounded to the nearest whole dollar.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, August 6, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–19254 Filed 8–11–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 363

RIN 3064–AD21

Annual Independent Audits and Reporting Requirements

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule; correction.

SUMMARY: On July 20, 2009, the FDIC published in the **Federal Register** a final rule amending part 363 of its regulations concerning annual independent audits and reporting requirements for certain insured depository institutions, which implements section 36 of the Federal Deposit Insurance Act (FDI Act), largely as proposed, but with certain modifications made in response to the comments received and making a technical amendment to its rules and procedures (part 308, subpart U) for the removal, suspension, or debarment of accountants and accounting firms. The publication of the final rule corrected certain errors in the original publication of the final rule, which had been published in the **Federal Register** on July 7, 2009. It has come to the attention of the FDIC that the July 20 re-publication included one additional error. This correction will rectify that oversight.

DATES: *Effective Date:* This correction is effective August 6, 2009.

FOR FURTHER INFORMATION CONTACT: Harrison E. Greene, Jr., Senior Policy Analyst (Bank Accounting), Division of Supervision and Consumer Protection, at *hgreene@fdic.gov* or (202) 898–8905; or Michelle Borzillo, Senior Counsel, Corporate and Legal Operations Section, Legal Division, at *mborzillo@fdic.gov* or (202) 898–7400.

SUPPLEMENTARY INFORMATION: On July 20, 2009, the FDIC published in the **Federal Register** a final rule amending part 363 of its regulations concerning annual independent audits and reporting requirements for certain insured depository institutions, which implements section 36 of the Federal Deposit Insurance Act (FDI Act), largely as proposed, but with certain modifications made in response to the comments received and making a technical amendment to its rules and procedures (part 308, subpart U) for the removal, suspension, or debarment of accountants and accounting firms. The July 20, 2009, publication of the final rule corrected certain errors in the original publication of the final rule, which had been published in the

Federal Register on July 7, 2009. It has come to the attention of the FDIC that the July 20 re-publication failed to include one further correction. This publication will rectify that oversight.

The correction included in this **Federal Register** document corrects an error in the prior publication which caused an apparent inconsistency in the effective date.

In the the final rule, FR Doc. No. 2009–17009 published on July 20, 2009 (74 FR 35726), make the following correction:

On page 35744, the first sentence of the V. Effective and Compliance Dates section is corrected to read:

Except as noted below, the final rule is effective August 6, 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E9–19259 Filed 8–11–09; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM400; Special Conditions No. 25–388–SC]

Special Conditions: Boeing Model 747–8/–8F Airplanes; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 747–8/–8F airplanes. These airplanes will have a novel or unusual design feature(s) that will affect structural performance. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* September 11, 2009.

FOR FURTHER INFORMATION CONTACT: Mark Freisthler, FAA, Airframe & Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1119; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2005, The Boeing Company, PO Box 3707, Seattle, WA 98124, applied for an amendment to Type Certificate Number A20WE to include the new Model 747–8 passenger airplane and the new Model 747–8F freighter airplane. The Model 747–8 and the Model 747–8F are derivatives of the 747–400 and the 747–400F, respectively. Both the Model 747–8 and the Model 747–8F are four-engine jet transport airplanes that will have a maximum takeoff weight of 970,000 pounds and new General Electric GEnx–2B67 engines. The Model 747–8 will have two flight crew and the capacity to carry 660 passengers. The Model 747–8F will have two flight crew and a zero passenger capacity, although Boeing has submitted a petition for exemption to allow the carriage of supernumeraries.

Type Certification Basis

Under the provisions of Title 14 Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 747–8 and 747–8F airplanes (hereafter referred to as the 747–8/–8F) as changed, continue to meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into Type Certificate No. A20WE after type certification approval of the 747–8/–8F.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25) do not contain adequate or appropriate safety standards for the 747–8/–8F because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 747–8/–8F must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued under § 11.38, and become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Boeing Model 747–8/–8F is equipped with systems that affect the airplane's structural performance, either directly or as a result of failure or malfunction. That is, the airplane's systems affect how it responds in maneuver and gust conditions, and thereby affect its structural capability. These systems may also affect the aeroelastic stability of the airplane. Such systems represent a novel and unusual feature when compared to the technology envisioned in the current airworthiness standards. A special condition is needed to require consideration of the effects of systems on the structural capability and aeroelastic stability of the airplane, both in the normal and in the failed state.

These special conditions require that the airplane meet the structural requirements of subparts C and D of 14 CFR part 25 when the airplane systems are fully operative. These special conditions also require that the airplane meet these requirements considering failure conditions. In some cases, reduced margins are allowed for failure conditions based on system reliability.

Discussion of Comments

Notice of proposed special conditions No. 25–09–03–SC for the Boeing Model 747–8 and 747–8F airplanes was published in the **Federal Register** on April 8, 2009 (74 FR 15888). No comments were received and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 747–8/–8F airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the Boeing Model 747–8/–8F airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

A. General

The Boeing Model 747–8/8F airplane is equipped with automatic control systems that affect the airplane's structural performance, either directly or as a result of a failure or malfunction. The influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of Subparts C and D of part 25. The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, fuel management systems, and other systems that either directly or as a result of failure or malfunction affect structural performance. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

1. The criteria defined here only address the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structural elements whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative mode are not provided in this special condition.

2. Depending on the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in these special conditions in order to demonstrate the capability of the airplane to meet other realistic conditions such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

3. The following definitions are applicable to these special conditions.

(a) *Structural performance:* Capability of the airplane to meet the structural requirements of part 25.

(b) *Flight limitations:* Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the Airplane Flight Manual (AFM) (*e.g.*, speed limitations, avoidance of severe weather conditions).

(c) *Operational limitations:* Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (*e.g.*, fuel, payload and Master Minimum Equipment List (MMEL) limitations).

(d) *Probabilistic terms:* The probabilistic terms (probable, improbable, extremely improbable) used in these special conditions are the same as those used in § 25.1309.

(e) *Failure condition:* The term failure condition is the same as that used in § 25.1309, however these special conditions apply only to system failure conditions that affect the structural performance of the airplane (*e.g.*, system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins). The system failure condition includes consequential or cascading effects resulting from the first failure.

B. Effects of Systems on Structures

1. General. The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structural elements.

2. System fully operative. With the system fully operative, the following apply:

(a) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C (or used in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(b) The airplane must meet the strength requirements of part 25 (*i.e.*, static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(c) The airplane must meet the aeroelastic stability requirements of § 25.629.

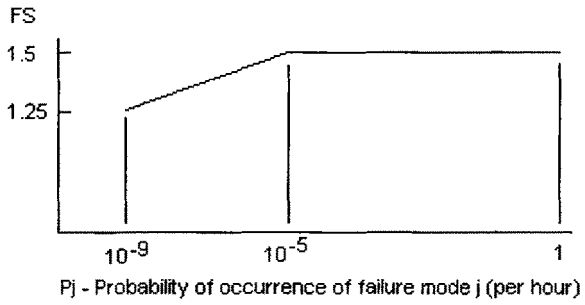
3. System in the failure condition. For any system failure condition not shown to be extremely improbable, the following apply:

(a) At the time of occurrence, starting from 1g level flight conditions, a realistic scenario including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(1) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (F.S.) is defined in Figure 1.

Figure 1

factor of safety at the time of occurrence



(2) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in subparagraph 3(a)(1). For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(3) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speeds beyond V_C/M_C, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(4) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of the affected structural elements.

(b) For continuation of flight, for an airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(1) The loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_C/M_C, or the speed limitation prescribed for the remainder of the flight, must be determined:

(i) The limit symmetrical maneuvering conditions specified in § 25.331 and in § 25.345.

(ii) The limit gust and turbulence conditions specified in § 25.341 and in § 25.345.

(iii) The limit rolling conditions specified in § 25.349 and the limit asymmetrical conditions specified in §§ 25.367 and 25.427(b) and (c).

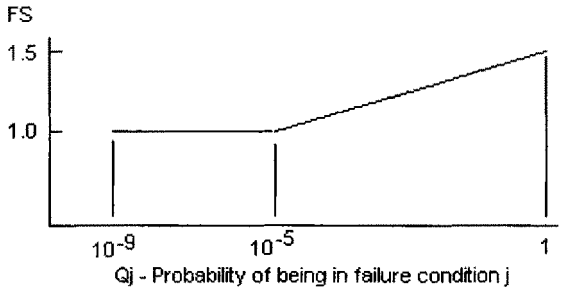
(iv) The limit yaw maneuvering conditions specified in § 25.351.

(v) The limit ground loading conditions specified in §§ 25.473, 25.491 and 25.493.

(2) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph (3)(b)(1) of this special condition multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of safety for continuation of flight



$Q_j = (T_j)(P_j)$ where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour then a 1.5 factor of safety must be applied to all limit load conditions specified in Subpart C.

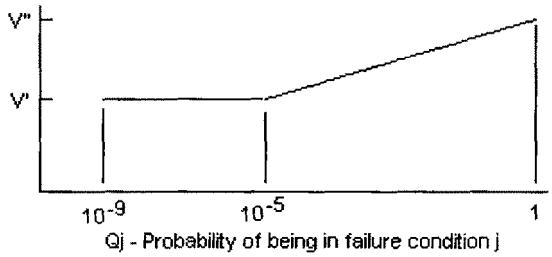
(3) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (3)(b)(1) of this special condition. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(4) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance then their effects must be taken into account.

(5) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3

Clearance speed



V′ = Clearance speed as defined by § 25.629(b)(2).
V″ = Clearance speed as defined by § 25.629(b)(1).
$Q_j = (T_j)(P_j)$ where:
T_j = Average time spent in failure condition j (in hours)
P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(6) Freedom from aeroelastic instability must also be shown up to V′ in Figure 3 above, for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b). Consideration of certain failure conditions may be required by other sections of part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

4. Failure indications. For system failure detection and indication, the following apply:

(a) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flight crew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of detection and indication systems to achieve the objective of this requirement. These Certification Maintenance Requirements (CMRs) must be limited to components that are not readily detectable by normal detection and indication systems and where service history shows that inspections will provide an adequate level of safety.

(b) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flight crew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of subpart C below 1.25, or flutter margins below V″, must be signaled to the crew during flight.

5. Dispatch with known failure conditions. If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of this special condition must be met, including the provisions of paragraph 2 for the dispatched condition, and paragraph 3 for subsequent failures. Expected operational limitations may be taken into account in establishing Pj as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

Issued in Renton, Washington, on July 29, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19246 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM399; Special Conditions No. 25–387–SC]

Special Conditions: Boeing Model 747–8/–8F Airplanes; Additional Airframe Structural Design Requirements Related to Sudden Engine Stoppage Due to Fan Blade Failures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Boeing Model 747–8/–8F airplanes. These airplanes will have a novel or unusual design feature(s) associated with an increased engine size when compared to previous model airplanes. These larger engines with larger bypass fans are capable of producing higher and more complex dynamic loads than previously experienced in older designs. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* September 11, 2009.

FOR FURTHER INFORMATION CONTACT: Mark Freisthler, FAA, Airframe & Cabin

Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1119; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2005, The Boeing Company, PO Box 3707, Seattle, WA, 98124, applied for an amendment to Type Certificate Number A20WE to include the new Model 747–8 passenger airplane and the new Model 747–8F freighter airplane. The Model 747–8 and the Model 747–8F are derivatives of the 747–400 and the 747–400F, respectively. Both the Model 747–8 and the Model 747–8F are four-engine jet transport airplanes that will have a maximum takeoff weight of 970,000 pounds and new General Electric GEnx-2B67 engines. The Model 747–8 will have two flight crew and the capacity to carry 660 passengers. The Model 747–8F will have two flight crew and a zero passenger capacity, although Boeing has submitted a petition for exemption to allow the carriage of supernumeraries.

Type Certification Basis

Under the provisions of Title 14 Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 747–8 and 747–8F airplanes (hereafter referred to as the 747–8/–8F) as changed, continue to meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into Type Certificate No. A20WE after type certification approval of the 747–8/–8F.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25) do not contain adequate or appropriate safety standards for the 747–8/–8F because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 747–8/–8F must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued under § 11.38, and become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Boeing Model 747–8/–8F airplanes will incorporate the following novel or unusual design features: High-bypass engines with a fan diameter approximately twelve percent greater than those currently installed on other Boeing Model 747 airplanes.

Discussion

High-bypass engines with a fan diameter approximately twelve percent greater than those currently installed on other Boeing Model 747 airplanes, such as the 747–400 series, were not envisioned when § 25.361 was adopted in 1965. Section 25.361 addresses loads imposed by engine seizure. Because of the higher inertia of the rotating components, worst case engine seizure events become increasingly more severe with increasing engine size.

Typically, the design torque loads associated with typical failure scenarios have been estimated by the engine manufacturer. These loads are used by the airframe manufacturer as limit loads. Section 25.305 requires that supporting structure be able to support limit loads without detrimental permanent deformation, meaning that supporting structure should remain serviceable after a limit load event. Limit loads are expected to occur about once in the lifetime of any airplane. For turbine engine installations, § 25.361(b)(1) requires that the engine mounts and supporting structures be designed to withstand a ''limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure.''

Since § 25.361(b)(1) was adopted the size, configuration, and failure modes of turbine engines have changed significantly. Current engines are much larger and are designed with large bypass fans. In the failure event prescribed by § 25.361 they produce much higher transient loads on the engine mounts and supporting structure than previous designs. At the same time, the likelihood of such an event occurring in modern engines has become less. The service history of modern turbine engines shows that engine seizures are rare events, much less than what is typically expected for ''limit'' loads. While it is important for the airplane to be able to support such rare loads safely without failure, it is unrealistic to expect that no permanent deformation will occur.

Given this situation, the Aviation Rulemaking Advisory Committee (ARAC) has proposed a design standard for today's large engines. For the commonly-occurring deceleration events, the proposed standard would require engine mounts and structures to support maximum torques without detrimental permanent deformation. For the rare-but-severe engine seizure events such as loss of any fan, compressor, or turbine blade, the proposed standard would require engine mounts and structures to support maximum torques without failure, but allow for some deformation in the structure.

The FAA concludes that modern large engines, including those on the 747–8/–8F, are novel and unusual compared to those envisioned when § 25.361(b)(1) was adopted and thus warrant special conditions. These special conditions contain design criteria recommended by the ARAC.

Discussion of Comments

Notice of proposed special conditions No. 25–09–02–SC for the Boeing Model 747–8 and 747–8F airplanes was published in the **Federal Register** on April 8, 2009 (74 FR 15888). No comments were received and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 747–8/–8F airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the Boeing Model 747–8/–8F airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model

747–8/–8F airplanes. The following special conditions are in lieu of § 25.361(b):

1. For turbine engine installations, the engine mounts, pylons and supporting airframe primary structure (such as the affected wing and fuselage primary structure) must be designed to withstand 1g level flight loads acting simultaneously with the maximum torque load, considered as limit load, imposed by each of the following:

(a) Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust; and

(b) The maximum acceleration of the engine.

2. For auxiliary power unit installations, the power unit mounts and supporting airframe primary structure (such as the affected fuselage primary structure) must be designed to withstand 1g level flight loads acting simultaneously with the maximum torque load, considered as limit load, imposed by each of the following:

(a) Sudden auxiliary power unit deceleration due to malfunction or structural failure; and

(b) The maximum acceleration of the power unit.

3. For turbine engine installations, the engine mounts, pylons and supporting airframe primary structure (such as the affected wing and fuselage primary structure) must be designed to withstand 1g flight loads acting simultaneously with the transient dynamic loads, considered as ultimate load, imposed by each of the following:

(a) Sudden engine stoppage due to the loss of any fan, compressor, or turbine blade; and separately

(b) Where applicable to a specific engine design, any other engine structural failure that results in higher loads.

4. The ultimate loads developed from the conditions specified in paragraphs 3(a) and 3(b) are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to the supporting airframe primary structure (such as the affected wing and fuselage primary structure). In addition, the airplane must be capable of continued safe flight considering the aerodynamic effects on controllability due to any permanent deformation that results from the conditions specified in paragraph 3, above.

Issued in Renton, Washington, on July 29, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19249 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0464; Directorate Identifier 2008–NM–189–AD; Amendment 39–15992; AD 2008–16–09 R1]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Airplanes

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

ACTION: Final rule.

SUMMARY: We are revising an existing airworthiness directive (AD) for the products listed above. This 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:

There have been several occurrences of cracked elevator trim tab balance weight attachment brackets, on one occasion, the elevator trim tab mass balance weight bracket separated from the aircraft. The loss of an elevator trim tab mass balance weight bracket has the potential to cause damage to an aircraft, or cause serious injury to personnel.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective September 16, 2009.

The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in this AD as of September 15, 2008 (73 FR 46543, August 11, 2008).

The Director of the Federal Register previously approved the incorporation by reference of a certain publication listed in this AD as of March 14, 2005 (70 FR 9212, February 25, 2005).

The Director of the Federal Register previously approved the incorporation by reference of a certain other publication listed in this AD as of September August 3, 2004 (69 FR 38813, June 29, 2004).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD to revise AD 2008–16–09, amendment 39–15627 (73 FR 46543, August 11, 2008). The existing AD applies to the products identified in this AD. The NPRM was published in the **Federal Register** on May 20, 2009 (74 FR 23668). That NPRM proposed to correct an unsafe condition for the specified products.

Since we issued AD 2008–16–09, Short Brothers advised that SD3–07–6011xA brackets manufactured in 2005 or later have a life limit of 28,800 flight hours, per Section 5–00–02 of the Short Brothers SD360 Aircraft Maintenance Manual (AMM), and as noted in Appendix 1 of Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007. In light of this, we have revised the existing AD to extend the life limit of any balance weight bracket from 1,750 flight hours to 28,800 flight hours. You may obtain further information by examining European Aviation Safety Agency Airworthiness Directive 2007–0107–E, dated April 18, 2007 (referred to after this as ''the MCAI''), in the AD docket.

In addition, we removed paragraphs (f) and (l)(1) of the existing AD from this AD. Those paragraphs defined the use of the term ''service bulletin,'' as used in the AD.

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 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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 21 products of U.S. registry. We also estimate that it will take about 8 to 12 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $632 to $864 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to U.S. operators to be between $26,712 and $38,304, or between $1,272 and $1,824 per product.

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–15627 (73 FR 46543, August 11, 2008) and adding the following new AD:

2008–16–09 R1 Short Brothers PLC: Amendment 39–15992. Docket No. FAA–2009–0464; Directorate Identifier 2008–NM–189–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 16, 2009.

Affected ADs

(b) This AD revises AD 2008–16–09.

Applicability

(c) This AD applies to all Shorts Model SD3–60 airplanes, certificated in any category.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) (i.e., European Aviation Safety Agency Airworthiness Directive 2007–0107–E, dated April 18, 2007) states:

There have been several occurrences of cracked elevator trim tab balance weight attachment brackets, on one occasion, the elevator trim tab mass balance weight bracket separated from the aircraft. The loss of an elevator trim tab mass balance weight bracket has the potential to cause damage to an aircraft, or cause serious injury to personnel.

* * * * *

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.

Restatement of Requirements of AD 2004–13–08, Amendment 39–13690, With Revised Service Information

Initial Inspection

(g) Within 2 months after August 3, 2004 (the effective date of AD 2004–13–08, amendment 39–13690): Do a dye penetrant inspection for cracking in the welded joints of the balance weight brackets for the left and right elevator trim tabs, in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; or Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007.

Investigative and Corrective Actions if No Cracking Is Found

(h) If no cracking is found during the inspection required by paragraph (g) of this AD, do the actions required by paragraphs (h)(1) and (h)(2) of this AD at the applicable compliance times.

(1) Repeat the inspection required by paragraph (g) of this AD at intervals not to exceed 4,800 flight hours until the bracket is replaced per paragraph (h)(2) or (i) of this AD.

(2) Prior to the accumulation of 28,800 total flight hours, or within 6 months after August 3, 2004, whichever occurs later: Replace any bracket that has not been replaced per paragraph (i) of this AD with a new bracket or with a serviceable bracket that has been inspected in accordance with paragraph (g) of this AD. Replace in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; or Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007. Replacement of the brackets constitutes terminating action for the repetitive inspections required by paragraph (h)(1) of this AD.

Corrective Actions if Any Cracking Is Found

(i) If any cracking is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, accomplish the applicable action in paragraph (i)(1) or (i)(2)

of this AD in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; or Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007.

(1) For airplanes that have accumulated less than 28,800 flight hours and on which all cracking on brackets is less than 0.25 inch in length: Repair the affected bracket in accordance with Part B of the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; or Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007 (including the additional dye penetrant inspection of the repaired welded joint); and repeat the inspection required by paragraph (g) of this AD at intervals not to exceed 4,800 flight hours; or replace the bracket in accordance with paragraph (h)(2) of this AD. Replacement of the bracket constitutes terminating action for the repetitive inspections.

(2) For any airplane on which any cracking on a bracket is 0.25 inch in length or greater, and for any airplane that has accumulated 28,800 flight hours or more on which any cracking of any length is found on a bracket: Replace the affected bracket with a new bracket or with a serviceable bracket that has been inspected in accordance with paragraph (g) of this AD. Replacement of the bracket constitutes terminating action for the repetitive inspections required by paragraph (i)(1) of this AD.

Refitting

(j) Before further flight, following any inspection per paragraph (g) or (h) of this AD; or before further flight following repair or replacement of a bracket per paragraph (h)(2) or (i) of this AD: Refit the balance weights, covers, and trim tabs, in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; or Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007. Where the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; or Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007; specify to contact the manufacturer for disposition of certain conditions while refitting, obtain further disposition instructions from the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Parts Installation

(k) As of August 3, 2004, no person may install on any airplane a balance weight bracket unless the welded joint has been inspected in accordance with paragraph (g) of this AD.

Restatement of Requirements of AD 2005–04–13, Amendment 39–13985, With Revised Service Information

Return of Parts to Manufacturer Not Required

(l) Although the Accomplishment Instructions of Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004; or Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007; specify to return subject parts to the manufacturer, this AD does not include that requirement.

Repetitive Inspections

(m) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–07–6011xA, and having a serial number beginning with ''X3'' or ''X4'': Prior to the accumulation of 250 flight hours since installation of the subject balance weight bracket of the elevator trim tab, or within 30 flight hours after March 14, 2005 (the effective date of AD 2005–04–13), whichever is later, do a dye penetrant inspection for cracking of the balance weight brackets for the left and right elevator trim tabs, in accordance with Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004; or Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007.

(1) For a balance weight bracket on which no cracking is found: Do paragraph (o) of this AD, and repeat the inspection thereafter at intervals not to exceed 250 flight hours until paragraph (n) of this AD is accomplished.

(2) For a balance weight bracket on which any cracking is found: Before further flight, replace the bracket with a new or reworked balance weight bracket that conforms to the approved design standard, in accordance with Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004; or Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007; and do paragraph (o) of this AD.

Optional Terminating Action

(n) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–07–6011xA, and having a serial number beginning with ''X3'' or ''X4'': Replacement of any subject balance weight bracket with a new or reworked balance weight bracket that conforms to the approved design standard, in accordance with the Accomplishment Instructions of Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004; or Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007; constitutes terminating action for the repetitive inspections required by paragraph (m) of this AD for the replaced bracket.

Refitting

(o) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–07–6011xA, and having a serial number beginning with ''X3'' or ''X4:'' Before further flight following any inspection or replacement of a bracket in accordance with paragraphs (m) and (n) of this AD: Refit the balance weights, covers, and trim tabs, in accordance with the Accomplishment Instructions of Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004; or Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007. Where the Accomplishment Instructions of Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004; or Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007; specify to contact the manufacturer for disposition of certain conditions while refitting, obtain further disposition instructions from the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Parts Installation

(p) *For all airplanes:* As of March 14, 2005, no person may install, on any airplane subject to this AD, a balance weight bracket having part number SD3–07–6011xA, and having a serial number beginning with ''X3'' or ''X4,'' unless the bracket is also marked ''Rework batch number R–Bxxxxx'' (where ''xxxxx'' is a number).

Restatement of Requirements of AD 2008–16–09, Amendment 39–15627, With Extended Repetitive Interval in Paragraph (q)(2) of This AD

Inspection(s) and Replacements

(q) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–07–6011xA manufactured in the year 2003 or 2004, including reworked brackets, installed in accordance with paragraph (h)(2), (i)(2), or (n) of this AD, as applicable: Do the actions specified in paragraphs (q)(1) and (q)(2) of this AD in accordance with Parts A and B of the Accomplishment Instructions of Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007.

(1) Within 30 flight hours after September 15, 2008 (the effective date of AD 2008–16–09) or within 250 flight hours since installation of the balance weight brackets of the elevator trim tabs or since the last inspection required by paragraph (g), (h)(1), (i)(1), or (m) of this AD, whichever occurs later: Do a dye penetrant inspection to detect cracks of the balance weight brackets of the elevator trim tabs.

(i) If no crack is detected, repeat the dye penetrant inspection at intervals not to exceed 250 flight hours, until the replacement required by paragraph (q)(2) of this AD is done.

(ii) If any crack is detected, before further flight, do the replacement specified in paragraph (q)(2) of this AD.

(2) Before the accumulation of 1,750 flight hours since installation of the balance weight brackets of the elevator trim tabs, or within 180 days after September 15, 2008, whichever occurs later: Replace the balance weight brackets with new balance weight brackets manufactured in 2005 or later. Thereafter, replace any balance weight bracket with a new bracket manufactured in 2005 or later at intervals not to exceed the accumulation of 28,800 flight hours on that bracket. Accomplishment of the initial replacement ends the repetitive inspection requirements of this AD.

(r) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–31–6213xB inspected in accordance with paragraph (g), (h)(1), or (i)(1) of this AD and retained or refitted following approved repair in accordance with paragraph (j) of this AD: Do the actions specified in paragraphs (r)(1) and (r)(2) of this AD in accordance with Parts A and B of the Accomplishment Instructions of Shorts Alert Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007.

(1) Within 4,800 flight hours since last inspection, or within 180 days after September 15, 2008, whichever occurs later, and thereafter at intervals not to exceed 4,800 flight hours: Do a dye penetrant inspection to detect cracks of the balance weight brackets of the elevator trim tabs.

(i) If no crack is detected, repeat the dye penetrant inspection at intervals not to exceed 4,800 flight hours, until the replacement required by paragraph (r)(2) of this AD is done.

(ii) If any crack is detected, before further flight, do the replacement specified in paragraph (r)(2) of this AD.

(2) Before the accumulation of 28,800 flight hours since any balance weight bracket of the elevator trim tabs is new, or within 180 days after September 15, 2008, whichever occurs later: Replace the balance weight brackets with new balance weight brackets manufactured in 2005 or later. Thereafter, replace any balance weight bracket with a new bracket manufactured in 2005 or later at intervals not to exceed the accumulation of 28,800 flight hours on that bracket. Accomplishment of the initial replacement ends the repetitive inspection requirements of this AD.

Part Installation

(s) For all airplanes: As of September 15, 2008, no person may install, on any airplane, a balance weight bracket of the elevator trim tab manufactured earlier than 2005.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(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, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(u) Refer to MCAI EASA Airworthiness Directive 2007–0107–E, dated April 18, 2007, and the service bulletins identified in Table 1 of this AD for related information.

TABLE 1—RELATED SERVICE INFORMATION

Document	Revision	Date
Short Brothers Alert Service Bulletin SD360–55–A21	Original	December 16, 2004.
Short Brothers Service Bulletin SD360–55–20	Original	June 26, 2003.
Shorts Alert Service Bulletin SD360–55–A21	1	March 29, 2007.
Shorts Service Bulletin SD360–55–20	1	June 20, 2005.
Shorts Service Bulletin SD360–55–20	2	March 29, 2007.

Material Incorporated by Reference

(v) You must use the service information contained in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise. If you do the optional terminating action specified in this AD, you must use the service information specified in Table 3 of this AD to do that action, unless the AD specifies otherwise.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE FOR REQUIRED ACTIONS

Document	Revision	Date
Short Brothers Alert Service Bulletin SD360–55–A21	Original	December 16, 2004.
Short Brothers Service Bulletin SD360–55–20	Original	June 26, 2003.
Shorts Alert Service Bulletin SD360–55–A21	1	March 29, 2007.
Shorts Service Bulletin SD360–55–20	1	June 20, 2005.
Shorts Service Bulletin SD360–55–20	2	March 29, 2007.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE FOR OPTIONAL ACTIONS

Document	Revision	Date
Short Brothers Alert Service Bulletin SD360–55–A21	Original	December 16, 2004.
Shorts Alert Service Bulletin SD360–55–A21	1	March 29, 2007.

(1) On September 15, 2008 (73 FR 46543, August 11, 2008), the Director of the Federal Register previously approved the incorporation by reference of Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; and Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007.

(2) On March 14, 2005 (70 FR 9212, February 25, 2005), the Director of the Federal Register previously approved the incorporation by reference of Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004.

(3) On August 3, 2004 (69 FR 38813, June 29, 2004), the Director of the Federal Register previously approved the incorporation by reference of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003.

(4) For service information identified in this AD, contact Short Brothers PLC, Airworthiness, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland; telephone +44(0)2890–462469; fax +44(0)2890–468444; e-mail *michael.mulholland@aero.bombardier.com*; Internet *http://www.bombardier.com.*

(5) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on August 3, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19181 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30680; Amdt. No. 482]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, August 27, 2009.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

Issued in Washington, DC, on July 24, 2009.

John M. Allen,

Director, Flight Standards Service.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, August 27, 2009.

■ 1. The authority citation for part 95 continues to read as follows:

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

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 482 Effective Date August 27, 2009]

From	To	MEA	MAA
§ 95.4000 High Altitude RNAV Routes			
§ 95.4016 RNAV Route Q16 Is Amended To Read In Part			
KODIAK, AK VOR/DME #GNSS MEA	MIDDLETON ISLAND, AK VOR/DME	18000	45000
Is Amended By Adding			
MIDDLETON ISLAND, AK VOR/DME #GNSS MEA	YAKUTAT, AK VOR/DME	18000	45000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 482 Effective Date August 27, 2009]

From	To	MEA	MAA
§ 95.4041	**RNAV Route Q41 Is Added To Read**		
*CAWIN, AK FIX *12000–MRA #GNSS MEA	DEADHORSE, AK VOR/DME	18000	45000
§ 95.4042	**RNAV Route Q42 Is Added To Read**		
KIRKSVILLE, MO VORTAC *18000–GNSS MEA #DME/DME/IRU RNAV MEA	DANVILLE, IL VORTAC	#*34000	45000
DANVILLE, IL VORTAC *18000–GNSS MEA #DME/DME/IRU RNAV MEA	MUNCIE, IN VOR/DME	#*34000	45000
MUNCIE, IN VOR/DME *18000–GNSS MEA #DME/DME/IRU RNAV MEA	BRNAN, PA FIX	#*24000	45000
BRNAN, PA FIX *18000–GNSS MEA #DME/DME/IRU RNAV MEA	MAALS, PA FIX	#*26000	45000
MAALS, PA FIX *18000–GNSS MEA #DME/DME/IRU RNAV MEA	EAST TEXAS, PA VOR/DME	#*24000	45000
EAST TEXAS, PA VOR/DME *18000–GNSS MEA #DME/DME/IRU RNAV MEA	ELIOT, NJ FIX	#*24000	45000
§ 95.4043	**RNAV Route Q43 Is Added To Read**		
ANCHORAGE, AK VOR/DME #GNSS MEA	FAIRBANKS, AK VORTAC	#18000	45000
§ 95.4044	**RNAV Route Q44 Is Added To Read**		
NOME, AK VOR/DME #GNSS MEA	ANCHORAGE, AK VOR/DME	#18000	45000
§ 95.4045	**RNAV Route Q45 Is Added To Read**		
DILLINGHAM, AK VOR/DME #GNSS MEA	AMOTT, AK FIX	#18000	45000
§ 95.4046	**RNAV Route Q46 Is Added To Read**		
POINT HOPE, AK NDB #GNSS MEA	BARROW, AK VOR/DME	#18000	45000
§ 95.4047	**RNAV Route Q47 Is Added To Read**		
KING SALMON, AK VORTAC #GNSS MEA	AMOTT, AK FIX	#18000	45000
§ 95.4048	**RNAV Route Q48 Is Added To Read**		
BARROW, AK VOR/DME #GNSS MEA	DEADHORSE, AK VOR/DME	#18000	45000
DEADHORSE, AK VOR/DME #GNSS MEA	ROCES, AK FIX	#18000	45000
§ 95.4049	**RNAV Route Q49 Is Added To Read**		
KODIAK, AK VOR/DME #GNSS MEA	AMOTT, AK FIX	#18000	45000
§ 95.4051	**RNAV Route Q51 Is Added To Read**		
KING SALMON, AK VORTAC #GNSS MEA	KOTZEBUE, AK VOR/DME	#18000	45000
§ 95.4053	**RNAV Route Q53 Is Added To Read**		
KODIAK, AK VOR/DME	ILIAMNA, AK NDB/DME	#18000	45000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 482 Effective Date August 27, 2009]

From	To	MEA	MAA
#GNSS MEA			
ILIAMNA, AK NDB/DME #GNSS MEA	KOTZEBUE, AK VOR/DME	#18000	45000
§ 95.4055 RNAV Route Q55 Is Added To Read			
KODIAK, AK VOR/DME #GNSS MEA	NOME, AK VOR/DME	#18000	45000
§ 95.4057 RNAV Route Q57 Is Added To Read			
KING SALMON, AK VORTAC #GNSS MEA	MC GRATH, AK VORTAC	#18000	45000
§ 95.4059 RNAV Route Q59 Is Amended By Adding			
COLD BAY, AK VORTAC #GNSS MEA	BETHEL, AK VORTAC	#18000	45000
§ 95.4061 RNAV Route Q61 Is Added To Read			
FAIRBANKS, AK VORTAC #GNSS MEA	BARROW, AK VOR/DME	#18000	45000
§ 95.4219 RNAV Route T219 Is Amended To Read In Part			
NANWAK, AK NDB/DME *1700–MOCA	RUFVY, AK FIX	*2300	17500
RUFVY, AK FIX *1300–MOCA	ACATE, AK FIX	*2000	17500
ACATE, AK FIX *5400–MOCA	BROUS, AK FIX	*6000	17500
BROUS, AK FIX *5000–MOCA	DILLINGHAM, AK VOR/DME	*6000	17500
§ 95.4222 RNAV Route T222 Is Amended To Read In Part			
MOUNT MOFFETT, AK, NDB/DME	BAERE, AK FIX	*6000	17500
BAERE, AK FIX	ST PAUL ISLAND, AK NDB/DME	*3600	17500
ST PAUL ISLAND, AK NDB/DME *1800–MOCA	RUFVY, AK FIX	*3000	17500
RUFVY, AK FIX *1400–MOCA	BETHEL, AK VORTAC	*3000	17500
§ 95.4223 RNAV Route T223 Is Amended To Read In Part			
CAPE NEWENHAM, AK NDB/DME	DILLINGHAM, AK VOR/DME	4400	17500
DILLINGHAM, AK VOR/DME	FAGIN, AK FIX	4400	17500
FAGIN, AK FIX	NONDA, AK FIX	8400	17500
NONDA, AK FIX	BLUGA, AK FIX	12000	17500
BLUGA, AK FIX	AMOTT, AK FIX	3000	17500
Is Amended To Delete			
AMOTT, AK FIX	ANCHORAGE, AK VOR/DME	2000	17500
§ 95.4225 RNAV Route T225 Is Amended To Read In Part			
HOOPER BAY, AK VOR/DME	AKELT, AK FIX	4600	17500
AKELT, AK FIX	ALMOT, AK FIX	4400	17500
ALMOT, AK FIX	UNALAKLEET, AK VOR/DME	3700	17500
UNALAKLEET, AK VOR/DME	EDMON, AK FIX	5000	17500
EDMON, AK FIX	VENCE, AK FIX	5900	17500
VENCE, AK FIX	GALENA, AK VOR/DME	3400	17500
GALENA, AK VOR/DME	KUHZE, AK FIX	3400	17500
KUHZE, AK FIX	CHOKK, AK FIX	6800	17500
CHOKK, AK FIX	TANANA, AK VOR/DME	4000	17500
TANANA, AK VOR/DME *7000–MRA	*REEBA, AK FIX	3600	17500
REEBA, AK FIX	FAIRBANKS, AK VORTAC	4500	17500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 482 Effective Date August 27, 2009]

From	To	MEA	MAA
§ 95.4227 RNAV Route T227 Is Amended To Read In Part			
SHEMYA, AK NDB	JANNT, AK FIX	3400	17500
JANNT, AK FIX	BAERE, AK FIX	2900	17500
BAERE, AK FIX	ALEUT, AK FIX	3300	17500
ALEUT, AK FIX	MORDI, AK FIX	2500	17500
MORDI, AK FIX	BINAL, AK FIX	4900	17500
BINAL, AK FIX	PORT HEIDEN, AK NDB/DME	3800	17500
PORT HEIDEN, AK NDB/DME	AMOTT, AK FIX	13000	17500
AMOTT, AK FIX	ANCHORAGE, AK VOR/DME	4000	17500
ANCHORAGE, AK VOR/DME	FAIRBANKS, AK VORTAC	9700	17500
FAIRBANKS, AK VORTAC	DEADHORSE, AK VOR/DME	11000	17500
§ 95.4228 RNAV Route T228 Is Amended To Read In Part			
CAPE NEWENHAM, AK NDB/DME	KUCYE, AK FIX	4600	17500
KUCYE, AK FIX	RUFVY, AK FIX	2000	17500
RUFVY, AK FIX	HOOPER BAY, AK VOR/DME	3000	17500
§ 95.4231 RNAV Route T231 Is Amended To Read In Part			
FAIRBANKS, AK VORTAC	SELAWIK, AK VOR/DME	6300	17500
SELAWIK, AK VOR/DME	KOTZEBUE, AK VOR/DME	3400	17500
§ 95.4231 RNAV Route T232 Is Amended To Delete In Part			
OLARU, AK FIX 5400–MOCA	NORTHWAY, AK VORTAC	6000	17500
§ 95.4240 RNAV Route T240 Is Amended To Delete In Part			
EVANSVILLE, AK NDB	NAMRE, AK FIX	10000	17500
Is Amended To Read In Part			
BETTLES, AK VOR/DME	TEGDE, AK FIX	7800	17500
TEGDE, AK FIX	DERIK, AK FIX	9700	17500
DERIK, AK FIX	SHELO, AK FIX	3600	17500
SHELO, AK FIX	DEADHORSE, AK VOR/DME	2000	17500
§ 95.4246 RNAV Route T246 Is Amended By Adding			
BARROW, AK VOR/DME	GALENA, AK VOR/DME	9200	17500
Is Amended To Read In Part			
GALENA, AK VOR/DME	MC GRATH, AK VORTAC	5800	17500
MC GRATH, AK VORTAC	ANCHORAGE, AK VOR/DME	8700	17500
§ 95.4248 RNAV Route T248 Is Amended By Adding			
GAMBELL, AK NDB/DME	QAYAQ, AK FIX	3600	17500
Is Amended To Read In Part			
QAYAQ, AK FIX	EMMONAK, AK VOR/DME	3000	17500
§ 95.4250 RNAV Route T250 Is Amended To Read In Part			
BETHEL, AK VORTAC	AKELT, AK FIX	3800	17500
AKELT, AK FIX	QAYAQ, AK FIX	3000	17500
QAYAQ, AK FIX	KUKULIAK, AK VOR/DME	3700	17500
§ 95.4252 RNAV Route T252 Is Amended By Adding			
NOME, AK VOR/DME	KOTZEBUE, AK VOR/DME	5900	17500
§ 95.4260 RNAV Route T260 Is Amended By Adding			
NOME, AK VOR/DME	TIN CITY, AK NDB/DME	6900	17500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 482 Effective Date August 27, 2009]

From	To	MEA	MAA
Is Amended To Read In Part			
TIN CITY, AK NDB/DME	COGNU, AK FIX	5300	17500
COGNU, AK FIX	POINT HOPE, AK NDB	3000	17500
§ 95.4269	**RNAV Route T269 Is Added To Read**		
BETHEL, AK VORTAC	SPARREVOHN, AK VOR/DME	6800	17500
SPARREVOHN, AK VOR/DME	ANCHORAGE, AK VOR/DME	11300	17500
ANCHORAGE, AK VOR/DME	JOHNSTONE POINT, AK VOR/DME	9000	17500
JOHNSTONE POINT, AK VOR/DME	YAKUTAT, AK VOR/DME	5900	17500
YAKUTAT, AK VOR/DME	BIORKA ISLAND, AK VORTAC	6200	17500
BIORKA ISLAND, AK VORTAC	ANNETTE ISLAND, AK VOR/DME	7100	17500
§ 95.4273	**RNAV Route T273 Is Added To Read**		
FAIRBANKS, AK VORTAC	ROCES, AK FIX	12000	17500
§ 95.4275	**RNAV Route T275 Is Added To Read**		
BETHEL, AK VORTAC	UNALAKLEET, AK VOR/DME	5900	17500
§ 95.4277	**RNAV Route T277 Is Added To Read**		
BETTLES, AK VOR/DME	POINT LAY, AK NDB	10300	17500
§ 95.4278	**RNAV Route T278 Is Added To Read**		
*HAPIT, AK FIX *15000–MRA	SISTERS ISLAND, AK VORTAC	6100	17500
§ 95.4279	**RNAV Route T279 Is Added To Read**		
ALEUT, AK FIX	BETHEL, AK VORTAC	3200	17500
§ 95.4280	**RNAV Route T280 Is Added To Read**		
FLIPS, AK FIX	LEVEL ISLAND, AK VOR/DME	7100	17500
§ 95.4282	**RNAV Route T282 Is Added To Read**		
VENCE, AK FIX	HORSI, AK FIX	5000	17500
HORSI, AK FIX	PERZO, AK FIX	4700	17500
PERZO, AK FIX	FAIRBANKS, AK VORTAC	4300	17500

From	To	MEA
§ 95.6001 Victor Routes-U.S.		
§ 95.6003 VOR Federal Airway V3 Is Amended To Read In Part		
HARVY, VA FIX *9000–MRA **4000–GNSS MEA	*NUTTS, VA FIX	**6000
*NUTTS, VA FIX *9000–MRA **4000–GNSS MEA #R–220 UNUSABLE	#FLAT ROCK, VA VORTAC	**6000
§ 95.6020 VOR Federal Airway V20 Is Amended To Read In Part		
RESERVE, LA VOR/DME *5000–MCA SLIDD, LA FIX, NE BND	*SLIDD, LA FIX	2000
SLIDD, LA FIX *2000–GNSS MEA	GULFPORT, MS VORTAC	*5000
§ 95.6029 VOR FederaL Airway V29 Is Amended To Read In Part		
#DUPONT, DE VORTAC *1800–MOCA *2000–GNSS MEA	MODENA, PA VORTAC	*6000

From	To	MEA
#R–358 UNUSABLE		
§ 95.6051 VOR Federal Airway V51 Is Amended To Read In Part		
CRAIG, FL VORTAC	#ALMA, GA VORTAC	*5000
*1700–MOCA		
*4000–GNSS MEA		
#R–144 NA BELOW 10000		
§ 95.6086 VOR Federal Airway V86 Is Amended To Read In Part		
MISSOULA, MT VOR/DME	COPPERTOWN, MT VOR/DME	*13000
*11300–MOCA		
*12000–GNSS MEA		
*PACTO, SD FIX	RAPID CITY, SD VORTAC.	
E BND		**8000
W BND		**9700
*9700–MRA		
**7100–MOCA		
§ 95.6106 VOR Federal Airway V106 Is Amended To Read In Part		
JOHNSTOWN, PA VORTAC	HUDON, PA FIX	*5000
*4500–MOCA		
HUDON, PA FIX	RASHE, PA FIX	*7000
*4000–MOCA		
*4000–GNSS MEA		
RASHE, PA FIX	SELINSGROVE, PA VORTAC	*14000
*4000–GNSS MEA		
§ 95.6114 VOR Federal Airway V114 Is Amended To Read In Part		
RESERVE, LA VOR/DME	*SLIDD, LA FIX	2000
*5000–MCA SLIDD, LA FIX, NE BND		
SLIDD, LA FIX	GULFPORT, MS VORTAC	*5000
*2000–GNSS MEA		
GULFPORT, MS VORTAC	EATON, MS VORTAC	*6000
*2000–GNSS MEA		
§ 95.6168 VOR Federal Airway V168 Is Amended To Read In Part		
MILER, AL FIX	EFORD, AL FIX	*3000
*2400–MOCA		
*3000–GNSS MEA		
EFORD, AL FIX	#WIREGRASS, AL VORTAC	2400
#R–360 UNUSABLE BEYOND EFORD		
§ 95.6170 VOR Federal Airway V170 Is Amended To Read In Part		
MODENA, PA VORTAC	#DUPONT, DE VORTAC	*6000
*1800–MOCA		
*2000–GNSS MEA		
# R–358 UNUSABLE		
§ 95.6259 VOR Federal Airway V259 Is Amended To Read In Part		
*KOOKE, SC FIX	**CLETA, SC FIX	2000
*3000–MRA		
**3000–MRA		
*CLETA, SC FIX	FLORENCE, SC VORTAC	2000
*3000–MRA		
§ 95.6269 VOR Federal Airway V269 Is Amended To Read In Part		
HOVEL, ID FIX	FONNA, OR FIX	*12000
*8700–MOCA		
*9000–GNSS MEA		
MANTE, OR FIX	MOBIL, OR FIX	*10000
*7600–MOCA		
*8000–GNSS MEA		
§ 95.6292 VOR Federal Airway V292 Is Amended To Read In Part		
*WIGAN, NY FIX	#BARNES, MA VORTAC	**10000
*4500–MRA		

From	To	MEA
**4900–MOCA **5000–GNSS MEA #R–279 UNUSABLE.		
§ 95.6514 VOR Federal Airway V514 Is Amended To Read In Part		
*TWENTYNINE PALMS, CA VORTAC *10200–MCA TWENTYNINE PALMS, CA VORTAC, NE BND **7900–MOCA **8000–GNSS MEA	GOFFS, CA VORTAC	**12000
§ 95.6528 VOR Federal Airway V528 Is Amended To Read In Part		
*PHOENIX, AZ VORTAC *8000–MCA PHOENIX, AZ VORTAC, NE BND **9400–MOCA **10000–GNSS MEA	EAGUL, AZ FIX	**14500
§ 95.6538 VOR Federal Airway V538 Is Amended To Read In Part		
*TWENTYNINE PALMS, CA VORTAC *10200–MCA TWENTYNINE PALMS, CA VORTAC, NE BND **7900–MOCA **8000–GNSS MEA	GOFFS, CA VORTAC	**12000
§ 95.6480 Alaska VOR Federal Airway V480 Is Amended To Read In Part		
MOUNT MOFFETT, AK NDB/DME	ST PAUL ISLAND, AK NDB/DME	6000 MAA–17500
ZESKA, AK FIX *1400–MOCA	BETHEL, AK VORTAC. SW BND NE BND	*10000 *2000

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7051 JET Route J51 Is Amended To Read In Part			
TUBAS, NC FIX *18000–GNSS MEA #R–218 UNUSABLE	#FLAT ROCK, VA VORTAC	*26000	45000
§ 95.7091 Jet Route J9 1Is Amended To Read In Part			
CROSS CITY, FL VORTAC #R–169 DME UNUSABLE	#ATLANTA, GA VORTAC	24000	45000

Airway Segment	Changeover Points		
	From	To	Distance
§ 95.8003 VOR Federal Airway Changeover Points Is Amended To Add Changeover Point Alaska V480			
ST PAUL ISLAND, AK NDB/DME	BETHEL, AK VORTAC	223	*ST PAUL ISLAND.
Is Amended To Delete Changeover Point			
ST PAUL ISLAND, AK NDB/DME	KIPNUKL, AK VORTAC	197	ST PAUL ISLAND.

[FR Doc. E9–18851 Filed 8–11–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Part 371

RIN 1820–AB63

[Docket ID ED–2009–OSERS–0008]

Vocational Rehabilitation Service Projects for American Indians With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Interim final rule; Request for Comments.

SUMMARY: The Secretary amends the regulations for the American Indian Vocational Rehabilitation Services (AIVRS) program to permit a consortium of Indian Tribes to establish a separate legal entity to apply for a grant under this program. This change is needed to provide the flexibility required by the Department to make grants to Indian Tribes that choose to form a consortium and, rather than authorizing one of the Indian Tribes of the consortium to serve as the grantee, create a separate legal entity that serves as the grantee on behalf of the consortium and that is responsible for using the grant funds to provide services to all the Indian Tribes in the consortium.

DATES: These regulations are effective August 12, 2009. We must receive your comments by September 11, 2009.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these interim final regulations, address them to Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 5059, Potomac Center Plaza (PCP), Washington, DC 20006–8544.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch. Telephone: 202–245–7343 or via the Internet: *tom.finch@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.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these interim final regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the interim final regulations that each of your comments address and to arrange your comments in the same order as the interim final regulations.

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 interim final regulations. Please let us know of any further opportunities we should take to 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 these interim final regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 5059, PCP, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these interim final regulations. If you want to schedule an appointment for this type of aid, please contact Thomas E. Finch. Telephone number (202) 245–7343 or e-mail: *tom.finch@ed.gov.*

Executive Order 13175

Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'') provides that each Federal agency must have an accountable process to ensure regular and meaningful consultation and collaboration with Indian Tribal governments or their representative organizations in the development of regulatory policies that have Tribal implications. As part of this process, before publishing these interim final regulations, we have consulted through meetings, telephone calls, and correspondence with the Consortia of Administrators for Native American Rehabilitation that represents all the AIVRS projects across the country, several Indian Tribes, Alaskan Regional Corporations, Native Alaskan Villages, the Native Alaskan Associations, as well as interested parties in Congress. We are specifically inviting input from Indian Tribal officials concerning these interim final regulations as part of the process of consultation required by the Executive order.

Background

The AIVRS program, authorized by section 121 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741), provides authority for the Commissioner of the Rehabilitation Services Administration (RSA) in the Office of Special Education and Rehabilitative Services of the Department of Education to make grants to the governing bodies of Indian Tribes located on Federal and State reservations (and consortia of such governing bodies) to pay 90 percent of the costs of vocational rehabilitation services for American Indians who are individuals with disabilities residing on or near such reservations. The term *governing bodies of Indian Tribes* is defined in the regulations at 34 CFR 371.4 as ''those duly elected or appointed representatives of an Indian Tribe or of an Alaskan native village. These representatives must have the authority to enter into contracts, agreements, and grants on behalf of their constituency.'' Section 371.4 also defines the term *consortium* as ''two or more eligible governing bodies of Indian Tribes that make application as a single applicant under an agreement whereby each governing body is legally responsible for carrying out all of the activities in the application.''

The regulatory definition of the term *consortium* permits groups of applicants to apply only if one member of the group applies for the grant on behalf of the consortium and serves as the grantee. In order to recognize that Indian Tribes may organize themselves by establishing separate legal entities to apply on their behalf for Federal program funds, the Department amends the definition of the term *consortium* to expressly allow the governing bodies of Indian Tribes in the consortium to create a separate legal entity to apply for a grant on behalf of the Tribes in the consortium. As the applicant, the separate legal entity would be governed by the regulations that apply to the AIVRS program pursuant to § 371.3.

On May 14, 2009, we published in the **Federal Register** (74 FR 22729) a notice inviting applications for new awards for fiscal year (FY) 2009 for the AIVRS program. The original notice for the FY 2009 AIVRS program competition established a July 23, 2009, deadline date for eligible applicants to apply for funding under this program. To ensure that the change in the regulatory definition of the term *consortium* applies to entities applying for a FY 2009 grant, we are reopening the competition and establishing a new deadline for the submission of applications. Applicants that submitted applications by the July 23, 2009, deadline date in accordance with the terms of the May 14, 2009 notice inviting applications are not required to submit new applications. Only groups of Indian Tribes that seek to apply for funding under the AIVRS program using a separate legal entity as the applicant are permitted to submit a new application under the new deadline. The notice reopening the FY 2009 competition for the AIVRS program is published elsewhere in this issue of the **Federal Register.**

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. However, we are waiving the notice-and-comment rulemaking requirements under the APA. Section 553(b) of the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Although these regulations are subject to the APA's notice-and-comment requirements, the Secretary has determined that it would be contrary to the public interest and impracticable to conduct notice-and-comment rulemaking.

It has come to the Department's attention that certain entities receiving AIVRS program grants do not meet the current definition of the term *governing bodies of Indian Tribes* or the term *consortium,* but rather are nonprofit associations created by the governing bodies of Indian Tribes to provide health, social, and welfare services (including vocational rehabilitation services) to the member Indian Tribes. Some of the Indian Tribes served by these nonprofit associations will be among the applicants in the FY 2009 AIVRS program competition and there are others who are due to receive continuation grants for FY 2009.

For many small Indian Tribes and Alaskan native villages, the only effective and efficient way for their members to receive health, social, and welfare services is for the Tribes or villages to join together and create a separate legal entity to apply for and administer grants and contracts from the Federal and State governments. Other Department and Federal agency programs accept applications from groups of Indian Tribes submitted by these separate legal entities. If the Department had to conduct notice-and-comment rulemaking to implement the change in the definition of the term *consortium* for purposes of the AIVRS program, it could not do so in time to permit it to make new and continuation awards to eligible applicants that apply through these separate legal entities for FY 2009, which would result in the disruption of services to hundreds of American Indians with disabilities who currently receive services through grants provided to these entities. Such a denial of services to the intended beneficiaries of the AIVRS program would be contrary to the public interest; this harm to the public interest outweighs the value that would be gained from notice-and-comment rulemaking in this instance because the regulatory change sought merely adopts an accepted practice used by many Indian Tribes to apply for and administer Federal programs.

In addition, even on an extremely expedited timeline, it is impracticable for the Department to conduct notice-and-comment rulemaking and then promulgate final regulations in time to make new and continuation awards to eligible applicants that apply through these separate legal entities for FY 2009 under the AIVRS program. Publishing a notice of proposed rulemaking, reviewing the public comments and issuing final regulations normally takes at least six months, and this could not be accomplished prior to September 30, 2009, the date by which FY 2009 funds have to be obligated under the AIVRS program. Issuing interim final regulations permits the Department to consider applications under the competition for new awards submitted by applicants affected by the change in the definition of the term *consortium* and to make continuation awards to certain applicants that will meet the changed definition and can then continue providing vocational rehabilitation services to American Indians with disabilities.

Based upon this information, and in order to make timely grant awards for FY 2009, the Secretary is issuing these interim final regulations without first publishing proposed regulations for public comment.

Although the Department is adopting these regulations on an interim final basis, the Department requests public comment on these regulations. After consideration of public comments, the Secretary will publish final regulations.

The APA also requires that a substantive rule be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). For the reasons outlined in the preceding paragraphs, the Secretary has determined that a delayed effective date for these interim final regulations is unnecessary and contrary to the public interest, and that good cause exists to waive the requirement for a delayed effective date.

Significant Regulations

We discuss substantive issues under the sections of the interim final regulations to which they pertain.

Statute: Section 121(a) of the Rehabilitation Act of 1973, as amended, provides that the Commissioner of RSA may make grants to the governing bodies of Indian Tribes located on Federal and State reservations (and consortia of such governing bodies) to pay 90 percent of the costs of vocational rehabilitation services for American Indians who are individuals with disabilities residing on or near such reservations.

Current Regulations: Current § 371.4 defines the term *consortium* as two or more eligible governing bodies of Indian Tribes that make application as a single applicant under an agreement whereby each governing body is legally responsible for carrying out all of the activities in the application.

Regulations: We are amending the definition of the term *consortium* in section 371.4 to provide that a *consortium* means two or more eligible governing bodies of Indian Tribes that apply for an award under this program by either: (1) Designating one governing body to apply for the grant; or (2) establishing and designating a separate legal entity to apply for the grant.

Reason: Although the regulations under the AIVRS program have not changed in several years, Indian Tribes have evolved in the ways that they have chosen to procure and deliver social services. Many Indian Tribes have found it more effective to join together and create one separate legal organization to apply for Federal funds on their behalf and to deliver services to the members of those Indian Tribes because they share the need for such services. This separate legal organization is generally a nonprofit association that provides health, social and welfare services (in this case, vocational rehabilitation services) to the members of the Indian Tribes that created this association. However, a nonprofit association does not meet the current definition of the term *governing body of an Indian Tribe* or the term *consortium* and, therefore, cannot serve as the grantee for a consortium of Indian Tribes under the AIVRS program.

Many of the Indian Tribes that choose to form a consortium and establish a separate legal entity to apply for grants and administer health, social, and welfare services to its member Tribes would not, on their own, be able to assume responsibility for a AIVRS program grant because of their small size or isolated location, or because they lack the necessary infrastructure and internal controls to administer an AVRIS program grant. It has become apparent that the Department's current definition of the term *consortium* constrains the intended recipients of an AIVRS grant from applying for funds under the program and from delivering services to the intended beneficiaries of AIVRS program funding—the American Indians with disabilities. Therefore, the Department has determined that it is appropriate to revise the regulatory definition of the term *consortium* so that a group of governing bodies of Indian Tribes may establish a separate legal entity to serve as the applicant and grantee on behalf of eligible Indian Tribes applying for a grant as part of a consortium. The Department believes that this regulatory change is essential in order to keep pace with the practical realities of the Indian community, to respect how the sovereign Indian Tribes have decided to organize themselves to receive Federal program funds, and to provide for as much flexibility as possible within the statutory requirements of the program to award funds to intended recipients. These separate legal entities, established by consortia of Indian Tribes, already receive grants under certain Department programs as well as programs administered by other Federal agencies, and this change will align the AIVRS program with these other programs.

Other Changes

Statute: None.

Current Regulations: Part 371 currently identifies ''29 U.S.C. 711(c) and 750, unless otherwise noted'' as the statutory authority for the regulations in this part.

Regulations: We are updating the authority citation for 34 part 371 to be 29 U.S.C. 709(c) and 741, unless otherwise noted.

Reason: We are updating the authority citation for this part because it has not been updated since the 1992 amendments to the Rehabilitation Act of 1973.

Executive Order 12866

1. Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. Pursuant to the terms of the Executive order, it has been determined that this regulatory action is not a significant regulatory action subject to OMB review under section 3(f) of Executive Order 12866.

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that this rule will not impose additional costs to applicants, grantees, or the Federal government, as the Department is proposing only to expand how eligible applicants can apply for and administer grants under this program. The rule, changing the definition of the term *consortium,* is not expected to result in increased costs to Indian Tribes in applying for an AIVRS grant or in implementing an AIVRS project. Moreover, the benefits of this regulatory action far outweigh any unforeseen administrative costs to the Federal government in administering the program. Some Indian Tribes, particularly those for whom it would be difficult to assume responsibility for an AIVRS grant because of their small size, isolated location, or lack of the necessary infrastructure, have found it more effective to join together and create one separate legal organization to apply for Federal funds on their behalf and to deliver services to the members of those Indian Tribes. This regulatory change would benefit such Indian Tribes by providing them the flexibility to establish a separate legal entity to serve as the applicant and grantee on behalf of eligible Indian Tribes applying for a grant as part of a consortium, rather than requiring one of the Indian Tribes of the consortium to serve as the grantee.

We have also determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions, alter the rights and obligations of recipients, or raise new legal or policy issues.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these interim final regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the interim final regulations clearly stated?
- Do the interim final regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the interim final regulations (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce their clarity?

• Would the interim final regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 371.4 What definitions apply to this program?)

• Could the description of the interim final regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the interim final regulations easier to understand? If so, how?

• What else could we do to make the interim final regulations easier to understand?

To send any comments that concern how the Department could make these interim final regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these interim final regulations will not have a significant economic impact on a substantial number of small entities. These interim final regulations affect Indian Tribal governments and nonprofit organizations. The U.S. Small Business Administration (SBA) Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000.

Although some Indian Tribal governments and nonprofit organizations may meet the definition of ''small entities,'' these interim final regulations do not impose new costs on these entities.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number: 84.250A AIVRS Program)

List of Subjects in 34 CFR Part 371

Grant programs—Indians, Grant programs—social programs, Indians vocational rehabilitation.

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services, to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: August 6, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

■ For the reasons discussed in the preamble, the Secretary amends part 371 of title 34 of the Code of Federal Regulations as follows:

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

■ 1. The authority citation for part 371 is revised to read as follows:

Authority: 29 U.S.C. 709(c) and 741, unless otherwise noted.

■ 2. Section 371.4 is amended by revising the definition of ''consortium'' in paragraph (b) to read as follows:

§ 371.4 What definitions apply to this program?

* * * * *

(b) * * *

Consortium means two or more eligible governing bodies of Indian Tribes that apply for an award under this program by either:

(i) Designating one governing body to apply for the grant; or

(ii) Establishing and designating a separate legal entity to apply for the grant.

* * * * *

[FR Doc. E9–19335 Filed 8–11–09; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R03–OAR–2009–0238; FRL–8936–4]

Outer Continental Shelf Air Regulations Consistency Update for Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the updates of the Outer Continental Shelf (OCS) Air Regulations for Delaware. Requirements applying to OCS sources located within 25 miles of a State's seaward boundary must be updated periodically to maintain continuity and ensure consistency with the regulations of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The intended effect of approving the OCS regulations for Delaware is to regulate air emissions from OCS sources in accordance with the requirements of the COA.

DATES: *Effective Date:* This rule is effective on September 11, 2009.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 11, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2009–0238. 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.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156 or by e-mail at caprio.amy@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose

Section 328(a) of the Clean Air Act (CAA) requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of a State's seaward boundary that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable rules of the corresponding onshore area (COA) into 40 CFR part 55.

On April 29, 2008 (74 FR 19472), EPA proposed to incorporate various

Delaware air quality management requirements into 40 CFR part 55. These requirements are being promulgated to ensure that the applicable OCS rules correspond with the rules for the COA. EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the CAA and 40 CFR part 55 limit EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevent EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the part 55 rule does not imply that a state or local rule meets the requirements of the CAA for SIP approval, nor does it imply that the state or local rule will be approved by EPA for inclusion in the SIP.

II. Public Comment

EPA did not receive comments on the proposed rulemaking published on April 29, 2009 (74 FR 19472).

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposed action. EPA is approving the proposed action under section 328(a)(1) of the CAA, 42 U.S.C. 7627(a)(1). Section 328(a)(1) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of a State's seaward boundary that are the same as would be applicable if the source were located in the COA. To comply with this statutory mandate, EPA must incorporate applicable COA rules into 40 CFR part 55 as they exist onshore.

IV. Statutory and Executive Order Reviews

Under the section 328(a)(1) of the CAA, 42 U.S.C. 7627(a)(1), the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundary that are the same as onshore air control requirements. To comply with this statutory mandate, EPA must incorporate applicable COA rules into 40 CFR part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of the COA, provided that they meet the criteria of the Clean Air Act. Accordingly, this action updates the existing OCS requirements to make them consistent with COA requirements, without the exercise of any policy discretion by EPA. 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);
- 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 (Public Law 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 it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (ICR) No. 1601.07 was published in the **Federal Register** on February 17, 2009 (74 FR 7432). The approval expires January 31, 2012. As EPA previously indicated (73 FR 66037 (November 6, 2008)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 112 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable. In addition, the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations lists the regulatory citations for the information requirements contained in 40 CFR part 55.

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).

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 October 13, 2009. Filing a petition for reconsideration by the Administrator of this final rule to incorporate updates to the OCS requirements for Delaware does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Continental Shelf, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 16, 2009.

William C. Early,

Acting Regional Administrator, Region III.

■ Title 40, chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 55—[AMENDED]

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Act (42 U.S.C. 7401, et seq.) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended as follows:
■ a. By adding paragraph (d)(5).
■ b. By revising paragraph (e) introductory text.
■ c. By adding paragraph (e)(5).

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(d) * * *

(5) Delaware.

(i) 40 CFR part 52, subpart I.

(ii) [Reserved].

* * * * *

(e) State and local requirements. State and local requirements promulgated by EPA as applicable to OCS sources located within 25 miles of States' seaward boundaries have been compiled into separate documents organized by State and local areas of jurisdiction. These documents, set forth below, are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Copies of rules pertaining to particular States or local areas may be inspected or obtained from the EPA Air Docket (A–91–76), U.S. EPA, room M–1500, 401 M St., SW., Washington, DC 20460, (202) 566–1742 or the appropriate EPA regional offices: U.S. EPA, Region I (Massachusetts) One Congress Street, Boston, MA 02114–2023, (617) 918–1111; U.S. EPA, Region III (Delaware) 1650 Arch Street, Philadelphia, PA 19103, (215) 814–5000; U.S. EPA, Region 4 (Florida and North Carolina), 61 Forsyth Street, Atlanta, GA 30303, (404) 562–9900; U.S. EPA, Region 9 (California), 75 Hawthorne Street, San Fransisco, CA 94105, (415) 947–8000; and U.S. EPA Region 10 (Alaska), 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1200. For an informational listing of the State and local requirements incorporated into this part, which are applicable to sources of air pollution located on the OCS, see appendix A to this part.

* * * * *

(5) Delaware.

(i) State requirements.

(A) State of Delaware Requirements Applicable to OCS Sources, December 19, 2008.

(B) [Reserved].

(ii) Local requirements.

(A) [Reserved].

* * * * *

■ 3. Appendix A to part 55 is amended by adding an entry for Delaware in alphabetical order to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

Delaware

(a) State requirements.

(1) The following State of Delaware requirements are applicable to OCS Sources, December 19, 2008, State of Delaware—Department of Natural Resources and Environmental Control. The following sections of 7 DE Admin. Code 1100—Air Quality Management Section:

7 DE Admin. Code 1101: Definitions and Administrative Principles

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Definitions (Effective 09/11/1999)
Section 3.0: Administrative Principles (02/01/1981)
Section 4.0: Abbreviations (Effective 02/01/1981)

7 DE Admin. Code 1102: Permits

Section 1.0: General Provisions (Effective 06/11/2006)
Section 2.0: Applicability (Effective 06/11/2006)
Section 3.0: Application/Registration Prepared by Interested Party (Effective 06/01/1997)
Section 4.0: Cancellation of Construction Permits (Effective 06/01/1997)
Section 5.0: Action on Applications (Effective 06/01/1997)
Section 6.0: Denial, Suspension or Revocation of Operating Permits (Effective 06/11/2006)
Section 7.0: Transfer of Permit/Registration Prohibited (Effective 06/01/1997)
Section 8.0: Availability of Permit/Registration (Effective 06/01/1997)
Section 9.0: Registration Submittal (Effective 06/01/1997)
Section 10.0: Source Category Permit Application (Effective 06/01/1997)
Section 11.0: Permit Application (Effective 06/11/2006)
Section 12.0: Public Participation (Effective 06/11/2006)
Section 13.0: Department Records (Effective 06/01/1997)
Section 1102: Appendix A (Effective 06/11/2006)

7 DE Admin. Code 1103: Ambient Air Quality Standards

Section 1.0: General Provisions (Effective 09/11/1999)
Section 2.0: General Restrictions (Effective 02/01/1981)
Section 3.0: Suspended Particulates (Effective 02/01/1981)
Section 4.0: Sulfur Dioxide (Effective 02/01/1981)
Section 5.0: Carbon Monoxide (Effective 02/01/1981)
Section 6.0: Ozone (Effective 09/11/1999)
Section 7.0: Hydrocarbons (Effective 02/01/1981)
Section 8.0: Nitrogen Dioxide (Effective 02/01/1981)
Section 9.0: Hydrogen Sulfide (Effective 02/01/1981)
Section 10.0: Lead (Effective 02/01/1981)
Section 11.0: PM10 and PM2.5 Particulates (Effective 2/11/2003)

7 DE Admin. Code 1104: Particulate Emissions From Fuel Burning Equipment

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Emission Limits (Effective 02/01/1981)

7 DE Admin. Code 1105: Particulate Emissions From Industrial Process Operations

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: General Restrictions (Effective 02/01/1981)
Section 3.0: Restrictions on Hot Mix Asphalt Batching Operations (Effective 02/01/1981)
Section 4.0: Restrictions on Secondary Metal Operations (Effective 02/01/1981)
Section 5.0: Restrictions on Petroleum Refining Operations (Effective 02/01/1981)
Section 6.0: Restrictions on Prill Tower Operations (Effective 02/01/1981)
Section 7.0: Control of Potentially Hazardous Particulate Matter (Effective 02/01/1981)

7 DE Admin. Code 1106: Particulate Emissions From Construction and Materials Handling

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Demolition (Effective 02/01/1981)
Section 3.0: Grading, Land Clearing, Excavation and Use of Non-Paved Roads (Effective 02/01/1981)
Section 4.0: Material Movement (Effective 02/01/1981)
Section 5.0: Sandblasting (Effective 02/01/1981)
Section 6.0: Material Storage (Effective 02/01/1981)

7 DE Admin. Code 1107: Emissions From Incineration of Noninfectious Waste

Section 1.0: General Provisions (Effective 10/13/1989)
Section 2.0: Restrictions (Effective 10/13/1989)

7 DE Admin. Code 1108: Sulfur Dioxide Emissions From Fuel Burning Equipment

Section 1.0: General Provisions (Effective 12/08/1983)
Section 2.0: Limit on Sulfur Content of Fuel (Effective 05/09/1985)
Section 3.0: Emission Control in Lieu of Sulfur Content Limits of 2.0 of This Regulation (Effective 05/09/1985)

7 DE Admin. Code 1109: Emissions of Sulfur Compounds From Industrial Operations

Section 1.0: General Provisions (Effective 05/09/1985)
Section 2.0: Restrictions on Sulfuric Acid Manufacturing Operations (Effective 02/01/1981)
Section 3.0: Restriction on Sulfuric Recovery Operations (Effective 02/01/1981)
Section 4.0: Stack Height Requirements (Effective 02/01/1981)

7 DE Admin. Code 1110: Emissions of Sulfur Compounds From Industrial Operations

Section 1.0: Requirements for Existing Sources of Sulfur Dioxide (Effective 01/18/1981)
Section 2.0: Requirements for New Sources of Sulfur Dioxide (Effective 02/01/1981)

7 DE Admin. Code 1111: Carbon Monoxide Emissions From Industrial Process Operations, New Castle County

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Restrictions on Petroleum Refining Operations (Effective 02/01/1981)

7 DE Admin. Code 1112: Control of Nitrogen Oxide Emissions

Section 1.0: Applicability (Effective 11/24/1993)
Section 2.0: Definitions (Effective 11/24/1993)
Section 3.0: Standards (Effective 11/24/1993)
Section 4.0: Exemptions (Effective 11/24/1993)
Section 5.0: Alternative and Equivalent RACT Determinations (11/24/1993)
Section 6.0: RACT Proposals (11/24/1993)
Section 7.0: Compliance Certification, Recordkeeping, and Reporting Requirements (Effective 11/24/1993)

7 DE Admin. Code 1113: Open Burning

Section 1.0: Purpose (Effective 04/11/2007)
Section 2.0: Applicability (Effective 04/11/2007)
Section 3.0: Definitions (Effective 04/11/2007)
Section 4.0: Prohibitions and Related Provisions (Effective 04/11/2007)
Section 5.0: Season and Time Restrictions (Effective 04/11/2007)
Section 6.0: Allowable Open Burning (Effective 04/11/2007)
Section 7.0: Exemptions (Effective 04/11/2007)

7 DE Admin. Code 1114: Visible Emissions

Section 1.0: General Provisions (Effective 07/17/1984)
Section 2.0: Requirements (Effective 07/17/1984)
Section 3.0: Alternate Opacity Requirements (Effective 07/17/1984)
Section 4.0: Compliance With Opacity Standards (Effective 07/17/1984)

7 DE Admin. Code 1115: Air Pollution Alert and Emergency Plan

Section 1.0: General Provisions (Effective 07/17/1984)
Section 2.0: Stages and Criteria (Effective 03/29/1988)
Section 3.0: Required Actions (Effective 02/01/1981)
Section 4.0: Standby Plans (Effective 02/01/1981)

7 DE Admin. Code 1116: Sources Having an Interstate Air Pollution Potential

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Limitations (Effective 02/01/1981)
Section 3.0: Requirements (Effective 02/01/1981)

7 DE Admin. Code 1117: Source Monitoring, Recordkeeping and Reporting

Section 1.0: Definitions and Administrative Principals (Effective 01/11/1993)
Section 2.0: Sampling and Monitoring (Effective 07/17/1984)
Section 3.0: Minimum Emissions Monitoring Requirements For Existing Sources (Effective 07/17/1984)
Section 4.0: Performance Specifications (Effective 07/17/1984)
Section 5.0: Minimum Data Requirements (Effective 07/17/1984)
Section 6.0: Data Reduction (Effective 07/17/1984)
Section 7.0: Emission Statement (Effective 01/11/1993)

7 DE Admin. Code 1120: New Source Performance Standards

Section 1.0: General Provisions (Effective 12/07/1988)
Section 2.0: Standards of Performance for Fuel Burning Equipment (Effective 04/18/1983)
Section 3.0: Standards of Performance for Nitric Acid Plants (Effective 04/18/1983)
Section 5.0: Standards of Performance for Asphalt Concrete Plants (Effective 04/18/1983)
Section 6.0: Standards of Performance for Incinerators (Effective 04/18/1983)
Section 7.0: Standards of Performance for Sewage Treatment Plants (Effective 04/18/1983)
Section 8.0: Standards of Performance for Sulfuric Acid Plants (Effective 04/18/1983)
Section 9.0: Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978 (Effective 04/18/1983)
Section 10.0: Standards of Performance for Stationary Gas Turbines (Effective 11/27/1985)
Section 11.0: Standards of Performance for Petroleum Refineries (Effective 11/27/1985)
Section 12.0: Standards of Performance for Steel Plants: Electric Arc Furnaces (Effective 11/27/1985)
Section 20.0: Standards of Performance for Bulk Gasoline Terminals (Effective 11/27/1985)
Section 22.0: Standards of Performance for Equipment Leaks at Petroleum Refineries (Effective 11/27/1985)
Section 27.0: Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984 (Effective 12/07/1988)
Section 29.0: Standards of Performance for Hospital/Medical/Infectious Waste Incinerators (Effective 09/11/1998)

7 DE Admin. Code 1122: Restriction on Quality of Fuel in Fuel Burning Equipment

Section 1.0: Prohibition of Waste Oil (Effective 11/27/1985)

7 DE Admin. Code 1124: Control of Volatile Organic Compounds

Section 1.0: General Provisions (Effective 01/11/1993)
Section 2.0: Definitions (Effective 01/11/2002)
Section 3.0: Applicability (Effective 01/11/1993)
Section 4.0: Compliance, Certification, Recordkeeping, and Reporting Requirements for Coating Sources (Effective 11/29/1994)
Section 5.0: Compliance, Certification, Recordkeeping, and Reporting Requirements for Non-Coating Sources (Effective 01/11/1993)
Section 6.0: General Recordkeeping (Effective 01/11/1993)

Section 7.0: Circumvention (Effective 01/11/1993)
Section 8.0: Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs) (Effective 11/29/1994)
Section 9.0: Compliance, Permits, Enforceability (Effective 01/11/1993)
Section 10.0: Aerospace Coatings (Effective 08/11/2002)
Section 11.0: Mobile Equipment Repair and Refinishing (Effective 11/11/2001)
Section 12.0: Surface Coating of Plastic Parts (Effective 11/29/1994)
Section 13.0: Automobile and Light-Duty Truck Coating Operations (Effective 01/11/1993)
Section 14.0: Can Coating (Effective 01/11/1993)
Section 15.0: Coil Coating (Effective 01/11/1993)
Section 16.0: Paper Coating (Effective 01/11/1993)
Section 17.0: Fabric Coating (Effective 01/11/1993)
Section 18.0: Vinyl Coating (Effective 01/11/1993)
Section 19.0: Coating of Metal Furniture (Effective 01/11/1993)
Section 20.0: Coating of Large Appliances (Effective 01/11/1993)
Section 21.0: Coating of Magnet Wire (Effective 01/11/1993)
Section 22.0: Coating of Miscellaneous Parts (Effective 01/11/1993)
Section 23.0: Coating of Flat Wood Paneling (Effective 01/11/1993)
Section 24.0: Bulk Gasoline Plants (Effective 01/11/1993)
Section 25.0: Bulk Gasoline Terminals (Effective 11/29/1994)
Section 26.0: Gasoline Dispensing Facility Stage I Vapor Recovery (Effective 01/11/2002)
Section 27.0: Gasoline Tank Trucks (Effective 01/11/1993)
Section 28.0: Petroleum Refinery Sources (Effective 01/11/1993)
Section 29.0: Leaks from Petroleum Refinery Equipment (Effective 11/29/1994)
Section 30.0: Petroleum Liquid Storage in External Floating Roof Tanks (Effective 11/29/1994)
Section 31.0: Petroleum Liquid Storage in Fixed Roof Tanks (Effective 11/29/1994)
Section 32.0: Leaks from Natural Gas/Gasoline Processing Equipment (Effective 11/29/1994)
Section 33.0: Solvent Cleaning and Drying (Effective 11/11/2001)
Section 34.0: Cutback and Emulsified Asphalt (Effective 01/11/1993)
Section 35.0: Manufacture of Synthesized Pharmaceutical Products (Effective 11/29/1994)
Section 36.0: Stage II Vapor Recovery (Effective 01/11/2002)
Section 37.0: Graphic Arts Systems (Effective 11/29/1994)
Section 38.0: Petroleum Solvent Dry Cleaners (Effective 01/11/1993)
Section 40.0: Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment (Effective 01/11/1993)
Section 41.0: Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins (Effective 01/11/1993)
Section 42.0: Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry (Effective 01/11/1993)
Section 43.0: Bulk Gasoline Marine Tank Vessel Loading Facilities (Effective 08/08/1994)
Section 44.0: Batch Processing Operations (Effective 11/29/1994)
Section 45.0: Industrial Cleaning Solvents (Effective 11/29/1994)
Section 46.0: Crude Oil Lightering Operations (Effective 05/11/2007)
Section 47.0: Offset Lithographic Printing (Effective 11/29/1994)
Section 48.0: Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry (Effective 11/29/1994)
Section 49.0: Control of Volatile Organic Compound Emissions from Volatile Organic Liquid Storage Vessels (Effective 11/29/1994)
Section 50.0: Other Facilities that Emit Volatile Organic Compounds (VOCs) (Effective 11/29/1994)

7 DE Admin. Code 1124: Control of Organic Compound Emissions

Appendix A: General Provisions: Test Methods and Compliance Procedures (Effective 11/29/1994)
Appendix B: Determining the Volatile Organic Compound (VOC) Content of Coatings and Inks (Effective 11/29/1994)
Appendix C: Alternative Compliance Methods for Surface Coating (Effective 11/29/1994)
Appendix D: Emission Capture and Destruction or Removal Efficiency and Monitoring Requirements (Effective 11/29/1994)
Method 30: Criteria for and Verification of a Permanent or Temporary Total Enclosure (Effective 11/29/1994)
Method 30A: Volatile Organic Compounds Content in Liquid Input Stream (Effective 11/29/1994)
Method 30B: Volatile Organic Compounds Emissions in Captured Stream (Effective 11/29/1994)
Method 30C: Volatile Organic Compounds Emissions in Captured Stream (Dilution Technique) (Effective 11/29/1994)
Method 30D: Volatile Organic Compounds Emissions in Fugitive Stream from Temporary Total Enclosure (Effective 11/29/1994)
Method 30E: Volatile Organic Compounds Emissions in Fugitive Stream from Building Enclosure (Effective 11/29/1994)
Appendix E: Determining the Destruction or Removal Efficiency of a Control Device (Effective 11/29/1994)
Appendix F: Leak Detection Methods for Volatile Organic Compounds (VOCs) (Effective 11/29/1994)
Appendix G: Performance Specifications for Continuous Emissions Monitoring of Total Hydrocarbons (Effective 11/29/1994)
Appendix H: Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS) (Effective 11/29/1994)
Appendix I: Method to Determine Length of Rolling Period for Liquid/Liquid Material Balance (Effective 11/29/1994)
Appendix K: Emissions Estimation Methodologies (Effective 11/29/1994)
Appendix L: Method to Determine Total Organic Carbon for Offset Lithographic Solutions (Effective 11/29/1994)
Appendix M: Test Method for Determining the Performance of Alternative Cleaning Fluids (Effective 11/29/1994)

7 DE Admin. Code 1125: Requirements for Preconstruction Review

Section 1.0: General Provisions (Effective 08/11/2005)
Section 2.0: Emission Offset Provisions (EOP) (Effective 08/11/2005)
Section 3.0: Prevention of Significant Deterioration of Air Quality (Effective 08/11/2005)
Section 4.0: Minor New Source Review (MNSR) (Effective 08/11/2005)

7 DE Admin. Code 1127: Stack Heights

Section 1.0: General Provisions (Effective 07/06/1982)
Section 2.0: Definitions Specific to this Regulation (Effective 12/07/1988)
Section 3.0: Requirements for Existing and New Sources (Effective 02/18/1987)
Section 4.0: Public Notification (Effective 02/18/1987)

7 DE Admin. Code 1129: Emissions From Incineration of Infectious Waste

Section 1.0: General Provisions (10/13/1989)
Section 2.0: Exemptions (Effective 10/13/1989)
Section 3.0: Permit Requirements (Effective 10/13/1989)
Section 4.0: Methods of Treatment and Disposal (Effective 10/13/1989)
Section 5.0: Recordkeeping and Reporting Requirements (Effective 10/13/1989)
Section 6.0: Evidence of Effectiveness of Treatment (Effective 10/13/1989)
Section 7.0: Incineration (Effective 10/13/1989)

7 DE Admin. Code 1130: Title V State Operating Permit Program

Section 1.0: Program Overview (Effective 11/15/1993)
Section 2.0: Definitions (Effective 11/15/1993)
Section 3.0: Applicability (Effective 11/15/1993)
Section 5.0: Permit Applications (Effective 11/15/1993)
Section 6.0: Permit Contents (Effective 12/11/2000)
Section 7.0: Permit Issuance, Renewal, Reopening, And Revisions (Effective 12/11/2000)
Section 8.0: Permit Review by EPA and Affected States (Effective 11/15/1993)
Section 9.0: Permit Fees (Effective 11/15/1993)
Appendix A: Insignificant Activities (Effective 11/15/1993)

7 DE Admin. Code 1132: Transportation Conformity

Section 1.0: Purpose (Effective 11/11/2007)
Section 2.0: Definitions (Effective 11/11/2007)
Section 3.0: Consultation (Effective 11/11/2007)
Section 4.0: Written Commitments for Control and Mitigation Measures (Effective 11/11/2007)

7 DE Admin Code 1134: Emission Banking and Trading Program

Section 1.0: Program Overview (Effective 10/06/1997)
Section 2.0: Definitions (Effective 10/06/1997)
Section 3.0: Applicability (Effective 10/06/1997)
Section 4.0: Generating an Emission Reduction (Effective 10/06/1997)
Section 5.0: Application for Certification of an Emission Reduction as an ERC (Effective 10/06/1997)
Section 6.0: Source Baseline (Effective 10/06/1997)
Section 7.0: Post-Reduction Emission rate (Effective 10/06/1997)
Section 8.0: Certification of an Emission Reduction (Effective 10/06/1997)
Section 9.0: Trading and Use of ERCs (Effective 10/06/1997)
Section 10.0: Record Keeping Requirements (Effective 10/06/1997)
Section 11.0: ERC Banking System (Effective 10/06/1997)
Section 12.0: Fees (Effective 10/06/1997)
Section 13.0: Enforcement (Effective 10/06/1997)
Section 14.0: Program Evaluation and Individual Audits (Effective 10/06/1997)

7 DE Admin. Code 1135: Conformity of General Federal Actions to the State Implementation Plans

Section 1.0: Purpose (Effective 08/14/1996)
Section 2.0: Definitions (Effective 08/14/1996)
Section 3.0: Applicability (Effective 08/14/1996)
Section 4.0: Conformity Analysis (Effective 08/14/1996)
Section 5.0: Reporting Requirements (Effective 08/14/1996)
Section 6.0: Public Participation and Consultation (Effective 08/14/1996)
Section 7.0: Frequency of Conformity Determinations (Effective 08/14/1996)
Section 8.0: Criteria for Determining Conformity of General Federal Actions (Effective 08/14/1996)
Section 9.0: Procedures for Conformity Determinations of General Federal Actions (Effective 08/14/1996)
Section 10.0: Mitigation of Air Quality Impacts (Effective 08/14/1996)
Section 11.0: Savings Provisions (Effective 08/14/1996)

7 DE Admin. Code 1139: Nitrogen Oxides (NO_X) Budget Trading Program

Section 1.0: Purpose (Effective 12/11/2000)
Section 2.0: Emission Limitation (Effective 12/11/2000)
Section 3.0: Applicability (Effective 12/11/2000)
Section 4.0: Definitions (Effective 12/11/2000)
Section 5.0: General Provisions (Effective 12/11/2000)
Section 6.0: NO_X Authorized Account Representative for NO_X Budget Sources (Effective 12/11/2000)
Section 7.0: Permits (Effective 12/11/2000)
Section 8.0: Monitoring and Reporting (Effective 12/11/2000)
Section 9.0: NATS (Effective 12/11/2000)
Section 10.0: NO_X Allowance Transfers (Effective 12/11/2000)
Section 11.0: Compliance Certification (Effective 12/11/2000)
Section 12.0: End-of-Season Reconciliation (Effective 12/11/2000)
Section 13.0: Failure to Meet Compliance Requirements (Effective 12/11/2000)
Section 14.0: Individual Units Opt-Ins (Effective 12/11/2000)
Section 15.0: General Accounts (Effective 12/11/2000)
Appendix A: Allowance Allocations to NO_X Budget Units under 3.1.1.1 and 3.1.1.2 of DE Admin. Code 1139 (Effective 02/11/2000)
Appendix B: 7 DE Admin. Code 1137—7 DE Admin. Code 1139 Program Transition (Effective 02/11/2000)

7 DE Admin. Code 1140: Delaware's National Low Emission Vehicle (NLEV) Regulation

Section 1.0: Applicability (Effective 09/11/1999)
Section 2.0: Definitions (Effective 09/11/1999)
Section 3.0: Program Participation (Effective 09/11/1999)

7 DE Admin. Code 1142: Specific Emission Control Requirements

Section 1.0: Control of NO_X Emissions from Industrial Boilers (Effective 12/12/2001)

7 DE Admin. Code 1143: Heavy Duty Diesel Engine Standards

Section 1.0: On Road Heavy Duty Diesel Requirements for Model Years 2005 and 2006 (Effective 02/11/2005)
Section 2.0: On Road Heavy Duty Diesel Requirements for Model Year 2007 and Later (Effective 02/11/2005)

7 DE Admin. Code 1144: Control of Stationary Generator Emissions [1]

Section 1.0: General (Effective 01/11/2006)
Section 2.0: Definitions (Effective 01/11/2006)
Section 3.0: Emissions (Effective 01/11/2006)
Section 4.0: Operating Requirements (Effective 01/11/2006)
Section 5.0: Fuel Requirements (Effective 01/11/2006)
Section 7.0: Emissions Certification, Compliance, and Enforcement (Effective 01/11/2006)
Section 8.0: Credit for Concurrent Emissions Reductions (Effective 01/11/2006)
Section 9.0: DVFA Member Companies (Effective 01/11/2006)

7 DE Admin. Code 1145: Excessive Idling of Heavy Duty Vehicles

Section 1.0: Applicability (Effective 04/11/2005)
Section 2.0: Definitions (Effective 04/11/2005)
Section 3.0: Severability (Effective 04/11/2005)
Section 4.0: Operational Requirements for Heavy Duty Motor Vehicles (Effective 04/11/2005)
Section 5.0: Exemptions (Effective 04/11/2005)
Section 6.0: Enforcement and Penalty (Effective 04/11/2005)

7 DE Admin. Code 1146: Electric Generating Unit (EGU) Multi-Pollutant Regulation

Section 1.0: Preamble (Effective 12/11/2006)
Section 2.0: Applicability (Effective 12/11/2006)
Section 3.0: Definitions (Effective 12/11/2006)
Section 4.0: NO_X Emissions Limitations (Effective 12/11/2006)
Section 5.0: SO_2 Emissions Limitations (Effective 12/11/2006)
Section 6.0: Mercury Emissions Limitations (Effective 12/11/2006)
Section 7.0: Recordkeeping and Reporting (Effective 12/11/2006)
Section 8.0: Compliance Plan (Effective 12/11/2006)
Section 9.0: Penalties (Effective 12/11/2006)

7 DE Admin. Code 1148: Control of Stationary Combustion Turbine Electric Generating Unit Emissions

Section 1.0: Purpose (Effective 07/11/2007)
Section 2.0: Applicability (Effective 07/11/2007)
Section 3.0: Definitions (Effective 07/11/2007)
Section 4.0: NO_X Emissions Limitations (Effective 07/11/2007)
Section 5.0: Monitoring and Reporting (Effective 07/11/2007)
Section 6.0: Recordkeeping (Effective 07/11/2007)
Section 7.0: Penalties (Effective 07/11/2007)
(2) [Reserved]

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[FR Doc. E9–19324 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–P

[1] All sections for 7 DE Admin. Code 1144: Control of Stationary Generator Emissions shall be incorporated by reference into 40 CFR part 55 except for all references to Carbon Dioxide (CO_2).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0041; FRL–8430–5]

Sodium Lauryl Sulfate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of sodium lauryl sulfate (CAS Reg. No. 151–21–3) when used as a component of food contact sanitizing solutions applied to all food contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at a maximum level in the end-use concentration of 350 parts per million (ppm). ETI H2O submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a

tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of sodium lauryl sulfate.

DATES: This regulation is effective August 12, 2009. Objections and requests for hearings must be received on or before October 13, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0041. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0041 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 13, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0041, by one of the following methods:

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

II. Background

In the **Federal Register** of February 6, 2008 (73 FR 6964) (FRL–8350–9), EPA issued a notice pursuant to section 408 (d)(3) of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 7F7179) by ETI H2O, 1725 Gillespie Way, El Cajon, CA 92020. The petition requested that 40 CFR 180.940(a) be amended by establishing an exemption from the requirement of a tolerance for residues of sodium lauryl sulfate (CAS Reg. No. 151–21–3) as a component of food contact sanitizing solutions applied to all food contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils which increases the maximum level in the end-use concentration from 3 ppm to 350 ppm. That notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene ploymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for exemption from the requirement of a tolerance for residues of sodium lauryl sulfate when used as a component of food contact sanitizing solutions applied to all food contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at a maximum level in the end-use concentration of 350 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicology database is adequate to support the use of sodium lauryl sulfate as an inert ingredient in pesticide formulations as well as its use as a component of food contact sanitizing solutions.

Sodium lauryl sulfate has low acute oral and dermal toxicity but is irritating to the skin and eye at high doses. Sodium lauryl sulfate is not a skin sensitizer. Sodium lauryl sulfate was negative in tests for genotoxicity. The repeated dose toxicity data on alkyl sulfates including sodium lauryl sulfate demonstrate effects consistent with surfactant-mediated irritant effects. The common target organs of toxicity following repeated-dose oral exposure were the forestomach in gavage studies, and the liver and kidneys in dietary studies. No evidence of neurotoxicity was observed in any of the available studies. Chronic toxicity data on sodium lauryl sulfate is available in limited, summary form. A developmental toxicity study with sodium lauryl sulfate in rats, rabbits and mice demonstrated developmental toxicity at maternally toxic doses at a dose level of 600 milligrams/kilogram/day (mg/kg/day). A 2-generation reproductive toxicity study conducted with a related chemical, α-alkyl (C_{12}) olefin sulfonate, showed no treatment-related adverse reproductive effects.

Specific information on the studies received and the nature of the adverse effects caused by sodium lauryl sulfate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document *Sodium Lauryl Sulfate. Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Formulations*. pages 6–9 in docket ID number EPA–HQ–OPP–2008–0041.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for sodium lauryl sulfate used for human risk assessment is shown in the following Table.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SODIUM LAURYL SULFATE FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (all populations)	An endpoint attributable to a single exposure was not seen in the database; therefore, a point of departure was not selected.		

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SODIUM LAURYL SULFATE FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Chronic dietary (all populations)	NOAEL= 100 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 1 mg/kg/day cPAD = 1 mg/kg/day	28-Day oral (gavage) toxicity study in rats LOAEL = 200 mg/kg/day,based on decreased body weight gain
Incidental oral, dermal and inhalation (short-term and intermediate-term)	NOAEL= 100 mg/kg/day Dermal absorption of 1% inhalation exposure is assumed to be equivalent to oral exposure UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential/occupational LOC for MOE = 100	28-Day oral (gavage) toxicity study in rats LOAEL = 200 mg/kg/day, based on decreased body weight gain
Cancer (oral, dermal, inhalation)	Classification: Based on limted data sodium lauryl sulfate is not expected to be carcinogenic.		

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). PAD = population adjusted dose (a=acute, c=chronic). FQPA SF = FQPA Safety Factor. RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sodium lauryl sulfate, EPA considered exposure under the petitioned-for exemption from the requirement of a tolerance. EPA assessed dietary exposures from sodium lauryl sulfate in food as follows:

i. *Acute exposure.* No adverse effects attributable to a single exposure of sodium lauryl sulfate were seen in the toxicity databases; therefore, an acute dietary exposure assessment for sodium lauryl sulfate is not necessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for sodium lauryl sulfate. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is found at *http://www.regulations.gov* in the document *Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts* in docket ID number EPA–HQ–OPP–2008–0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

In addition to dietary exposures resulting from use of sodium lauryl sulfate as an inert ingredient in pesticide formulation application to crops, a conservative dietary exposure estimate of residues of sodium lauryl sulfate in food as a result of its use as a component in food contact sanitizing solution was also performed. This estimate also utilizes conservative assumptions related to the amount of residues that can be transferred to foods as a result of use of food contact sanitizing products.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentration of active ingredients in agricultural products is generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather, there is generally a combination of different inert ingredients used thereby further reducing the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating the level of inert residue that could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data show that tolerance level residues

are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

iii. *Cancer*. There is no evidence that sodium lauryl sulfate is carcinogenic. While the full study reports are not available, summary data on two carcinogenicity studies with sodium (C_{12}-C_{15}) alkyl sulfate show no increase in tumor incidence, nor any impact on tumor type at levels up to up to 1.5% highest dose tested (HDT) in the diet.

Since the Agency has not identified any concerns for carcinogenicity relating to sodium lauryl sulfate, a cancer dietary exposure assessment was not performed.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for sodium lauryl sulfate. Tolerance level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for *sodium lauryl sulfate* in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of sodium lauryl sulfate. Further information regarding EPA drinking water models used in the pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

A screening level drinking water analysis, based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) was performed to calculate the estimated drinking water concentrations (EDWCs) of sodium lauryl sulfate. Modeling runs on four surrogate inert ingredients using a range of physical chemical properties that would bracket those of sodium lauryl sulfate were conducted. Modeled acute drinking water values ranged from 0.001 parts per billion (ppb) to 41 ppb. Modeled chronic drinking water values ranged from 0.0002 ppb to 19 ppb. Further details of this drinking water analysis can be found at *http://www.regulations.gov* in the document *Sodium Lauryl Sulfate. Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredients in Pesticide Formulations,* pages 10 and 25–27 in docket ID number EPA–HQ–OPP–2008–0041.

For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for sodium lauryl sulfate, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for chronic dietary risk assessments for the parent compounds and for the metabolites of concern. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Sodium lauryl sulfate may be used as an inert ingredient in pesticide products that are registered for specific uses that may result in both indoor and outdoor residential exposures. A screening level residential exposure and risk assessment was completed for products containing sodium lauryl sulfate. The Agency conducted an assessment to represent worst-case residential exposure by assessing sodium lauryl sulfate in pesticide formulations resulting in the highest residential exposures, including both residential handler exposures and residential post-application exposures. Further details of this residential exposure and risk analysis can be found at *http://www.regulations.gov* in the document *Joint Insert Task Force (JITF) Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations*, in docket ID number EPA–HQ–OPP–2008–0710.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found sodium lauryl sulfate to share a common mechanism of toxicity with any other substances, and sodium lauryl sulfate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sodium lauryl sulfate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology database for sodium lauryl sulfate includes a prenatal developmental toxicity study in rats, rabbits, and mice as well as a 2-generation reproduction toxicity study in rats on a closely related compound. There was no evidence of increased quantitative or qualitative susceptibility following *in utero* exposure of rats, rabbits or mice in the developmental toxicity study and no evidence of increased quantitative or qualitative susceptibility of offspring in the reproduction study. Developmental toxicity was not observed in the developmental toxicity study at doses below that which maternal toxicity was also observed. In the reproduction study, no offspring or maternal toxicity was observed at the highest dose tested (HDT) of 285 mg/kg/day. There is no evidence of neurotoxicity in the toxicity database for sodium lauryl sulfate.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for sodium lauryl sulfate is considered adequate for assessing the risks to infants and children (the available studies are described in Unit IV.D.2.).

ii. No evidence of quantitative or qualitative increased susceptibility was demonstrated in the offspring in a

developmental toxicity study in rats, rabbits, and mice following *in utero* and prenatal exposure or in young rats in the 2-generation reproduction study.

iii. There is no indication that sodium lauryl sulfate is a neurotoxic chemical and thus there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iv. The Agency has concluded that an additional uncertainty factor is not needed for the use of a subchronic study for a chronic exposure assessment as reported NOAELs in two chronic rat studies were at the same levels as the POD derived from a subchronic toxicity study.

v. There are no residual uncertainties identified in the exposure databases. The food and drinking water assessment is not likely to underestimate exposure to any subpopulation, including those comprised of infants and children. The food exposure assessments are considered to be highly conservative as they are based on the use of the highest tolerance level from the surrogate pesticides for every food and the assumption that for all crops, 100% of the crop is treated as well as similarly conservative assumptions related to the transfer of residues of sodium lauryl sulfate into food from its use in food contact sanitizing solutions. EPA also made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to sodium lauryl sulfate in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by sodium lauryl sulfate.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. There was no hazard attributable to a single exposure seen in the toxicity database for sodium lauryl sulfate. Therefore, sodium lauryl sulfate is not expected to pose an acute risk.

2. *Chronic risk*. A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for chronic exposure, the chronic dietary exposure from food and water to sodium lauryl sulfate is 19% of the cPAD for the U.S. population and 67% of the cPAD for children 1 to 2 years old, the most highly exposed population subgroup.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Sodium lauryl sulfate is used in pesticide products that are currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to sodium lauryl sulfate. Using the exposure assumptions described in this unit, EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in aggregate MOEs of 500, for both adult males and females, respectively. Adult residential exposure combines high end dermal and inhalation handler indoor and outdoor exposure with a high end post application dermal exposure. EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 147 for children. Children's residential exposure combines outdoor and indoor dermal and hand-to-mouth exposures. As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Sodium lauryl sulfate is used in products currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to sodium lauryl sulfate. Using the exposure assumptions described in this unit, EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in aggregate MOEs of 660 for both adult males and females, respectively. Adult residential exposure includes high end post application dermal exposure from contact with treated lawns. EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 148 for children. Children's residential exposure combines outdoor and indoor dermal and hand-to-mouth exposures. As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population*. The Agency has not identified any concerns for carcinogenicity relating to sodium lauryl sulfate.

6. *Determination of safety*. Based on these risk assessments and the limitation imposed in the exemption, EPA concludes that, with respect to the exemption, there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to residues of sodium lauryl sulfate under reasonably foreseeable circumstances.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for sodium lauryl sulfate nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of sodium lauryl sulfate as a component of food contact sanitizing solutions applied to all food contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils at a maximum level in the end-use concentration of 350 ppm.

VII. Statutory and Executive Order Reviews

This final rule establishes an exemtpion from the requirement of a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 6, 2009.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In §180.940(a), the table is amended by revising the following entry to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
* * * * *		* *
Sulfuric acid monododecyl ester, sodium salt (sodium lauryl sulfate).	151–21–3	When ready for use, the end-use concentration is not to exceed 350 ppm.
* * * * *		* *

* * * * *

[FR Doc. E9–19314 Filed 8–11–09 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0129; FRL–8426–3]

Carbon Black; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of carbon black (CAS Reg. No. 1333–86–4) under 40 CFR 180.920 when used as an inert ingredient (colorant) in pesticide formulations applied to seeds used to grow agricultural and horticultural crops. Becker Underwood, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of carbon black.

DATES: This regulation is effective August 12, 2009. Objections and requests for hearings must be received on or before October 13, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0129. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8560; e-mail address: *fertich.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0129 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 13, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0129, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of May 6, 2009 (74 FR 20947) (FRL–8412–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170), announcing the filing of a pesticide petition (PP 8E7484) by Becker Underwood, Inc., 801 Dayton Ave., P.O. Box 667, Ames, IA 50010. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of carbon black when used as an inert ingredient (colorant) in pesticide formulations applied to seeds used to grow agricultural and horticultural crops. That notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has

exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by carbon black are discussed in this unit.

Based on the limited systemic toxicity, carbon black is not expected to pose a hazard when used for its proposed use pattern as an inert ingredient (colorant) in pesticide formulations applied to seeds used to grow agricultural and horticultural crops. Six acute toxicity studies were submitted by the petitioner to support this action. The results indicate that carbon black is very low in toxicity. The acute oral toxicity of carbon black to rats and the acute dermal toxicity to rabbits are both low. The lethal dose $(LD)_{50}$ for both was determined to be greater than 5,050 milligrams/kilogram (mg/kg) and the EPA Toxicity Category is IV. The acute inhalation toxicity to rats was also low with a lethal concentration $(LC)_{50}$ of greater than 2.54 mg/Liter (L) and the toxicity category is IV. Acute eye and dermal irritation to rabbits were both rated as non-irritating with a Toxicity category of IV. A skin sensitization study on guinea pigs determined that carbon black is not a dermal sensitizer.

The toxicity of carbon black is summarized in a 2005 Tolerance Reassessment Document (*http://www.epa.gov/opprd001/inerts/carbonblack.pdf*). No systemic toxicity was identified in a chronic toxicity/carcinogenicity study in mice and rats fed carbon black at doses up to 1,000 mg/kg/day for 2 years (Gandhi, 2005). No developmental or reproductive studies were identified in this report for carbon black. However, there was no evidence of effects on reproductive organs observed in a 2 year, long term study in rats. The lack of systemic toxicity identified at doses up to 1,000 mg/kg/day in the 2 year chronic toxicity study also supports the lack of developmental and reproductive effects. It has also been determined that assays for mutagenicity are negative for carbon black. No neurotoxicity information is available, however, no neurological effects were observed in any of the available studies. There is no evidence of carcinogenicity by oral route. However, there is some evidence of lung tumors in occupational exposure scenarios via inhalation route.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Residential exposures (inhalation and dermal) are not expected since there are no existing or proposed residential uses. Dietary exposure (food and drinking water) to carbon black is not expected since it is a solid, insoluble particle that adsorbs to the seed surface only. It is not likely that it will be absorbed into the seed and translocated to the plant and harvested plant parts. In addition, carbon black has limited toxicity, therefore no harm is expected.

As stated above, no hazard was identified for dietary and residential exposures to carbon black. Therefore, no aggregate risk assessments were performed. For carbon black, a qualitative assessment for all pathways of human exposure (food, drinking water, and residential) is appropriate given the lack of human health concerns, associated with the exposure to carbon black when used as an inert ingredient (colorant) in pesticide formulations applied to seed used to grow agricultural and horticultural crops.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to carbon black and any other substances and carbon black does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has not assumed that carbon black has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

VII. Safety Factor for Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X or uses a different additional safety factor when reliable data supports the choice of a different factor.

The toxicity database is sufficient for carbon black and potential exposure is adequately characterized given the low toxicity of the chemical. In terms of hazard, there are low concerns and no residual uncertainties regarding prenatal and/or postnatal toxicity. ''Carbon black has low subchronic and chronic toxicities. Although no developmental or reproductive studies, per se, were identified, long-term studies have not demonstrated any effects on the reproductive organs of male or female rats. Additionally, the poor to nil absorption of carbon black as demonstrated by the lack of significant adverse effects by the oral route even at high doses would mitigate any concerns'' (Gandhi, 2005). No acute or subchronic neurotoxicity studies are available, but there were no signs of neurological effects observed in the database at doses up to 1,000 mg/kg/day. Therefore, the Agency concluded that these studies are not required. Based on this information, there is no concern at this time for increased sensitivity to infants and children to carbon black when used as an inert ingredient in pesticide formulations as a colorant for pesticides applied as seed treatment to seed used to grow agricultural and horticultural crops and a safety factor analysis has not been used to assess risk.

Further, given the limited exposure potential based on the proposed use and limited systemic toxicity, a safety factor analysis has not been used to assess the risks resulting from the inert pesticidal use of carbon black. For the same reason, EPA has determined that an additional safety factor is not needed to protect the safety of infants and children.

VIII. Determination of Safety for U.S. Population

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Residues of concern are not anticipated for dietary exposure (food and drinking water) or for residential exposure (dermal and inhalation) from the use of carbon black for the proposed use pattern as an inert ingredient in pesticide products. As discussed above, EPA expects aggregate exposure to carbon black to pose no appreciable dietary risk given that the data on carbon black shows a lack of systemic toxicity at doses up to 1,000 mg/kg/day. In addition, dietary exposure is not expected since carbon black is a solid, insoluble particle that adsorbs to the seed surface only. It is not likely that it will be absorbed into the seed and translocated to the plant and harvested plant parts. Also, carbon black will be used in very small amounts as a colorant for pesticides applied as a seed treatment to seed used to grow agricultural and horticultural crops. Based on the available exposure and toxicity information, a safety factor analysis has not been used to assess the risks resulting from the inert pesticidal use of carbon black.

Taking into consideration all available information on carbon black, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to carbon black. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.920 for residues of carbon black when used as an inert ingredient (colorant) in pesticide formulations applied to seeds used to grow agricultural and horticultural crops can be considered safe under section 408 of the FFDCA.

IX. Other Considerations

A. Endocrine Disruptors

EPA is required under FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following recommendations of its Endocrine Disruptor and Testing Advisory Committee (EDSTAC), EPA determined that there was a scientific basis for including, as part of the program, the androgen and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

When additional appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, carbon black may be subjected to further screening and/or testing to better characterize effects related to endocrine disruption.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

Currently, carbon black is exempted from tolerance requirements in pesticide formulations applied to animals when used as a colorant/pigment in animal tags (40 CFR 180.930).

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for carbon black nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

X. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for carbon black (CAS Reg. No. 1333–86–4) when used as an inert ingredient (colorant) in pesticide formulations applied to seed used to grow agricultural and horticultural crops.

XI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct

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

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

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 31, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.920, the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

Inert ingredients	Limits	Uses
* * * * * * *		
Carbon Black (CAS Reg. No. 1333–86–4)	For seed treatment use only	Colorant.
* * * * * * *		

[FR Doc. E9–19193 Filed 8–11–09; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0373; FRL–8428–3]

1-Naphthaleneacetic Acid Ethyl Ester; Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of 1-naphthaleneacetic acid ethyl ester in or on avocados. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on avocado trees. This regulation establishes a maximum permissible level for residues of 1-naphthaleneacetic acid ethyl ester in this food commodity. The time-limited tolerance expires and is revoked on December 31, 2012.

DATES: This regulation is effective August 12, 2009. Objections and requests for hearings must be received on or before October 13, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0373. All documents in the docket are listed in the docket index available in *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *ertman.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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C. Can I File an Objection or Hearing Request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0373 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 13, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0373, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited tolerance for residues of the plant growth regulator 1-naphthaleneacetic acid ethyl ester in or on avocados at 0.05 parts per million (ppm). This time-limited tolerance expires and is revoked on December 31, 2012. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the CFR.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related time-limited tolerances to set binding precedents for the application of section 408 of FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for 1-Naphthaleneacetic Acid Ethyl Ester on Avocados and FFDCA Tolerances

Avocado growers in Southern California are dealing with emergency conditions in their orchards caused by unique environmental factors including a hard freeze, strong Santa Ana winds, drought, and fires that burned through orchards damaging or killing trees. Trees adversely affected by these conditions need to be ''stumped'' to be brought back into production. The processing of ''stumping'' entails cutting the primary scaffolding limbs of the tree back to stumps and painting them with white latex paint to protect them from sunburn and disease. The treatment of the pruned branches and cut stumps with naphthalene acetic acid ethyl ester slows the re-growth of vegetative sprouts by about 70%. This growth inhibition results in several lateral sprouts instead of literally hundreds of sprouts growing at and below the pruning cuts. This shortens the pruning time per tree or stump and the management of the re-growth can be accomplished with only one pruning per season. After having reviewed the submission, EPA determined that emergency conditions exist for this State, and that the criteria for an emergency exemption are met. EPA has authorized under FIFRA section 18 the use of 1-naphthaleneacetic acid ethyl ester on avocado trees limbs that have been pruned or cut back to a stump for control of excess sprout growth in California. As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of 1-naphthaleneacetic acid ethyl ester in or on avocados. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation

and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although this time-limited tolerance expires and is revoked on December 31, 2012, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on avocados after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this time-limited tolerance at the time of that application. EPA will take action to revoke this time-limited tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this time-limited tolerance is being approved under emergency conditions, EPA has not made any decisions about whether 1-naphthaleneacetic acid ethyl ester meets FIFRA's registration requirements for use on avocados or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of 1-naphthaleneacetic acid ethyl ester by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for persons in any State other than California to use this pesticide on this crop under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for 1-naphthaleneacetic acid ethyl ester, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption request and the time-limited tolerances for residues of 1-naphthalene acetic acid ethyl ester on avocado at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing time-limited tolerances follows.

A. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a benchmark dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for 1-naphthaleneacetic acid ethyl ester used for human risk assessment can be found at *http://www.regulations.gov* in document *Naphthalene Acetates HED Risk Assessment for Section 18 Use of Naphthalene Acetic Acid Ethyl Ester on Avocado Trees*, page 11 in docket ID number EPA–HQ–OPP–2009–0373.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to 1-naphthaleneacetic acid ethyl ester, EPA considered exposure under the time-limited tolerances established by this action as well as all existing naphthalene acetic acid tolerances in 40 CFR 180.155(a), naphthalene acetic acid ethyl ester tolerances in 40 CFR 180.155(b), and α-naphthaleneacetamide and its metabolite α-naphthalene acetic acid (calculated as α-naphthalene acetic acid) tolerances in 40 CFR 180.309. For commodities having tolerances for both naphthalene acetic acid and the acetamide of naphthalene acetic acid, the total amount of residues calculated as naphthalene acetic acid shall not exceed the higher of the two tolerances (40 CFR 180.3(d)(7)). Collectively, these chemicals are referred to as the naphthalene acetates. For the purpose of the human health risk assessment, all forms of the naphthalene acetates are combined (1-Naphthaleneacetic acid (NAA), its salts, ester, and acetamide) because they are structurally related and are metabolized to the acid form and eliminated from the body as glycine and glucuronic acid conjugates within 48 hours after exposure EPA assessed dietary exposures from the naphthalene acetates in food as follows:

i. *Acute exposure*. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, the acute dietary exposure/risk analyses for all supported naphthalene acetates food uses were conducted using conservative, Tier 1 exposure assessments. The Tier I analyses assume tolerance level residues for all registered uses, 100 PCT for all commodities with existing tolerances, and default processing factors.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, the chronic dietary exposure/risk analyses for all supported food uses for the naphthalene acetates were conducted using conservative, Tier 1 exposure assessments. The Tier I analyses assume tolerance level residues for all registered uses, 100 PCT for all commodities with existing tolerances, and default processing factors.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, EPA has classified the naphthalene acetates as ''not likely to be carcinogenic to humans'' therefore, a quantitative cancer exposure assessment is unnecessary.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for the naphthalene acetates. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.*The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for the naphthalene acetates in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of the naphthalene acetates. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of naphthalene acetates for acute exposures are estimated to be 12.9 parts per billion (ppb) for surface water and 0.0008 ppb for ground water and for chronic exposures for non-cancer assessments are estimated to be 0.71 ppb for surface water and 0.0008 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model for acute dietary risk assessment, the water concentration value of 12.9 ppb was used to assess the contribution to drinking water, and for chronic dietary risk assessment, the water concentration of value 0.71 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Although there are residential uses for the naphthalene acetates, the uses are for ornamentals only (i.e., not turf) and post-application residential exposure is expected to be negligible. Therefore, a quantitative assessment is not required.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found the naphthalene acetates to share a common mechanism of toxicity with any other substances, and the naphthalene acetates do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that the naphthalene acetates do not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

C. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There is low concern (and no residual uncertainty) for pre-natal and postnatal toxicity resulting from exposure to the naphthalene acetates. The available data provided no indication of increased susceptibility (quantitative or qualitative) in rats or rabbits to *in utero* exposure to naphthalene acetates or to pre-natal and post-natal exposure in rat reproduction studies.

3. *Conclusion*. Therefore, the FQPA safety factor is reduced to 1x for risk assessment for this chemical. A developmental neurotoxicity study is not required since there was no evidence of neurotoxicity or neuropathology from the available studies and there is no concern or residual uncertainty for pre-natal or post-natal toxicity.

EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for the naphthalene acetates is complete.

ii. There is no indication that the naphthalene acetates are neurotoxic chemicals and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that the naphthalene acetates result in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to the naphthalene acetates in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by the naphthalene acetates.

D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-tern, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and

residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to the naphthalene acetates will occupy 10% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to the naphthalene acetates from food and water will utilize 8% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure.

3. *Short-term and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Although the naphthalene acetates are registered for residential use, the uses are for ornamentals only (i.e., not turf) and post-application residential exposure is expected to be negligible. Therefore, the short-term and intermediate-term aggregate risks consist of the sum of the risk from exposure to the naphthalene acetates through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. EPA has classified the naphthalene acetates as ''not likely to be carcinogenic to humans.'' The naphthalene acetates are not expected to pose a cancer risk

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to naphthalene acetic acid residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement methodology is available to enforce the tolerance expression of α-naphthalene acetic acid and 1-naphthaleneacetamide in or on plant commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no CODEX MRLs for residues of 1-naphthaleneacetic acid ethyl ester on avocados.

VI. Conclusion

Therefore, a time-limited tolerance is established for residues of 1-naphthaleneacetic acid ethyl ester in or on avocado at 0.05 ppm. This tolerance expires and is revoked on December 31, 2012.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under sections 408(e) and 408(l)(6) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with sections 408(e) and 408(l)(6) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 31, 2009.

Lois Rossi,

Director, Registration Division,Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.155 is amended by redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2) and adding a heading to paragraph (a); by adding a new paragraph (b); and by adding and reserving paragraphs (c) and (d)to read as follows:

§ 180.155 1-Naphthaleneacetic acid; tolerances for residues.

(a) *General.* (1) * * *

(2) * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances specified in the following table are established for residues of the ethyl ester of 1-naphthaleneacetic acid in or on the following raw agricultural commodities resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. The tolerances expire and are revoked on the date specified in the following table.

Commodity	Parts per million	Expiration/revocation date
avocado	0.05	December 31, 2012

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

* * * * *

[FR Doc. E9–19200 Filed 8–11–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R08–RCRA–2009–0341; FRL–8941–1]

Colorado: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize states to operate their hazardous waste management programs in lieu of the federal program. Colorado has applied to the EPA for final authorization of changes to its hazardous waste program under RCRA. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the state's changes through this immediate final action.

DATES: This final authorization will become effective on October 13, 2009 unless the EPA receives adverse written comments by September 11, 2009. If adverse written comments are received, EPA will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R08–RCRA–2009–0341, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: cosentini.christina@epa.gov.*
- *Fax:* (303) 312–6341.
- *Mail:* Christina Cosentini, Region 8, Solid and Hazardous Waste Program, U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, phone number: (303) 312–6231.
- *Hand Delivery or Courier:* Deliver your comments to Christina Cosentini, Region 8, Solid and Hazardous Waste Program, Mailcode 8P–HW, U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, *phone number:* (303) 312–6231.

Instructions: Direct your comments to Docket ID No. EPA–R08–RCRA–2009–0341. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information, disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected from disclosure through *http://www.regulations.gov*, or e-mail. The federal Web site, *http://www.regulations.gov*, 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 may not be 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 through *http://www.regulations.gov* or in hard copy from 9 a.m. to 4 p.m. at: EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, contact: Christina Cosentini, phone number (303) 312–6231, or the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530, *contact:* Randy Perila, phone number (303) 692–3364. The public is advised to call in advance to verify business hours.

FOR FURTHER INFORMATION CONTACT: Christina Cosentini, (303) 312–6231, *cosentini.christina@epa.gov* or Randy Perila, (303) 692–3364, *randy.perila@state.co.us.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

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

B. What Decisions Have We Made in This Rule?

We conclude that Colorado's application to revise its authorized program meets all of the statutory and

regulatory requirements established by RCRA. Therefore, we grant Colorado Final Authorization to operate its hazardous waste program with the changes described in the authorization application. Colorado has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian country, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Colorado including issuing permits, until Colorado is authorized to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision means that a facility in Colorado subject to RCRA will now have to comply with the authorized state requirements instead of the equivalent Federal requirements in order to comply with RCRA. Colorado has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Conduct inspections, and require monitoring, tests, analyses, or reports; (2) enforce RCRA requirements, suspend or revoke permits, and, (3) take enforcement action regardless of whether Colorado has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Colorado is being authorized by this action are already effective under state law, and are not changed by this action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before this rule because we view this as a routine program change. We are providing an opportunity for the public to comment now. In addition to this rule, we are publishing a separate document that proposes to authorize the state program changes in the proposed rules section of today's **Federal Register**.

E. What Happens if the EPA Receives Comments That Oppose This Action?

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. We will then address all public comments in a later **Federal Register** notice. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the Colorado hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For What Has Colorado Previously Been Authorized?

Colorado initially received final authorization on October 19, 1984, effective November 2, 1984 (49 FR 41036), to implement the RCRA hazardous waste management program. We granted authorization for changes to the state's program on: October 24, 1986, effective November 7; 1986 (51 FR 37729), May 15, 1989, effective July 14, 1989 (54 FR 20847); May 10, 1991, effective July 9, 1991 (56 FR 21601); April 7, 1994, effective June 6, 1994 (59 FR 16568); November 14, 2003, effective January 13, 2004 (68 FR 64550) and March 12, 2008 (73 FR 13141) effective May 12, 2008.

G. What Changes Are We Approving With Today's Action?

Colorado submitted a final complete program application on December 20, 2006, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Colorado's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. The state of Colorado is not seeking to be authorized for Methods Innovation Rule and SW–846 Update (Checklist 208). Rather, Colorado's revisions consist of regulations that specifically govern Federal Hazardous Waste revisions promulgated from July 1, 2004 through June 30, 2005 (RCRA Clusters XV). Colorado's requirements are included in a chart with this document.

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
Nonwastewaters from Dyes and Pigments. (Checklist 206).	70 FR 9138–9180 February 24, 2005.	Colorado Hazardous Regulations, 6 CCR 1007–3 effective July 2, 2006; 261.4, 261.4(b)(15), 261.4(b)(15(i)–(v), 261.32, 261.32(a)–(d), 261.32(d)(1)–(d)(2), 261.32(d)(2)(i)–(iv), 261.32(iv)(A)–(C), 261.32(d)(3), 261.32(d)(3)(i)–(iii), 261.32(d)(iii)(A)–(D), 261.32(d)(3)(iv), 261.32(d)(3)(iv)(A)–(B), 261.32(d)(3)(v)–(x), 261.32(x)(A)–(D), 261.32(d)(3)(xi), 261.32(d)(xi)(A)–(C), 261.32(d)(4)–(5), 261 Appendices VII–VIII, 268.20, 268.20(a)–(b), 268.20(b)(1)–(5), 268.20(c) 268.40/Treatment Standard Table and 268.48/Universal Waste Treatment Standard Table.

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
Uniform Hazardous Waste Manifest Rule (Checklist 207).	70 FR 10776 March 4, 2005	Colorado Hazardous Regulations, 6 CCR 1007–3 effective July 2, 2006; 260.10, 261.7(b)(1)(iii)(A)–(B), 262.20, 262.20(a)(1), 262.20(a)(2), 262.21/Section heading, 262.21(a)(1)–(2), 262.21(b), 262.21(b)(1)–(5), 262.21(b)(5)(i)–(iii), 262.21(b)(6)–(8), 262.21(c), 262.21(d)(1)–(2), 262.21(d)(2)(i)–(iv), 262.21(d)(3), 262.21(e)–(f), 262.21(f)(1)–(6), 262.21(f)(6)(i)–(vi), 262.21(f)(7), 262.21(f)(7(i), 262.21(f)(7(i)(A)–(C), 262.21(f)(7)(ii), 262.21(f)(7)(ii)(7)(A)–(C), 262.21(g)(1), 262.21(g)(i)–(iv), 262.21(g)(2), 262.21(h)(1)–(3), 262.21(i)– (l), 262.21(m)(1), 262.21(m)(1)(i)–(ii), 262.21(m)(2), 262.27, 262.27/Section heading, 262.27, 262.27(a)–(b), 262.32, 262.32(b), 262.33, 262.34, 262.34(n), 262.34(n)(1)–(2), 262.54(c), 262.54(e), 262.60, 262.60(c)–(e), 262/Appendix, 262/Appendix 8700–22, 262/Appendix/8700–22/I, International Shipment Block, 262/Appendix 8700–22/II, 262/Appendix 8700–22/III, 262/Appendix 8700–22/IV, 262/Appendix 8700–22A/Instructions–Continuation Sheet, 263.20, 263.20(a)(1)–(3), 263.20(g), 263.20(g)(1)–(4), 263.21.
Checklist 207 Continues	70 FR 10776 March 4, 2005	263.21(b)(1)–(2), 263.21(b)(2)(i)–(ii), 264.70(a), 264.70(b), 264.71, 264.71(a)(1)–(2), 264.71(a)(2)(i)–(v), 264.71(a)(3)–(4), 264.71(e), 264.72, 264.72(a), 264.72(a)(1)–(3), 264.72(b)– (c), 264.72(d)(1)–(2), 264.72(e), 264.72(e)(1)–(7), 264.72(f), 264.72(1)–(7), 264.72(g), 264.76, 264.76(a), 264.76(a)(1)–(7), 264.76(b), 265.70(a), 265.70(b), 265.71, 265.71(a)(1)–(2), 265.71(a)(2)(i)–(v), 265.71(a)(3), 265.71(b)(4), 265.71(e), 265.72, 265.72(a), 265.72(a)(1)–(3), 265.72(b)–(c), 265.72(d)(1)–(2), 265.72(e), 265.72(e)(1)–(7), 265.72(f), 265.72(f)(1)–(7), 265.72(g), 265.76(a), 265.76(a)(1)–(7) and 265.76(b).

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

Colorado has requirements that are more stringent than the federal rules at (references are to the Code of Colorado Regulations, except where there is no state analog, then the reference is to the federal citation): state analog Section 261.32 includes two additional state-added listings (K901 and K902) related to military munitions; in 261 Appendix VII; and state analog 261 Appendix VIII includes additional state-added listings (K901, K902, P909, P910, and P911) related to military munitions. The State of Colorado's hazardous waste rules are more stringent at 40 CFR 266.203 because the state has not adopted state analogs to the federal standards applicable to the transportation of solid waste military munitions. Specifically, the state regulations do not provide the exemptions that exist in 40 CFR 266.203; under the state's regulations, waste military munitions that are being transported and that exhibit a hazardous waste characteristic or are listed as hazardous waste under Part 261, are not exempted from manifest requirements as in 40 CFR 264.70(a) and 265.70(a).

I. Who Issues and Administers Permits After the Authorization Takes Effect?

Colorado will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that were issued prior to the effective date of this authorization until Colorado has equivalent instruments in place. We will not issue any new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Colorado is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Colorado?

Colorado is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes: (1) Lands within the exterior boundaries of the following Indian reservations located within or abutting the State of Colorado, (a) Southern Ute Indian Reservation and (b) Ute Mountain Ute Indian Reservation; (2) any land held in trust by the United States for an Indian tribe, and (3) any other areas that are ''Indian country'' within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where EPA will continue to implement and administer the RCRA program.

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

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the CFR, which occurs when EPA references the authorized state rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart G, for this authorization of Colorado's program changes until a later date. EPA is not codifying the rules documented in this **Federal Register** notice in this authorization application.

L. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes Colorado state requirements for the purpose of RCRA 3006, and imposes no additional requirements beyond those imposed by Colorado state law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the

communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. The EPA will submit a report containing this document 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 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 action will be effective October 13, 2009.

List of Subjects in 40 CFR Part 271

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

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

Dated: July 14, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. E9–19315 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 89

[Docket No. OST–2008–0329]

RIN 2105–AD78

Administrative Wage Garnishment

AGENCY: Office of the Secretary of Transportation (OST), DOT.

ACTION: Final rule.

SUMMARY: This final rule will implement the authority established under the Debt Collection Improvement Act of 1996 (DCIA) for DOT to collect the Department's past due indebtedness through administrative wage garnishment. The final rule will adopt, without change, the hearing procedures issued by the Department of the Treasury implementing administrative wage garnishment under the DCIA. This final rule would apply only to individuals who are not Federal employees. The final rule also will amend regulations on procedures for the collection of claims to conform DOT regulations to applicable provisions of the DCIA.

DATES: This rule is effective September 11, 2009.

FOR FURTHER INFORMATION CONTACT: Edward C. Ramos, Collections Specialist, Office of the Secretary of Transportation, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–5905. Hearing and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

In 1996, Congress enacted the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–1358, approved April 26, 1996), which amended the Debt Collection Act of 1982. Section 31001(o) of the DCIA authorizes collection of Federal agency debt by administrative wage garnishment (section 31001(o) is codified at 31 U.S.C. 3720D). Wage garnishment is a legal process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies to garnish up to 15% of the disposable pay of a debtor to satisfy delinquent nontax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees.

The DCIA directed the Secretary of the Treasury to issue implementing regulations (see 31 U.S.C. 3720D(h)) on this subject. On May 6, 1998 (63 FR 25136), the Department of the Treasury published a final rule implementing the statutory administrative wage garnishment requirements at 31 CFR 285.11. Paragraph (f) of 31 CFR 285.11 provides that ''[a]gencies shall prescribe regulations for the conduct of administrative wage garnishment hearings consistent with this section or shall adopt this section without change by reference.'' Under the DCIA, the Treasury Department serves as a coordinator for Federal debt collection through its Treasury Offset Program.

This final rule would amend DOT's regulations at 49 CFR part 89, subpart B to adopt 31 CFR 285.11 in its entirety. Specifically, the final rule would establish a new 49 CFR 89.35 that would contain a cross-reference to 31 CFR 285.11.

On December 5, 2008, the DOT published a notice of proposed

rulemaking in the **Federal Register** for the public to comment, as required. DOT received no comments from the public on this rule.

Overview of the Administrative Wage Garnishment Process

Readers should refer to the Department of the Treasury regulation at 31 CFR 285.11 for details regarding the administrative wage garnishment procedures that would be adopted by this final rule. For the convenience of readers, the following presents a very brief overview of the rules and procedures codified at 31 CFR 285.11.

1. *Notice to debtor.* At least 30 days before the agency initiates garnishment proceedings, the agency will give the debtor written notice informing him or her of the nature and amount of the debt, the intention of the agency to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

2. *Rights of debtor.* The agency will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule. A hearing must be held prior to the issuance of a withholding order if the debtor's request is timely received. For hearing requests that are not received in the specified timeframe, the agency need not delay the issuance of a withholding order prior to conducting a hearing. An agency may not garnish the wages of a debtor who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months. The debtor bears the responsibility of notifying the agency of the circumstances surrounding an involuntary separation from employment.

3. *Hearing official.* The Department of the Treasury regulations authorize the head of each agency to designate any qualified individual as a hearing official. This final rule would provide that any hearing required to establish DOT's right to collect a debt through administrative wage garnishment will be conducted by a qualified individual selected by the Secretary of Transportation. The hearing official is required to issue a written decision no later than 60 days after the request for a hearing is made. The hearing official's decision is the final agency action for purposes of judicial review.

4. *Employer's responsibilities.* The Treasury Department will send to the employer of a delinquent debtor a wage garnishment order directing that the employer pay a portion of the debtor's wages to the Federal Government. The employer is required to certify certain payment information about the debtor. Employers are not required to vary their normal pay cycles in order to comply with these requirements. Employers are prohibited from taking disciplinary actions against the debtor because the debtor's wages are subject to administrative garnishment. An agency may sue an employer for amounts not properly withheld from the wages payable to the debtor.

5. *Garnishment amounts.* As provided in the DCIA, no more than 15% of the debtor's disposable pay for each pay period may be garnished. Special rules apply to calculating the amount to be withheld from a debtor's pay that is subject to multiple withholding orders. A debtor may request a review by the agency of the amount being garnished under a wage garnishment order based on materially changed circumstances, such as disability, divorce, or catastrophic illness, which result in financial hardship.

Rulemaking Analyses and Notices

E.O. 12866 and DOT Regulatory Policies and Procedures

The agency has evaluated this final rule in accordance with existing regulatory policies and procedures and has concluded that it is a nonsignificant regulatory action under E.O. 12866, and a nonsignificant rule under section 5(a)(4) of the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

The final rule is not a significant regulatory action under E.O. 12866 because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; will not create a serious inconsistency with an action planned or underway by another Federal agency; will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of the Executive Order.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this final rule would not have a significant economic impact on a substantial number of small entities. Although many small employers will be subject to the requirements of this final rule, the requirements will not have a significant economic impact on these entities.

Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on an entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this final rule.

Executive Order 13132 (Federalism)

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order.

This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Executive Order 13084

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule would not significantly or uniquely affect the Indian tribal communities, and would not impose substantial direct compliance costs, the funding and consultation requirements of the Executive Order do not apply.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

This rule would not impose a Federal mandate on any State, local, or tribal government, or on the private sector,

within the meaning of the Unfunded Mandates Reform Act of 1995.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) addresses the collection of information by the Federal government from individuals, small businesses and State and local government and seeks to minimize the burdens such information collection requirements might impose. A collection of information includes requiring answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities or employees of the United States.

This final rule contains information that would apply to individuals and possibly small entities. However, there are no reporting or other collection requirements associated with this final rule, even though it relates to an employer's certification of certain information about the debtor, such as the debtor's employment status and earnings, which would be inquiries on a one-time basis. In any case, comments in this area are welcomed.

National Environmental Policy Act

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' See 66 FR 28355 (May 22, 2001). Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of final rulemaking, and notices of final rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. OST has evaluated this final rule in accordance with Executive Order 13211.

The Department has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, the Department has determined that this final rule is not a ''significant energy action'' within the meaning of the Executive Order.

Privacy Act Statement

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

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 89

Claims, Income taxes.

The Final Rule

■ For the reasons set forth in the preamble, OST amends Part 89 of chapter I, subtitle A of title 49, Code of Federal Regulations, as set forth below:

PART 89—IMPLEMENTATION OF THE FEDERAL CLAIMS COLLECTION ACT

■ 1. The authority citation for 49 CFR part 89, subpart B is revised to read as follows:

Authority: Public Law 89–508; Public Law 89–365, secs. 3, 10, 11, 13(b), 31 U.S.C. 3701–3720A; Public Law 98–167; Public Law 98–369; Public Law 99–578; Public Law 101–552, 31 U.S.C. 3711(a)(2); 31 CFR 3711, 3716–3720E.

■ 2. Add *§ 89.35* to subpart B to read as follows:

§ 89.35 Administrative wage garnishment.

(a) *General.* The Secretary may use administrative wage garnishment for debts referred to cross-servicing at Financial Management Service, Department of Treasury. Regulations in 31 CFR 285.11 govern the collection of debts owed to federal agencies through administrative wage garnishment. Whenever the Financial Management Service collects a debt for the Secretary using administrative wage garnishment, the statutory administrative requirements in 31 CFR 285.11 will govern.

(b) *Hearing official.* Any hearing required to establish the Secretary's right to collect a debt through administrative wage garnishment shall be conducted by a qualified individual selected at the discretion of the Secretary of Transportation, as specified in 31 CFR 285.11. The qualified individual may include an Administrative Law Judge.

Issued this 30th day of July 2009, at Washington, DC.

Ray LaHood,

Secretary of Transportation.

[FR Doc. E9–19344 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XQ93

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Lottery in Areas 542 and 543

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

ACTION: Notification of fishery assignments.

SUMMARY: NMFS is notifying the owners and operators of registered vessels of their assignments for the 2009 B season Atka mackerel fishery in harvest limit area (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the 2009 B season HLA limits established for area 542 and area 543 pursuant to the final 2009 and

2010 harvest specifications for groundfish in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 7, 2009, until 1200 hrs, A.l.t., November 1, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 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.

In accordance with § 679.20(a)(8)(iii)(A), owners and operators of vessels using trawl gear for directed fishing for Atka mackerel in the HLA are required to register with NMFS. Eight vessels have registered with NMFS to fish in the B season HLA fisheries in areas 542 and/or 543. In accordance with § 679.20(a)(8)(iii)(B), the Administrator, Alaska Region, NMFS, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment.

For the Amendment 80 cooperative, the vessels authorized to participate in the first HLA directed fishery in area 542 and the second HLA directed fishery in area 543 in accordance with § 679.20(a)(8)(iii) are as follows: Federal Fishery Permit number (FFP) 2134 Ocean Peace and FFP 3835 Seafisher. The vessel authorized to participate in the first HLA directed fishery in area 543 and the second HLA directed fishery in area 542 in accordance with § 679.20(a)(8)(iii) is as follows: FFP 2733 Seafreeze Alaska.

For the Amendment 80 limited access sector, vessels authorized to participate in the first HLA directed fishery in area 542 and in the second HLA directed fishery in area 543 in accordance with § 679.20(a)(8)(iii) are as follows: FFP 4093 Alaska Victory and FFP 2443 Alaska Juris. Vessels authorized to participate in the first HLA directed fishery in area 543 and in the second HLA directed fishery in area 542 in accordance with § 679.20(a)(8)(iii) are as follows: FFP 3819 Alaska Spirit and FFP 3423 Alaska Warrior.

For the BSAI trawl limited access sector, the vessel authorized to participate in the first HLA directed fishery in area 542 in accordance with § 679.20(a)(8)(iii) is as follows: FFP 11770 Alaska Knight.

Classification

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 unnecessary. This notice merely advises the owners of these vessels of the results of a random assignment required by regulation. The notice needs to occur immediately to notify the owner of each vessel of its assignment to allow these vessel owners to plan for participation in the B season HLA fisheries in area 542 and area 543.

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: August 7, 2009.

Kristen C. Koch,

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

[FR Doc. E9–19331 Filed 8–7–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 154
Wednesday, August 12, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0685; Directorate Identifier 2009–NM–113–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–30, DC–9–40, and DC–9–50 Series 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 McDonnell Douglas Model DC–9–30, DC–9–40, and DC–9–50 series airplanes. This proposed AD would require inspecting to determine the part numbers of the forward and aft auxiliary tank fuel boost and transfer pump conduit/conduit assembly and conduit assembly electrical connector, as applicable, 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 the potential for an arc/spark condition to occur within the fuel boost or transfer pump conduit assembly connectors and propagate into the forward and aft auxiliary fuel tanks, which could result in a fire or explosion.

DATES: We must receive comments on this proposed AD by September 28, 2009.

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

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

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: William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; 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–2009–0685; Directorate Identifier 2009–NM–113–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.

It was determined by the SFAR 88 review that failure could occur in the forward and aft auxiliary tanks due to damage of the fuel boost or transfer pump conduit assembly connectors. Damage has been attributed to maintenance personnel loosening or tightening the conduit assembly by turning the round or hex fitting part of the conduit instead of the electrical connector square nut. Turning the round part of the conduit can break the seal and permit fuel to enter the conduit and connector. Fuel contacting the connector insert causes the insert material to swell, allowing the socket to become loose, resulting in pin and socket misalignment when reconnected to the pump. This condition, if not corrected, could result in an arc/spark condition in the fuel boost or transfer pump conduit assembly connectors, that could propagate into the forward and aft auxiliary fuel tanks, which could result in a fire or explosion.

Relevant Service Information

We have reviewed Boeing Service Bulletin DC9–28–227, dated April 23, 2009. The service bulletin describes procedures for inspecting to determine the part numbers of the forward and aft auxiliary tank fuel boost or transfer pump conduit/conduit assembly and conduit assembly electrical connector. Corrective actions include replacing or repairing conduit assemblies and conduit assembly electrical connectors having certain part numbers.

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 this 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 137 airplanes of U.S. registry. We also estimate that it would take up to 8 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $87,680, or $640 per product.

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: Docket No. FAA–2009–0685; Directorate Identifier 2009–NM–113–AD.

Comments Due Date

(a) We must receive comments by September 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes, certificated in any category, as identified in Boeing Service Bulletin DC9–28–227, dated April 23, 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 the potential for an arc/spark condition to occur within the fuel boost or transfer pump conduit assembly connectors and propagate into the forward and aft auxiliary fuel tanks, which could result in a fire or explosion.

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.

Inspection

(g) Within 60 months after the effective date of this AD, inspect to determine the part numbers of the forward and aft auxiliary fuel tank boost and transfer pumps conduit assembly and conduit assembly electrical connector, as applicable, and do applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9–28–227, dated April 23, 2009. Do the applicable corrective actions before further flight.

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: William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; 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 August 3, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19265 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0134; Directorate Identifier 2008–NM–162–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. 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:

During 2008, two cases of main hydraulic accumulator failure were reported, one of which was caused by corrosion. Investigation has shown that a severe failure can occur to any of the four hydraulic accumulators which are installed in the hydraulic compartment. Either one of the two end parts on the accumulator may depart from the pressure vessel due to corrosion. This condition, if not corrected, is likely to degrade the functionality of the hydraulic system, possibly resulting in degradation or total loss of control of the landing gear, flap actuation and brakes. A severe failure during flight may even result in debris penetrating and exiting the fuselage outer skin. When such a failure occurs while the aeroplane is on the ground, as in the two reported cases, this may cause severe damage to the fuselage and result in injuries to persons nearby.

* * * * *

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 September 8, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Saab Aircraft AB, SAAB Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail *saab2000.techsupport@saabgroup.com*; Internet *http://www.saabgroup.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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0134; Directorate Identifier 2008–NM–162–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 based on 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

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on February 18, 2009 (74 FR 7568). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, there was another report of main hydraulic accumulator failure, which occurred during final approach. The airplane was able to land safely, and there were no injuries reported. We have determined that it is necessary to reduce the compliance time specified in the NPRM for replacing the hydraulic accumulator from 24 to 12 months.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0146R1, dated April 16, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The revised MCAI states:

During 2008, two cases of main hydraulic accumulator failure were reported, one of which was caused by corrosion. Investigation has shown that a severe failure can occur to any of the four hydraulic accumulators which are installed in the hydraulic compartment. Either one of the two end parts on the accumulator may depart from the pressure vessel due to corrosion. This condition, if not corrected, is likely to degrade the functionality of the hydraulic system, possibly resulting in degradation or total loss of control of the landing gear, flap actuation and brakes. A severe failure during flight may even result in debris penetrating and exiting the fuselage outer skin. When such a failure occurs while the aeroplane is

on the ground, as in the two reported cases, this may cause severe damage to the fuselage and result in injuries to persons nearby.

Since [EASA] AD 2008–0146 was issued, one more case of main hydraulic accumulator failure has been reported, which occurred in flight during final approach. The aeroplane was able to land safely and there were no injuries reported on the aeroplane or on the ground.

To address and correct this unsafe condition, a modified hydraulic accumulator has been developed, which is sealed between the barrel and the screw cap and between the screw cap and the end cap.

For the reasons described above, this EASA AD requires the replacement of the affected hydraulic accumulators P/N (part number) 08 8423 001 1 and P/N 08 8423 030 1, as identified in Saab SB (Service Bulletin) 340–29–023, with a modified hydraulic accumulator.

This AD is revised to indicate that the accomplishment of SAAB SB 340–29–024 is another acceptable method to correct the unsafe condition.

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

Relevant Service Information

Saab has issued Service Bulletins 340–29–023 and 340–29–024, both Revision 01, both dated April 3, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Comments

We have considered the following comments received on the earlier NPRM.

Request To Reduce Compliance Time

Tactair Fluid Controls Inc. recommends that we reduce the compliance time specified in the NPRM for replacing the hydraulic accumulator from 24 to 12 months. Tactair states that the 24-month compliance time is too long given the age of the fleet of potentially affected airplanes. Tactair adds that shortening the compliance time to 12 months would provide an additional margin of safety.

We agree that the compliance time for replacing the hydraulic accumulator should be reduced to 12 months because of the recent incident of another failure of the hydraulic accumulator. We have determined that a compliance time of within 12 months after the effective date of the AD is appropriate and will ensure an acceptable level of safety. The manufacturer and EASA agree with this reduction in compliance time. We have changed paragraphs (f)(1), (f)(2), and (f)(3) of this AD accordingly.

Request To Expand Applicability

Tactair asks that the applicability specified in the NPRM be expanded to add Model SAAB 2000 airplanes. Tactair states that Model SAAB 2000 airplanes contain hydraulic accumulators with the same part numbers specified in the applicability of the NPRM.

We acknowledge the commenter's concern; however, we do not agree that Model SAAB 2000 airplanes should be added to this supplemental NPRM. EASA has determined that hydraulic accumulators with the same part numbers could be installed on Model SAAB 2000 airplanes; however, there have been no incidents on that model, and we consider the fleet safety risk to be lower for that model. The manufacturer has confirmed that service information with replacement procedures for Model SAAB 2000 airplanes will not be issued for several months. We will consider additional rulemaking once service information for the Model SAAB 2000 airplanes is developed and available. To delay issuing this supplemental NPRM would be inappropriate, since we have identified recent incidents on the affected models and have determined that the replacements must be done to ensure continued safety.

FAA's Determination and Requirements of This 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 the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Differences Between This AD and the MCAI or Service Information

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

We might 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

Based on the service information, we estimate that this proposed AD would affect 111 products of U.S. registry. We also estimate that it would take 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost $8,800 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,047,840, or $9,440 or per product.

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:

SAAB AB, SAAB Aerosystems: Docket No. FAA–2009–0134; Directorate Identifier 2008–NM–162–AD.

Comments Due Date

(a) We must receive comments by September 8, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B airplanes, all serial numbers, certificated in any category; on which hydraulic accumulators with part number (P/N) 08 8423 001 1 or P/N 08 8423 030 1 are installed, except accumulators with serial numbers listed in paragraph 3.B. of Saab Service Bulletin 340–29–023, Revision 01, dated April 3, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic power.

Reason

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

During 2008, two cases of main hydraulic accumulator failure were reported, one of which was caused by corrosion. Investigation has shown that a severe failure can occur to any of the four hydraulic accumulators which are installed in the hydraulic compartment. Either one of the two end parts on the accumulator may depart from the pressure vessel due to corrosion. This condition, if not corrected, is likely to degrade the functionality of the hydraulic system, possibly resulting in degradation or total loss of control of the landing gear, flap actuation and brakes. A severe failure during flight may even result in debris penetrating and exiting the fuselage outer skin. When such a failure occurs while the aeroplane is on the ground, as in the two reported cases, this may cause severe damage to the fuselage and result in injuries to persons nearby.

Since AD 2008–0146 was issued, one more case of main hydraulic accumulator failure has been reported, which occurred in flight during final approach. The aeroplane was able to land safely and there were no injuries reported on the aeroplane or on the ground.

To address and correct this unsafe condition, a modified hydraulic accumulator has been developed, which is sealed between the barrel and the screw cap and between the screw cap and the end cap.

For the reasons described above, this EASA AD requires the replacement of the affected hydraulic accumulators P/N (part number) 08 8423 001 1 and P/N 08 8423 030 1, as identified in Saab SB (Service Bulletin) 340–29–023, with a modified hydraulic accumulator.

This AD is revised to indicate that the accomplishment of SAAB SB 340–29–024 is another acceptable method to correct the unsafe condition.

Actions and Compliance

(f) Unless already done, replace the hydraulic accumulator at the applicable time specified in paragraph (f)(1) or (f)(2) of this AD in accordance with the instructions of Saab Service Bulletin 340–29–023 or 340–29–024, both Revision 01, both dated April 3, 2009, as applicable.

(1) For airplanes on which the manufacturing date of the hydraulic accumulator is June 2000 or earlier: Replace the accumulator with a new or modified accumulator within 12 months after the effective date of this AD.

(2) For airplanes on which the manufacturing date of the accumulator is July 2000 or later: Replace the accumulator with a new or modified accumulator within 10 years after the manufacturing date or within 12 months after the effective date of this AD, whichever occurs later.

(3) As of 12 months after the effective date of this AD, no person may install a hydraulic accumulator, P/N 08 8423 001 1 or P/N 08 8423 030 1 on any airplane, except accumulators with serial numbers listed in paragraph 3.B. of Saab Service Bulletin 340–29–023, Revision 01, dated April 3, 2009.

(4) Actions done before the effective date of this AD in accordance with Saab Service Bulletin 340–29–023, dated June 10, 2008, are acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Where the MCAI includes a compliance time of ''24 months,'' we have determined that a compliance time of ''within 12 months after the effective date of the AD'' is appropriate. The manufacturer and EASA agree with this reduction in compliance time.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(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, 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 Airworthiness Directive 2008–0146R1, dated April 16, 2009, and Saab Service Bulletins 340–29–023 and 340–29–024, both Revision 01, both dated April 3, 2009, for related information.

Issued in Renton, Washington, on August 3, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19261 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0684; Directorate Identifier 2008–NM–149–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200C and –200F Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747–200C and –200F series airplanes. The existing AD currently requires repetitive inspections to find fatigue cracking in the floor panel attachment fastener holes of the upper chord of certain upper deck floor beams in Section 41 (*i.e.,* body station 520 and forward), and repair if necessary. The existing AD also provides optional modifications, which extend the threshold for the initiation of certain repetitive inspections. This proposed AD would add repetitive inspections to find fatigue cracking in the floor panel attachment fastener holes of the upper chord of certain other upper deck floor beams in Section 41 and Section 42 (*i.e.,* aft of body station 520); repetitive inspections to find fatigue cracking in the permanent fastener holes of the upper chord of certain upper deck floor beams in Section 41; and related investigative and corrective actions. This proposed AD would also provide a new optional modification, which would terminate certain repetitive inspections. This proposed AD results from new reports of cracking in the upper chord of the upper deck floor beams in Sections 41 and 42, and new analysis that shows the permanent fastener holes of the upper chord of certain upper deck floor beams in Section 41 are also susceptible to fatigue cracking. We are proposing this AD to detect and correct cracking in the upper chord of the upper deck floor beams. Such cracking could extend and sever the floor beams, which could result in rapid decompression and loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by September 28, 2009.

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

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0684; Directorate Identifier 2008–NM–149–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

On March 31, 2006, we issued AD 2006–08–02, amendment 39–14556 (70 FR 18618, April 12, 2006), for certain Boeing Model 747–200C and –200F series airplanes. That AD requires repetitive inspections to find fatigue cracking in the floor panel attachment fastener holes of the upper chord of certain upper deck floor beams in Section 41 (*i.e.,* body station 520 and forward), and repair if necessary. That AD also provides optional modifications, which extend the threshold for initiating certain repetitive inspections. That AD resulted from new reports of cracks in the upper deck floor beams occurring at lower total flight cycles. We issued that AD to find and fix cracking in the upper chord of certain upper deck floor beams in Section 41. Such cracking could extend and sever the floor beams, which could result in rapid decompression and loss of controllability of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2006–08–02, several operators of Boeing Model 747–400D series airplanes have reported cracking in the floor panel attachment fastener holes of the upper chord of the upper deck floor beams at body stations (BS) 460 and 480, and at the upper chord of the floor beams in Section 42. The upper deck floor beams of Model 747–200C and 747–200F series airplanes are of similar type design to Model 747–400D series airplanes at those locations; therefore, we have concluded that the unsafe condition also exists on Model 747–200C and 747–200F series airplanes. In addition, Boeing has done analysis that shows certain permanent fastener holes of the upper chord of certain upper deck floor beams in Section 41 are also susceptible to fatigue cracking.

Other Relevant Rulemaking

On December 26, 2007, we issued AD 2004–07–22 R1, amendment 39–15326 (73 FR 1052, January 7, 2008), for all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. (A correction of the final rule was published in the **Federal Register** on February 14, 2008 (73 FR 8589).) That AD requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each structural significant item, and repair of cracked structure. We issued that AD to ensure the continued structural integrity of the affected Model 747 series airplanes.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008 (''Revision 2 of the service bulletin''). (We referred to

Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005, as the appropriate source of service information for accomplishing the actions required by AD 2006–08–02.) Revision 2 of the service bulletin adds procedures for repetitive open-hole or surface high-frequency eddy current (HFEC) inspections to find fatigue cracking in the upper chord of the upper deck floor beams at body stations (BS) 460 and 480, and from BS 540 to 780 (specified as Area 5 in the service bulletin). Revision 2 of the service bulletin also adds procedures for inspections to find fatigue cracking in the permanent fastener holes of the upper chord of certain upper deck floor beams in Section 41.

For airplanes on which any crack is found, Revision 2 of the service bulletin specifies the corrective action of repairing the crack before further flight. The repair depends on the location and extent of cracking and can involve oversizing the fastener hole, installing a repair strap or angle, or contacting Boeing for repair instructions.

Revision 2 of the service bulletin also specifies post-repair inspections and corrective actions that include:

- Repair of any cracking before further flight. For airplanes on which a crack is found in a previously repaired or modified area, the service bulletin specifies contacting Boeing for repair data.
- An additional HFEC inspection for cracking of areas that have been repaired or modified.

Revision 2 of the service bulletin also describes optional (alternative) modification procedures for airplanes on which no cracking is found. Accomplishing these modifications extends the threshold for initiating certain repetitive inspections.

Revision 2 of the service bulletin defines the area for the new floor panel attachment fastener hole inspections as ''Area 5.'' The Area 5 inspections start at the latest of the following times:

- Before the accumulation of 20,000 total flight cycles.
- Within 1,000 flight cycles after the date of the service bulletin.
- Within 2,000 flight cycles after the last surface HFEC inspection or 6,000 flight cycles after the last open-hole HFEC inspection done in accordance with Supplemental Structural Inspection Document (SSID) SSI F–19B only (required by AD 2004–07–22 R1).

Revision 2 of the service bulletin also specifies additional inspection of permanent fastener holes in ''Areas 1, 2, 3 and 4.'' This new inspection starts at the later of the following times:

- Before the accumulation of 15,000 total flight cycles.
- Within 1,000 flight cycles after the date of the service bulletin.

The repetitive inspection interval depends on the inspection method and previous repairs/modifications, and ranges from 2,000 to 6,000 flight cycles for the surface/open-hole HFEC inspections.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Revision 2 of the service bulletin refers to Boeing Alert Service Bulletin 747–53A2696, dated October 16, 2008, for certain modifications. The actions in Boeing Alert Service Bulletin 747–53A2696 have been approved as an alternative method of compliance (AMOC) with certain requirements of AD 2006–08–02.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–08–02 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in the service information described previously except as discussed under ''Differences Between the Proposed AD and the Service Bulletin.''

Differences Between the Proposed AD and the Service Bulletin

Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Explanation of Changes Made to This AD

We have added new paragraph (d) to this proposed AD specifying the Air Transport Association (ATA) of America code identifying the subject of the AD, and have re-identified the subsequent paragraphs accordingly.

We have simplified paragraph (h)(1) of this proposed AD (which corresponds to paragraph (g)(1) of AD 2006–08–02) by referring to the ''Alternative Methods of Compliance (AMOCs)'' paragraph of this AD for repair methods.

We have revised paragraph (h)(1) of this proposed AD to allow any crack in the subject area to be repaired according to data that conform to the airplane's type certificate and that are approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make such findings.

Costs of Compliance

There are about 68 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 2006–08–02)	29	$80	$2,320 per inspection cycle.	25	$58,000 per inspection cycle.
Inspection of Area 5 and permanent fastener hole in Areas 1, 2, 3, and 4 (new proposed action).	78	80	$6,240 per inspection cycle.	25	$156,000 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

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 removing amendment 39–14556 (70 FR 18618, April 12, 2006) and adding the following new AD:

Boeing: Docket No. FAA–2009–0684; Directorate Identifier 2008–NM–149–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 28, 2009.

Affected ADs

(b) This AD supersedes AD 2006–08–02.

Applicability

(c) This AD applies to Boeing Model 747–200C and –200F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from new reports of cracking in the upper chord of the upper deck floor beams in Sections 41 and 42, and new analysis that shows the permanent fastener holes of the upper chord of certain upper deck floor beams in Section 41 are also susceptible to fatigue cracking. We are issuing this AD to detect and correct cracking in the upper chord of the upper deck floor beams. Such cracking could extend and sever the floor beams, which could result in rapid decompression and loss of controllability 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.

Requirements of AD 2006–08–02

Initial Compliance Time at a New Reduced Threshold

(g) At the earliest of the times specified in paragraphs (g)(1) through (g)(3) of this AD, do the inspection required by paragraph (h) of this AD.

(1) Before the accumulation of 22,000 total flight cycles, or within 1,000 flight cycles after March 15, 2004 (the effective date of AD 2004–03–11, which was superseded by AD 2006–08–02), whichever occurs later.

(2) For airplanes with 17,000 or more total flight cycles as of May 17, 2006 (the effective date of AD 2006–08–02): Before the accumulation of 18,000 total flight cycles, or within 90 days after May 17, 2006, whichever occurs later.

(3) For airplanes with fewer than 17,000 total flight cycles as of May 17, 2006: Before the accumulation of 15,000 total flight cycles, or within 1,000 flight cycles after May 17, 2006, whichever occurs later.

Inspections at Reduced Intervals for Certain Floor Beams and Repair

(h) Do the applicable inspection to find fatigue cracking in the upper chord of the upper deck floor beams as specified in Part 1 (Open-Hole High Frequency Eddy Current (HFEC) Inspection Method) or Part 2 (Surface HFEC Inspection Method) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001. Do the inspections per the Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, except as provided by paragraph (k) of this AD. Any combination of the applicable inspection methods specified in Parts 1 and 2 may be used, provided that the corresponding repetitive inspection interval is used.

(1) If any crack is found, before further flight, repair per Part 3 (Upper Chord Repair) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; except where Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, specifies to contact Boeing for appropriate action, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD or repair according to data meeting the certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) or by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization. For a repair method to be approved by the Manager, Seattle Aircraft Certification Office (ACO), as required by this paragraph, the Manager's approval letter must specifically reference this AD. Do the applicable inspection of the repaired area per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, at the applicable time per Part 3 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, and repeat the applicable inspection at the applicable interval per Figure 1 of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001.

(2) If no crack is found, repeat the applicable inspection per paragraph (h) of this AD at the applicable time specified in paragraphs (h)(2)(i) through (h)(2)(iii) of this AD. As an option to the repetitive inspections, accomplishment of paragraph (i)(1) or (i)(2) of this AD, before further flight, extends the threshold for the initiation of the repetitive inspections required by this paragraph.

(i) If the immediately preceding inspection was conducted using an open-hole HFEC inspection method: Conduct the next inspection of that area within 3,000 flight cycles of the last inspection.

(ii) If the immediately preceding inspection was conducted using a surface HFEC inspection method at stations 340 through 420 inclusive and station 500: Conduct the next inspection of that area within 750 flight cycles of the last inspection.

(iii) If the immediately preceding inspection was conducted using a surface HFEC inspection method at stations 440 and

520: Conduct the next inspection of that area at the earlier of the times specified in paragraphs (h)(2)(iii)(A) and (h)(2)(iii)(B) of this AD, and thereafter at intervals not to exceed 250 flight cycles.

(A) Within 750 flight cycles since the last surface HFEC inspection required by paragraph (h) of this AD.

(B) Within 250 flight cycles after May 17, 2006.

Optional Repair/Modification

(i) For areas on which the inspection required by paragraph (h) of this AD is done per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; and on which no cracking is found: Accomplishment of the actions specified in either paragraph (i)(1) or (i)(2) of this AD extends the threshold for the initiation of the repetitive inspections required by paragraph (h)(2) of this AD. For areas on which the inspection required by paragraph (h) of this AD is done per Part 2 of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; and on which no cracking is found: Accomplishment of the actions specified in paragraph (i)(1) of this AD extends the threshold for the initiation of the repetitive inspections required by paragraph (h)(2) of this AD.

(1) Do the applicable repair per Part 3 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, except as provided by paragraph (k) of this AD. At the applicable time specified in Table 1 of Part 3 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, do the applicable inspection of the repaired area per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001. Repeat the inspection thereafter within the applicable interval of 3,000 flight cycles per Figure 1 of the service bulletin.

(2) Do the modification of the attachment hole of the floor panel per Figure 5 of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, except as provided by paragraph (k) of this AD. Within 10,000 flight cycles after accomplishment of the modification, do the inspection of the modified area per Part 1 of the Work Instructions of the service bulletin. Repeat the inspection thereafter within the applicable interval of 3,000 flight cycles per Figure 1 of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001.

Determining the Number of Flight Cycles for Compliance Time

(j) For the purposes of calculating the compliance threshold and repetitive intervals for actions required by paragraphs (g), (h), or (i) of this AD: As of May 17, 2006 (the effective date of AD 2006–08–02), all flight cycles, including the number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less, must be counted when determining the number of flight cycles that have occurred on the airplane.

New Requirements of This AD

Applicable Revisions of Service Bulletins

(k) Use the information in Tables 1 and 2 of this AD, at the applicable time specified in paragraphs (k)(1) and (k)(2) of this AD, to determine the part of the applicable service bulletin to use to accomplish the actions required by this AD.

(1) On or after May 17, 2006, but before the effective date of this AD, use only the service information listed in Table 1 or Table 2 of this AD.

TABLE 1—SERVICE INFORMATION GIVEN IN BOEING ALERT SERVICE BULLETIN 747–53A2439, REVISION 1, DATED MARCH 10, 2005

Do—	In accordance with—
(1) The actions required by paragraph (h) of this AD.	Parts 1 and 2 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; as applicable.
(2) The applicable inspection of the repaired area required by paragraph (h)(1) of this AD.	Parts 1 and 6 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; as applicable; at the applicable time specified in Table 1 of Part 3 of the Work Instructions of that service bulletin.
(3) The actions required by paragraph (i)(1) of this AD.	Parts 1, 3, and 6 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005.
(4) The actions required by paragraph (i)(2) of this AD.	Figure 5 and Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; as applicable.

(2) On or after the effective date of this AD, use only the service information listed in Table 2 of this AD.

TABLE 2—SERVICE INFORMATION GIVEN IN BOEING ALERT SERVICE BULLETIN 747–53A2439, REVISION 2, DATED JULY 17, 2008

Do—	In accordance with—
(1) The actions required by paragraph (h) and (l) of this AD.	Part 1 (open-hole or surface HFEC inspection, as applicable) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008.
(2) The applicable inspection of the repaired area required by paragraph (h)(1) of this AD.	Part 1 (open-hole HFEC inspection only) and Part 5 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008; at the applicable time specified in Table 1 of Part 2 of the Work Instructions of that service bulletin.
(3) The applicable repair required by paragraph (h)(1) of this AD.	Part 2 (upper chord repair at floor panel attach holes) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008.
(4) The actions required by paragraph (i)(1) of this AD.	Part 1 (open-hole HFEC inspection only), Part 2, and Part 5 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008.
(5) The actions required by paragraph (i)(2) of this AD.	Figure 5 and Part 1 (open-hole HFEC inspection only) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008.

New Inspections and Related Investigative and Corrective Actions

(l) For all airplanes, except as provided by paragraphs (k)(1) and (k)(2) of this AD: At the applicable time specified in Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008, do the applicable open-hole or surface HFEC inspections for fatigue cracking in the upper chord of the upper deck floor beams in Area 5, and the inspection for fatigue cracking in the permanent fastener holes of the upper chord of certain upper deck floor beams in Areas 1, 2, 3, and 4, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008. Do all applicable related investigative

and corrective actions before further flight. Repeat the applicable inspection thereafter at the applicable interval specified in Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008.

(1) Where Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008, specifies a compliance time relative to the date of issuance of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008, specifies contacting Boeing for repair data: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

Optional New Modification for Areas 1, 2, 3, and 4

(m) For areas 1, 2, 3, and 4 as defined in Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008: Doing the modification and post-modification actions specified in Boeing Alert Service Bulletin 747–53A2696, dated October 16, 2008, terminates the repetitive inspection requirements of paragraphs (g) and (h) of this AD. Doing the modification and post-modification actions specified in Boeing Alert Service Bulletin 747–53A2696, dated October 16, 2008, terminates the repetitive inspection requirements of paragraph (l) of this AD, except at the upper deck floor beam at body station (BS) 460 and 480 and the upper deck floor beams aft of BS 520.

No Reporting Requirement

(n) Although Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; and Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008; specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Seattle 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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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.

(3) AMOCs approved previously in accordance with AD 2006–08–02, are approved as AMOCs for the corresponding provisions of this AD.

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

Issued in Renton, Washington, on August 3, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19262 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0513; Airspace Docket No. 09–ASW–13]

Proposed Amendment of Class E Airspace; Midlothian-Waxahachie, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Midlothian-Waxahachie, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Mid-Way Regional Airport, Midlothian-Waxahachie, TX. This action would also reflect the name change to Mid-Way Regional Airport and update the geographic coordinates. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Mid-Way Regional Airport.

DATES: 0901 UTC. Comments must be received on or before September 28, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0513/Airspace Docket No. 09–ASW–13, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0513/Airspace Docket No. 09–ASW–13.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Mid-Way Regional Airport, Midlothian-Waxahachie, TX. This action would also reflect the name change of the airport from Midlothian-Waxahachie Municipal Airport to Mid-Way Regional Airport and update the geographic coordinates. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Midlothian-Waxahachie, TX [Amended]

Mid-Way Regional Airport, TX
(Lat. 32°27′22″ N., long. 96°54′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mid-Way Regional Airport and within 1.8 miles each side of the 184° bearing from the airport extending from the 6.5-mile radius to 9.8 miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on July 30, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–19251 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0318; Airspace Docket No. 09–AAL–8]

Proposed Revision of Class E Airspace; Noorvik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at the Robert (Bob) Curtis Memorial Airport at Noorvik, AK. Two Standard Instrument Approach Procedures (SIAPs) are being developed for the Robert (Bob) Curtis Memorial Airport at Noorvik, AK. Additionally, one textual Obstacle Departure Procedure (ODP) is being developed. Adoption of this proposal would result in establishing Class E airspace upward from 700 feet (ft.) above the surface at the Robert (Bob) Curtis Memorial Airport at Noorvik, AK.

DATES: Comments must be received on or before September 28, 2009.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0318/ Airspace Docket No. 09–AAL–8, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related

aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0318/Airspace Docket No. 09–AAL–8.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71, which would establish Class E airspace at the Robert (Bob) Curtis Memorial Airport, Noorvik, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Robert (Bob) Curtis Memorial Airport, Noorvik, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has created two new SIAPs for the Robert (Bob) Curtis Memorial Airport and one textual ODP. The SIAPs are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 06, Original and (2) the RNAV (GPS) RWY 24, Original. Textual ODPs are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward from 700 ft. above the surface in the Robert (Bob) Curtis Memorial Airport area would be established by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Robert (Bob) Curtis Memorial Airport, Noorvik, AK.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace at Robert (Bob) Curtis Memorial Airport, Noorvik, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Noorvik, AK [New]

Robert (Bob) Curtis Memorial Airport, Noorvik, AK
(Lat. 66°49′03″ N., long. 161°01′20″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Robert (Bob) Curtis Memorial Airport, AK

* * * * *

Issued in Anchorage, AK, on August 3, 2009.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–19250 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No: MT–030–FOR; Docket ID: OSM–2009–0007]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Montana proposes revisions to the statute, the Montana Code Annotated (MCA), about determination of revegetation success and final bond release. Montana intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. September 11, 2009. If requested, we will hold a public hearing on the amendment on September 8, 2009. We will accept requests to speak until 4 p.m., m.d.t. on August 27, 2009.

ADDRESSES: You may submit comments by either of the following two methods:

Federal eRulemaking Portal: http://http://www.regulations.gov . This proposed rule has been assigned Docket ID: OSM–2009–0007. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and do the following. Click on the ''Advanced Docket Search'' button on the right side of the screen. Type in the Docket ID ''OSM–2009–0007'' and click the ''Submit'' button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2009–0007, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

- *Mail/Hand Delivery/Courier:* Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Rm. 1018, Casper, Wyoming 82601–1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at *http://www.regulations.gov*, you may review copies of the Montana program, this amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Casper, Wyoming 82601–1018, 307/261–06547, *JFleischman@osmre.gov.*

Neil Harrington, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 406/444–4972, *neharrington@mt.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, *Telephone:* 307/261–6547. *Internet: jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Description of the Proposed Amendment

By letter dated May 12, 2009, Montana sent us a proposed amendment to its program [Administrative Record Docket ID No. OSM–2009–0007 under SMCRA (30 U.S.C. 1201 *et seq.*)] to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, Montana proposes changes to MCA 82–4–235(2), (3), and (4), Determination of successful revegetation—final bond release. The proposed change to subsection (2) would add a reference to proposed new subsection (3). Proposed new subsection (3) is modeled after a similar provision in North Dakota's Policy Memorandum No. 20 to Mine Operators, dated January 29, 2009 (Revised). This new provision would exempt selected disturbances from the minimum 10-year revegetation liability period. Exempted disturbances could include sedimentation ponds, topsoil stockpiles, roads, and other water management or support facilities areas up to a maximum of 10% of any area for which bond release is sought.

Former subsection (3) would be recodified as subsection (4). Additional changes proposed to this subsection include adding a reference to new subsection (3) and editorial changes resulting from those changes proposed above.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or

regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed above (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available in the electronic docket for this rulemaking at *http://www.regulations.gov*. 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on August 27, 2009. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the docket for this rulemaking.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

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

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 10, 2009.

Allen D. Klein,

Regional Director, Western Region.

[FR Doc. E9–19362 Filed 8–11–09; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R08–RCRA–2009–0341; FRL–8940–9]

Colorado: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The state of Colorado has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to the hazardous waste program changes submitted by the state of Colorado. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes in an immediate final rule. EPA did not propose the rule prior to issuing the immediate final rule because the Agency believes this action is not controversial and does not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we receive written comments that oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and EPA will not take further action on this proposal. If the Agency receives comments that oppose this action, EPA will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will then address public comments in a later final rule based on this proposal. Any parties interested in commenting on this action must do so at this time. EPA may not provide further opportunity for comment.

DATES: Comments must be received on or before September 11, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–RCRA–2009–0341, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: cosentini.christina@epa.gov.*
- *Fax:* (303) 312–6341.
- *Mail:* Send written comments to Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P–HW, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery or Courier:* Deliver your comments to Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P–HW, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Deliveries are accepted only during the Regional Office's normal hours of operation, 7 a.m. to 5 p.m. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–RCRA–2009–0341. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information, the disclosure of which 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 federal Web site *http://www.regulations.gov* 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 e-mail your comment directly to EPA rather than going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.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 may not be 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 through *http://www.regulations.gov* or in hard copy from 9 a.m. to 4 a.m. at: EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, contact: Christina Cosentini, phone number (303) 312–6231, or the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530, contact: Randy Perila, phone number (303) 692–3364.

FOR FURTHER INFORMATION CONTACT: Christina Cosentini, (303) 312–6231, *cosentini.christina@epa.gov* or Randy Perila, (303) 692–3364, *randy.perila@state.co.us.*

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: July 14, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. E9–19317 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R9-ES-2009-0057]
[90100 16641FLA-B6]

Endangered and Threatened Wildlife and Plants; Annual Notice of Findings on Resubmitted Petitions for Foreign Species; Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this notice of review, we announce our annual petition findings for foreign species, as required under section 4(b)(3)(C)(i) of the Endangered Species Act of 1973, as amended. When, in response to a petition, we find that listing a species is warranted but precluded by higher priority listing actions, we must complete a new status review each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent status reviews and the accompanying 12–month findings are referred to as ''resubmitted'' petition findings.

Information contained in this notice describes our status review of 20 foreign taxa that were the subjects of previous warranted-but-precluded findings, most recently summarized in our 2008 Notice of Review. Based on our current review, we find that 20 species (see Table 1) continue to warrant listing, but that their listing remains precluded by higher priority listing actions.

With this annual notice of review (ANOR), we are requesting additional status information for the 20 taxa that remain warranted but precluded by higher priority listing actions. We will consider this information in preparing listing documents and future resubmitted petition findings for these 20 taxa. This information will also help us to monitor the status of the taxa and in conserving them.

DATES: We will accept information on these resubmitted petition findings at any time.

ADDRESSES: This notice is available on the Internet at *http://www.regulations.gov*, and *http://endangered.fws.gov/*. Supporting information used in preparing this notice is available for public inspection, by appointment, during normal business hours at the Branch of Listing, 4401 N. Fairfax Drive, Room 420, Arlington, Virginia 22203. Please submit any new information, materials, comments, or questions concerning this notice to the above address.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Listing, Endangered Species Program, (see **ADDRESSES**); by telephone at 703-358-2171; or by facsimile at 703-358-1735). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), provides two mechanisms for considering species for listing. First, we can identify and propose for listing those species that are endangered or threatened based on the factors contained in section 4(a)(1) of the Act. We implement this mechanism through the candidate program. Candidate taxa are those taxa for which we have sufficient information on file relating to biological vulnerability and threats to support a proposal to list the taxa as endangered or threatened, but for which preparation and publication of a proposed rule is precluded by higher priority listing actions. The second mechanism for considering species for listing is for the public to petition to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists). The species covered by this notice were assessed through the petition process.

Under section 4(b)(3)(A) of the Act, when we receive a listing petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (90–day finding). If we make a positive 90–day finding, we are required to promptly commence a review of the status of the species, whereby, in accordance with section 4(b)(3)(B) of the Act we must make one of three findings within 12 months of the receipt of the petition (12–month finding). The first possible 12–month finding is that listing is not warranted, in which case we need not take any further action on the petition. The second possibility is that we may find that listing is warranted, in which case we must promptly publish a proposed rule to list the species. Once we publish a proposed rule for a species, sections 4(b)(5) and 4(b)(6) govern further procedures, regardless of whether or not we issued the proposal in response to the petition. The third possibility is that we may find that listing is warranted but precluded. A warranted-but-precluded finding on a petition to list means that listing is warranted, but that the immediate proposal and timely promulgation of a final regulation is precluded by higher priority listing actions. In making a warranted-but precluded finding under the Act, the Service must demonstrate that expeditious progress is being made to add and remove species from the lists of endangered and threatened wildlife and plants.

Pursuant to section 4(b)(3)(C)(i) of the Act, when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12–month finding annually until we publish a proposed rule or make a determination that listing is not warranted. These subsequent 12–month findings are referred to as ''resubmitted'' petition findings. This notice contains our resubmitted petition findings for foreign species previously described in the 2008 Notice of Review (73 FR 44062; July 29, 2008) and that are currently the subject of outstanding petitions.

Previous Notices

The species discussed in this notice were the result of three separate petitions submitted to the U.S. Fish and Wildlife Service (Service) to list a number of foreign bird and butterfly species as threatened or endangered under the Act. We received petitions to list foreign bird species on November 24, 1980, and May 6, 1991 (46 FR 26464; May 12, 1981, and 56 FR 65207; December 16, 1991, respectively). On January 10, 1994, we received a petition to list 7 butterfly species as threatened or endangered (59 FR 24117; May 10, 1994).

We took several actions on these petitions. To notify the public on these actions, we published petition findings, listing rules, status reviews, and petition finding reviews that included foreign species in the **Federal Register** on the following dates:

Date	FR Citation
May 12, 1981	46 FR 26464
January 20, 1984	49 FR 2485
May 10, 1985	50 FR 19761
January 9, 1986	51 FR 996
July 7, 1988	53 FR 25511
December 29, 1988	53 FR 52746
April 25, 1990	55 FR 17475
September 28, 1990	55 FR 39858
November 21, 1991	56 FR 58664
December 16, 1991	56 FR 65207
March 28, 1994	59 FR 14496
May 10, 1994	59 FR 24117
January 12, 1995	60 FR 2899
May 21, 2004	69 FR 29354
April 23, 2007	72 FR 20184

Our most recent review of petition findings was published on July 29, 2008 (73 FR 44062).

Since our last review of petition findings in July 2008, we have taken four listing actions related to species previously included in this notice (see Preclusion and Expeditious Progress section for additional listing actions that were not related to this notice). On December 8, 2008, we published two proposed rules to list species under the Act: One to list the medium tree finch (73 FR 74434), and the other to list the black-breasted puffleg (73 FR 74427). On December 24, 2008, we published a proposed rule to list the Andean flamingo, the Chilean woodstar, and the St. Lucia forest thrush (73 FR 79226). On July 7, 2009, we published a proposed rule to list the blue-billed curassow, the brown-banded antpitta, the Cauca guan, the gorgeted wood-quail, and the Esmeraldas woodstar (74 FR 32307).

Findings on Resubmitted Petitions

This notice describes our resubmitted petition findings for 20 foreign species for which we had previously found proposed listing to be warranted but precluded. We have considered all of the new information that we have obtained since the previous findings, and we have reviewed the listing priority number (LPN) of each taxon for which proposed listing continues to be warranted but precluded, in accordance with our Listing Priority Guidance published September 21, 1983 (48 FR 43098). Such a priority ranking guidance system is required under section 4(h)(3) of the Act. Using this guidance, we assign each taxon an LPN of 1 to 12, whereby we first categorize based on the magnitude of the threat(s) (high versus moderate-to-low), then by the immediacy of the threat(s) (imminent versus nonimminent), and finally by taxonomic status; the lower the listing priority number, the higher the listing priority (i.e., a species with an LPN of 1 would have the highest listing priority).

As a result of our review, we find that warranted-but-precluded findings remain appropriate for these 20 species. We emphasize that we are not proposing these species for listing by this notice, but we do anticipate developing and publishing proposed listing rules for these species in the future, with an objective of making expeditious progress in addressing all 20 of these foreign species within a reasonable timeframe.

Table 1 (see end of this notice) provides a summary of all updated determinations of the 20 taxa in our review. All taxa in Table 1 of this notice are ones for which we find that listing is warranted but precluded and are referred to as ''candidates'' under the Act. The column labeled ''Priority'' indicates the LPN. Following the scientific name of each taxon (third column) is the family designation (fourth column) and the common name, if one exists (fifth column). The sixth column provides the known historic range for the taxon. The avian species in Table 1 are listed taxonomically.

Findings on Species for Which Listing Is Warranted but Precluded

We have found that, for the 20 taxa discussed below, publication of proposed listing rules will continue to be precluded over the next year due to the need to complete pending, higher priority listing actions. We will continue to monitor the status of these species as new information becomes available (see **Monitoring**, below). Our review of new information will determine if a change in status is warranted, including the need to emergency list any species or change the LPN of any of the species. In the following section, we describe the status of and threats to the individual species.

Birds

Southern helmeted curassow (*Pauxi unicornis*)

The southern helmeted curassow is one of the least frequently encountered South American bird species because of the inaccessibility of its preferred habitat and its apparent intolerance of human disturbance (Herzog and Kessler 1998). The southern helmeted curassow is known only from two distinct populations in central Bolivia and central Peru (BirdLife International 2009a).

The Bolivian population of the nominate species (*Pauxi unicornis unicornis)* remained unknown to science until 1937 (Cordier 1971). Subsequently, it has been observed in the adjacent Amboró and Carrasco National Parks (Brooks 2006; Herzog and Kessler 1998), and has recently been found in Isiboro-Secure Indigenous Territory and National Park (TIPNIS), along the western edge of the Mosetenes Mountains, Cochabamba, Bolivia. Recent surveys have located few southern helmeted curassows across the northern boundary of Carrasco National Park, where it was historically found (MacLeod 2007 as cited in BirdLife International 2009a). In Amboró National Park, the southern helmeted curassow is regularly sighted on the upper Rio Saguayo (Wege and Long 1995). Extensive surveys over the last several years have failed to locate the species in Madidi National Park, La Paz (Hennessey 2004a as cited in BirdLife International 2009a8; Maccormack *in litt.* 2004 as cited in BirdLife International 2008; MacLeod *in litt.* 2003 as cited in BirdLife International 2009a), on the eastern edge of the Mosetenes Mountains in Cochabamba, and in the Rio Tambopata area near the Bolivia/Peru border.

In Peru, a subpopulation (*Pauxi unicornis koepckeae*) is known only from the Sira Mountains in Huanuco (Tobias and del Hoyo 2006). In 2005, a team from the Armonia Association (BirdLife in Bolivia) saw one and heard three southern helmeted curassow in the Sira's: the first sighting of the distinctive endemic Peruvian race since 1969 (BirdLife International 2008). Limited reports suggest that the southern helmeted curassow is rare here (MacLeod *in litt.* 2004 as cited in BirdLife International 2008; Maccormack *in litt.* 2004 as cited in BirdLife International 2009a; Mee *et al.* 2002), and evidence suggests the population is declining (Gastañaga and Hennessey 2005 as cited in BirdLife International 2009a). The southern helmeted curassow occurs at densities up to 20 individuals/square kilometer (km^2); however, in recent surveys only 1 or 2 individuals have been observed (Macleod 2007 as cited in BirdLife International 2008).

According to the International Union for Conservation of Nature and Natural Resources (IUCN) /Species Survival Commission (SSC) Cracid Specialist Group the southern helmeted curassow is critically endangered and should be given immediate conservation attention (Brooks and Strahl 2000).

The southern helmeted curassow inhabits dense, humid, lower montane forest and adjacent evergreen forest at 450 to 1,200 meters (m) (Cordier 1971; Herzog and Kessler 1998). It prefers eating nuts of the almendrillo tree (*Byrsonima wadsworthii* (Cordier 1971)), but also consumes other nuts, seeds, fruit, soft plants, larvae, and insects (BirdLife International 2008). Clutch size of the southern helmeted curassow is probably two, as in other *Cracidae.* However, the only nest found contained only one egg (Banks 1998; Cox *et al.* 1997; Renjifo and Renjifo 1997 as cited in BirdLife International 2008).

The southern helmeted curassow was previously classified as ''Vulnerable'' on the IUCN Red List. In 2005, it was uplisted to its current status as ''Endangered'' (BirdLife International 2009a; BirdLife International 2004). Southern helmeted curassow populations are estimated to be declining very rapidly due to

uncontrolled hunting and habitat destruction; this species has a small range and is known only from a few locations, which continue to be subject to habitat loss and hunting pressures. The total population of mature southern helmeted curassow is estimated to be between 1,000 and 4,999 individuals (BirdLife International 2009a). The subspecies in Peru is estimated to have fewer than 400 individuals (Gastañaga *in litt.* 2007 as cited in BirdLife International 2009a). Estimated decline in the overall population over 10 years or 3 generations past is 50 to 79 percent. However, the quality of this estimate is poor (BirdLife International 2009b). The Rio Leche area in Peru experienced a 100 percent population decline in less than 5 years because of hunting pressures. Similar human pressures are ongoing throughout the species' range. The observed decline likely infers that a 50-percent population loss occurred between 1995 and 2005. Unless threats are mitigated this trend will probably continue for the next several years (Macleod *in litt.* 2005). Hunting is probably the biggest threat to southern helmeted curassow in all parts of its range (Gastañaga 2006 as cited in BirdLife International 2009a). The species is often hunted for meat and its casque, or horn (Collar *et al.* 1992), which the local people use to fashion cigarette-lighters (Cordier 1971). In the Amboró region of Bolivia, the bird's head is purportedly used in folk dances (Hardy 1984 as cited in Collar 1992).

In Bolivia, forests within the range of the southern helmeted curassow are being cleared for crop cultivation by colonists from the altiplano (Maillard 2006 as cited in BirdLife International 2009a). Rural development, including road building, inhibits its dispersal (Fjeldså *in litt.* 1999 as cited in BirdLife International 2008; Herzog and Kessler 1998). In Peru, in addition to hunting, southern helmeted curassow habitat is threatened by subsistence agriculture (MacLeod *in litt.* 2000 as cited in BirdLife International 2009a), forest clearing by colonists, illegal logging, mining, and oil exploration (BirdLife International 2009a). The southern helmeted curassow is dependent upon pristine habitat. Therefore, its presence is critical for determining priorities for conservation (Brooks 2006).

In Bolivia, large parts of southern helmeted curassow habitat are ostensibly protected by inclusion in the Amboro and Carrasco National Parks and in the Isiboro-Secure Indigenous Territory and National Park. However, pressures on the species' populations continue (BirdLife International 2009a; BirdLife International 2000). In recent years, extensive field surveys of southern helmeted curassow habitat have resulted in little success in locating the species (Hennessey 2004a; MacLeod in litt. 2004 as cited in BirdLife International 2009a; Maccormack *in litt.* 2004 as cited in BirdLife International 2009a; MacLeod *in litt* 2003 as cited in BirdLife International 2009a; Mee *et al.* 2002). The Association Armonia has been attempting to estimate southern helmeted curassow population numbers to identify its most important populations, and is evaluating human impact on the species' natural habitat. In addition, Armonia is carrying out an environmental awareness project to inform local people about the threat to southern helmeted curassow (BirdLife International 2009a) and is conducting training workshops with park guards to help improve chances for its survival (Llampa 2007 as cited in BirdLife International 2009a).

The southern helmeted curassow does not represent a monotypic genus. It faces threats that are moderate in magnitude as the population is fairly large; however, the population trend has been declining rapidly. The threats to the species are ongoing and, therefore, imminent. Thus, we have assigned this species a priority rank of 8.

Bogota rail (*Rallus* semiplumbeus)

The Bogota rail is found in the East Andes of Colombia on the Ubaté–Bogotá Plateau in Cundinamarca and Boyacá. In Cundinamarca, the Bogota rail has been observed in at least 21 locations. It occurs in the temperate zone, at 2,500–4,000 m (occasionally as low as 2,100 m) in savanna and páramo marshes (BirdLife International 2008; BirdLife International 2007). Bogota rail frequent wetland habitats with vegetation-rich shallows that are surrounded by tall, dense reeds and bulrushes (Stiles *in litt.* 1999 as cited in BirdLife International 2009). It inhabits the water's edge, in flooded pasture and along small overgrown dykes and ponds (Salaman *in litt.*1999 as cited in BirdLife International 2009; Fjeldså 1990 as cited in BirdLife International 2009; Fjeldså and Krabbe 1990 as cited in BirdLife International 2009; Varty *et al.* 1986 as cited in BirdLife International 2009). Nests have been recorded adjoining shallow water in beds of *Scirpus* and *Typha* spp. (Stiles *in litt.* 1999 as cited in BirdLife International 2009). The Bogota rail is omnivorous, consuming a diet that includes aquatic invertebrates, insect larvae, worms, mollusks, dead fish, frogs, tadpoles, and plant material (BirdLife International 2009; Varty *et al.* 1986 as cited in BirdLife International 2009; BirdLife International 2006).

The Bogota rail is listed as endangered by IUCN primarily because its range is very small and is contracting because of widespread habitat loss and degradation. Furthermore, available habitat has become widely fragmented (BirdLife International 2007). Wetland drainage, pollution, and siltation on the Ubaté-Bogotá plateau have resulted in major habitat loss and few suitably vegetated marshes remain. All major savanna wetlands are threatened, predominately because of draining, but also by agricultural runoff, erosion, dyking, eutrophication caused by untreated sewage effluent, insecticides, tourism, hunting, burning, reed harvesting, fluctuating water levels, and increasing water demand. Additionally, road construction may result in colonization and human interference, including introduction of exotic species in previously stable wetland environments (Cortes *in litt.* 2007 as cited in BirdLife International 2009). The current population is estimated to range between 1,000–2,499 individuals, though numbers are expected to decline over the next 10 years or 3 generations by 10 to 19 percent (BirdLife International 2009). Although the Bogota rail population is declining, it is still uncommon to fairly common, with a few notable populations, including nearly 400 birds at Laguna de Tota, approximately 50 bird territories at Laguna de la Herrera, approximately 110 birds at Parque La Florida, and populations at La Conejera marsh and Laguna de Fuquene (BirdLife International 2009). Some Bogota rails occur in protected areas such as Chingaza National Park and Carpanta Biological Reserve. However, most savanna wetlands are virtually unprotected (BirdLife International 2009).

The Bogota rail does not represent a monotypic genus. It is subject to threats that are moderate in magnitude and ongoing and, therefore, imminent. We have assigned a priority rank of 8 to this species.

Takahe (*Porphyrio* hochstetteri, previously known as *P. mantelli*)

The Takahe, a flightless rail endemic to New Zealand, is the world's largest extant member of the rail family (del Hoyo *et al.* 1996). The species, *Porphyrio mantelli*, has been split into *P. mantelli* (extinct) and *P. hochstetteri* (extant) (Trewick 1996). BirdLife International (2000) incorrectly assigned the name *P. mantelli* to the extant form, while the name *P. hochstetteri* was incorrectly assigned to the extinct form.

Fossils indicate that this bird was once widespread throughout the North and South Islands. The Takahe was thought to be extinct by the 1930s until its rediscovery in 1948 in the Murchison Mountains, Fjordland (South Island) (Bunin and Jamieson 1996; New Zealand Department of Conservation (NZDOC) 2009b). Soon after its rediscovery, a Takahe Special Area of 193 square miles (mi^2) (500 km^2) was set aside in Fiordland National Park for the conservation of Takahe (Crouchley 1994; NZDOC 2009c). Today, the species is present in the Murchison and Stuart Mountains and has been introduced to four island reserves (Kapiti, Mana, Tiritiri Mantangi, and Maud) (Collar *et al.* 1994). The population in the Murchison Mountains is important because it is the only mainland population that has the potential for sustaining a large, viable population (NZDOC 1997).

Originally, the species occurred throughout forest and grass ecosystems. Today, Takahe occupy alpine grasslands (BirdLife International 2007). They feed on tussock grasses during much of the year, with snow tussocks (*Chionochloa pallens*, *C. flavescens*, and *C. crassiuscula*) being their preferred food (Crouchley 1994). By June, the snow cover usually prevents feeding above tree line, and birds move into forested valleys in the winter and feed mainly on the rhizome of a fern (*Hypolepis millefolium*). Research by Mills *et al.* (1980) suggested that Takahe require the high-carbohydrate concentrations in the rhizomes of the fern to meet the metabolic requirement of thermoregulation in the mid-winter, subfreezing temperatures. The island populations eat introduced grasses (BirdLife International 2007). Takahe form pair bonds that persist throughout life and generally occupy the same territory throughout life (Reid 1967). Their territories are large, and Takahe defend them aggressively against other Takahe, which means that they will not form dense colonies even in very good habitat. They are long-lived birds, probably between 14 and 20 years (Heather and Robertson 1997) and have a low reproductive rate, with clutches consisting of 1 to 3 eggs. Only a few pairs manage to consistently rear chicks each year. Although under normal conditions this is generally sufficient to maintain the population, populations recover slowly from catastrophic events (Crouchley 1994).

The Takahe is listed as ''Endangered'' on the IUCN Red List because it has an extremely small population (BirdLife International 2006). When rediscovered in 1948, it was estimated that the population was about 260 pairs (del Hoyo 1996; Heather and Robertson 1997). By the 1970s, Takahe populations had declined dramatically, and it appeared that the species was at risk of extinction. In 1981, the population reached a low at an estimated 120 birds. Since then, the population has fluctuated between 100 and 180 birds (Crouchley 1994). At first, translocated populations increased only slowly, probably due to young pair-bonds and the quality of the founding population (Bunin *et al.* 1997). In recent years, the total Takahe population has had significant growth; in 2004, there was a 13.6 percent increase in the number of adult birds, with the number of breeding pairs up 7.9 percent (BirdLife International 2005). As of August 2007, birds in the Takahe Special Area had increased to 168, and the current national population was 297. However, this mainland population was thought to be at carrying capacity (Greaves 2007), and Island reserves also appeared to be at carrying capacity (NZDOC 2007). Thus, a high priority of the recovery program is to establish a second viable mainland population to further increase the total population size (Greaves 2007). Overall, population numbers are slowly increasing due to intensive management of the island reserve populations, but fluctuations in the remnant mainland population continue to occur (BirdLife International 2000).

The main cause of the species' historical decline was competition for tussock grasses by grazing red deer (*Cervus elaphus*), which were introduced after the 1940s (Mills and Mark 1977). The red deer overgrazed the Takahe's habitat, eliminating nutritious plants and preventing some grasses from seeding (del Hoyo *et al.* 1996). The NZDOC has controlled red deer through an intensive hunting program in the Murchison Mountains since the 1960s, and now the tussock grasses are close to their original condition (BirdLife International 2005).

Predation by introduced stoats (*Mustela erminea*) is believed to be a current risk to the species (Bunin and Jamieson 1995; Bunin and Jamieson 1996; Crouchley 1994). The NZDOC is running a trial stoat control program in a portion of the Takahe Special Area to measure the effect on Takahe survival and productivity. Initial assessment indicates a positive influence (NZDOC 2007). Other potential competitors or predators include the introduced brush-tailed possum (*Trichosurus vulpecula*) and the threatened weka (*Gallirallus australis*), a flightless woodhen endemic to New Zealand (BirdLife International 2008). In addition, severe weather is a natural limiting factor to this species (Bunin and Jamieson 1995). Weather patterns in the Murchison Mountains vary from year to year. High chick and adult mortality may occur during extraordinarily severe winters, and poor breeding may result from severe stormy weather during spring breeding season (Crouchley 1994). Research confirms that severity of winter conditions adversely affects survivorship of Takahe in the wild, particularly of young birds (Maxwell and Jamieson 1997).

Since 1983, the NZDOC has been involved in managing a captive-breeding and release program to boost Takahe recovery. Excess eggs from wild nests are managed to produce birds suitable for releasing back into the wild population in the Murchison Mountains. Some of these captive-reared birds have also been used to establish four predator-free offshore island reserves. Since 1984, these birds have increased the total population on islands to about 60 birds (NZDOC 2009a). Captive-breeding efforts have increased the rate of survival of chicks reaching 1 year of age from 50 to 90 percent (NZDOC 1997). However, Takahe that have been translocated to the islands have higher rates of egg infertility and low hatching success when they breed, contributing to the slow increase in the islands' populations. Researchers postulated that the difference in vegetation between the native mainland grassland tussocks and that found on the islands might be affecting reproductive success. After testing nutrients from all available food sources, they concluded that there was no effect, and advised that a supplementary feeding program for the birds was not necessary or recommended (Jamieson 2003). Further research on Takahe established on Tiritiri Matangi Island estimated that the island can support up to 8 breeding pairs, but suggested that the ability of the island to support Takahe is likely to decrease as the grass/shrub ecosystem reverts to forest. The researchers concluded that, although the four island populations fulfilled their role as an insurance against extinction on the mainland at the time of the study, given impending habitat changes on the islands, it is unclear whether these island populations will continue to be viable in the future without an active management plan (Baber and Craig 2003a; Baber and Craig 2003b). Maxwell and Jamieson (1997) studied survival and recruitment of captive-reared and wild-reared Takahe on Fiordland. They concluded that captive rearing of

Takahe for release into the wild increases recruitment of juveniles into the population.

There is growing evidence that inbreeding can negatively affect small, isolated populations. Jamieson *et al.* (2006) suggested that limiting the potential effects of inbreeding and loss of genetic variation should be integral to any management plan for a small, isolated, highly inbred island species, such as the Takahe. Failure to address these concerns may result in reduced fitness potential and much higher susceptibility to biotic and abiotic disturbances in the short term and an inability to adapt to environmental change in the long term.

The Takahe does not represent a monotypic genus. The current wild population is small, and the species' distribution is extremely limited. It faces threats that are moderate in magnitude because the NZDOC has taken measures to aid the recovery of the species. The NZDOC has implemented a successful deer control program and implemented a captive-breeding and release program to augment the mainland population and establish four offshore island reserves. Predation by introduced species and reduced survivorship resulting from severe winters, combined with the Takahe's small population size and naturally low reproductive rate are threats to this species that are imminent and ongoing. Therefore, we have assigned this species a priority rank of 8.

Chatham oystercatcher (*Haematopus* chathamensis)

Chatham oystercatcher is the rarest oystercatcher species in the world (DOC 2001). It is endemic to the Chatham Island group (Marchant and Higgins 1993; Schmechel and Paterson 2005), which lies 534 mi (860 km) east of mainland New Zealand. The Chatham Island group comprises two large, inhabited islands (Chatham and Pitt) and numerous smaller islands. Two of the smaller islands (Rangatira and Mangere) are nature reserves, which provide important habitat for the Chatham oystercatcher. The Chatham Island group has a biota quite different from the mainland. The remote marine setting, distinct climate, and physical makeup have led to a high degree of endemism (Aikman *et al.* 2001). The southern part of the Chatham oystercatcher range is dominated by rocky habitats with extensive rocky platforms. The northern part of the range is a mix of sandy beach and rock platforms (Aikman *et al.* 2001).

Pairs of Chatham oystercatchers occupy their territory all year, while juveniles and subadults form small flocks or occur alone on a vacant section of the coast. The nest is a scrape usually on a sandy beach just above spring-tide and storm surge level or among rocks above the shoreline and are often under the cover of small bushes or rock overhangs (Heather and Robertson 1997).

Chatham oystercatcher is classified as 'Endangered' on the IUCN Red List because it has an extremely small population (BirdLife International 2009). It is listed as 'critically-endangered' by the New Zealand Department of Conservation (DOC 2008a), making it a high priority for conservation management (DOC 2007). In the early 1970s the Chatham oystercatcher population was approximately 50 birds (del Hoyo 1996). In 1988, based on past productivity information, it was feared that the species was at risk of extinction within 50 to 70 years (Davis 1988 as cited in Schmechel and Paterson 2005). However, the population increased by 30 percent overall between 1987 and 1999, except trends varied in different areas of the Chatham Islands (Moore *et al.* 2001). Surveys taken over a 6–year period recorded an increase in Chatham oystercatchers from approximately 100 individuals in 1998 (Marchant and Higgins 1993) to 320 individuals (including 88 breeding pairs) in 2005 (Moore 2005a). Although the overall population has significantly increased over the last 20 years, the population on South East Island (Rangatira), an island free of mammalian predators, has gradually declined since the 1970s. The reason for the decline is unknown (Schmechel and O'Connor 1999).

Predation, nest disturbance, invasive plants, and spring tides and storm surges are factors threatening the Chatham oystercatcher population (DOC 2001, Moore 2005). Feral cats (*Felis catus*) have become established on two of the Chatham Islands after being introduced as pets. Severe reduction in Chatham oystercatcher numbers is attributed in part by heavy cat predation. Another predator, the weka (*Gallirallus australis*), an endemic New Zealand rail, introduced to the Chatham Islands in the early 1900s, is not considered as much a threat to the Chatham oystercatcher as feral cats because they only prey on eggs when adult oystercatchers are not present. Other potential predators include the Norway rat (*Rattus norvegicus*), the ship rat (*R. rattus*), Australian brush-tailed possum (*Trichsurus vulpeculs*), and hedgehog (*Erinaceus europaeus*). However, these species are not considered a serious threat because of the large size of the oystercatcher eggs. Native predators include the red-billed gull (*Larus scopulinus*), and southern black-backed gull (*L. dominicanus*) (Moore 2005b). Nest destruction and disturbance is caused by people fishing, walking, or driving, and by livestock. When a nesting area is disturbed, adult Chatham oystercatchers often abandon their eggs for up to an hour or more, leaving the eggs vulnerable to opportunistic predators. Eggs are also trampled by livestock (Moore 2005a).

Another obstacle to Chatham oystercatcher populations is marram grass (*Ammophila arenaria*), introduced to New Zealand from Europe to protect farmland from sand encroachment. It has spread to the Chatham Islands where it binds beach sands forming tall dunes with steep fronts. In many marram-infested areas, the strip between the high tide mark and the foredunes narrows as the marram advances seaward. Consequently, the Chatham oystercatcher is forced to nest closer to shore where nests are vulnerable to tides and storm surges. The dense marram grass is unsuitable for nesting (Moore and Davis 2005). In a study done by Moore and Williams (2005), the authors found that, along the narrow shoreline, many eggs were washed away and the adults would not successfully breed without human intervention. Oystercatcher eggs could easily be moved away from the shoreline by fieldworkers and placed in hand-dug scrapes surrounded by tidal debris and kelp. Video cameras placed to observe nests indicated that feral cats are a major nest predator. After three summers of video recording, 13 of the 19 nests recorded were predated by cats. When a cat was present eggs usually lasted only one or two days. Of the remaining six nest failures, weka were responsible for three; red-billed gull, one; sheep-trampling, one; and sea wash, one (Moore 2005b).

The birds of the Chatham Island group are protected. The NZDOC focused conservation efforts in the early 1990s on predator trapping and fencing to limit domestic stock access to nesting areas. In 2001, the NZDOC published the Chatham Island oystercatcher recovery plan 2001–2011 (DOC 2001), which outlines actions such as translocation of nests away from the high tide mark and nest manipulation to further the conservation of this species. These actions may have helped to increase hatching success (DOC 2008b). Artificial incubation has been tried but did not increase productivity. Additionally, livestock have been

fenced and signs erected to reduce human and dog disturbance. Marram grass control has been successful in some areas. Intensive predator control combined with nest manipulation has resulted in a high number of fledglings (BirdLife International 2009).

The Chatham oystercatcher does not represent a monotypic genus. The current population has 311 individuals, and the species only occurs on the small Chatham Island group. It faces threats that are moderate in magnitude because the NZDOC has taken measures to aid the recovery of the species. Threats are ongoing and, therefore, imminent. We have assigned this species a priority rank of 8.

Orange-fronted parakeet (*Cyanoramphus* malherbi)

The orange-fronted parakeet, also known as Malherbe's parakeet, was treated as an individual species until it was proposed to be a color morph of the yellow-crowned parakeet, *C. auriceps*, in 1974 (Holyoak 1974). Further taxonomic analysis suggested that it should once again be considered a distinct species (Kearvell *et al.* 2003; ITIS 2008).

At one time, the orange-fronted parakeet was scattered throughout most of New Zealand, although the two records from the North Island are thought to be dubious (Harrison 1970). This species has never been common (Mills and Williams 1979). During the nineteenth century, the species' distribution included South Island, Stewart Island, and a few other offshore islands of New Zealand (NZDOC 2009a). Currently, there are four known remaining populations, all located within an 18.6-mi (30-km) radius in beech (*Nothofagus* spp.) forests of upland valleys within Arthur's Pass National Park and Lake Sumner Forest Park in Canterbury, South Island (NZDOC 2009a), and two populations established on Chalky and Maud Islands (Elliott and Suggate 2007). This species inhabits southern beech forests, with a preference for locales bordering stands of mountain beech (*N. solandri*) (del Hoyo 1997; Snyder *et al.* 2000; Kearvell 2002). It is reliant on old mature beech trees with natural cavities or hollows for nesting. Breeding is linked with the irregular seed production by *Nothofagus*; in mast years with a high abundance of seeds, parakeet numbers can increase substantially. In addition to eating seeds, the orange-fronted parakeet feeds on fruits, leaves, flowers, buds, and invertebrates (BirdLife International 2009).

The orange-fronted parakeet has an extremely small population and limited range. The species is listed as ''Critically Endangered'' on the IUCN Red List, ''because it underwent a population crash following rat invasions in 1990–2000, and it now has a very small and severely fragmented population that has declined during the past ten years'' (BirdLife International 2009). It is listed in Appendix II of the Convention on International Trade in Endangered Species (CITES) as part of a general listing for all parrots (CITES 2008). The NZDOC (2009b) considers the orange-fronted parakeet, or käkäriki, to be the rarest parakeet in New Zealand. Because it is classified as ''Nationally Critical'' with a high risk of extinction, the NZDOC has been working intensively with the species to ensure its survival. The population is estimated at 100 to 200 individuals in the wild and declining (NZDOC 2009a).

There are several reasons for the species' continuing decline; one of the most prominent risks to the species is believed to be predation by introduced species, such as stoats (*Mustela erminea*) and rats (*Rattus* spp.) (BirdLife International 2009). Large numbers of stoats and rats in beech forests cause large losses of parakeets. Stoats and rats are excellent hunters on the ground and in trees. When they exploit parakeet nests and roosts in tree holes, they particularly impact females, chicks, and eggs (NZDOC 2009c). The NZDOC introduced ''Operation ARK,'' an initiative to respond to predator problems in beech forests to prevent species' extinctions, including orange-fronted parakeets. Predators are methodically controlled with traps, toxins in bait stations, bait bags, and aerial spraying, when necessary (NZDOC 2009d). Despite these controls, predation by introduced species is still a threat because they have not been eradicated from this species' range.

Habitat loss and degradation are also considered threats to the orange-fronted parakeet (BirdLife International 2007b). Large areas of native forest have been felled or burnt, decreasing the habitat available for parakeets (NZDOC 2009c). Silviculture of beech forests aims to harvest trees at an age when few will become mature enough to develop suitable cavities for orange-fronted parakeets (Kearvell 2002). The habitat is also degraded by brush-tailed possum (*Trichosurus vulpecula*), cattle, and deer browsing on plants, which changes the forest structure (NZDOC 2009c). This is a problem for the orange-fronted parakeet, which uses the ground and low-growing shrubs while feeding (Kearvell *et al.* 2002).

Snyder *et al.* (2000) reported that hybridization with yellow-crowned parakeets had been observed at Lake Sumner. Other risks include increased competition between the orange-fronted parakeet and the yellow-crowned parakeet for nest sites and food in a habitat substantially modified by humans, competition with introduced finch species, and competition with introduced wasps (*Vespula vulgaris* and *V. germanica*) for invertebrates as a dietary source (Kearvell *et al.* 2002).

The NZDOC closely monitors all known populations of the orange-fronted parakeet. Nest searches are conducted, nest holes are inspected, and surveys are carried out in other areas to look for evidence of other populations. In fact, the surveys successfully located another orange-fronted parakeet population in May 2003 (NZDOC 2009d). A new population was established in 2006 on the predator-free Chalky Island. Eggs were removed from nests in the wild, and foster parakeet parents incubated the eggs and cared for the hatchlings until they fledged and were transferred to the island. Monitoring later in the year (2006) indicated that the birds had successfully nested and reared chicks. Additional birds will be added to the Chalky Island population, in an effort to increase the genetic diversity of the population (NZDOC 2009d). A second self-sustaining population has been established on Maud Island (NZDOC 2008).

The orange-fronted parakeet does not represent a monotypic genus. The current wild population ranges between 100 and 200 individuals, and the species' distribution is extremely limited. It faces threats that are moderate in magnitude because the NZDOC has taken important measures to aid in the recovery of the species. The NZDOC implemented a successful captive-breeding program for the orange-fronted parakeet. Using captive-bred birds from the program, NZDOC established two self-sustaining populations of the orange-fronted parakeet on predator-free islands. The NZDOC monitors wild nest sites and is constantly looking for new nests and new populations, as evidenced by the 2003 discovery of a new population. Finally, the NZDOC determined that the species' largest threat is predation and initiated a successful program to remove predators. The threats of competition for food and highly altered habitat are ongoing and, therefore, imminent. Thus, we have assigned this species a priority rank of 8.

Uvea parakeet (*Eunymphicus* uvaeensis)

The Uvea parakeet, previously known as *Eunymphicus cornutus*, is currently

treated as two species: *E. cornutus* and *E. uvaeensis* (Boon *et al.* 2008; BirdLife International 2007). The Uvea parakeet is found only on the small island of Uvea in the Loyalty Archipelago, New Caledonia (Territory of France). The island is only 42 mi^2 (110 km^2) (Juniper and Parr 1998). The Uvea parakeet is found primarily in old-growth forests, notably, those dominated by the pine tree *Agathis australis* (del Hoyo *et al.* 1997). Most birds occur in about 7.7 mi^2 (20 km^2) of forest in the north, although some individuals are found in strips of forest on the northwest isthmus and in the southern part of the island, with a total area of potential habitat of approximately 25.5 mi^2 (66 km^2) (BirdLife International 2009, CITES 2000b). Uvea parakeets feed on the berries of vines and the flowers and seeds of native trees and shrubs (del Hoyo *et al.* 1997). They also feed on limited crops in adjacent cultivated land. The greatest number of birds occurs close to gardens with papayas (BirdLife International 2009). Uvea parakeet nest in cavities of native trees, and have a clutch size of 2 to 3 eggs with some double clutches (Robinet and Salas 1999).

Early population estimates of Uvea parakeet were alarmingly low—70 to 90 individuals (Hahn 1993). Surveys in 1993 by Robinet *et al.* (1996) yielded estimates of approximately 600 individuals. In 1999, it was believed that 742 individuals lived in northern Uvea, and 82 in the south (Primot 1999 as cited in BirdLife International 2009). Six surveys conducted between 1993 and 2007 indicated a steady increase in population numbers in both areas (Verfaille *in litt.* 2007 as cited in BirdLife International 2009). Even though populations are currently increasing, any reduction in conservation efforts or introduction of invasive species (particularly the ship rat, *Rattus rattus* and the Norway rat, *R. norvegicus*) could lead to rapid declines (Robinet *et al.* 1998, BirdLife International 2009). Although the Uvea parakeet has a number of predators, the absence of the ship rat and Norwegian rat on Uvea is a major factor contributing to its survival. Norway rats are prolific invaders of islands and can rapidly establish large populations (Russell 2007). Additionally, impacts of the rat appear to be more severe on smaller islands (Martin *et al.* 2000). In one study, it was determined that the low rate of predation on nest sites of Uvea parakeet was related to the absence of ship rat and Norwegian rat. However, these rat species are present on the other Loyalty Islands and on Grande Terre (Robinet and Salas 1996). Experimental egg predation rates were four times higher on Lifu where *R. rattus* occurs (Robinet *et al.* 1998).

Preventive measures have been taken at the port and airport to prevent introduction of invasive rats and should continue to be reinforced (Robinet and Salas 1996), but there is concern that these rats may be introduced in the future (CITES 2000b). However, as of 2007, the island remained rat free (Verfaille *in litt.* 2007 as cited in BirdLife International 2009). Introductions of Uvea parakeets to the adjacent island of Lifou (to establish a second population) in 1925 and 1963 failed (Robinet *et al.* 1995 as cited in BirdLife International 2009), possibly because of the presence of ship rats and Norwegian rats (Robinet *in litt.* 1997 as cited in Snyder *et al.* 2000). Robinet *et al.* (1998) studied the impact of rats in Uvea and Lifou on the Uvea parakeet and concluded that Lifou is not a suitable place for translocating Uvea parakeet unless active habitat management is carried out to protect it from invasive rats. They also suggested it would be valuable to apply low-intensity rat control of the Polynesian rat (*R. exulans*) in Uvea immediately before the parakeet breeding season.

Uvea parakeet is threatened by habitat loss, capture of juveniles for the pet trade, and predation (BirdLife International 2009). The forest habitat of the Uvea parakeet is threatened by clearance for agriculture and logging. In 30 years, approximately 30 to 50 percent of primary forest has been removed (Robinet *et al.* 1996). The island has a young and increasing human population of almost 4,000 inhabitants. The increase in population will most probably lead to more destruction of forest for housing, cultivated fields, and plantations, especially coconut palms, the island's main source of income (CITES 2000a). The species is also threatened by the illegal pet trade, mainly for the domestic market (BirdLife International 2007). Nesting holes are cut open to extract nestlings, which renders the holes unsuitable for future nesting. The lack of nesting sites is believed to be a limiting factor for the species (BirdLife International 2009). Also, Robinet *et al.* (1996) suggested that the impact of capture of juveniles on the viability of populations is not obvious with long-lived species that are capable of re-nesting, such as Uvea parakeet. The current capture of 30 to 50 young Uvea parakeets each year for the pet trade may be unsustainable. In a study of the reproductive biology of Uvea parakeet, Robinet and Salas (1999) found that the main causes of chick death were starvation of the third chick within the first week after hatching, raptor (presumably the native brown goshawk (*Accipiter fasciatus*) predation of fledglings, and human harvest for the pet trade.

Additionally, the invasion of bees into Uvea in 1996 has resulted in competition with Uvea parakeet over nesting sites. This has resulted in a reduction of known Uvea parakeet nesting sites by 10 percent between 2000 and 2002 (Barré *in litt.* 2003 as cited in BirdLife International 2009). Studies by Robinet *et al.* (2003) indicate the density of breeding Uvea parakeet is positively related to the distribution of suitable trees. Consequently, the number of suitable trees may limit the number of breeding pairs. In two cases, Robinet *et al.* (2003) observed successful nesting after human restoration of former nest sites that had been destroyed by illegal collectors. This further indicates the deleterious effect of nest-site limitation. Additionally, forest fragmentation as a result of increased numbers of coconut plantations acts as a barrier to dispersal. This could possibly explain the lack of recolonization in southern Uvea (Robinet *et al.* 2003). Uvea parakeet was uplisted from Appendix II to Appendix I of CITES in July 2000 because of its small population size, restricted area of distribution, loss of suitable habitat, and the illegal pet trade (CITES 2000b).

A recovery plan for the Uvea parakeet was prepared for the period 1997–2002, which included strong local participation in population and habitat monitoring (Robinet *in litt.* 1997 as cited in Snyder *et al.* 2000). The species has recently increased in popularity and is celebrated as an island emblem (Robinet and Salas 1997, Primot *in litt.* 1999 as cited in BirdLife International 2009). Conservation actions, including *in situ* management (habitat protection and restoration), recovery efforts (providing nest boxes and food), and public education on the protection of Uvea parakeet and its habitat are ongoing (Robinet *et al.* 1996). Increased awareness of the plight of the Uvea parakeet and improvements in law enforcement capability are helping to address illegal trade of the species. A captive-breeding program has been discussed but not begun (BirdLife International 2009). A translocation program to restock this species into the southern portion of Uvea was cancelled under a new recovery plan (2003) because the population is considered viable and is expected to increase naturally (Barré *in litt.* 2003, Anon 2004 as cited in BirdLife International 2009). Measures are now being taken to control

predators and prevent further colonization by rats (BirdLife International 2009). Current Uvea parakeet numbers are increasing, but any relaxation of conservation efforts or introduction of nonnative rats or other predators could lead to a rapid decline (BirdLife International 2009). The Société Calédonienne d'Ornithologie (SCO) received funding to test artificial nests, and BirdLife Suisse (ASPO) is continuing to destroy invasive bees nests and is placing hives in forested areas to attract bees for removal (Verfaille *in litt.* 2007 as cited in BirdLife International 2009).

The Uvea parakeet does not represent a monotypic genus. The Uvea parakeet faces threats that are moderate because important management efforts have been put in place to aid in the recovery of the species. However, all of these efforts must continue to function, because this species is an island endemic with restricted habitat in one location. Threats to the species are imminent because illegal trade still occurs and the removal of 30 to 50 percent of the old-growth forest, which the birds depend on for nesting holes, negatively impacts the reproductive requirements of the species. We have assigned this species a priority rank of 8.

Blue-throated macaw (*Ara glaucogularis*)

The blue-throated macaw is endemic to forest islands in the seasonally flooded Beni Lowlands (Lanos de Mojos) of Central Bolivia (Jordan and Munn 1993; Yamashita and de Barros 1997). It inhabits a mosaic of seasonally inundated savanna, palm groves, forest islands, and humid lowlands. This species is found in areas where palm-fruit food is available, especially motacu palm (*Attalea phalerata*) (Jordan and Munn 1993; Yamashita and de Barros 1997), and it depends on motacu palms for nesting (Birdlife International 2008d). It inhabits elevations between 656 and 984 ft (200 and 300 m) (BirdLife International 2008c; Brace *et al.* 1995; Yamashita and de Barros 1997). These macaws are not found to congregate in large flocks, but are seen most commonly traveling in pairs, and on rare occasions may be found in small flocks (Collar *et al.* 1992). The blue-throated macaw nests between November and March in large tree cavities where one to two young are raised (BirdLife International 2000).

The taxonomic status of this species was long disputed, primarily because the species was unknown in the wild to biologists until 1992. Previously it was considered an aberrant form of the blue-and-yellow macaw (*A. ararauna*), but the two species are now known to occur sympatrically without interbreeding (del Hoyo *et al.* 1997). BirdLife International (2008b) estimated the total wild population to be between 250 and 300 and noted the population has some fragmentation. Surveys indicate the population may now be slowly increasing following dramatic declines in the 1970s and 1980s. Biologists surveying for this species in 2004 found more birds than in previous surveys by searching specific habitat types – palm groves and forested islands – and predicted more birds would be found by concentrating searches in these areas (Herrera *et al.* 2007). Through a population viability analysis (PVA) of this species, Strem (2008) found that, while there was a low probability of extinction over the next 50 years, the small population size, as well as low population growth rates, makes this species very vulnerable to any threat. The low probability of extinction is not unexpected given that the blue-throated macaw is a long-lived species and the 50–year simulation timeframe is relatively short for such species. However, Strem (2008) found that impacts such as habitat destruction and harvesting had significant negative effects on the probabilities of extinction (increasing the probability of extinction), which reemphasizes the importance of addressing these threats for this species.

The blue-throated macaw was historically at risk from trapping for the national and international cage-bird trade, and some illegal trade may still be occurring. Between the early 1980s and early 1990s, an estimated 1,200 or more wild-caught individuals were exported from Bolivia, and many are now in captivity in the European Union and in North America (BirdLife International 2008b, World Parrot Trust 2003). In 1984, Bolivia outlawed the export of live parrots (Brace *et al.* 1995). However, in 1993 (Jordan and Munn 1993) investigators reported that an Argentinean bird dealer was offering illegal Bolivian dealers a high price for blue-throated macaws. Armonia Association (BirdLife in Bolivia) monitored the wild birds that passed through a pet market in Santa Cruz from August 2004 to July 2005. Although nearly 7,300 parrots were recorded in trade, the blue-throated macaw was absent in the market during the monitoring period, which may point to the effectiveness of the ongoing conservation programs in Bolivia (BirdLife International 2007). There are a number of blue-throated macaws in captivity, with over 1,000 registered in the North American studbook. Because these birds are not too difficult to breed, the supply of captive-bred birds has increased (Waugh 2007), helping to alleviate pressure on illegal collecting of wild birds, but not completely eliminating illegal collection.

The blue-throated macaw is also at risk from habitat loss and possible competition from other birds, such as other macaws, toucans, and large woodpeckers (BirdLife International 2008b; World Parrot Trust 2008). Until recently, all known sites of the blue-throated macaw were on private cattle ranches, where local ranchers typically burn the pasture annually (del Hoyo 1997). This results in almost no recruitment of palm trees, which are central to the ecological needs of the blue-throated macaw (Yamashita and de Barros (1977)). In addition, in Beni many palms are cut down by the local people for firewood (Brace *et al.* 1995). Thus, although the palm groves are more than 500 years old, Yamashita and de Barros (1977) concluded that the palm population structure suggests long-term decline.

Despite some recent surveys that indicate the population may be slowly increasing, this species remains categorized as ''Critically Endangered'' on the 2009 IUCN Red List, ''because its population is extremely small and each isolated subpopulation is probably tiny and declining as a result of illegal trade'' (BirdLife International 2009). It is listed in Appendix I of CITES (CITES 2006) and is legally protected in Bolivia (Juniper and Parr 1998). The Eco Bolivia Foundation patrols existing macaw habitat by foot and motorbike, and the Armonia Association is searching the Beni lowlands for more populations (Snyder *et al.* 2000). Additionally, the Armonia Association is building an awareness campaign aimed at the cattlemen's association to ensure that the protection and conservation of these birds is at a local level (e.g., protection of macaws from trappers and the sensible management of key habitats, such as palm groves and forest islands, on their property) (BirdLife International 2008a; Llampa 2007; Snyder *et al.* 2000). In October 2008, Armonia Association announced it had purchased a large 8,785-acre (3,555-hectare) ranch for the purpose of establishing a protected area for the blue-throated macaw (BirdLife International 2008d). The new Barba Azul Nature Reserve protects excellent savanna habitat and 20 blue-throated macaws are known to nest here. The organization has also been experimenting with artificial nest boxes;

the macaws have been using these, and this promises to be a way to boost breeding success while habitat restoration is under way in the new reserve.

The blue-throated macaw does not represent a monotypic genus. It faces threats that are moderate in magnitude because wild birds are no longer taken for the legal wild-bird trade as a result of the species' CITES listing, and it is also legally protected in Bolivia. Wildlife managers in Bolivia are actively protecting the species and searching for additional populations, and the species is now protected in one nature reserve. Threats to the species are ongoing and, therefore, imminent because hunters still trap the birds for the illegal bird trade and annual burning on private ranches continues. Therefore, we have assigned this species a priority rank of 8.

Helmeted woodpecker (*Dryocopus* galeatus)

The helmeted woodpecker is endemic to the southern Atlantic forest region of southeastern Brazil, eastern Paraguay, and northeastern Argentina (BirdLife International 2009). It is found in tall lowland Atlantic and primary and mature montane forest and has been recorded in degraded and small forest patches. However, it is usually found near large forest tracts (Chebez 1995b as cited in BirdLife International 2009; Clay *in litt.* 2000 as cited in BirdLife International 2009). Helmeted woodpecker forage primarily in the middle story of the forest interior (Brooks *et al.* 1993 cited in BirdLife International 2009; Clay *in litt.* 2000 as cited in BirdLife International 2009).

Recent field work on the helmeted woodpecker revealed that the species is less rare than once thought (BirdLife International 2009), although its range is highly restricted (Mattsson *et al.* 2008). It is listed as Vulnerable by the IUCN (IUCN 2008). The current population is estimated at between 10,000 and 19,999 individuals and decreasing. Because the helmeted woodpecker is difficult to locate except when vocalizing and is silent most of the year, its numbers are probably underestimated. The overall status of the helmeted woodpecker is unclear. However, it is not common anywhere it is known to exist (BirdLife International 2009), and in one of the few remaining large fragments of Atlantic forest in Paraguay it is considered to be near threatened (Alberto *et al.* 2007). The greatest threat to the helmeted woodpecker is widespread deforestation (BirdLife International 2009; Cockle 2008 as cited in BirdLife International 2009). Numerous sightings since the mid-1980s include one pair in the Brazilian State of Santa Catarina in 1998, where the species had not been seen since 1946 (del Hoyo *et al.* 2002). The helmeted woodpecker is protected by Brazilian law, and populations occur in numerous protected areas throughout its range (Chebez *et al.* 1998 as cited in BirdLife International 2009; Lowen *et al.* 1996 as cited in BirdLife International 2009; Wege and Long 1995 as cited in BirdLife International 2009). Further studies are needed to clarify species distribution and status (del Hoyo *et al.* 2002).

The helmeted woodpecker does not represent a monotypic genus. The magnitude of threat to the species is moderate because the population is much larger than previously thought and imminent because the forest habitat upon which the species is dependent is constantly being altered by humans. We, therefore, have assigned this species a priority rank of 8.

Okinawa woodpecker (*Dendrocopos* noguchii, previously known as *Sapheopipo noguchii*)

The Okinawa woodpecker lives in the northern hills of Okinawa Island, Japan. Okinawa is the largest island of the Ryukyus Islands, a small island chain located between Japan and Taiwan (Brazil, 1991; Stattersfield *et al.* 1998; Winkler *et al.* 2005). This species is confined to Kunigami-gun, or Yambaru, with its main breeding areas located along the mountain ridges between Mt. Nishime-take and Mt. Iyu-take, although it also nests in well-forested coastal areas (Research Center, Wild Bird Society of Japan 1993, as cited in BirdLife International 2001). It prefers undisturbed, mature, subtropical evergreen broadleaf forests, with tall trees greater than 7.9 in (20 cm) in diameter (del Hoyo 2002; Short 1982). Trees of this size are generally more than 30 years old and are confined to hilltops (Brazil 1991). Places with conifers appear to be avoided (Short 1973; Winkler *et al.* 1995). The Okinawa woodpecker has been sighted just south of Tanodake in an area of entirely secondary forest that was too immature for use by woodpeckers to excavate nest cavities, but Brazil (1991) thought this may have involved birds displaced by the clearing of mature forests. The Okinawa woodpecker feeds on large arthropods, notably beetle larvae, spiders, moths, and centipedes, fruit, berries, seeds, acorns, and other nuts (del Hoyo 2002; Short 1982; Winkler *et al.* 2005). They forage in old-growth forests with large, often moribund trees, accumulated fallen trees, rotting stumps, debris, and undergrowth (Brazil 1991; Short 1973). This woodpecker nests in holes excavated in large old trees, often a hollow in *Castanopsis cuspidate* and *Machilus thunbergii* trees (del Hoyo 2002; Ogasawara and Ikehara 1977; Short 1982).

Until recently the Okinawa woodpecker was considered to belong to the monotypic genus *Sapheopipo*. This view was based on similarities in color patterns, external morphology, and foraging behavior. Winkler *et al.* (2005) analyzed partial nucleotide sequences of mitochondrial genes and concluded that this woodpecker belongs in the genus *Dendrocopos*. Given the other species in this genus, scientists no longer consider the Okinawa woodpecker to belong to a monotypic genus.

The Okinawa woodpecker is considered one of the world's rarest extant woodpecker species (Winkler *et al.* 2005). The elimination of forests by logging and the cutting and gathering of wood for firewood are the main causes of its small and lessening numbers (Short 1982), but the greatest danger to this woodpecker is the fragmentation of its population into scattered tiny colonies and isolated pairs (Short 1973). The species is categorized on the IUCN Red List as ''Critically Endangered,'' because it comprises a single diminutive, declining population, which is put at risk by the continued loss of old-growth and mature forest to logging, dam construction, agricultural clearing, and golf course construction. Its limited range and tiny population make it vulnerable to extinction from disease and natural disasters such as typhoons (BirdLife International 2008). Feral dogs and cats and the introduced Javan mongoose (*Herpestes javanicus*) and weasel (*Mustela itatsi*) are possible predators of the woodpecker. Additionally, feral pigs damage potential ground-foraging sites (BirdLife International 2003). During the 1930s, the Okinawa woodpecker was considered nearly extinct. By the early 1990s, the breeding population was estimated to be about 75 birds (BirdLife International 2008a). The current population estimate ranges between 146 and 584 individuals, with a projected future 10–year decline of 30 to 49 percent (BirdLife International 2008b). The species is legally protected in Japan and occurs in small protected areas on Mt. Ibu and Mt. Nishime (BirdLife International 2008a). The Yambaru, a forest area in the Okinawa Prefecture, was proposed to be designated as a national park in 1996, and conservation organizations have purchased sites where the woodpecker occurs to establish private wildlife preserves (BirdLife International 2008; del Hoyo *et*

al. 2002). However, information from the Japanese Ministry of Environment shows that the national park has not been established (Japanese Ministry of Environment 2009), and conservationists recommend that a major protected area be created to protect all the area's remaining natural forest (BirdLife International 2003).

The Okinawa woodpecker faces threats that are moderate in magnitude because the species is legally protected in Japan and its range occurs in several protected areas. However, the threats to the species are imminent because the old-growth habitat, upon which the species is dependent, continues to be removed, and preferable habitat continues to be altered for agriculture and golf courses. Therefore, we have assigned this species a priority rank of 8.

Yellow-browed toucanet (*Aulacorhynchus* huallagae)

The yellow-browed toucanet is known from only two localities in north-central Peru—La Libertad, where it is uncommon, and Rio Abiseo National Park, San Martin, where it is very rare (BirdLife International 2009; del Hoyo *et al.* 2002; Wege and Long 1995). Its estimated range is only 174 mi^2 (450 km^2) (BirdLife International 2009). There have been recent reports of yellow-browed toucanet from Leymebambe (T. Mark *in litt.* 2003, as cited in BirdLife International 2009). It inhabits a narrow altitudinal range between 6,970 and 8,232 ft (2,125 and 2,510 m), preferring the canopy of humid, epiphyte-laden montane cloud forests, particularly areas that support *Clusia* trees (del Hoyo *et al.* 2002; Fjeldså and Krabbe 1990; Schulenberg and Parker 1997). This narrow distributional band may be related to the occurrence of the larger grey-breasted mountain toucan (*Andigena hypoglauca*) above 7,544 ft (2,300 m) and to the occurrence of the emerald toucanet (*Aulacorhynchus prasinus*) below 6,888 ft (2,100 m) (Schulenberg and Parker 1997). The restricted range of yellow-browed toucanet remains unexplained, and recent information indicates that both of the suggested competitors have wider altitudinal ranges that completely encompass that of yellow-browed toucanet (Clements and Shany 2001, as cited in BirdLife International 2008; Collar *et al.* 1992; del Hoyo *et al.* 2002; J. Hornbuckle *in litt.* 1999, as cited in BirdLife International 2009). The yellow-browed toucanet does not appear to occupy all potentially suitable forest available within its range (Schulenberg and Parker 1997).

Deforestation has been widespread in this region, but has largely occurred at lower elevations than habitat occupied by the yellow-browed toucanet (BirdLife International 2009; Barnes *et al.* 1995). However, coca growers have taken over forests within its altitudinal range, probably resulting in some reductions in this species' range and population (BirdLife International 2009; Plenge *in litt.* 1993, as cited in BirdLife International 2009). Nevertheless, much forest remains, though forest at all elevations has likely been affected (Plenge *in litt.* 1993, as cited in BirdLife International 2009). Most of the area is only lightly settled by humans (Schulenberg and Parker 1997). However, the human population surrounding the Rio Abiseo Park was steadily increasing during the 15 years prior to 2002, primarily because of the advent of mining operations in the area (Obenson 2002).

The yellow-browed toucanet is listed as 'Endangered' on the IUCN Red List because of its very small range and extant population records from only two locations (BirdLife International 2009). The current population size is unknown, but the population trend is believed to be decreasing (BirdLife International 2009).

The yellow-browed toucanet does not represent a monotypic genus. The magnitude of threat to the species is moderate and nonimminent given that the majority of deforestation has not yet occurred at the elevations occupied by this species. Therefore, we have assigned this species a priority rank of 11.

Brasilia Tapaculo (*Scytalopus novacapitalis*)

The Brasilia tapaculo is a small bird found in swampy gallery forest, disturbed areas of thick streamside vegetation, and dense secondary growth of the bracken fern (*Pteridium aquilinum*), from Goiás, the Federal District, and Minas Gerais, Brazil (Negret and Cavalcanti 1985, as cited in Collar *et al.* 1992; Collar *et al.* 1992; BirdLife International 2008). The Brasilia Tapaculo will occasionally colonize disturbed areas near streams (BirdLife International 2003). This species has only been recorded locally within Formas in Goiás, around Brasília. Particular sites where the species has been located, at low densities, include Serra Negra (on the upper Dourados River) and the headwaters of the São Francisco, both in Minas Gerais; and Serra do Cipó and Caraça in the hills and tablelands of central Brazil (Collar *et al.* 1992).

Although the species was once considered rare (Sick and Texeira 1979, as cited in Collar *et al.* 1992), it is now found in reasonable numbers in certain areas of Brasilia (D. M. Teixeira, *in litt.* 1987, as cited in Collar *et al.* 1992). Silviera (1998) found this species to be very common in and around Serra da Canastra National Park in Minas Gerais. The population is estimated at more than 10,000 birds, with a decreasing population trend (BirdLife International 2008). The IUCN categorizes Brasilia tapaculo as ''Near Threatened'' (BirdLife International 2008). The species occupies a very limited range and is presumably losing habitat around Brasilia. Its distribution now appears larger than initially believed, and the swampy gallery forests where it is found are not conducive for forest clearing, leaving the species' habitat less vulnerable to this threat than previously thought. However, dam building for irrigation on rivers that normally flood gallery forests is an emerging threat (Antas 2007; D. M. Teixeira *in litt.* 1987, as cited in Collar *et al.* 1992). The majority of locations of this species lie within established reserves, and both fire risk and drainage impacts are reduced in these areas (Antas 2007). The Brasilia tapaculo is currently protected by Brazilian law (Bernardes *et al.* 1990, as cited in Collar *et al.* 1992), and it is found in six protected areas (Machado *et al.* 1998, as cited in BirdLife International 2008; Wege and Long 1995). However, annual burning of adjacent grasslands limits the extent and availability of suitable habitat, as does wetland drainage and the sequestration of water for irrigation (Machado *et al.* 1998, as cited in BirdLife International 2008).

The Brasilia tapaculo does not represent a monotypic genus. The magnitude of threat to the species is moderate because the population is much larger than previously believed and preferred habitat is swampy and difficult to clear. Threats are imminent, however, because habitat is being drained or dammed for agricultural irrigation, and grassland burning limits the extent of suitable habitat. Therefore, we have assigned this species a priority rank of 8.

Codfish Island fernbird (*Bowdleria* punctata wilsoni)

The Codfish Island fernbird is found only on Codfish Island—a Nature Reserve of 3,448 acres (ac) (1,396 hectares (ha))—located 1.8 mi (3 km) off the northwest coast of Stewart Island, New Zealand (IUCN 1979, McClelland 2007). There are five subspecies of *Bowdleria punctata*, each restricted to a

single island and its outlying islands. The North and South Islands' subspecies are widespread and locally common. The Stewart Island and the Snares' subspecies are moderately abundant (Heather and Robertson 1997). In 1966, the status of the Codfish Island subspecies (*B. punctata wilsoni*) was considered relatively safe (Blackburn 1967), but estimates dating from 1975 indicated a gradually declining population numbering approximately 100 individuals (Bell 1975 as cited in IUCN 1979). McClelland (2007) wrote that in the past the Codfish Island fernbird was restricted to low shrubland on the top of Codfish Island with a few individuals around the coastal shrubland; the birds are thought to have been eliminated from forest habitat by the Polynesian rat (*Rattus exulans*) (McClelland 2007). The IUCN (1979) concluded that the absence of the fernbird from areas of Codfish Island that it had formerly occupied in the mid-1970s evidenced a decline.

Fernbirds are sedentary and their flight is weak. They are secretive and reluctant to leave cover. They feed in low vegetation or on the ground, eating mainly caterpillars, spiders, grubs, beetles, flies, and moths (Heather and Robertson 1997).

Codfish Island's native vegetation has been modified by the introduced Australian brush-tailed possum (*Trichosurus vulpecula*). Codfish Island fernbird populations have also been reduced due to predation by weka (*Gallirallus australis scotti*) and Polynesian rats (Merton 1974, personal communication, as cited in IUCN 1979). Several conservation measures have been undertaken by the New Zealand DOC. The weka and possum were eradicated from Codfish Island in 1984 and 1987, respectively (McClelland 2007). The Polynesian rat was eradicated in 1997 (Conservation News 2002, McClelland 2007). The Codfish Island fernbird population has been rebounding strongly with the removal of invasive predator species. Additionally, it has successfully colonized the forest habitat, which greatly expanded its range. Although there is no accurate estimate on the current size of the Codfish Island fernbird population (estimates are based on incidental encounter rates in the various habitat types on the island), the current population is believed to be several hundred. Thus, McClelland (2007) concluded that is it likely that the population has peaked and is now stable.

To safeguard the Codfish Island fernbird, the New Zealand DOC established a second population on Putauhinu Island—a small 356-ac (144 ha), privately owned island located approximately 25 mi (40 km) south of Codfish Island. The Putauhinu population established rapidly, and McClelland (2007) reported that it is believed to be stable. While there are no accurate data on the population size or trends on Putauhinu, the numbers are estimated to be 200 to 300 birds spread over the island (McClelland 2007). Even with a second population, the fernbird remains vulnerable to naturally occurring storm events because of its restricted range and small population size.

The Codfish Island fernbird is a subspecies that is now facing threats that are low to moderate in magnitude because the removal of invasive predator species and the establishment of a second population have allowed for a strong rebound in the subspecies' population. Threats are nonimminent because the conservation measures to prevent the invasion of predatory invasive species have proven to be very successful. We have, therefore, assigned this subspecies a priority rank of 12.

Ghizo white-eye (*Zosterops* luteirostris)

The Ghizo white-eye is endemic to Ghizo, a very densely populated island in the Solomon Islands in the South Pacific (BirdLife International 2008). Birds are locally common in the remaining tall or old-growth forest, which is very fragmented and comprises less than 0.39 mi^2 (1 km^2). It is less common in scrub close to large trees and in plantations (Buckingham *et al.* 1995 and Gibbs 1996, as cited in BirdLife International 2008), and it is not known whether these two habitats can support sustainable breeding populations (Buckingham *et al.* 1995, as cited in BirdLife International 2008). The IUCN Red List classifies this species as ''Endangered,'' because of its very small population that is considered to be declining due to habitat loss. It further notes that the species would be classified as ''Critically Endangered'' if the species' range was judged to be severely fragmented (BirdLife International 2008). The population estimate for this species is 250 to 999 birds. Biologists recommended that systematic surveys be conducted for this species to verify its conservation status (Sherley 2001). While there are no data on population trends, the species is suspected to be declining due to habitat degradation (BirdLife International 2008). The very tall old-growth forest on Ghizo is still under some threat from clearance for local use as timber, firewood, and gardens, and the areas of other secondary growth, which are suboptimal habitats for this species, are under considerable threat from clearance for agricultural land (BirdLife International 2008).

The Ghizo white-eye does not represent a monotypic genus. It faces threats that are moderate in magnitude because forest clearing, while a concern, does not appear to be proceeding at a pace to rapidly denude the habitat. Threats are imminent because the old-growth forest which the species is dependent upon, is still being cleared for local use, and secondary growth is being converted for agricultural purposes. Therefore, we have assigned this species a priority rank of 8.

Black-backed tanager (*Tangara* peruviana)

The black-backed tanager is endemic to the coastal Atlantic forest region of southeastern Brazil, with records from Rio de Janeiro, Sao Paulo, Parana, Santa Catarina, Rio Grande do Sul, and Espirito Santo (Argel-de-Oliveira *in litt.* 2000, as cited in BirdLife International 2008). It is largely restricted to coastal sand-plain forest and littoral scrub, or restinga, and has also been located in secondary forests (BirdLife International 2008). The black-backed tanager is generally not considered rare within suitable habitat (BirdLife International 2008). It has a complex distribution with periodic local fluctuations in numbers owing to seasonal movements in response to the ripening of areoira *Schinus* fruit, at least in Rio de Janeiro and Sao Paulo (BirdLife International 2008). This species is more common in Sao Paulo during the winter and records from Espirito Santo are only from the winter season. Clarification of the species' seasonal movements will provide an improved understanding of the species' population status and distribution, but currently populations appear small and fragmented and are probably declining rapidly in response to extensive habitat loss (BirdLife International 2008). Population estimates range from 2,500 to 10,000 individuals (BirdLife International 2008), and it is considered ''Vulnerable'' by the IUCN (BirdLife International 2008). The species is negatively impacted by the rapid and widespread loss of habitat for beachfront development and occasionally appears in the illegal cage-bird trade (BirdLife International 2008). Only small portions of the tanager's range occur in six protected areas, none of which have effective protection (BirdLife International 2008).

The black-backed tanager does not represent a monotypic genus. The threat to the species is low to moderate in

magnitude due to the species' fairly large population size and range. The threat is, however, imminent because the species is put at risk by ongoing rapid and widespread loss of habitat due to beachfront development. Therefore, we have assigned this species a priority rank of 8.

Lord Howe pied currawong (*Strepera* graculina crissalis)

The Lord Howe pied currawong is a separate subspecies from the five mainland pied currawongs (*Strepera graculina spp.*). It is endemic to the Lord Howe Island, New South Wales, Australia. The Lord Howe pied currawong can be found anywhere on the 7.7-mi² (20-km²) island (Hutton 1991), as well as on offshore islands such as the Admiralty group (Garnett and Crowley 2000). The Lord Howe pied currawong breeds in rainforests and palm forests, particularly along streams. Its territories include sections of streams or gullies that are lined by tall timber (Garnett and Crowley 2000). The highest densities of Lord Howe pied currawong nests are located on the slopes of Mt. Gower and in the Erskine Valley, with smaller numbers on the lower land to the north (Knight 1987, as cited in Garnett and Crowley 2000). The nest is placed high in a tree and is made of a cup of sticks lined with grass and palm thatch (Department of Environment & Climate Change (DECC) 2005). Most of the island is still forested, and the removal of feral animals has resulted in the recovery of the forest understory (World Wildlife Fund (WWF) 2001).

The Lord Howe pied currawong is omnivorous and eats a wide variety of food, including native fruits and seeds (Hutton 1991), and is the only remaining native island vertebrate predator (DECC 2005). It has been recorded taking seabird chicks, poultry, and chicks of the Lord Howe woodhen (*Tricholimnas sylvestris*) and white tern (*Gygis alba*). It also feeds on dead rats and has been observed catching live rats to eat (Hutton 1991). A Department of Environmental Conservation (DEC) scientist observed that food brought to Lord Howe pied currawong nestlings was, in decreasing order: invertebrates, fruits, reptiles, and nestlings of other bird species (Lord Howe Island Board (LHIB) 2006).

The Lord Howe pied currawong is listed as 'Vulnerable' under the New South Wales Threatened Species Conservation Act of 1995 because it has a limited range, only occurring on Lord Howe Island (DECC 2004). It also is listed as 'Vulnerable' under the Commonwealth Environment Protection and Biodiversity Conservation Act of 1999. These laws provide a legislative framework to protect and encourage the recovery of vulnerable species (DEC 2006a). The Lord Howe Island Act of 1953, as amended, established the LIHB, made provisions for the LHIB to care, control, and manage the island, and established 75 percent of the land area as a Permanent Park Preserve (DEC 2007). In 1982, the island was inscribed on the World Heritage List for its outstanding natural universal values (Department of the Environment and Water Resources 2007).

In the Action Plan for Australian Birds 2000 (Garnett and Crowley 2000), the Lord Howe pied currawong population was estimated at approximately 80 mature individuals. In 2006, initial results from a color band survey suggested that the population size was 180 to 200 in number (LHIB 2006). Complete results reported by the Foundation for National Parks & Wildlife (2007) estimated the breeding population of the Lord Howe pied currawong was 80 to 100 pairs, with a nesting territory in the tall forest areas of about 12 acres (ac) (5 hectares (ha)) per pair. The population size is limited by the amount of available habitat and the lack of food during the winter (Foundation for National Parks & Wildlife 2007).

The Lord Howe Island Biodiversity Management Plan was finalized in 2007, and is the formal National and NSW Recovery Plan for threatened species and communities of the Lord Howe Island Group (DEC 2007a). The main threat identified for the Lord Howe pied currawong is habitat clearing and modification (DEC 2007b). Lord Howe Island is unique among inhabited Pacific Islands in that less than 10 percent of the island has been cleared (WWF 2001) and less than 24 percent has been disturbed (DEC 2007a). Although large-scale clearing of native vegetation no longer occurs on Lord Howe Island, the impact of vegetation clearing on a small scale needs to be assessed (DEC 2007a). A lesser threat to the Lord Howe pied currawong is human interaction with the species. Prior to the 1970s, locals would shoot this currawong because it preys on nestling birds (Hutton 1991). The Lord Howe pied currawong remains unpopular with some residents. It is unknown what effect this localized killing has on the overall population size and distribution of the species (Garnett and Crowley 2000). Also, the Lord Howe pied currawong often preys on ship (black) rats (*Rattus rattus*) and may be subject to nontarget poisoning during rat-baiting programs (DEC 2007b). Close monitoring of the population is needed because this small, endemic population is susceptible to catastrophic events, such as disease or introduction of a new predator (Garnett and Crowley 2000).

The Lord Howe pied currawong is a subspecies facing threats that are low in magnitude and nonimminent because of the conservation efforts taken for the island as a whole. Therefore, we have assigned this subspecies a priority rank of 12.

Invertebrates

Harris' mimic swallowtail (*Eurytides* (syn. *Mimoides) lysithous harrisianus*)

Harris' mimic swallowtail is a subspecies endemic to Brazil (Collins and Morris 1985). Although the *species'* range includes Paraguay, the *subspecies* has not been confirmed there (Collins and Morris 1985; Finnish University and Research Network (Funet) 2004). Occupying the lowland swamps and sandy flats above the tidal margins of the coastal Atlantic Forest, the subspecies prefers alternating patches of strong sun and deep shade (Brown 1996; Collins and Morris 1985). This subspecies is polyphagous, meaning that its larvae feed on more than one plant species (Kotiaho *et al.* 2005). Information on preferred hostplants and adult nectar-sources was published in the 12–month finding (69 FR 70580; December 7, 2004). This subspecies mimics at least three *Parides* species, including the fluminense swallowtail; details on mimicry were provided in the 12–month finding (69 FR 70580; December 7, 2004) and in the 2007 Notice of Review (72 FR 20184; April 23, 2007). Researchers believe that this mimicry system may cause problems in distinguishing this subspecies from the species that it mimics (Brown, in litt. 2004; Monteiro *et al.* 2004).

Harris' mimic swallowtail was previously known in Espirito Santo and Rio de Janeiro (Collins and Morris 1985; New and Collins 1991). However, there are no recent confirmations in Espirito Santo. In Rio de Janeiro, Harris' mimic swallowtail has recently been confirmed in three localities. Two colonies are located on the east coast of Rio de Janeiro, at Barra de São João and Macaé, and the other in Poço das Antas Biological Reserve, further inland. The Barra de São João colony is the best-studied. Since 1984, it has maintained a stable size, varying between 50 to 250 individuals (Brown 1996; K. Brown, Jr., *in litt.* 2004; Collins and Morris 1985), and was reported to be viable, vigorous, and stable in 2004 (K. Brown, Jr., in litt. 2004). There are no estimates of the size

of the colony in Poço das Antas Biological Reserve, where it had not been seen for 30 years prior to its rediscovery there in 1997 (K. Brown, Jr., *in litt.* 2004). Population estimates are lacking for the colony at Macaé, where the subspecies was netted in Jurubatiba National Park in the year 2000, after having not been seen in the area for 16 years (Monteiro *et al.* 2004). The Brazilian Institute of the Environment and Natural Resources (Instituto Brasileiro do a Meio Ambiente de do Recursos Naturais Renováveis; IBAMA) considers this subspecies to be critically imperiled (MMA 2003; Portaria No. 1,522 1989) and ''strictly protected,'' such that collection and trade of the subspecies are prohibited (Brown 1996). Harris' mimic swallowtail was categorized on the IUCN Red List as ''Endangered'' in the 1988, 1990, and 1994 IUCN Red Lists (IUCN 1996). However, it has not been reevaluated using the 1997 IUCN Red List criteria, nor has it been incorporated into the 2007 IUCN Red List database (IUCN 2007).

Habitat destruction is the main threat to this subspecies (Brown 1996; Collins and Morris 1985), especially urbanization in Barra de São João, industrialization in Macaé (Jurubatiba National Park), and previous fires in the Poço das Antas Biological Reserve. As described in detail for the fluminense swallowtail (below), Atlantic Forest habitat has been reduced to 5 to 10 percent of its original cover. More than 70 percent of the Brazilian population lives in the Atlantic forest, and coastal development is ongoing throughout the Atlantic Forest region (Butler 2007; Conservation International 2007; Critical Ecosystem Partnership Fund (CEPF) 2007a; Höfling 2007; Hughes *et al.* 2006; The Nature Conservancy 2009; Peixoto and Silva 2007; Pivello 2007; World Food Prize 2007; WWF 2007).

Both Barra de São João and the Poço das Antas Biological Reserve, two of the known Harris' mimic swallowtail localities, lie within the São João River Basin. The current conditions at Barra de São João appear to be suitable for long-term survival of this subspecies. The Barra de São João River Basin encompasses a 535,240-ac (216,605-ha) area, 372,286 ac (150,700 ha) of which is managed as protected areas. The preferred environment of open and shady areas (Brown 1996; Collins and Morris 1985) continues to be present in the region, with approximately 541 forest patches averaging 314 ac (127 ha) in size, covering nearly 68,873 ha (170,188 ac), and a minimum distance between forest patches of 0.17 mi (276 m) (Teixeira 2007). In studies between 1984 and 1991, Brown (1996) determined that Harris' mimic swallowtails in Barra de São João flew a maximum distance of 0.62 mi (1000 m); it follows that the average flying distance would be less than this figure. Thus, the average (0.17 mi (276 m)) distance between forest patches in the Barra de São João River Basin is clearly within the flying distance of this subspecies. The colony at Barra de São João has maintained a stable population for 20 years, indicating that the conditions available there remain suitable.

Harris' mimic swallowtail ranges within two protected areas: Poço das Antas Biological Reserve and Jurubatiba National Park. These protected areas are described in detail for the fluminense swallowtail below. The Poço das Antas Biological Reserve (Reserve) was established to protect the golden lion tamarin (*Leontopithecus rosalia*) (Decree No. 73,791 1974), but the Harris' mimic swallowtail, which occupies the same range, may benefit indirectly by efforts to conserve golden-lion-tamarin habitat (De Roy 2002; Teixeira 2007; WWF 2003). Habitat destruction caused by fires in Poço das Antas Biological Reserve appears to have abated, and the revised management plan indicates that the Reserve will be used for research and conservation, with limited public access (CEPF 2007a; IBAMA 2005). The Jurubatiba National Park (Park) is located in a region that is undergoing continuing development pressures from urbanization and industrialization (Brown 1996; CEPF 2007b; IFC 2002; Khalip 2007; Otero and Brown 1984; Savarese 2008), and there is no management plan in place for the Park (CEPF 2007b). However, as discussed for the fluminense swallowtail, the Park is considered to be in a very good state of conservation (Rocha *et al.* 2007).

Harris' mimic swallowtail is a subspecies and does not represent a monotypic genus. Based on the above information, we have determined that habitat destruction is a threat to the subspecies. The magnitude of the threat is low because suitable habitat continues to exist for this polyphagous subspecies; the best-studied colony has maintained a stable and viable size for nearly two decades; an additional locality has been confirmed; the subspecies is strictly protected by Brazilian law; and two colonies are located within protected areas. While the protected areas in which this subspecies is found continue to be threatened with potential habitat destruction from urbanization and industrialization, the threat of habitat destruction is nonimminent because such destruction within those protected areas is not ongoing at this time. Therefore, we have assigned the subspecies a priority rank of 12.

Jamaican kite swallowtail (*Eurytides* marcellinus)

The Jamaican kite swallowtail is endemic to Jamaica, preferring wooded, undisturbed habitat containing the only known larval hostplant West Indian lancewood (*Oxandra lanceolata*); adult preferences have not been reported (Bailey 1994; Collins and Morris 1985). Since the 1990s, adult Jamaican kite swallowtails have been observed in the Parishes of St. Thomas and St. Andrew in the east; westward in St. Ann, Trelawny, and St. Elizabeth; and, in the extreme western coast Parish of Westmoreland (Bailey 1994; Harris 2002; Möhn 2002; Smith *et al.* 1994; WRC 2001). There is only one known breeding site in the eastern coast town of Rozelle (St. Thomas Parish) (Bailey 1994; Collins and Morris 1985; Garraway *et al.* 1993; Smith *et al.* 1994), although it is possible that other sites exist given the widely dispersed nature of the larval food plant (R. Robbins, *in litt.* 2004). Rozelle may also be referred to in the literature as Roselle (e.g., Anderson *et al.* 2007). The Jamaican kite swallowtail maintains a low population level. It occasionally becomes locally abundant in Rozelle during the breeding season in early summer and again in early fall (Bailey 1994; Brown and Heineman 1972; Collins and Morris 1985; Garraway *et al.* 1993; Smith *et al.* 1994), and experiences episodic population explosions, as described in the 12–month finding (69 FR 70580; December 7, 2004) and in the 2007 ANOR (72 FR 20184; April 23, 2007). The species is protected under Jamaica's Wildlife Protection Act of 1998 and is included in Jamaica's National Strategy and Action Plan on Biological Diversity, which has established specific goals and priorities for the conservation of Jamaica's biological resources (Schedules of The Wildlife Protection Act 1998). Since 1985, the Jamaican kite swallowtail was categorized on the IUCN Red List as 'Vulnerable' it has not been reevaluated using the 1997 criteria (IUCN 2008; Gimenez Dixon 1996).

Habitat destruction has been considered a primary threat to the Jamaican kite swallowtail. In Rozelle, there has been extensive habitat modification for agricultural and industrial purposes, such as mining (Gimenez Dixon 1996; WWF 2001). The Jamaican kite's larval food plant, West Indian lancewood, is threatened by clearing for cultivation and by felling for the commercial timber industry (Collins

and Morris 1985; Windsor Plywood 2004). Monophagous butterflies tend to be more threatened than polyphagous species, in part due to their specific habitat requirements (Kotiaho *et al.* 2005), and harvest and clearing reduces the availability of the only known larval food plant. Habitat modification poses an additional threat because the swallowtail does not thrive in disturbed habitats (Collins and Morris 1985). Rozelle is also subject to naturally occurring, high-impact stochastic events, such as regularly-occurring hurricanes, as elaborated in the 2007 ANOR (72 FR 20184; April 23, 2007). According to the Economic Commission for Latin America and the Caribbean (ECLAC), United Nations Development Programme (UNDP), and Planning Institute of Jamaica (PIOJ) (2004), hurricane-related weather damage in the last two decades along the coastal zone of Rozelle has resulted in the erosion and virtual disappearance of the once-extensive recreational beach. Most recently, Hurricane Ivan, a Category 5 hurricane that hit the island in 2004, caused severe local damage to Rozelle Beach, including road collapse caused by the erosion of the cliff face and shoreline. The estimated restoration cost from Hurricane Ivan damage was $23 million U.S. Dollars (US$) ($1.6 million Jamaican Dollars (J$) (ECLAC *et al.* 2004). Thus, while we do not consider stochastic events to be a primary threat factor for this species, we believe that the damage caused by hurricanes is contributing to habitat loss.

Habitat destruction in western Parishes also threatens adult Jamaican kite swallowtails. Cockpit Country, encompassing 30,000 ha (74,131 ac) of rugged forest-karst (a specialized limestone habitat) terrain, spans four Western Parishes, including Trelawny and St. Elizabeth, where adult Jamaican kite swallowtails have been observed (Gordon and Cambell 2006). Eighty-one percent of this region remains forested, although fragmentation is occurring as a result of human-induced activities (Tole 2006). Current threats to Cockpit Country include bauxite mining, unregulated plant collecting, extensive logging, conversion of forest to agriculture, illegal drug cultivation, and expansion of human settlements. These activities contribute to threats to the hydrology system from in-filling, siltation, accumulation of solid waste, and invasion by nonnative, invasive species (Cockpit Country Stakeholders Group and JEAN (Jamaica Environmental Advocacy Network 2007; Gordon and Cambell 2006; Tole 2006)).

Currently, the Blue and John Crow Mountains National Park, located on the inland portions of St. Thomas and St. Andrew and the southeast portion of St. Mary Parishes, is the only protected area in which adult Jamaican Kite swallowtails have been observed (Bailey 1994; Jamaica Conservation and Development Trust (JCDT) 2006). Created in 1993, this Park encompasses 122,367 ac (49,520 ha) of mountainous, forested terrain that ranges in elevation from 492 to 7,402 ft (150 m to 2,256 m) and is considered one of the best-managed protected areas in Jamaica (JCDT 2006). Deforestation is currently a threat in the Blue Mountains (Tole 2006). In 2003, the Jamaican National Environment and Planning Agency identified Rozelle and Cockpit Country (which spans at least four Western Parishes, including Trelawny and St. Elizabeth, where adult Jamaican kites have been observed) as priority locations to receive protected area status within the next 5 to 7 years (NEPA 2003). The status of this proposal is not included in the 2007 Environmental Action Plan Status Report (NEPA 2007).

The Jamaican kite swallowtail has been collected for commercial trade (Collins and Morris 1985; Melisch 2000; Schütz 2000) and has been protected under the Jamaican Wildlife Protection Act since 1998. This Act carries a maximum penalty of US$1439 (J$100,000) or 12 months imprisonment for violating provisions of the Act, which appears to be effectively protecting this species from illegal trade (NEPA 2005). This species is not listed under CITES, nor is it listed on the European Commission's Annex B (Eur-Lex 2008), both of which regulate international trade in animals and plants of conservation concern. However, we are not aware of any recent seizures or smuggling in this species into or out of the United States (Office of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia, *in litt.* 2008). Therefore, we believe that overutilization is not currently a contributory threat factor for the Jamaican kite swallowtail.

The Jamaican kite swallowtail does not represent a monotypic genus. The current threat to the species is moderate in magnitude because habitat destruction is occurring at the species' only known breeding site, but Jamaica has taken regulatory steps to preserve their native swallowtail species and their habitat. The threat is imminent because habitat destruction is ongoing and stochastic events are unpredictable. Therefore, we have assigned this species a priority rank of 8.

Fluminense swallowtail (*Parides ascanius*)

The fluminense swallowtail is endemic to Brazil's ''restinga'' habitat within the Atlantic Forest region (Thomas 2003). Restingas form on sandy, acidic, and nutrient-poor soils in the tropical and subtropical moist broadleaf forests of coastal Brazil. Restinga habitat, also referred to as ''fluminense vegetation,'' is characterized by medium-sized trees and shrubs that are adapted to coastal conditions (Kelecom 2002). The species is monophagous (Otero and Brown 1984), meaning that its larvae feed only on a single plant species (Kotiaho *et al.* 2005); information on larval hostplant preferences is provided in the April 23, 2007 Notice of Review (72 FR 20184).

The historical range of this species has probably always been limited to coastal Rio de Janeiro State (Gelhaus *et al.* 2004), but it was historically reported in Rio de Janeiro, Espirito Santo, and Sao Paulo. However, there are no recent confirmations in Espirito Santo or Sao Paulo. In Rio de Janeiro, the species is reported in five localities, including: Barra de São João and Macaé (in the Restinga de Jurubatiba National Park), along the coast; and, Poço das Antas Biological Reserve, further inland (Keith S. Brown, Jr., Livre-Docent, Universidade Estadual de Campinas, Brazil, *in litt.* 2004; Soler 2005). Uehara-Prado and Fonseca (2007) recently reported a verified occurrence within Área de Tombamento do Mangue do rio Paraíba do Sul. Fluminense swallowtail has also been reported in Parque Natural Municipal do Bosque da Barra (Instituto Iguacu 2008).

The fluminense swallowtail is sparsely distributed throughout its range, reflecting the patchy distribution of its preferred habitat (Otero and Brown 1984; Tyler *et al.* 1994; Uehara-Prado and Fonseca 2007). However, the species can be seasonally common, with sightings of up to 50 individuals in one morning in the Barra de São João location. The population estimate in Barra de São João ranges from 20 to 100 individuals (Otero and Brown 1984). The colony within Poço das Antas Biological Reserve (Reserve) was rediscovered in 1997, after a nearly 30–year absence from this locality (K. Brown, Jr., in litt. 2004). Researchers noted only that ''large numbers'' of swallowtails were observed (K. Brown, Jr., *in litt.* 2004; Dr. Robert Robbins, Research Entomologist, National Museum of Natural History, Department of Entomology, Smithsonian Institution, Washington, D.C., *in litt.* 2004). There are no population estimates for the other

colonies. However, individuals from the viable population in Barra de São João migrate widely in some years, which is likely to enhance interpopulation gene flow among existing colonies (K. Brown, Jr., in litt. 2004).

Brazil considers the fluminense swallowtail to be ''Imperiled'' (MMA 2003; Portaria No. 1,522 1989). According to the 2008 IUCN Red List (Gimenez Dixon 1996), the fluminense swallowtail has been categorized as ''Vulnerable'' since 1983, based on its small distribution and a decline in the number of populations caused by habitat fragmentation and loss. However, this species has not been reevaluated using the 1997 IUCN Red List categorization criteria.

Habitat destruction has been the main threat to this species (Brown 1996; Collins and Morris 1985; Gimenez Dixon 1996). Monophagous butterflies tend to be more threatened than polyphagous species (Kotiaho *et al.* 2005), and the restinga habitat preferred by fluminense swallowtails is a highly specialized environment that is restricted in distribution (K. Brown, Jr., *in litt.* 2004; Otero and Brown 1986; Ueraha-Prado and Fonseca). Moreover, fluminense swallowtails require large areas to maintain viable populations (K. Brown, Jr., *in litt.* 2004; Otero and Brown 1986; Ueraha-Prado and Fonseca). The Atlantic Forest habitat, which once covered 540,543 mi^2 (1.4 million km^2), has been reduced 5 to 10 percent of its original cover and harbors more than 70 percent of the Brazilian population (Butler 2007; Conservation International 2007; Critical Ecosystem Partnership Fund (CEPF) 2007a; Höfling 2007; The Nature Conservancy 2009; World Wildlife Fund (WWF) 2007). The restinga habitat upon which this species depends has been reduced by 6.56 mi^2 (17 km^2) each year between 1984 and 2001, equivalent to a loss of 40 percent of restinga vegetation over the 17–year period (Temer 2006). The major ongoing human activities that have resulted in habitat loss, degradation, and fragmentation include conversion for agriculture, plantations, livestock pastures, human settlements, hydropower reservoirs, commercial logging, subsistence activities, and coastal development (Butler 2007; Hughes *et al.* 2006; Pivello 2007; The Nature Conservancy 2007; Peixoto and Silva 2007; World Food Prize 2007; WWF 2007).

Uehara-Prado and Fonseca (2007) estimated that Rio de Janeiro contains 4,140,127 ac (1,675,457 ha) of suitable habitat (Uehara-Prado and Fonseca 2007). While the presence of suitable habitat should not be used to infer the presence of a species, this research should facilitate more focused efforts to identify and confirm additional localities and the conservation status of the fluminense swallowtail (Uehara-Prado and Fonseca 2007). Analyzing the correlation between the distribution of fluminense swallowtail and the existing protected areas within Rio de Janeiro, Uehara-Prado and Fonseca (2007) found that only two known occurrences of the fluminense swallowtail correlated with protected areas, including the Poço das Antas Biological Reserve. The researchers concluded that the existing protected area system may be inadequate for the conservation of this species.

The Poço das Antas Biological Reserve and the Jurubatiba National Park are the only two protected areas considered large enough to support viable populations of the fluminense swallowtail (K. Brown, Jr., *in litt.* 2004; Otero and Brown 1984; R. Robbins, *in litt.* 2004). The Poço das Antas Biological Reserve (Reserve), established in 1974, encompasses 13,096 ac (5,300 ha) of inland Atlantic Forest habitat (CEPF 2007a; Decree No. 73,791 1974). According to the 2005 revised management plan (IBAMA 2005), the Reserve is used solely for protection, research, and environmental education. Public access is restricted, and there is an emphasis on habitat conservation, including protection of the Río São João. This river runs through the Reserve and is integral to creating the restinga conditions preferred by the fluminense swallowtail. The Reserve was plagued by fires in the late 1980s through the early 2000s, but there have been no recent reports of fires. Between 2001 and 2006, there was an increase in the number of private protected areas near or adjacent to the Poço das Antas Biological Reserve and Barra de São João (Critical Ecosystem Partnership Fund (CEPF) 2007a). Corridors are being created between existing protected areas and 13 privately protected forests, by planting and restoring habitat previously cleared for agriculture or by fires (De Roy 2002).

The Jurubatiba National Park (14,860 ha; 36,720 mi^2), located in Macaé and established in 1998 (Decree of April 29 1998), is one of the largest contiguous restingas (specialized sandy, coastal habitats) under protection in Brazil (CEPF 2007b; Rocha *et al.* 2007). The Macaé River Basin forms the outer edge of the Jurubatiba National Park (Park) (International Finance Corporation (IFC) 2002) and creates the restinga habitat preferred by the fluminense swallowtail (Brown 1996; Otero and Brown 1984). Rocha *et al.* (2007) described the habitat as being in a very good state of conservation, but lacking a formal management plan. Threats to the Macaé region include industrialization for oil reserve and power development (IFC 2002) and intense population pressures (including migration and infrastructural development) (Brown 1996; CEPF 2007b; IFC 2002; Khalip 2007; Otero and Brown 1984; Savarese 2008).

Commercial exploitation has been identified as a potential threat to the fluminense swallowtail (Collins and Morris 1985; Melisch 2000; Schütz 2000). The species is easy to capture, and species with restricted distributions or localized populations, such as the fluminense swallowtail, tend to be more vulnerable to overcollection than those with a wider distribution (K. Brown, Jr., *in litt.* 2004; R. Robbins, in litt. 2004). This species has not been formally considered for listing in the Appendices of CITES (*http://www.cites.org*). However, the European Commission listed fluminense swallowtail on Annex B of Regulation 338/97 in 1997 (Dr. Ute Grimm, German Scientific Authority to CITES (Fauna), Bonn, Germany, *in litt.* 2008), and the species continues to be listed on this Annex (Eur-Lex 2008). This listing requires that imports from a non-European Union country be accompanied by a permit that is only issued if the Scientific Authority has made a positive nondetriment finding, a determination that trade in the species will not be detrimental to the survival of the species in the wild (U. Grimm, *in litt.* 2008). There has been no legal trade in this species into the European Union since its listing on Annex B (U. Grimm, *in litt.* 2008), and we are not aware of any recent reports of seizures or smuggling in this species into or out of the United States (Office of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia, *in litt.* 2008). The fluminense remains strictly protected from commerce in Brazil (K. Brown, Jr., *in litt.* 2004). For the reasons outlined above, we believe that overutilization is not currently a threat factor for the fluminense swallowtail.

Parasitism could be a factor threatening the fluminense swallowtail. Recently, Tavares *et al.* (2006) discovered four species of parasitic chalcid wasps (*Brachymeria* and *Conura* species; Hymenoptera family) associated with fluminense swallowtails. Parasitoids are species whose immature stages develop on or within an insect host of another species, ultimately killing the host (Weeden *et al.* 1976). This is the first report of parasitoid association with fluminense swallowtails (Tavares *et al.* 2006). To date, there is no information as to the

extent and effect that these parasites are having on the fluminense swallowtail.

Although Harris' mimic swallowtail and the fluminense swallowtail face similar threats, there are several dissimilarities that influence the magnitude of these threats. Fluminense swallowtails are monophagous (Otero and Brown 1984), meaning that its larvae feed only on a single plant species (Kotiaho *et al.* 2005). In contrast, Harris' mimic swallowtail is polyphagous (Brown 1996; Collins and Morse 1985), such that its larvae feed on more than one species of plant (Kotiaho *et al.* 2005). In addition, although their ranges overlap, Harris' mimic swallowtails tolerate a wider range of habitat than the highly specialized restinga habitat preferred by fluminense swallowtail. Also unlike the Harris' mimic swallowtail, fluminense swallowtails require a large area to maintain a viable population (K. Brown, Jr., *in litt.* 2004; Monteiro *et al.* 2004).

The fluminense swallowtail does not represent a monotypic genus. The species is currently at risk from habitat destruction and potentially from parasitism; however, we have determined that overutilization is not currently a threat factor for the fluminense swallowtail. The current threat of habitat destruction is of high magnitude because the species: (1) occupies highly specialized habitat; (2) requires large areas to maintain a viable colony; and (3) is only found within two protected areas considered to be large enough to support viable colonies. However, additional populations have been reported, increasing previously known population numbers and distribution. The threat of habitat destruction is nonimminent because most habitat modification is the result of historical destruction that has resulted in fragmentation of the current landscape; however, the potential for continued habitat modification exists, and we will continue to monitor the situation. On the basis of this information, we have assigned the fluminense swallowtail a priority rank of 5.

Hahnel's Amazonian swallowtail (*Parides* hahneli)

Hahnel's Amazonian swallowtail is endemic to Brazil and is found only on sandy beaches where the habitat is overgrown with dense scrub vegetation (Collins and Morris 1985; New and Collins 1991; Tyler *et al.* 1994). Hahnel's Amazonian swallowtail is likely to be monophagous. Information on larval and adult hostplant preferences was provided in the **Federal Register** 12–month finding (69 FR 70580; December 7, 2004) and in the 2007 ANOR (72 FR 20184; April 23, 2007).

Hahnel's Amazonian swallowtail is known in three localities along the tributaries of the middle and lower Amazon River basin in the states of Amazonas and Pará (Collins and Morris 1985; New and Collins 1991; Tyler *et al.* 1994; Brown 1996). Two of these colonies were rediscovered in the 1970s (Collins and Morris 1985; Brown 1996). Hahnel's Amazonian swallowtail is highly localized, reflecting the distribution of its highly specialized preferred habitat (Brown *in litt.* 2004). The population size of Hahnel's Amazonian swallowtail is not known. However, within the area of its range, Hahnel's Amazonian swallowtail populations are small (Brown *in litt.* 2004). Hahnel's Amazonian swallowtail is not nationally protected (MMA 2003; Portaria No. 1522 1989), although Pará has listed it as endangered on its newly created list of threatened species (Resolução 054 2007; Decreto No. 802 2008; Secco and Santos 2008). Hahnel's Amazonian swallowtail continues to be listed as 'Data Deficient' by the IUCN Red List (Gimenez Dixon 1996).

Competition is a potential threat to Hahnel's Amazonian swallowtail. Researchers have posited that it might suffer from host-plant competition with any of three other butterfly species that occupy a similar range (Collins and Morris 1985, Wells 1983, Brown 1996, ANOR 2007, 72 FR 20184; April 23, 2007). However, there is insufficient information to conclude that competition is a factor affecting this species.

Habitat alteration (e.g., for dam construction and waterway crop transport) and destruction (e.g., clearing for agriculture and cattle grazing) are ongoing in Pará and Amazonas, where this species is found (Fearnside 2006; Hurwitz 2007). Current research on population declines is lacking. However, researchers believe that, because Hahnel's Amazonian swallowtail has extremely limited habitat preferences, any sort of river modification would have an immediate and highly negative impact on the species (Wells *et al.* 1983; New and Collins 1991).

Hahnel's Amazonian swallowtail has been collected for commercial trade (Collins and Morris 1985; Melisch 2000; Schütz 2000). Although not strictly protected from collection throughout Brazil, the state of Pará recently declared the capture of Hahnel's Amazonian swallowtail for purposes other than research to be forbidden (Decreto No. 802 2008). There continues to be limited trade in the species over the internet. However, it has not been ascertained whether this trade represents new collections or older, established ones (DSA 2008). Hahnel's Amazonian swallowtail is listed on Annex B of Regulation 338/97 (Eur-Lex 2008), and there has been no legal trade in this species into the European Union since its listing on Annex B in 1997 (Grimm *in litt.* 2008). Hahnel's Amazonian swallowtail has not been formally considered for listing in the Appendices of CITES (*http://www.cites.org*). Additionally, recent seizures or smuggling of Hahnel's Amazonian swallowtail into or out of the United States have not been reported (Office of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia *in litt.* 2008). Species with restricted distributions or localized populations, like Hahnel's Amazonian swallowtail, are more vulnerable to overcollection than those with a wider distribution (Brown *in litt.* 2004; Robbins *in litt.* 2004).

Hahnel's Amazonian swallowtail does not represent a monotypic genus. The primary threat of habitat destruction is moderate because of the species' specialized habitat requirements. However, the threat is imminent because habitat alteration is ongoing. Illegal collection and trade have not been reported. Therefore, we have assigned this species a priority rank of 8.

Kaiser-I-Hind swallowtail (*Teinopalpus* imperialis)

The Kaiser-I-Hind swallowtail is native to the Himalayan regions of Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, and Vietnam (Baral *et al.* 2005; Food and Agriculture Organization (FAO) 2001; FRAP 1999; Igarashi 2001; Masui and Uehara 2000; Osada *et al.* 1999; Shrestha 1997; TRAFFIC 2007; Tordoff *et al.* 1999; Trai and Richardson 1999). This species prefers undisturbed (primary), heterogeneous, broad-leaved-evergreen forests or montane deciduous forests, and flies at altitudes of 4,921 to 10,000 ft (1,500 to 3,050 m) (Collins and Morris 1985; Igarashi 2001; Tordoff *et al.* 1999). Information on this polyphagous species' biology and food plant preferences is provided in the 2007 Notice of Review (72 FR 20184). It should be noted that Collins and Morris (1985) reported that the adult Kaiser-I-Hind swallowtails do not feed. This is a correction to the 2007 Notice of Review (72 FR 20184), which stated that the adult food plant preferences were unknown. Since 1996, the Kaiser-I-Hind swallowtail has been categorized on the

IUCN Red List as a species of ''Lower Risk/near threatened''; it has not been reevaluated using the 1997 criteria (Gimenez Dixon 1996). The species is considered ''Rare'' by Collins and Morris (1985). Despite its widespread distribution, local populations are not abundant (Collins and Morris 1985). The known localities and conservation status of the species within each range country follows:

Bhutan: The species was reported to be extant in Bhutan (Gimenez Dixon 1996; FRAP 1999), although details on localities or status information were not provided.

China: The species has been reported in Fuji, Guangxi, Hubei, Jiangsu, Sichuan, and Yunnan Provinces (Collins and Morris 1985; Gimenez Dixon 1996; Igarashi and Fukuda 2000; Sung and Yan 2005; United Nations Environment Programme – World Conservation Monitoring Center (UNEP – WCMC) 1999). The species is classified by the 2005 China Species Red List as ''Vulnerable'' (China Red List 2006).

India: Assam, Manipur, Meghalaya, Sikkim, and West Bengal (Bahuguna 1998; Collins and Morris 1985; Gimenez Dixon 1996; Ministry of Environment and Forests 2005). There is no recent status information on this species (N. Chaturvedi, Curator, Bombay Natural History Society, Mumbai, India, *in litt.* 2007).

Laos: The species has been reported (Osada *et al.* 1999), but no further information is available (Southiphong Vonxaiya, CITES Coordinator, Vientiane, Lao, *in litt.* 2007).

Myanmar: The species has been reported in Shan, Kayah (Karen) and Thaninanthayi (Tenasserim) states (Collins and Morris 1985; Gimenez Dixon 1996). There is no status information.

Nepal: The species has been reported in Nepal (Collins and Morris 1985; Gimenez Dixon 1996), in the Central Administrative Region at two localities: Phulchoki Mountain Forest (Baral *et al.* 2005; Collins and Morris 1985) and Shivapuri National Park (Nepali Times 2002; Shrestha 1997). There is no status information.

Thailand: The species has been reported in the northern province of Chang Mai (Pornpitagpan 1999). The Scientific Authority of Thailand recently confirmed that the species has limited distribution in the high mountains (>1,500 m (4,921 ft)) of northern Thailand and is found within three national parks. However, no biological or status information was available (S. Choldumrongkul, Forest Entomology and Microbiology Group, Department of National Parks, Bangkok, Thailand, *in litt.* 2007).

Vietnam: The species has been confirmed in three Nature Reserves (Tordoff *et al.* 1999; Trai and Richardson 1999), and the species is listed as ''Vulnerable'' in the 2007 Vietnam Red Data Book, due to declining population sizes and area of occupancy (Dr. Le Xuan Canh, Director of the Institute of Ecology and Biological Resources, CITES Scientific Authority, Hanoi, Vietnam, in litt. 2007).

Habitat destruction is the greatest threat to this species, which prefers undisturbed high-altitude habitat (Collins and Morris 1985; Igarashi 2001; Tordoff *et al.* 1999). In China and India, the Kaiser-I-Hind swallowtail populations are at risk from habitat modification and destruction due to commercial and illegal logging (Yen and Yang 2001; Maheshwari 2003). In Nepal, the species is at risk from habitat disturbance and destruction resulting from mining, fuel wood collection, agriculture, and grazing animals (Baral *et al.* 2005; Collins and Morris 1985; Shrestha 1997). Nepal's Forest Ministry considered habitat destruction to be a critical threat to all biodiversity, including the Kaiser-I-Hind swallowtail, in the development of their biodiversity strategy (HMGN 2002). Habitat degradation and loss caused by deforestation and land conversion for agricultural purposes is a primary threat to the species in Thailand (Hongthong 1998; FAO 2001). The species is afforded some protection from habitat destruction in Vietnam, where it has been confirmed in three Nature Reserves that have low levels of disturbance (Tordoff *et al.* 1999; Trai and Richardson 1999).

The Kaiser-I-Hind swallowtail is highly valued and has been collected for commercial trade, despite range country regulations prohibiting or restricting such activities (Collins and Morris 1985; Schütz 2000). In China, where the species is protected by the Animals and Plants (Protection of Endangered Species) Ordinance (1989), which restricts import, export, and possession of the species, species purportedly derived from Sichuan were being advertised for sale on the internet for 60 U.S. Dollars (USD). In India, the Kaiser-I-Hind swallowtail is listed on Schedule II of the Indian Wildlife Protection Act of 1972, which prohibits hunting without a license (Collins and Morris 1985; Indian Wildlife Protection Act 2006). However, between 1990 and 1997, illegally collected specimens were selling for 500 Rupees (12 USD) per female and 30 Rupees (0.73 USD) per male (Bahuguna 1998). In Nepal, the Kaiser-I-Hind swallowtail is protected by the National Parks and Wildlife Conservation Act of 1973 (His Majesty's Government of Nepal (HMGN) 2002). However, the Nepal Forestry Ministry determined in 2002 that the high commercial value of its ''Endangered'' species on the local and international market may result in local extinctions of species such as the Kaiser-I-Hind (HMGN 2002).

In Thailand, the Kaiser-I-Hind swallowtail and 13 other invertebrates are listed under Thailand's Wild Animal Reservation and Protection Act (WARPA) of 1992 (B.E. 2535 1992), which makes it illegal to collect wildlife (whether alive or dead) or to have the species in one's possession (S. Choldumrongkul, *in litt.* 2007; FAO 2001; Hongthong 1998; Pornpitagpan 1999). In addition to prohibiting possession, WARPA prohibits hunting, breeding, and trading; import and export are only allowed for conservation purposes (Jeerawat Jaisielthum, CITES Management Authority, Bangkok, Thailand, *in litt.* 2007). According to the Thai Scientific Authority, there are no captive breeding programs for this species; however, the species is offered for sale by the Lepidoptera Breeders Association (2009), being marketed as derived from a captive breeding program in Thailand, although specimens were recently noted as being ''out of stock'' (Lepidoptera Breeders Association 2009).

In Vietnam, Kaiser-I-Hind swallowtails are reported to be among the most valuable of all butterflies (World Bank 2005). In 2006, the species was listed on Schedule IIB of Decree No. 32 on ''Management of endangered, precious and rare forest plants and animals.'' A Schedule IIB-listing restricts the exploitation or commercial use of species with small populations or considered by the country to be in danger of extinction (L.X. Canh, *in litt.* 2007). In a recent survey conducted by TRAFFIC Southeast Asia (2007), of 2000 residents in Hanoi, Vietnam, the Kaiser-I-Hind swallowtail was among 37 Schedule IIB-species that were actively being collected, and the majority of the survey respondents were unaware of legislation prohibiting collection of Schedule IIB-species. Thus, overutilization for illegal domestic and possibly international trade via the internet is a threat to this species, and within-country protections are inadequate to protect the species from illegal collection throughout its range.

The Kaiser-I-Hind swallowtail has been listed in CITES Appendix II since 1987 (UNEP-WCMC 2008a). Between 1991 and 2005, 160 Kaiser-I-Hind

swallowtail specimens were traded internationally under CITES permits (UNEP WCMC 2006), and between 2000 and 2008, 157 specimens were traded (UNEP WCMC 2009). The most recent CITES trade data are available for the year 2008. Reports that the Kaiser-I-Hind swallowtail is being captive-bred in Taiwan (Yen and Yang 2001) remain unconfirmed. Since 1993, there have been no reported seizures or smuggling of this species into or out of the United States (Office of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia, *in litt.* 2008). Therefore, on the basis of global trade data, we do not consider legal international trade to be a contributory threat factor to this species.

The Kaiser-I-Hind swallowtail does not represent a monotypic genus. The current threats of habitat destruction and illegal collection are moderate to low in magnitude due to the species' wide distribution, but imminent due to ongoing habitat destruction, high market value for specimens, and inadequate domestic protections for the species or its habitat. Therefore, we have assigned this species a priority rank of 8.

Preclusion and Expeditious Progress

This section describes the actions that continue to preclude the immediate proposal of listing rules for the 20 species described above. In addition, we summarize the expeditious progress we are making, as required by section 4(b)(3)(B)(iii)(II) of the Act, to add qualified species to the lists of endangered or threatened species and to remove from these lists species for which protections of the Act are no longer necessary.

Section 4(b) of the Act states that the Service may make warranted-but-precluded findings only if it can demonstrate that (1) An immediate proposed rule is precluded by other pending proposals and that (2) expeditious progress is being made on other listing actions. Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher priority listing actions.In FY 2009, we have begun to transfer the listing of foreign species under the Act from the Division of Scientific Authority, within the Service's International Affairs program, to the domestic Endangered Species Program. In addition to the responsibility for development of listing proposals and promulgation of final rules for domestic species, whether internally driven or as the result of a petition, the Listing Branch within the Washington Office of the Endangered Species program will have responsibly for listing determinations for foreign species as well. During this transition period (the remainder of FY 2009) the DSA and WO Endangered Species Program are sharing the work on listing actions for foreign species. The work on foreign species is being funded from a separate account than the work on domestic species. Starting in FY 2010, the Service anticipates that the WO Endangered Species program will have full responsibility for foreign species ESA listing actions. In FY 2009, we have limited funds to work on foreign species listing determinations. All funds available are being used to complete the pending listing actions listed below. These actions are either the subject of a court-approved settlement agreement or subject to an absolute statutory deadline and, thus, are higher priority than work on proposed listing determinations for the 20 species described above. Therefore, in the upcoming year, publication of proposed rules for the 20 species described above is precluded.

ESA FOREIGN SPECIES LISTING ACTIONS FUNDED IN FY 2009 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/ Settlement Agreement	
3 species of Procellarids	Final listing determination
3 other species of Procellarids	Final listing determination
7 bird species from Brazil	Proposed listing determination
Salmon crested cockatoo	Proposed listing determination
6 bird species from Peru	Proposed listing determination
6 bird species from Asia & Eurasia	Proposed listing determination
Actions with Statutory Deadlines	
14 species of parrots	12–month petition finding
Morelet's crocodile	12–month petition finding and Proposed delisting determination

Despite the priorities that preclude publishing proposed listing rules for these 20 species described in this notice, we are making expeditious progress in adding to and removing species from the Federal lists of threatened and endangered species. Our expeditious progress since publication of the 2008 Notice of Review, July 29, 2008, to the current date includes preparing and publishing the following:

ESA FOREIGN SPECIES LISTING ACTIONS PUBLISHED IN FY 2009

Publication Date	Title	Actions	FR Pages
8/19/2008	90-Day Finding on a Petition To List the Northern Snakehead Fish (*Channa argus*)	Notice 90–day petition finding; not substantial	73 FR 48359-48362
12/8/2008	Listing the Medium Tree Finch (*Camarhynchus pauper*) as Endangered Throughout Its Range	Proposed Listing, Endangered	73 FR 74434-74445
12/8/2008	Proposed Rule To List Black-Breasted Puffleg as Endangered Throughout Its Range	Proposed Listing, Endangered	73 FR 74427-74434

ESA FOREIGN SPECIES LISTING ACTIONS PUBLISHED IN FY 2009—Continued

Publication Date	Title	Actions	FR Pages
12/18/2008	12-Month Finding on a Petition To List southern rockhopper penguin (*Eudyptes chrysocome*), northern rockhopper penguin (*Eudyptes moseleyi*), macaroni penguin (*Eudyptes chrysolophus*), and emperor penguin (*Aptenodytes forsteri*) and Proposed Rule To List southern rockhopper penguin as Threatened in the Campbell Plateau Portion of Its Range	Notice 12–month petition finding, Not warranted; Proposed Listing, Threatened	73 FR 77264-77302
12/18/2009	12-Month Finding on a Petition and Proposed Rule To List the yellow-eyed penguin (*Megadyptes antipodes*), white-flippered penguin (*Eudyptula minor albosignata*), Fiordland crested penguin (*Eudyptes pachyrhynchus*), Humboldt penguin (*Spheniscus humboldti*), and erect-crested penguin (*Eudyptes sclateri*) as Threatened Throughout Their Range	Notice 12–month petition finding, Warranted; Proposed Listing, Threatened	73 FR 77303-77332
12/18/2008	12-Month Finding on a Petition and Proposed Rule To List the African Penguin (*Spheniscus demersus*) as Endangered Throughout Its Range	Notice 12–month petition finding, Warranted; Proposed Listing, Threatened	73 FR 77332-77341
12/24/2008	Listing Three Foreign Bird Species From Latin America and the Caribbean as Endangered Throughout Their Range	Proposed Listing, Endangered	73 FR 79226-79254
2/03/2009	Notice of 90–day petition finding and initiation of status review of the wood bison to determine if reclassification of this subspecies is warranted under the Act	Notice 90–day petition finding; substantial	73 FR 5908-5910
7/ 07/2009	Proposed Rule to List Five Foreign Bird Species in Colombia and Ecuador, South America, under the Endangered Species Act	Proposed Listing, Endangered	74 FR 32307 32349
7/14/2009	90-Day Finding on a Petition to List 14 Parrot Species as Threatened or Endangered	Notice 90–day petition finding; substantial	74 FR 33957 33960

Our expeditious progress also includes work on pending listing actions described above in our ''precluded finding,'' but for which decisions had not been completed at the time of this publication.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations and the constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Despite higher listing priorities that preclude us from issuing listing proposals for the 20 species described in this Notice of Review, the actions described above collectively constitute expeditious progress.

Monitoring

Section 4(b)(3)(C)(iii) of the Act requires us to ''implement a system to monitor effectively the status of all species'' for which we have made a warranted-but-precluded 12–month finding, and to ''make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant risk to the well being of any such species.'' For foreign species, the Service's ability to gather information to monitor species is limited. The Service welcomes all information relevant to the status of these species, because we have no ability to gather data in foreign countries directly and cannot compel another country to provide information. Thus, this ANOR plays a critical role in our monitoring efforts for foreign species. With each ANOR, we request information on the status of the species included in the notice. Information and comments on the annual findings can be submitted at any time. We review all new information received through this process as well as any other new information we obtain using a variety of methods. We collect information directly from range countries by correspondence, from the peer-reviewed scientific literature, unpublished literature, scientific meeting proceedings, and CITES documents (including species proposals and reports from scientific committees). We also obtain information through the permit application processes under CITES, the Act, and the Wild Bird Conservation Act. We also consult with staff members of the Service's Division of International Conservation and the IUCN species specialist groups, and we attend scientific meetings to obtain current status information for relevant species. As previously stated, if we identify any species for which emergency listing is appropriate, we will make prompt use of the emergency listing authority under section 4(b)(7) of the Act.

Request for Information

We request the submission of any further information on the species in this notice as soon as possible, or whenever it becomes available. We

especially seek information: (1) indicating that we should remove a taxon from consideration for listing; (2) documenting threats to any of the included taxa; (3) describing the immediacy or magnitude of threats facing these taxa; (4) identifying taxonomic or nomenclatural changes for any of the taxa; or (5) noting any mistakes, such as errors in the indicated historic ranges.

References Cited

A list of the references used to develop this notice is available upon request (see **ADDRESSES** section).

Authors

This Notice of Review was authored by the staff of the Endangered Species Program, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

This Notice of Review is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Date: July 29, 2009.

James J. Slack

Acting Director, Fish and Wildlife Service.

TABLE 1. – ANNUAL NOTICE OF REVIEW

(C = listing warranted but precluded)

Status		Scientific name	Family	Common name	Historic range
Category	Priority				
BIRDS					
C	8	*Pauxi unicornis*	Craciidae	southern helmeted curassow	Bolivia, Peru
C	8	*Rallus semiplumbeus*	Rallidae	Bogota rail	Colombia
C	8	*Porphyrio hochstetteri*	Rallidae	Takahe	New Zealand
C	8	*Haematopus chathamensis*	Haematopodidae	Chatham oystercatcher	Chatham Islands, New Zealand
C	8	*Cyanoramphus malherbi*	Psittacidae	orange-fronted parakeet	New Zealand
C	8	*Eunymphicus uvaeensis*	Psittacidae	Uvea parakeet	Uvea, New Caledonia
C	8	*Ara glaucogularis*	Psittacidae	blue-throated macaw	Bolivia
C	8	*Dryocopus galeatus*	Picidae	helmeted woodpecker	Argentina, Brazil, Paraguay
C	8	*Dendrocopus noguchii*	Picidae	Okinawa woodpecker	Okinawa Island, Japan
C	11	*Aulacorhynchus huallagae*	Ramphastidae	yellow-browed toucanet	Peru
C	8	*Scytalopus novacapitalis*	Conopophagidae	Brasilia tapaculo	Brazil
C	12	*Bowdleria punctata wilsoni*	Sylviidae	Codfish Island fernbird	Codfish Island, New Zealand
C	8	*Zosterops luteirostris*	Zosteropidae	Ghizo white-eye	Solomon Islands
C	8	*Tangara peruviana*	Thraupidae	black-backed tanager	Brazil
C	12	*Strepera graculina crissalis*	Cracticidae	Lord Howe pied currawong	Lord Howe Islands, New South Wales
INVERTEBRATES					
C	12	*Eurytides* (= *Graphium* or *Mimoides*)*lysithous harrisianus*	Paplionidae	Harris' mimic swallowtail	Brazil, Paraguay
C	8	*Eurytides* (= *Graphium* or *Neographium* or *Protographium* or *Protesilaus*) *marcellinus*	Paplionidae	Jamaican kite swallowtail	Jamaica
C	5	*Parides ascanius*	Paplionidae	Fluminense swallowtail	Brazil
C	8	*Parides hahneli*	Paplionidae	Hahnel's Amazonian swallowtail	Brazil
C	8	*Teinopalpus imperialis*	Paplionidae	Kaiser-I-Hind swallowtail	Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, Vietnam

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 0906101030–91038–01]

RIN 0648–AX88

Taking and Importing Marine Mammals; Navy Training Activities Conducted within the Northwest Training Range Complex

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

ACTION: Notice; proposed rule; extension of comment period.

SUMMARY: On July 13, 2009, the NMFS published its proposed regulations to govern the take marine mammals incidental to training activities conducted within the U.S. Navy's Northwest Training Range Complex (NWTRC) for the period of February 2010 through February 2015. The **Federal Register** notice indicated written comments were due by August 12, 2009, allowing 30 days for public input. In response to a request from a public interest organization, NMFS is extending the public comment period by 7 days, to August 19, 2009.

DATES: The public comment period for this action has been extended from August 12 to August 19, 2009. Written comments and information must be received no later than August 19, 2009.

ADDRESSES: You may submit comments, identified by 0648–AX88, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Hand delivery or mailing of paper, disk, or CD-ROM comments should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

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 (e.g., 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 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.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION: On August 3, 2009, NMFS received a request from Friends of the Earth, a non-profit environmental advocacy organization, requesting a 30–day extension of the comment period on the NWTRC proposed rule. NMFS has considered this request along with the critical military readiness training needs of the Navy and the need for timely MMPA compliance and will provide an additional seven days for public comment. Further postponement of the MMPA authorization process and the establishment of the necessary protective measures would risk a delay in the Navy's critical military readiness training.

Moreover, the public has had numerous opportunities to comment on the Navy's proposed action and potential environmental consequences through the National Environmental Policy Act process [Northwest Training Range Complex Draft Environmental Impact Statement/Overseas Environmental Impact Statement, December 2008 (DEIS)]. The activities and potential environmental effects described in NMFS' NWTRC proposed rule are similar to, if not identical to, those considered in the Navy's DEIS. In particular, the public comment period for the DEIS was extended twice, providing a total of 105 days for public review, and several public meetings were added.

Background information concerning the proposed regulations can be found in the July 13, 2009 **Federal Register** notice (74 FR 33828), and is not repeated here. For additional information regarding the proposed regulations and the Navy's associated Environmental Impact Statement, please visit NMFS' website at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*

Dated: August 6, 2009.

P. Michael Payne,

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

[FR Doc. E9–19334 Filed 8–11–09; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 74, No. 154
Wednesday, August 12, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection: Agricultural Foreign Investment Disclosure Act

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection associated with the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA).

DATES: We will consider comments that we receive by October 13, 2009.

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

- *Mail:* Patricia A. Blevins, Agricultural Foreign Investment Specialist, Natural Resources Analysis Group, Economic and Policy Analysis Staff, USDA, FSA, STOP 0531, 1400 Independence Avenue, SW., Washington, DC 20250–0531.
- *E-mail:* *patricia.blevins@wdc.usda.gov.*
- *Fax:* (202) 720–9617.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Patricia Blevins at the above addresses.

FOR FURTHER INFORMATION CONTACT: Patricia Blevins, Agricultural Foreign Investment Specialist, (202) 720–0604.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Foreign Investment Disclosure Act Report.

OMB Control Number: 0560–0097.

Expiration Date of Approval: February 28, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: AFIDA requires foreign persons who hold, acquire, or dispose of any interest in U.S. agricultural land to report the transactions to the FSA on an AFIDA report (FSA–153). The information collected is made available to States. Also, although not required by law, the information collected from the AFIDA reports is used to prepare an annual report to Congress and the President concerning the effect of foreign investment upon family farms and rural communities so that Congress may review the annual report and decide if further regulatory action is required.

Estimate of Average Time to Respond: .2065 hours per response.

Respondents: Foreign investors, corporate employees, attorneys or farm managers.

Estimated Number of Respondents: 4,375.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 4,375.

Estimated Total Annual Burden on Respondents: 904 hours.

We are requesting comments on all aspects of this information collection, including the following, to help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on July 27, 2009.

Jonathan Coppess,

Administrator, Farm Service Agency.

[FR Doc. E9–19348 Filed 8–11–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection: Power of Attorney

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection associated with the Power of Attorney. This information collection is used to support the FSA, Commodity Credit Corporation (CCC) and Risk Management Agency (RMA) in conducting business and accepting signatures on documents from individuals acting on behalf of other individuals or entities.

DATES: We will consider comments that we receive by October 13, 2009.

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

- *Mail:* Mike Sienkiewicz, Agricultural Program Specialist, USDA, FSA, STOP 0572, 1400 Independence Avenue, SW., Washington, DC 20250–0572.
- *E-mail:* *mike.sienkiewicz@wdc.usda.gov.*
- *Fax:* (202) 720–0051.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Mike Sienkiewicz at the above addresses.

FOR FURTHER INFORMATION CONTACT: Mike Sienkiewicz, Agricultural Program Specialist, (202) 720–8959.

SUPPLEMENTARY INFORMATION:

Title: Power of Attorney.

OMB Control Number: 0560–0190.

Expiration Date of Approval: March 31, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: Individuals or entities that want to appoint another to act as an attorney-in-fact in connection with certain FSA, CCC, RMA programs and related actions must complete a FSA–211, Power of Attorney form. The FSA–211 is the form that is used by a grantor to appoint another to act on the individual's or entity's behalf for certain FSA, CCC, and RMA programs and related actions, giving the appointee legal authority to enter into certain binding agreements on the grantor's behalf. The FSA–211 also provides FSA, CCC and RMA a source to verify an individual's authority to sign and act for another in the event of errors or fraud. The information collected on the FSA–211 is limited to grantor's name, signature and identification number, the grantee's address, and the applicable FSA, CCC, and RMA programs.

Estimate of Average Time To Respond: .25 hours per response.

Respondents: Individuals or authorized representatives of entities, such as corporations, who want to appoint an attorney-in-fact to act on their behalf.

Estimated Number of Respondents: 179,822.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 179,822.

Estimated Total Annual Burden on Respondents: 44,956 hours.

We are requesting comments on all aspects of this information collection, including the following, to help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on August 4, 2009.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. E9–19349 Filed 8–11–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, August 27, 2009. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: The meeting will be held August 27, 2009 at 6 p.m.

ADDRESSES: The meeting will be held at the Ketchikan-Misty Fiords Ranger District Office, 3031 Tongass Avenue, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to Diane Daniels, RAC Coordinator at *ddaniels@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Diane Daniels, RAC Coordinator Ketchikan-Misty Fjords Ranger District, Tongass National Forest, (907) 228–4105.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 31, 2009.

Forrest Cole,

Forest Supervisor.

[FR Doc. E9–19051 Filed 8–11–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes from May 21 & July 16, (3) Public Comment, (4) Chairman's Perspective, (5) Reconsider & Vote on Yolla Bolly Project, (6) FY09 RAC Proposal Presentations, (7) Next Agenda.

DATES: The meeting will be held on August 20, 2009 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Pine Room, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Randy Jero, Committee Coordinator, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Aye, Willows, CA 95988. (530) 934–1269; E–Mail *riero@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 17, 2009 will have the opportunity to address the committee at those sessions.

Dated: August 4, 2009.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. E9–19054 Filed 8–11–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Eastern Region: Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, and Wisconsin

AGENCY Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Eastern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the Supplementary

Information section of this notice. As provided in 36 CFR part 215.5(a) and 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision. In addition, the Responsible Official in the Eastern Region will also publish notice of proposed actions under 36 CFR 215 in the newspapers that are listed in the Supplementary Information section of this notice. As provided in 36 CFR part 215(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Patricia Rowell, Regional Appeals Assistant, Eastern Region, Gaslight Building, 7th Floor, 626 East Wisconsin Avenue, Milwaukee, Wisconsin 53202 *Phone:* 414–297–3439.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Eastern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and 36 CFR 215 in the following newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeals shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR parts 215 and 217.

Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be used to provide notice.

Eastern Region

Regional Forester Decisions:

Affecting National Forest System lands in the States of Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York; West Virginia, Wisconsin and for any decision of Region-wide Impact.

Journal/Sentinel, published daily in Milwaukee, Milwaukee County, Wisconsin.

National Forests

Allegheny National Forest, Pennsylvania

Forest Supervisor Decisions:

Warren Times Observer, Warren, Warren County, Pennsylvania.

District Ranger Decisions:

Bradford District: Bradford Era, Bradford, McKean County, Pennsylvania.

Marienvitle District: The Kane Republican, Kane, Pennsylvania.

Chequamegon/Nicolet National Forest, Wisconsin

Forest Supervisor Decisions:

The Journal/Sentinel, published daily in Milwaukee, Milwaukee County, Wisconsin.

District Ranger Decisions:

Eagle River/Florence District: The Daily News, published daily except Saturday, Rhinelander, Wisconsin.

Great Divide District: The Daily Press, published daily in Ashland County, Ashland, Wisconsin.

Medford/Park Falls District: The Star News published weekly in Medford, Taylor County, Wisconsin and The Park Falls Herald, published weekly in Park Falls, Price County, Wisconsin.

Washburn District: The Daily Press, published daily in Ashland County, Ashland, Wisconsin.

Lakewood/Laona District: The Daily News, published daily except Saturday, Rhinelander, Wisconsin. Chippewa National Forest, Minnesota.

Forest Supervisor Decisions:

Bemidji Pioneer, published daily in Bemidji, Beltrami County, Minnesota.

District Ranger Decisions:

Blackduck District: The American, published weekly in Blackduck, Beltrami County, Minnesota.

Cass Lake District: The Cass Lake Times, published weekly in Cass Lake, Cass County, Minnesota.

Deer River and Marcell Districts: The Western Itasca Review, published weekly in Deer River, Itasca County, Minnesota.

Walker District: The Pilot/Independent, published weekly in Walker, Cass County, Minnesota.

Green Mountain National Forest, Vermont

Forest Supervisor Decisions:

The Rutland Herald, published daily in Rutland, Rutland County, Vermont.

District Ranger Decisions:

The Rutland Herald, published daily in Rutland, Rutland County, Vermont is the formal newspaper of record for all district ranger decisions. Other newspapers listed are optional.

Manchester District: The Rutland Herald, published daily in Rutland, Rutland County, Vermont; All others optional, The Bennington Banner, published daily in Bennington, Bennington County, Vermont Manchester Journal, published weekly in Bennington County, Vermont and The Brattleboro Reformer, published daily in Brattleboro, Windham County, Vermont.

Middlebury District: The Rutland Herald, published daily in Rutland, Rutland County, Vermont; All others optional, The Addison County Independent, published twice weekly in Middlebury, Addison County, Vermont.

Rochester District: The Rutland Herald, published daily in Rutland, Rutland County, Vermont; All others optional, The Burlington Free Press, published daily in Burlington, Chittenden County, Vermont; The Valley Reporter, published weekly in Washington County, Vermont and The Randolph Herald, published weekly in Orange County, Vermont.

Finger Lakes National Forest, New York

Forest Supervisor Decisions:

The Ithaca Journal, published daily in Ithaca, Tompkins County, New York.

District Ranger Decisions:

Hector District: The Ithaca Journal, published daily in Ithaca, Tompkins County, New York.

Hiawatha National Forest, Michigan.

Forest Supervisor Decisions:

The Daily Press, published daily in Escanaba, Delta County, Michigan.

District Ranger Decisions:

Rapid River District: The Daily Press, published daily in Escanaba, Delta County, Michigan.

Manistique District: The Daily Press, published daily in Escanaba, Delta County, Michigan.

Munising District: The Mining Journal, published daily in Marquette, Marquette County, Michigan.

Sault Ste. Marie District: The Evening News, published daily in Sault.

Ste. Marie St. Ignace District: The Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan.

Hoosier National Forest, Indiana

Forest Supervisor Decisions:

The Hoosier Times, published in Bloomington, Monroe County, and Bedford, Lawrence County, Indiana.

District Ranger Decisions:

Brownstown District: The Hoosier Times, published in Bloomington, Monroe County, and Bedford, Lawrence County, Indiana.

Tell City District: The Perry County News, published in Tell City, Perry County, Indiana.

Huron-Manistee National Forest, Michigan

Forest Supervisor Decisions:

Cadillac News, published daily in Cadillac, Wexford County, Michigan.

District Ranger Decisions:

Baldwin-White Cloud Districts: Lake County Star, published weekly in Baldwin, Lake County, Michigan.

Cadillac-Manistee Districts: Manistee News Advocate, published daily in Manistee, Manistee County, Michigan.

Mio District: Oscoda County Herald, published weekly in Mb, Oscoda County, Michigan.

Huron Shores District: Oscoda Press, published weekly in Oscoda, Iosco County, Michigan.

Mark Twain National Forest, Missouri

Forest Supervisor Decisions:

Rolla Daily News, published in Rolla Phelps County, Missouri.

District Ranger Decisions:

Ava/Cassville District: Springfield News Leader, published daily in Springfield, Greene County, Missouri.

Cedar Creek District: Fulton Sun, published daily in Fulton, Callaway County, Missouri.

Doniphan District: Prospect News, published weekly in Doniphan, Ripley County, Missouri.

Eleven Point District: Prospect News, published weekly in Doniphan, Ripley County, Missouri.

Rolla District: Houston Herald, published weekly (Thursdays) in Houston, Texas County, Missouri.

Houston District: Houston Herald, published weekly (Thursdays) in Houston, Texas County, Missouri.

Poplar Bluff District: Daily American Republic, published daily in Poplar Bluff, Butler County, Missouri.

Potosi District: The Independent-Journal, published Thursday in Potosi, Washington County, Missouri.

Fredericktown District: The Democrat-News, published weekly in Fredericktown, Madison County, Missouri.

Salem District: The Salem News, published Tuesday and Thursday in Salem, Dent County, Missouri.

Willow Springs District: Springfield NewsLeader, published daily in West Plains, Howell County, Missouri.

Midewin Taligrass Prairie, Wilmington, Illinois.

Prairie Supervisor Decisions:

The Herald News, published daily in Joliet, Illinois.

Monongahela National Forest, Elkins, West Virginia.

Forest Supervisor Decisions:

The Inter-Mountain, published daily in Elkins, Randolph County, W.V.

District Ranger Decisions:

Cheat-Potomac District: The Grant County Press, published weekly in Petersburg, Grant County W.V.

Gauley District: The Nicholas Chronicle, published weekly in Summersville, Nicholas County, W.V.

Greenbrier District: The Pocahontas Times, published weekly in Marlinton, Pocahontas County, W.V.

Marlinton-White Sulphur District: The Pocahontas Times, published weekly in Marlinton, Pocahontas County, W.V.

Ottawa National Forest, Michigan

Forest Supervisor Decisions:

The Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan and for those on the Iron River District, The Reporter, published in Iron River, Iron County, Michigan.

District Ranger Decisions:

Bergland, Bessemer, Kenton, Ontonagon and Watersmeet Districts: fl lronwood Daily Globe, published in lronwood, Gogebic County, Michigan.

Iron River District: The Reporter, published in Iron River, Michigan, Iron County, Michigan.

Shawnee National Forest, Illinois

Forest Supervisor Decisions:

Southern Illinoisan, published daily in Carbondale, Jackson County, Illinois

District Ranger Decisions:

Hidden Springs, Mississippi Bluffs Districts: Southern Illinoisan, published daily in Carbondale, Jackson County, Illinois.

Superior National Forest, Minnesota

Forest Supervisor Decisions:

Duluth News-Tribune, published daily in Duluth, St. Louis County, Minnesota

District Ranger Decisions:

Gunflint District: Cook County News-Herald, published weekly in Grand Marais, Cook County, Minnesota.

Kawishiwi District: Ely Echo, published weekly in Ely, St. Louis County, Minnesota.

LaCroix District: Mesabi Daily News, published daily in Virginia, St. Louis County, Minnesota.

Laurentian District: Mesabi Daily News, published daily in Virginia, St. Louis County, Minnesota.

Tofte District: Duluth News-Tribune, published daily in Duluth, St. Louis County, Minnesota.

Wayne National Forest, Ohio

Forest Supervisor Decisions:

The Athens Messenger, published daily in Athens, Athens County, Ohio District.

Ranger Decisions:

Athens District: Athens Messenger, (same for Marietta Unit), published daily in Athens, Athens County, Ohio.

Ironton District: The Ironton Tribune, published daily in lronton, Lawrence County, Ohio.

White Mountain National Forest, New Hampshire and Maine

Forest Supervisor Decisions:

The New Hampshire Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire. If project will occur in Maine, also the Lewiston Sun-Journal, published daily in the Lewiston, County of Androscoggin, Maine.

Androscoggin District: The New Hampshire Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire if project is in New Hampshire and the Lewiston Sun-Journal, published daily Lewiston, County of Androscoggin, Maine if the project is in Maine.

Pemigewasset District: The New Hampshire Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Saco District: The New Hampshire Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire if project is in New Hampshire and the Lewiston Sun-Journal, published daily in Lewiston, County of Androscoggin, Maine if the project is in Maine.

Dated: August 4, 2009.

Logan Lee,

Deputy Regional Forester.

[FR Doc. E9–19049 Filed 8–11–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Opportunity To Submit Content Request for the 2010 Census of Aquaculture

AGENCY: National Agricultural Statistics Service.

ACTION: Notice and request for stakeholder input.

SUMMARY: The National Agricultural Statistics Service (NASS) is currently accepting stakeholder feedback in the form of content requests for the 2010 Census of Aquaculture. This census is required by law under the ''Census of

Agriculture Act of 1997,'' Public Law No. 105–113 (7 U.S.C. 2204g).

DATES: Comments on this notice must be received by September 25, 2009 to be assured consideration.

ADDRESSES: Requests must address items listed in comments section below.

Please submit requests online at: *http://www.agcensus.usda.gov/follow-ons* or via mail to: USDA–NASS, Census Content Team, 1400 Independence Ave., SW., Rm. 5340, MS 2021, Washington, DC 20250.

If you have any questions send an e-mail to *aginputcounts@nass.usda.gov* or call 1–800–727–9540.

FOR FURTHER INFORMATION OR COMMENTS CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION: The results of the 2005 Census of Aquaculture were released in October 2006. For more information, visit on-line at: *http://www.agcensus.usda.gov/Publications/2002/Aquaculture*. The U.S. Department of Agriculture's National Agricultural Statistics Service is in the process of planning the content of the 2010 Census of Aquaculture. We are seeking input on ways to improve the Census of Aquaculture. Recommendations or any other ideas concerning the census would be greatly appreciated. The 2005 Census of Aquaculture questionnaire may be viewed on-line at: *http://www.agcensus.usda.gov/Publications/2002/Aquaculture/aquacen2005_appendixb.pdf*.

The following justification categories must be addressed when proposing a new line of questioning for the 2010 Census of Aquaculture:

1. What data are needed?

2. Why are the data needed?

3. At what geographic level are the data needed? (U.S., State, County, other)

4. Who will use these data?

5. What decisions will be influenced with these data?

6. What surveys have used the proposed question before; what testing has been done on the question; and what is known about its reliability and validity.

7. Draft of the recommended question.

All responses to this notice will become a matter of public record and be summarized and considered by NASS in preparing the 2010 Census of Aquaculture questionnaire for OMB approval.

Signed at Washington, DC, July 22, 2009.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E9–19347 Filed 8–11–09; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China

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

SUMMARY: On October 20, 2008, the Department of Commerce (the Department) published in the **Federal Register** the initiation of an antidumping circumvention inquiry to determine if certain products produced by Tianjin Iron and Steel Co., Ltd. (Tianjin) and/or imported by Toyota Tsusho America, Inc. (Toyota Tsusho) constitute circumvention of the antidumping duty order on certain cut-to-length carbon steel plate from the People's Republic of China. *See Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Initiation of Antidumping Circumvention Inquiry*, 73 FR 62250 (October 20, 2008). On July 14, 2009, the Department published its notice of affirmative preliminary determination of circumvention. *See Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 74 FR 33991 (July 14, 2009) (*Preliminary Determination*). We gave interested parties an opportunity to comment on the *Preliminary Determination*, and received no comments. Therefore, we continue to determine that imports of inquiry merchandise (as defined below) are circumventing the order on cut-to-length carbon steel plate from the People's Republic of China.

DATES: *Effective Date:* August 12, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1131 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2009, the Department published its notice of affirmative preliminary determination of circumvention. *See Preliminary Determination*. The Department preliminarily determined that inquiry merchandise (defined below) produced by Tianjin and/or imported by Toyota Tsusho was circumventing the antidumping duty order on certain cut-to-length carbon steel plate from the People's Republic of China. The Department also directed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of such merchandise and require case deposits on said entries. *Id.* In accordance with 19 CFR 351.225(f)(3), interested parties were invited to comment on the preliminary determination within 20 days of publication of the *Preliminary Determination. Id.* No parties submitted comments.

Scope of the Order

The product covered by the order is certain cut-to-length carbon steel plate from the People's Republic of China. Included in this description is hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in the order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045,

7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. Specifically excluded from subject merchandise within the scope of the order is grade X–70 steel plate.

Merchandise Subject to the Minor Alterations Antidumping Circumvention Proceeding

The merchandise subject to this antidumping circumvention inquiry (inquiry merchandise) consists of all merchandise produced by Tianjin and/or imported by Toyota Tsusho containing 0.0008 percent or more boron, by weight, and otherwise meeting the requirements of the scope of the antidumping duty order as listed under the ''Scope of the Order'' section above, with the exception of merchandise meeting all of the following requirements: aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (*i.e.*, Jominy test) result indicating a boron factor of 1.8 or greater. This merchandise is currently classified in the HTSUS under item numbers 7225.40.3050, 7225.99.0090, 7226.91.5000, and 7226.99.0180. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of inquiry merchandise is dispositive.

Affirmative Final Determination of Circumvention

The Department conducted this circumvention inquiry in accordance with section 781(c) of the Tariff Act of 1930, as amended (the Act), which deals with minor alterations of merchandise. The Department noted in the *Preliminary Determination* the criteria typically used by the Department to make determinations in such inquiries (*i.e.*, the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products). *See Preliminary Determination* at 33992.

As noted in the *Preliminary Determination*, Toyota Tsusho failed to respond to the Department's questionnaire, thus warranting a preliminary determination, pursuant to sections 776(a) and (b) of the Act, that imports from the People's Republic of China of inquiry merchandise imported by Toyota Tsusho, regardless of the producer or exporter of the merchandise, and otherwise meeting the description of in-scope merchandise, are within the class or kind of merchandise subject to the antidumping duty order on certain cut-to-length carbon steel plate from the People's Republic of China. *See Preliminary Determination* at 33993.

With respect to Tianjin, the Department analyzed the information provided by Tianjin in its questionnaire responses following the aforementioned criteria normally used in minor alteration circumvention inquiries, as well as an additional case-specific criterion (*i.e.*, alteration of export tariff and VAT refund rates by the government of the People's Republic of China), and preliminarily determined that imports from the People's Republic of China of inquiry merchandise produced by Tianjin and otherwise meeting the description of in-scope merchandise are within the class or kind of merchandise subject to the antidumping duty order on certain cut-to-length carbon steel plate from the People's Republic of China. *See Preliminary Determination* at 33993.

Because no parties commented on the Department's preliminary determination, and no reasons exist to reverse that determination, the Department determines that inquiry merchandise produced by Tianjin and/or imported by Toyota Tsusho is within the class or kind of merchandise subject to the antidumping duty order on certain cut-to-length carbon steel plate from the People's Republic of China.

Continuation of Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(3), we are directing CBP to continue to suspend liquidation of inquiry merchandise entered, or withdrawn from warehouse, for consumption on or after October 20, 2008, the date of the publication of the *Initiation Notice*. We will also instruct CBP to continue to require a cash deposit of estimated duties at the applicable rates for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after October 20, 2008, the date of the publication of the *Initiation Notice*, in accordance with 19 CFR 351.225(l)(3).[1]

[1] In the *Preliminary Determination* the Department inadvertently stated that the requirement of cash deposits applied for entries of the product entered, or withdrawn from warehouse, for consumption on or after October 10, 2008. However, the publication of the *Preliminary Determination* was on October 20, 2008, and that is the effective date for both suspension of liquidation and requirement of cash deposits for the merchandise in question.

Notice to Parties

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This affirmative final circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

Dated: August 6, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–19339 Filed 8–11–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 33–2009]

Foreign-Trade Zone 274—Butte-Silver Bow, MT; Application for Reorganization under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City and County of Butte-Silver Bow, Montana, grantee of FTZ 274, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 4, 2009.

The grantee's proposed service area under the ASF would be the City and County of Butte-Silver Bow, Montana. If approved, the grantee would be able to serve sites throughout the service area

based on companies' needs for FTZ designation. The proposed service area is adjacent to the Butte-Silver Bow Customs and Border Protection port of entry.

FTZ 274 was approved on June 4, 2009 (74 FR 31009, 6/29/09). The applicant is requesting to include its current site in the reorganized zone as a ''magnet'' site. The applicant proposes that Site 1 be exempt from ''sunset'' time limits that otherwise apply to sites under the ASF. No usage-driven sites are being proposed at this time.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 13, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 26, 2009).

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz*. For further information, contact Kathleen Boyce at *Kathleen_Boyce@ita.doc.gov* or 202–482–1346.

Dated: August 4, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–19351 Filed 8–11–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 32–2009]

Foreign-Trade Zone 74—Baltimore, MD Application for Subzone Status Tulkoff Food Products, Inc. (Dehydrated Garlic)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Baltimore, grantee of FTZ 74, requesting special-purpose subzone status for the garlic products manufacturing plant of Tulkoff Foods Products, Inc. (TFP), located in Baltimore, Maryland. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 3, 2009.

The TFP facility (56 employees/6 acres/258,226 sq. ft.) is located at 2301 Chesapeake Avenue in Baltimore, Maryland. The manufacturing plant is used to produce packaged wet garlic (up to 3 million pounds annually) for industrial and commercial food service use. The manufacturing process involves foreign-origin bulk dehydrated garlic (HTSUS 0712.90, duty rate: 29.8%) which is rehydrated with water then packaged in jars, tubs, and pails. The rehydrated garlic (HTSUS 2005.91) is sold to U.S. wholesale customers and exported.

FTZ procedures could exempt TFP from customs duty payments on the foreign dehydrated garlic used in export production (about 1% of annual shipments). On domestic shipments, the company would be able to elect the duty rate that applies to finished rehydrated garlic (11.2%) for the foreign bulk dehydrated garlic. TFP would also be exempt from duty payments on any foreign garlic that becomes waste during the production process. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. The closing period for receipt of comments is October 13, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 26, 2009.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz*. For further information, contact Pierre Duy at *Pierre_Duy@ita.doc.gov* or (202) 482–1378.

Dated: August 3, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–19341 Filed 8–11–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–946]

Prestressed Concrete Steel Wire Strand From the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

DATES: *Effective Date:* August 12, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone 202–482–2209.

SUPPLEMENTARY INFORMATION:

Background

On June 23, 2009, the Department of Commerce (the Department) initiated the countervailing duty investigation of prestressed concrete steel wire strand from the People's Republic of China. *See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Initiation of Countervailing Duty Investigation* 74 FR 29670 (June 23, 2009).

Postponement of Due Date for Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, the Department may postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation if, pursuant to section 703(c)(1)(B) of the Act, the Department concludes that the parties concerned in the investigation are cooperating and determines that the investigation is extraordinarily complicated and that ''additional time is necessary to make the preliminary determination.''

The Department is currently investigating a number of complex alleged subsidy programs, including various loan programs, grants, income tax incentives, and the provision of goods and services for less than adequate remuneration. Due to the number and complexity of the alleged subsidy programs being investigated, we find that this investigation is extraordinarily complicated and that additional time is necessary to make the preliminary determination. Therefore, in accordance with section 703(c)(1)(B) of the Act, we are fully extending the due date for the preliminary determination to no later than 130 days after the day on which the investigation was initiated. The deadline for completion of the preliminary determination is now October 24, 2009.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: August 5, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–19332 Filed 8–11–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ74

Endangered and Threatened Species; Initiation of a Status Review for the Humpback Whale and Request for Information

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic andAtmospheric Administration, Commerce.

ACTION: Notice of initiation of a status review; request for information.

SUMMARY: The National Marine Fisheries Service (NMFS) announces a status review of the humpback whale (*Megaptera novaeangliae*) under the Endangered Species Act of 1973 (ESA). A status review is a periodic undertaking conducted to ensure that the listing classification of a species is accurate. A status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information on the all humpback whale populations in all waters worldwide that has become available since the last humpback whale status review in 1999. Based on the results of this review, we will make the requisite findings under the ESA.

DATES: To allow us adequate time to conduct these reviews, we must receive your information no later than October 13, 2009. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: You may submit comments, identified by the code 0648–XQ74, addressed to Shannon Bettridge by any of the following methods:

1. Electronic Submissions: Submit all electronic comments via the Federal eRulemaking Portal *http://www.regulations.gov.*

2. Facsimile (fax): 301–713–0376, Attn: Shannon Bettridge.

3. Mail: Shannon Bettridge, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge at the above address, or at 301–713–2322.

SUPPLEMENTARY INFORMATION: Under the ESA, a list of endangered and threatened wildlife and plant species must be maintained. The list is published at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. On the basis of such reviews under section 4(c)(2)(B), we determine whether a particular species should be removed from the list (delisted), or reclassified from endangered to threatened, or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available, substantiating that the species is neither endangered nor threatened for one or more of the following reasons: (1) the species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces active reviews of the humpback whale, currently listed globally as endangered.

Public Solicitation of New Information

To ensure that the review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, relevant governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the humpback whale.

Status reviews consider the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include: (1) species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and suitability; (3) conservation measures that have been implemented that benefit the species; (4) status and trends of threats; and (5) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the list, and improved analytical methods.

Because these species are vertebrate species, we will also be considering application of the Distinct Population Segment (DPS) policy for vertebrate taxa. A DPS is defined in the February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). For a population to be listed under the ESA as a DPS, three elements are considered: (1) the discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment=s conservation status in relation to the ESA=s standards for listing (i.e., is the population segment endangered or threatened?). DPSs of vertebrate species, as well as subspecies of all listed species, may be proposed for separate reclassification or for removal from the list.

If you wish to provide information on the humpback whale in the northern and/or southern hemispheres for this status review, you may submit your information and materials to Shannon Bettridge (see **ADDRESSES** section).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 5, 2009.

James H. Lecky,

Office Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–19336 Filed 8–11–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ70

Marine Mammals; File No. 1054–1731

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that the University of Florida, Aquatic Animal Program, College of Veterinary Medicine, 2015 SW 16th Avenue, Gainesville, FL 32610 [Dr. Ruth Francis-Floyd, Responsible Party] has been issued an amendment to scientific research Permit No. 1054–1731.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

This minor amendment extends the expiration date of the permit from July 31, 2009 to July 31, 2010. The permit authorizes the Permit Holder to receive, import, and export marine mammal and threatened and endangered species under NMFS jurisdiction. No takes of live animals are authorized by the permit.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 30, 2009.

P. Michael Payne,

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

[FR Doc. E9–19292 Filed 8–11–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 0908061222–91222–02]

RIN 0660–ZA29

State Broadband Data and Development Grant Program

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

ACTION: Notice of Funds Availability; clarification.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, publishes this Notice to provide clarification of the information requirements for State Broadband Data and Development Grant Program awardees stated in the Notice of Funds Availability and Solicitation of Applications (Notice) published on July 8, 2009.

DATES: NTIA will accept applications until August 14, 2009, at 11:59 p.m. Eastern Time (ET).

ADDRESSES: All applications must be submitted through the online Grants.gov system no later than 11:59 p.m. ET on August 14, 2009, as more fully described in the Notice published on July 8, 2009.

FOR FURTHER INFORMATION CONTACT: Anne W. Neville, Program Director, State Broadband Data and Development Grant Program, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4716, Washington, DC 20230; by telephone at (202) 482–4949 or via electronic mail at *broadbandmapping@ntia.doc.gov.* Information about the State Broadband Data and Development Grant Program can also be obtained electronically via the Internet at *http://www.ntia.doc.gov/broadbandgrants.*

SUPPLEMENTARY INFORMATION: On July 8, 2009, NTIA published a Notice in the **Federal Register** to announce the availability of funds for the State Broadband Data and Development Grant Program pursuant to the authority provided in the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, 123 Stat. 115 (2009) and the Broadband Data Improvement Act (BDIA), Title 1, Public Law 110–385, 122 Stat. 4096 (2008).[1] The Technical Appendix of the Notice directs awardees to provide a timeline for anticipated dates of data delivery, including the provision of a substantially complete set of the following information to NTIA regarding each provider's service area no later than February 1, 2010: broadband service availability by service address and by shapefile for wireless services; residential broadband service pricing based on average revenue per end user and weighted average speed; broadband service infrastructure based, specifically last-mile and middle-mile connection points; and a listing of community anchor institutions.[2] The Technical Appendix also includes a description of the specific technical formats to be used when submitting the data. In addition to the information the Technical Appendix requires to be provided, the Notice requires applicants to provide a comprehensive description of plans to obtain all data required under the Technical Appendix regarding service provided by commercial or public providers as part of the application to be submitted between July 14, 2009 and August 14, 2009.[3]

Technical Appendix Clarification

This Notice is intended to clarify the exact level of detail required by the information collection set forth in the following sections of the Technical Appendix.

1. Broadband Service Availability in Provider's Service Area

(a) Availability by Service Address—Service Associated With Specific Addresses

In lieu of reporting address-specific data, Awardees may satisfy the requirements of this section of the Technical Appendix by providing

[1] State Broadband Data and Development Grant Program, *Notice of Funds Availability and Solicitation of Applications,* 74 FR 32545 (July 8, 2009) (Notice).

[2] Notice at *Technical Appendix* A, 74 FR at 32557–32564. The Notice also states that applicants must demonstrate that they have the ability to provide a substantially complete set of all broadband mapping data on or before February 1, 2010 and complete the data collection on or before March 1, 2010. *See id.* at 32552, 32553.

[3] Notice, 74 FR at 32552.

NTIA, for each facilities-based provider of broadband service in their state, a list of all census blocks of no greater than two square miles in area in which broadband service is available to end users, along with the associated service characteristics identified in the Technical Appendix. For those census blocks larger in area than two square miles, Awardees must provide NTIA, for each facilities-based provider of broadband service in their state, either the address-specific data as described in the original Notice or a list of all street segments with address ranges in such census blocks, as contained within the U.S. Census Bureau's TIGER[4]/Line Files or such other database of at least equivalent granularity, in which broadband service is available to end users, along with the associated service characteristics identified in the Technical Appendix. Awardees are not required to report the 11 fields of data expressly denominated as ''End User'' fields in the Record Format chart. Additionally, Awardees are not required to provide Maximum Advertised Downstream or Maximum Advertised Upstream Speed at the address level and may satisfy this requirement by providing such speeds across each service area or local franchise area, by Metropolitan or Rural Statistical Area.

(b) Availability by Shapefile—Wireless Services not Provided to a Specific Address

With respect to the ''Availability Area Shapefile Details,'' item 4 will be satisfied if each polygon indicates the subscriber broadband service authorized maximum downstream and upstream speed available.

2. Residential Broadband Service Pricing in Provider's Service Area

(a) Average Revenue per End User and Weighted Average Speed

Awardees are not required to report average revenue per end user. Awardees must satisfy the remaining conditions of this section, provided that such data may be reported across a provider's service or local franchise area, by Metropolitan or Rural Statistical Area.

3. Broadband Service Infrastructure in Provider's Service Area

(a) Last-Mile Connection Points

Awardees are not required to report the data identified in this section. Nevertheless, to the extent an Awardee is unable to reasonably verify the network service area availability data required under Section 1 of the Technical Appendix by other means, the Awardee should be prepared to conduct verification by reference to the first points of aggregation in the networks (serving facilities) used by facilities-based providers to provide broadband service to end users, as described in this section of the Technical Appendix.

Clarification With Respect to Use of Data

NTIA intends no changes to the use of data collected hereunder, except to the extent that the clarifications and deferrals provided in this Notice may affect the type and level of detail of the data reported, or as otherwise expressly provided in this Notice. In light of these clarifications and deferrals, NTIA intends to identify all broadband providers by name on the broadband map, rather than leaving such identification to the discretion of the provider.[5] Thus, an address-specific search of the map shall identify the names of all providers whose service is available in the corresponding census block or street segment.

With respect to nondisclosure agreements between broadband service providers and awardees (see Notice Section V(B)), NTIA expects awardees to enter into such agreements upon the request of the service provider. Further, NTIA will condition its disclosure of Confidential Information to the FCC or other Federal agencies upon the agency's agreement to treat the data as confidential as provided in the Notice and as otherwise consistent with applicable law.

All other requirements provided in the Notice published on July 8, 2009, remain unchanged.

Dated: August 7, 2009.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. E9–19326 Filed 8–7–09; 4:15 pm]

BILLING CODE 3560–60–P

[4] Topologically Integrated Geographic Encoding and Referencing (TIGER) is available at *http://www.census.gov*.

[5] In light of the clarification regarding reporting of availability data at a census block or street segment level rather than street address level, the definition of ''Confidential Information'' in section III of the Notice published on July 8, 2009, shall no longer include the identification of a service provider's specific Service Area. A service provider's ''footprint'' will likewise no longer be included in the definition of ''Confidential Information.'' Notice, 74 FR at 32549.

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0031]

Ross Stores, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Ross Stores, Inc., containing a civil penalty of $500,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 27, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 09–C0031, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Renee K. Haslett, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7673.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 6, 2009.

Todd A. Stevenson,

Secretary.

In the Matter of Ross Stores, Inc.; Settlement Agreement

1. In accordance with 16 CFR 1118.20, Ross Stores, Inc. (''Ross'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product

Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Ross is a corporation organized and existing under the laws of Delaware, with its principal offices located in Pleasanton, California. At all times relevant hereto, Ross sold apparel.

Staff Allegations

4. From September to December, 2006, Ross held for sale and/or sold the following children's upper outerwear product with drawstrings at the neck: Seena International, Inc., Brooklyn Express children's hooded sweatshirts. From July 2007 to January 2008, Ross held for sale and/or sold the following children's upper outerwear products with drawstrings at the neck: Scope Imports, Inc., boys' hooded sweatshirts; Liberty Apparel Company, Inc., Jewel brand girls' hooded sweatshirts; and Siegfried & Parzifal, Inc., Karl Kani boys' fleece hooded sweatshirts. The products identified in this paragraph are collectively referred to herein as ''Sweatshirts.''

5. Ross sold Sweatshirts to consumers.

6. The Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Ross was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. 2052(a)(5), (8), and (13).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure Sweatshirts they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Ross informed the Commission that there had been no incidents or injuries associated with the Sweatshirts.

11. Ross's distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. Recalls have been announced regarding the Sweatshirts.

13. Ross had presumed and actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Ross had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Ross to immediately inform the Commission of the defect and risk.

14. Ross knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Ross to civil penalties.

Ross's Responsive Allegations

15. Ross denies the Staff's allegations above, including, but not limited to, any allegation that Ross knowingly violated the CPSA.

16. Ross has entered into this Agreement solely to avoid protracted litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing on the part of Ross.

Agreement of the Parties

17. Under the CPSA, the Commission has jurisdiction over this matter and over Ross.

18. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Ross, or a determination by the Commission, that Ross knowingly violated the CPSA.

19. In settlement of the Staff's allegations, Ross shall pay a civil penalty in the amount of five hundred thousand dollars ($500,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

20. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

21. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Ross knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Ross failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

22. The Commission may publicize the terms of the Agreement and the Order.

23. The Agreement and the Order shall apply to, and be binding upon, Ross and each of its successors and assigns.

24. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Ross and each of its successors and assigns to appropriate legal action.

25. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

26. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such

provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Ross agree that severing the provision materially affects the purpose of the Agreement and the Order.

Ross Stores, Inc.

Dated: *6/25/09*

By:

Mark LeHocky,

Senior Vice President
General Counsel & Corporate Secretary
ROSS STORES, INC.
4440 Rosewood Drive
Pleasanton, CA 94588

Dated: *6/26/09*

By:

Jeffrey B. Margulies,

Fulbright & Jaworski L.L.P.
555 South Flower Street, Forty-First Floor
Los Angeles, CA 90071
Counsel for Ross Stores, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey,
General Counsel.

Ronald G. Yelenik,
Assistant General Counsel,
Office of the General Counsel.

Dated: *6/29/09*

By:

Renee K. Haslett,

Trial Attorney
Division of Compliance,
Office of the General Counsel.

In the Matter of Ross Stores, Inc.; Order

Upon consideration of the Settlement Agreement entered into between Ross Stores, Inc. (''Ross'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Ross, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

further ordered, that Ross shall pay a civil penalty in the amount of five hundred thousand dollars ($500,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Ross to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Ross at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *5th* day *August,* 2009.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. E9–19370 Filed 8–11–09; 8:45 am]

BILLING CODE 6355–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2009–1]

Risk Assessment Methodologies at Defense Nuclear Facilities

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) which identifies the need for adequate policies and associated standards and guidance on the use of quantitative risk assessment methodologies at the Department of Energy's (DOE) defense nuclear facilities.

DATES: Comments, data, views, or arguments concerning the recommendation are due on or before September 11, 2009.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Faculties Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Brian Grosner or Andrew L. Thibadeau at the address above or telephone number (202–694–7000).

Dated: August 5, 2009.

Joseph F. Bader,

Acting Vice Chairman.

RECOMMENDATION 2009–1 TO THE SECRETARY OF ENERGY

Risk Assessment Methodologies at Defense Nuclear Facilities Pursuant to 42 U.S.C. 2286(a)(5), Atomic Energy Act of 1954, As Amended

Dated: July 30, 2009.

Overview

Quantitative risk assessment techniques are widely used to improve the safety of complex engineering systems. Such techniques have been relied upon in the nuclear industry for decades. One of the seminal documents, known as WASH–1400, used an event-tree, fault-tree methodology to assess the risk of accidents at nuclear power reactors operating in the United States.[1] Today, the U.S. Nuclear Regulatory Commission (NRC) employs a more sophisticated set of risk assessment tools and methodologies.[2] Likewise, the National Aeronautics and Space Administration (NASA) has developed and implemented a detailed policy on the use of quantitative risk assessment for its missions.[3]

The Department of Energy (DOE) has historically endorsed a ''bounding'' or deterministic approach to hazard and accident analysis, which continues to have important applications at defense nuclear facilities. Beginning in the early 1990s, the Defense Nuclear Facilities Safety Board (Board) observed increasing use of quantitative risk assessment techniques by DOE. This increased use was not viewed by the Board as objectionable in itself; the Board's concern was that DOE was using quantitative risk assessment methods without having in place a clear policy and set of procedures to govern the application of these methods at facilities that perform work ranging from assembly and disassembly of nuclear weapons to nuclear waste processing and storage operations. For this reason, the Board wrote to the Secretary of Energy on April 5, 2004, and made the following observation:

''[T]he Board has reviewed the DOE's use of risk management tools at defense nuclear facilities. This review revealed that DOE and its contractors have employed risk assessment in a variety of activities, including the development of documented safety analyses and facility-level decision making. The level of formality of these assessments varies over a wide range. The Board's review also revealed that DOE does not have mechanisms (such as standards or guides) to control the use of risk management tools nor does it have an internal organization assigned to maintain cognizance and ensure the adequacy and consistency of risk assessments. Finally, the Board's review showed that other Federal agencies involved in similar high-risk activities (e.g., National Aeronautics and Space Administration, U.S. Nuclear Regulatory Commission) have, to varying degrees, formalized the use of quantitative risk assessment in their operations and decision-making activities. These agencies have relevant standards and defined organizational elements, procedures, and processes for the development and use of risk management tools.''

On this basis, the Board requested that the Secretary ''brief the Board within 60 days of receipt of this letter as to DOE's ongoing and planned programs and policies for assessing, prioritizing, and managing risk.''

The Board's initial concerns on this issue have been reiterated in letters dated November 23, 2005, and May 16, 2007. In the Board's 2006 Annual Report to Congress, the section on Risk Assessment Methodologies noted ''the slow pace of its development,'' and the 2008 report noted that ''all progress [has come] to a halt.'' The Board's most recent annual report stated that at ''a time when governments, financial institutions and industries worldwide are expediting the implementation of enterprise-wide risk governance programs, DOE's slow pace for developing a policy is of serious concern.''

DOE's most recent correspondence on this issue, dated January 9, 2007, outlined plans

[1] The Reactor Safety Study, October 1975 (sometimes known as the ''Rasmussen Report'').

[2] The NRC approach is summarized at *http://www.nrc.gov/about-nrc/regulatory/risk-informed.html.*

[3] NASA's policies and methods can be found at *http://www.hq.nasa.gov/office/codeq/risk/index.htm.*

and progress toward developing a policy and accompanying guidance document on the use of risk assessment at defense nuclear facilities. This DOE letter indicated that the draft policy and guidance document would be ready for submittal to the DOE directives system in March 2007. Despite periodic meetings with the Board's staff and briefings to the Board, as of July 2009, the draft policy and guidance document has not been entered into the DOE Directives system, and near-term resolution of the issue is not evident. Without such a policy, DOE has little basis to accept the validity of existing risk management tools that use quantitative risk assessment. This is particularly important since the managers of DOE's field elements are allowed to accept the safety risks that high-hazard operations pose toward workers and the public based on widely varying levels of assessments.

Though Title 10, Part 830 of the Code of Federal Regulations (10 CFR 830, *Nuclear Safety Management*) and its associated quality assurance considerations govern nuclear safety evaluations at a fundamental level, these existing requirements are not of sufficient specificity to guide the use of complex quantitative risk assessments. The continued pursuit of ad hoc applications of risk assessment in the absence of adequate DOE policy and guidance is contrary to the standards-based approach to nuclear safety espoused by DOE and endorsed by the Board.[4]

Recommendation

Therefore, the Board recommends that DOE:

1. Establish a policy on the use of quantitative risk assessment for nuclear safety applications.

2. Consistent with this policy, establish requirements and guidance in a DOE directive or directives that prescribe controls over the quality, use, implementation, and applicability of quantitative risk assessment in the design and operation of defense nuclear facilities.

3. Evaluate current ongoing uses of quantitative risk assessment methodologies at defense nuclear facilities to determine if interim guidance or special oversight is warranted pending the development of formal policy and guidance.

4. Establish a requirement to identify deficiencies and gaps in ongoing applications of quantitative risk assessment along with the additional research necessary to fill those gaps in support of the development and implementation of the final policy and guidance.

A. J. Eggenberger,
Chairman.

[FR Doc. E9–19245 Filed 8–11–09; 8:45 am]

BILLING CODE 3670–01–P

[4] The Board's Recommendation 2008–1 is similarly directed at DOE's use of a safety methodology (in this case, classifying fire protection systems as safety-class or safety-significant) in advance of developing criteria and guidance.

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Record of Decision for Undersea Warfare Training Range

AGENCY: Department of the Navy, DOD.

ACTION: Notice of record of decision.

SUMMARY: The United States (U.S.) Department of the Navy (Navy), after carefully weighing the environmental consequences of the installation and operation of the proposed action, announces its decision to develop an undersea warfare training range (USWTR) within the Preferred Alternative Site, the Jacksonville Operating Area (JAX OPAREA). At this time the Navy is implementing only a portion of the proposed action, a decision to move forward with installation of the USWTR, which consists of installing undersea cables and up to 300 nodes over a 500 square-nautical-mile area of the ocean. This location is approximately 50 nm from the northeast coast of Florida. The underwater nodes will be linked by underwater cable to a cable termination facility located ashore on Naval Station Mayport, Florida.

Although both the installation phase and training phase of the USWTR are fully analyzed in the Final Overseas Environmental Impact Statement/Environmental Impact Statement (OEIS/EIS), and informs the decision as to the site selected for installation of the USWTR, this Record of Decision (ROD) implements only a portion of the proposed action by authorizing the installation of the USWTR. Because the USWTR is not anticipated to be ready for operation until at least 2014, the analysis regarding the environmental effects from training on the range will be updated in a future OEIS/EIS document closer in time to the date when the training will begin. The principal type of training activities on the USWTR will be anti-submarine warfare. The decision to implement training on USWTR will be based on the updated analysis of environmental effects in a future OEIS/EIS in conjunction with appropriate coordination and consultation with the National Marine Fisheries Service.

SUPPLEMENTARY INFORMATION: The complete text of the ROD is available on the public web site: *http://projects.earthtech.com/uswtr/USWTR_index.htm* along with the complete Final OEIS/EIS and accompanying documentation. Single copies of the ROD will be made available upon request by contacting Naval Facilities Engineering Command Atlantic, Attn: USWTR OEIS/EIS Project Manager, Code EV22LL, 6506 Hampton Boulevard, Lafayette River Annex Building A, Norfolk, Virginia 23508–1278.

Dated: August 5, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–19346 Filed 8–11–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The 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 October 13, 2009.

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 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: August 7, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.
Title: Common Core of Data National Public Education Financial Survey (NPEFS) 2009–11.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 56.
Burden Hours: 5,264.

Abstract: As a result of American Recovery and Reinvestment Act of 2009 (ARRA), NCES has been asked to add six data items to the Common Core of Data National Public Education Financial Survey (NPEFS) in order to allow an adjustment in the state per pupil expenditure (SPPE) used in allocating Title I, Impact Aid, and other ED funds. The Department must be able to exclude the ARRA expenditures from the SPPE so that they will not affect the allocation process. States are already required to track the ARRA revenues separately. The six additional data items will provide the necessary detail to exclude ARRA expenditures from SPPE and allow states to report total ARRA expenditures and their functional allocations, such as for classroom instruction or school construction. The estimated additional data burden time is 8 hours per respondent, for a total of 79 burden hours per state data technician and 19 burden hours per state data manager (total 5,264 burden hours). NPEFS annually gathers universe information from states about revenues and expenditures for public education, specifically revenues by source and expenditures by function and object, such as school administration costs, student transportation, food services, salaries, benefits, and supply costs.

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 4108. 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. E9–19357 Filed 8–11–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 11, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, 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: August 7, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: The Program for North American Mobility in Higher Education (1894–0001).
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 30.
Burden Hours: 900.

Abstract: The Program for North American Mobility in Higher Education is a discretionary grant program which supports institutional cooperation and student exchanges among the United States, Mexico, and Canada. Funding supports the participation of U.S. institutions and students in trilateral consortia of institutions of higher education. Funding will be multi-year with funding up to four years.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4107. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete

title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–19361 Filed 8–11–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 11, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 6, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: IDEA Part C State Performance Plan (SPP) and Annual Performance Report (APR).

Frequency: SPP—originally submitted in 2005 and updated annually as needed; APR—annual submission.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 110,880.

Abstract: In accordance with 20 U.S.C. 1416(b)(1) and 20 U.S.C. 1442, not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each lead agency must have in place a performance plan that evaluates the lead agency's efforts to implement the requirements and purposes of Part C and describe how the Lead Agency will improve such implementation. This plan is called the Part C State Performance Plan (Part C—SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) the lead agency shall report annually to the public on the performance of each early intervention service program located in the State on the targets in the lead agency's performance plan. The lead agency also shall report annually to the Secretary on the performance of the State under the lead agency's performance plan. This report is called the Part C Annual Performance Report (Part C—APR). IC 1820–0578 is being extended so that States will continue to maintain the SPP and annually submit the APR.

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 4033. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–19364 Filed 8–11–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; Vocational Rehabilitation Services Projects for American Indians With Disabilities; Notice Reopening Fiscal Year (FY) 2009 Competition for the Vocational Rehabilitation Services Projects for American Indians With Disabilities Program

Catalog of Federal Domestic Assistance (CFDA) Number: 84.250A.

SUMMARY: On May 14, 2009, we published in the **Federal Register** (74 FR 22729) a notice inviting applications for new awards for fiscal year (FY) 2009 for the American Indian Vocational Rehabilitation Services (AIVRS) program. The application notice for the FY 2009 AIVRS program competition established a July 23, 2009, deadline date for eligible applicants to apply for funding under this program. Elsewhere in this issue of the **Federal Register** we have published interim final regulations that amend the regulatory definition of the term *consortium* under the AIVRS program. In order to apply this change to entities applying for a FY 2009 grant, through this notice, we are reopening the competition and establishing a new deadline for the submission of applications by those applicants affected by the change.

FOR FURTHER INFORMATION CONTACT: August Martin, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5088, PCP, Washington, DC 20202–2800. *Telephone:* (202) 245–7410 or by *e-mail: august.martin@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.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, the Department has amended the definition of the term *consortium* in the regulations for the AIVRS program (34 CFR 371.4(b)). The purpose of this regulatory change is to ensure that any consortium of Indian tribes could establish a separate legal entity to apply for a grant under this program. Prior to this regulatory change, the Department's definition of the term *consortium* under the AIVRS program required Indian tribes that choose to form a consortium to designate one of the Indian tribes of the consortium to serve as the grantee; it did not also permit the Indian tribes in the consortium to create a separate legal entity that would serve as the grantee on behalf of the consortium and be responsible for using the grant funds to provide services to all the Indian tribes in the consortium. To ensure that the change in the regulatory definition of the term *consortium* under the AIVRS program applies to entities applying for a FY 2009 grant, we are reopening the competition and establishing a new deadline for the submission of applications.

Only groups of Indian tribes that seek to apply for funding under the AIVRS program as a consortium using a separate legal entity as the applicant are permitted to submit an application under this reopened competition. Applicants that submitted applications by the July 23, 2009, deadline date in accordance with the terms of the May 14, 2009, notice inviting applications are not required to submit new applications. If an applicant that has already submitted an application for this competition now chooses to join a consortium and have a separate legal entity apply on behalf of the consortium, the applicant must notify the Department and reapply using the separate legal entity as the applicant by the deadline date in this notice.

The new deadline date is:

Deadline for Transmittal of Applications: September 11, 2009.

For information (other than the deadline for submission) about how to submit your application, please refer to section IV. 6. *Other Submission Requirements* in the May 14, 2009 **Federal Register** notice (74 FR 22729).

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services, to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: August 7, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–19333 Filed 8–11–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

APOGEE Medical, LLC

AGENCY: Department of Energy.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given with an intent to grant to APOGEE Medical, LLC of Atlanta, Georgia, an exclusive license to practice the inventions described in U.S. Patent No. 5,413,596, entitled ''Digital Electronic Bone Growth Stimulator.'' The inventions are owned by the United States of America, as represented by the U.S. Department of Energy (DOE).

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than August 27, 2009.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Annette R. Reimers, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Ave., SW., Washington, DC 20585; Telephone (202) 586–3815.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209 provides Federal agencies with authority to grant exclusive licenses in federally-owned inventions, if, among other things, the agency finds that the public will be served by the granting of the license. The statute requires that no exclusive license may be granted unless public notice of the intent to grant the license has been provided, and the agency has considered all comments received in response to that public notice before the end of the comment period.

APOGEE Medical, LLC of Atlanta, Georgia has applied for an exclusive license to practice the inventions embodied in U.S. Patent No. 5,413,596 and has plans for commercialization of the inventions. The exclusive license will be subject to a license and other rights retained by the U.S. Government and other terms and conditions to be negotiated. DOE intends to negotiate to grant the license, unless, within 15 days of this notice, the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reason why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all timely written responses to this notice and will proceed with negotiating the license if, after consideration of written responses to this notice, a finding is made that the license is in the public interest.

Issued in Washington, DC, on August 6, 2009.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. E9–19298 Filed 8–11–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–451–000]

Tennessee Gas Pipeline Company; Notice of Application

August 5, 2009.

Take notice that on July 31, 2009, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP09–451–000, an application

pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon certain inactive supply pipelines, associated meters, and appurtenances located in the West Delta area in Federal offshore waters and in State waters in Plaquemines Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Susan T. Halbach, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, or by calling (713) 420–5751 (telephone) or (713) 420–1601 (fax), *susan.halbach@elpaso.com,* Kathy Cash, Principal Analyst, Rates and Regulatory Affairs, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, or by calling (713) 420–3290 (telephone) or (713) 420–1605 (fax), *kathy.cash@elpaso.com,* or to Thomas G. Joyce, Manager, Certificates, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, or by calling (713) 420–3299 (telephone) or (713) 420–1605 (fax), *tom.joyce@elpaso.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; *see,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: August 26, 2009.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–19268 Filed 8–11–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2696–033]

Albany Engineering Corporation; and Town of Stuyvesant; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

DATES: August 5, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2696–033.

c. *Date filed:* July 31, 2009.

d. *Applicants:* Albany Engineering Corporation and the Town of Stuyvesant.

e. *Name of Project:* Stuyvesant Falls Hydroelectric Project.

f. *Location:* The existing project is located on Kinderhook Creek (in the Hudson River drainage basin) in the town of Stuyvesant, Columbia County, New York. The project does not occupy any Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. James A. Besha, P.E., President, Albany Engineering Corporation, 5 Washington Square, Albany, New York 12205; (518) 456–7712.

i. *FERC Contact:* Carolyn Templeton at (202) 502–8785 or *carolyn.templeton@ferc.gov.*

j. *Cooperating agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item (l) below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or

person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* September 29, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''efiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

m. The application is not ready for environmental analysis at this time.

n. The Stuyvesant Falls Hydroelectric Project consists of the following existing facilities: (1) A 13-foot-high, 240-foot-long, masonry gravity dam with a Taintor gate and trash sluice near the south abutment; (2) a 46-acre reservoir with a normal pool elevation of 174.3 feet USGS datum; (3) two 7.5-foot-diameter, 2,860-foot-long, riveted-steel pipelines; (4) a 25-foot-diameter surge tank; (5) two 200-foot-long steel penstocks; (6) a powerhouse containing a single 2.8-megawatt generating unit; and (7) other appurtenances.

The following generating equipment is proposed as part of the new license: (1) A minimum flow turbine located in the powerhouse utilizing a rated flow range of 10—65 cubic feet per second (cfs) and rated at 590 horsepower at 97 feet of head directly connected to a 440-kVA generator; and (2) a minimum flow turbine utilizing a rated flow range of 15 cfs and rated at 37 horsepower at 30 feet of head, directly connected to a 35-kVA generator and located at the existing dam and intake, and discharging directly to the current bypass reach immediately below the dam via an equalizing weir.

No new transmission lines are proposed for this project. The following equipment would be procured and installed to replace equipment previously removed from the project: (1) A new step up transformer and 50-foot generator leads; and (2) a new 34.5-kilovolt (kV) primary circuit breaker, adjacent to the proposed step up transformer and 34.5-kV, 40-foot primary leads to an existing adjacent Niagara Mohawk Power Corporation substation.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online *Support at FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

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, contact FERC Online Support.

p. With this notice, we are initiating consultation with the New York State Historic Preservation Officer, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue deficiency letter; September 2009.

Issue acceptance letter; January 2010.

Issue Scoping Document 1 for comments; February 2010.

Request additional information; March 2010.

Issue Scoping Document 2; April 2010.

Notice of application is ready for environmental analysis; April 2010.

Notice of the availability of the draft EA; December 2010.

Notice of the availability of the final EA; April 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–19269 Filed 8–11–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2727–085; 2666–032; 2534–091; 2710–053, and 2712–072]

PPL Maine, LLC; Black Bear Hydro Partners, LLC; Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

August 5, 2009.

On July 24, 2009, PPL Maine, LLC (Transferor) and Black Bear Hydro Partners, LLC (Transferee) filed a joint application for transfer of licenses of the Ellsworth Project No. 2727, Medway Project No. 2666, Milford Project No. 2534, Orono Project No. 2710, and the Stillwater Project No. 2712. The Ellsworth Project is located on the Union River near the city of Ellsworth in Hancock County, Maine. The Medway Project is located on the West Branch Penobscot River near the city of Medway in Penobscot County, Maine. The Milford Project is located on the Penobscot River near the city of Old Town in Penobscot County, Maine. The Orono and Stillwater Projects are located on the Stillwater Branch of the Penobscot River near the city of Orono in Penobscot County, Maine.

Applicants seek Commission approval to transfer the licenses for the Ellsworth, Medway, Milford, Orono, and Stillwater Projects from PPL Maine, LLC, to Black Bear Hydro Partners, LLC.

Applicant Contact: For Transferor: Jesse A. Dillon, PPL Maine, LLC, c/o PPL Services Corporation, Office of General Counsel, Two North Ninth Street, Allentown, PA 18101, (610) 774–5013.

For Transferee: Christine Miller, Esq. Black Bear Hydro Partners, LLC, c/o ArcLight Capital Partners, LLC, 200 Clarendon Street, Boston, MA 02117, (617) 531–6338.

FERC Contact: Steven Sachs, (202) 502–8666 or *Steven.Sachs@ferc.gov*.

Deadline for filing comments, protests, and motions to intervene: 30 days from the issuance of this notice. Comments and motions to intervene 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 ''e-Filing'' 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–2727–085 etc.) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–19271 Filed 8–11–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

August 05, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–76–000.

Applicants: Sollunar Energy, Inc.

Description: Amendment to Application of Sollunar Energy, Inc.

Filed Date: 08/04/2009.

Accession Number: 20090804–5092.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 25, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–4281–020.

Applicants: NRG Power Marketing LLC, Louisiana Generating LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, NRG Sterlington Power LLC.

Description: NRG Power Marketing, LLC submits an amendment to its 6/30/09 request for classification as Category 1 seller in the Central and Southwest Power Pool regions as amended on 7/22/09.

Filed Date: 08/03/2009.

Accession Number: 20090805–0017.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: ER99–1610–036; ER99–1610–037; ER98–4590–029; ER98–2640–032.

Applicants: Southwestern Public Service Company; Public Service Company of Colorado; Northern States Power Companies.

Description: Southwestern Public Service Company submits market-based rate authorization Triennial Market Power Analysis and a change in status report.

Filed Date: 07/31/2009.

Accession Number: 20090804–0158.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 29, 2009.

Docket Numbers: ER07–1130–003; ER97–4143–021; ER98–2075–026; ER98–542–023.

Applicants: AEP Service Corporation, AEP Energy Partners, Inc., CSW Energy Services, Inc., Central and South West Services, Inc.

Description: American Electric Power Service Corporation submits updated market power analysis.

Filed Date: 07/31/2009.

Accession Number: 20090805–0013.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 29, 2009.

Docket Numbers: ER01–3103–018.

Applicants: Astoria Energy LLC, Astoria Energy II LLC.

Description: Astoria Energy Files Under Ord. 697–C re Astoria Energy II.

Filed Date: 07/31/2009.

Accession Number: 20090731–5132.

Comment Date: 5 p.m. Eastern Time on Friday, August 21, 2009.

Docket Numbers: ER09–1412–001.

Applicants: U.S. Energy Partners LLC.

Description: US Energy Partners, LLC submits revised Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 08/04/2009.

Accession Number: 20090805–0024.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 25, 2009.

Docket Numbers: ER09–1426–002.

Applicants: Lehman Brothers Commodity Services Inc.

Description: Lehman Brothers Commodity Services, Inc. submits notice of cancellation of First Revised FERC Electric Tariff No. 1, effective 9/30/09.

Filed Date: 07/31/2009.

Accession Number: 20090804–0152.

Comment Date: 5 p.m. Eastern Time on Friday, August 21, 2009.

Docket Numbers: ER09–1541–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits Affected Systems Engineering and Procurement Agreement dated 7/24/09 with Interstate Power and Light Co.

Filed Date: 08/03/2009.

Accession Number: 20090804–0153.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: ER09–1542–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits an amendment to its tariff *etc.*

Filed Date: 08/03/2009.

Accession Number: 20090804–0154.

Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: ER09–1543–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to Section 22.3 of its Open Access Transmission, Energy and Operating Reserve Markets Tariff.

Filed Date: 08/04/2009.

Accession Number: 20090804–0161.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 25, 2009.

Docket Numbers: ER09–1545–000.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits Average System Cost filing for sales of electric power to the Bonneville Power Administration.

Filed Date: 08/04/2009.

Accession Number: 20090805–0022.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 25, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–19267 Filed 8–11–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0429; FRL–8944–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Metal Furniture Surface Coating, EPA ICR Number 1952.04, OMB Control Number 2060–0518

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR that is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before September 11, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0429, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0429, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Metal Furniture Surface Coating (Renewal).

ICR Numbers: EPA ICR Number 1952.04, OMB Control Number 2060–0518.

ICR Status: This ICR is scheduled to expire on September 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Metal Furniture Surface Coating (40 CFR part 63, subpart RRRR) were proposed on April 24, 2002, and promulgated on May 23, 2003. These regulations apply to existing facilities and new facilities that perform metal furniture surface coating operations where the total Hazardous Air Pollutants (HAPs) emitted are greater than or equal to 10 tons per year of any one HAP; or where the total HAPs emitted are greater than or equal to 25 tons per year of any combination of HAPs.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction (SSM) in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 109 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Metal furniture surface coating facilities.

Estimated Number of Respondents: 583.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 190,408.

Estimated Total Annual Cost: $16,826,397, including $16,126,797 in annual labor costs, $699,600 in O&M costs, and no annualized capital/start-up costs.

Changes in the Estimates: There is a change of $400 less for the total estimated Operations and Maintenance (O&M) burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: August 6, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–19302 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8944–4]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (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 request unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1976.04; NESHAP for Reinforced Plastic Composites Production (40 CFR part 63, subpart WWWW) (Renewal); was approved on 07/15/2009; OMB Number 2060–0509; expires on 07/31/2012; OMB decision—Approved without change.

EPA ICR Number 2022.04; NESHAP for Brick and Structural Clay Manufacturing (CFR 40 part 63, subpart JJJJJ) (Renewal); was approved on 07/15/2009; OMB Number 2060–0508; expires on 07/31/2012; OMB decision—Approved without change.

EPA ICR Number 1954.04; NESHAP for the Surface Coating of Large Household and Commercial Appliances (40 CFR part 63, subpart NNNN) (Renewal); was approved on 07/15/2009; OMB Number 2060–0457; expires on 07/31/2012; OMB decision—Approved without change.

EPA ICR Number 1951.04; NESHAP for Paper and Other Web Coating (40 CFR part 63, subpart JJJJ) (Renewal); was approved on 07/15/2009; OMB Number 2060–0511; expires on 07/31/2012; OMB decision—Approved without change.

EPA ICR Number 1285.07; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, including Light-Duty Trucks (40 CFR part 86, subpart L) (Renewal); was approved on 07/20/2009; OMB Number 2060–0132; expires on 07/31/2012; OMB decision—Approved without change.

EPA ICR Number 0161.11; Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides; 40 CFR part 168, subpart D; was approved on 07/22/2009; OMB Number 2070–0027; expires on 07/31/2012; OMB decision—Approved without change.

EPA ICR Number 0596.09; Application and Summary Report for Emergency Exemption for Pesticides; 40 CFR part 166; was approved on 07/23/2009; OMB Number 2070–0032; expires on 07/31/2012; OMB decision—Approved without change.

EPA ICR Number 1852.04; Exclusion Determinations for New Non-road Spark-ignited Engines, New Non-road Compression-ignited Engines, and New On-road Heavy Duty Engines (Renewal); 40 CFR part 85, subpart R, 40 CFR part 89, subpart J, 40 CFR part 90, subpart J, 40 CFR part 91, subpart K, 40 CFR part 94, subpart J, 40 CFR 1039.5, 40 CFR 1048.5, 40 CFR 1051.5, 40 CFR part 1068, subpart C and 40 CFR part 92, subpart J; was approved on 07/27/2009; OMB Number 2060–0395; expires on 07/31/2012; OMB decision—Approved without change.

EPA ICR Number 0277.15; Application for New and Amended Pesticide Registration (Renewal); 40 CFR part 158; was approved on 07/29/2009; OMB Number 2070–0060; expires on 07/31/2012; OMB decision—Approved without change.

EPA ICR Number 2164.03; Emission Guidelines for Existing Other Solid Waste Incineration (OSWI) Units (40 CFR part 60, subpart FFFF) (Renewal); was approved on 07/29/2009; OMB Number 2060–0562; expires on 07/31/2012; OMB decision—Approved without change.

EPA ICR Number 2104.03; Brownfields Programs—Revitalization Grantee Reporting (Renewal); 40 CFR parts 30–31; was approved on 07/29/2009; OMB Number 2050–0192; expires on 07/31/2012; OMB decision—Approved without change.

EPA ICR Number 1989.06; NPDES Permit Regulations and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations (Final Rule); 40 CFR parts 122, 123 and 412; was approved on 07/29/2009; OMB Number 2040–0250; expires on 07/31/2012; OMB decision—Approved without change.

EPA ICR Number 2042.04; NESHAP for Semiconductor Manufacturing (40 CFR part 63, Subpart BBBBB)(Renewal); was approved on 07/31/2009; OMB Number 2060–0519; expires on 07/31/2012; OMB decision—Approved without change.

Comment Filed

EPA ICR Number 2332.01; NESHAP for Aluminum, Copper, and Other Nonferrous Foundries (Proposed Rule); in 40 CFR part 63, subpart A, 40 CFR part 63, subpart ZZZZZZ; OMB filed comment on 07/27/2009.

EPA ICR Number 2313.01; Ambient Ozone Monitoring Regulations: Revisions to Network Design Requirements; OMB filed comment on 07/27/2009.

Withdrawn and Continue

EPA ICR Number 2306.01; Environmental and Economic Effects of Alternative Dispute Resolution at the EPA; Withdrawn from OMB on 07/23/2009.

Dated: August 6, 2009.

John Moses,

Director, Collections Strategies Division.

[FR Doc. E9–19307 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0282; FRL–8944–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Secondary Aluminum Production (Renewal), EPA ICR Number 1894.06, OMB Control Number 2060–0433

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before September 11, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0282, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4113; *fax number:* (202) 564–0050; *e-mail address: williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0282, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Stationary Aluminum Production (Renewal).

ICR Numbers: EPA ICR Number 1894.06, OMB Control Number 2060–0433.

ICR Status: This ICR is schedule to expire on September 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production were proposed on February 11, 1999, and promulgated on March 23, 2002, with final rule amendments published on December 30, 2002.

These standards apply to component processes at secondary aluminum production plants that are major sources and area sources. These sources includes aluminum scrap shredders, thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, secondary aluminum processing units (SAPUs) composed of in-line fluxers and process furnaces (including both melting and holding furnaces of various configurations), sweat furnaces, dross-only furnaces, and rotary dross coolers, commencing construction, or reconstruction after the date of proposal. Due to a result of a rule amendment in 2002, owners and operators of certain aluminum die casting facilities, aluminum foundries, and aluminum extrusion facilities were excluded from the rule coverage. Respondents do not include the owner or operator of any facility which is not a major source of hazardous air pollutant (HAP) emissions, except for those that are area sources of dioxin/furan emissions.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, and malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP. Semiannual reports are also required.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least five years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information estimated to average 29 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying

information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Secondary aluminum production.

Estimated Number of Respondents: 1,624.

Frequency of Response: On occasion, initially and semiannually.

Estimated Total Annual Hour Burden: 93,725.

Estimated Total Annual Cost: $8,163,900, which includes $7,938,150 in labor costs, $84,000 in capital/startup costs, and $141,750 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours in this ICR as compared to the previous one. This is due to two considerations: (1) The regulations have not changed over the past three years and do not anticipate changes over the next three years; and (2) the growth rate for the industry is very low, negative or nonexistent, so there is no significant change in the overall burden. It should be noted that there is a change in the cost burden compared to the previous ICR. The change is due to minor calculation errors. This ICR reflects the corrections and updates of the labor cost figure.

Dated: August 6, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–19303 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8940–5]

Clean Water Act Section 303(d): Availability of 8 Total Maximum Daily Loads (TMDLs) for Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the administrative record file for comment on 8 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the State of Arkansas under Section 303(d) of the Clean Water Act (CWA).

DATES: Comments must be submitted in writing to EPA on or before September 11, 2009.

ADDRESSES: Comments on the 8 TMDLs should be sent to Ms. Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, facsimile (214) 665–7373, or e-mail: *smith.diane@epa.gov.* For further information, contact Diane Smith at (214) 665–2145. Documents from the administrative record file for these TMDLs are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm,* or obtained by calling (214) 665–2145 or writing Ms. Smith at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION:

EPA Seeks Comments on 8 TMDLs

By this notice EPA is seeking comment on the following 8 TMDLs for waters located within the State of Arkansas:

Segment-Reach	Waterbody name	Pollutant
08020301–010	Cypress Bayou	Fecal coliform and E. coli.
08020301–011	Cypress Bayou	Fecal coliform and E. coli.
08020301–012	Cypress Bayou	Fecal coliform and E. coli.
11110103–029	Clear Creek	Fecal coliform and E. coli.

EPA requests that the public provide EPA with any water quality related data and information that may be relevant to the calculations for these 8 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs where appropriate. EPA will then forward the TMDLs to the Arkansas Department of Environmental Quality (ADEQ). The ADEQ will incorporate the TMDLs into its current water quality management plan.

Dated: July 28, 2009.

Bill Luthans,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. E9–19319 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0225; FRL–8944–1]

Board of Scientific Counselors (BOSC), 2009 Clean Air Subcommittee Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Clean Air Subcommittee.

DATES: The meeting (a teleconference call) will be held on Friday, August 28, 2009 from 1 p.m. to 2:30 p.m. EST. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to one business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Heather Drumm, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0225, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2009–0225.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2009–0225.

• *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC), 2009 Clean Air Subcommittee Meetings Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2009–0225.

• *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2009–0225. Note: this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0225. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors (BOSC), 2009 Clean Air Subcommittee Meetings Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Heather Drumm, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–8239; via fax at: (202) 565–2911; or via e-mail at: *drumm.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at this meeting may contact Heather Drumm, the Designated Federal Officer, via any of the contact methods listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the teleconference include, but are not limited to: reviewing the subcommittee's draft report and finalizing the report for BOSC Executive Committee review. The meetings are open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Heather Drumm at (202) 564–8239 or *drumm.heather@epa.gov.* To request accommodation of a disability, please contact Heather Drumm, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 4, 2009.

Fred Hauchman,

Director, Office of Science Policy.

[FR Doc. E9–19337 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0177; FRL–8429–2]

Nominations to the FIFRA Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel (SAP) established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The FIFRA SAP was created on November 28, 1975, and made a statutory panel by amendment to FIFRA, dated October 25, 1988. The Agency is, at this time, selecting two new members to serve on the FIFRA SAP as a result of a membership term that will expire this year and the sudden and unexpected loss of a FIFRA SAP member. Public comment on the nominations is invited, as these comments will be used to assist the Agency in selecting the new chartered FIFRA SAP members.

DATES: Comments must be received on or before September 11, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0177, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0177. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Myrta R. Christian, Designated Federal Official (DFO), FIFRA SAP, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8498; fax number: (202) 564–8382; e-mail address: *christian.myrta@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. Background

The FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Prevention, Pesticides and Toxic Substances and is structured to provide scientific advice, information, and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. The FIFRA SAP is a Federal advisory committee, established in 1975 under FIFRA, that operates in accordance with requirements of the Federal Advisory Committee Act (FACA). The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health (NIH) and the National Science Foundation (NSF). FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP. As a peer review mechanism, the FIFRA SAP provides comments, evaluations, and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency. The Agency is, at this time, selecting two new members to serve on the permanent FIFRA SAP as a result of a membership term that will expire this year and the sudden and unexpected loss of a FIFRA SAP member. The Agency requested nominations of experts to be selected from the field of environmental risk assessment including: planning, scoping, and problem formulation; analysis; and interpretation and risk characterization (including the interpretation and communication of uncertainty). Nominees should be well published and current in their fields of expertise. The statute further stipulates that we publish the names, addresses, and professional affiliations in the **Federal Register**.

III. Charter

A charter for the FIFRA SAP, dated October 24, 2008, was issued in accordance with the requirements of FACA, Public Law 92–463, 86 Stat. 770 (5 U.S.C. App.).

A. Qualifications of Members

FIFRA SAP members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact of pesticides on health and the environment. No persons are ineligible to serve on the FIFRA SAP by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). The EPA Administrator appoints individuals to serve on the FIFRA SAP for staggered terms of 4 years unless the appointment serves to fill an unexpired term for a vacancy that has occurred due to a member resignation or reason other than

expiration of a term. The FIFRA SAP members, as Special Government Employees, are subject to the provisions of 5 CFR Part 2635–Standards of Ethical Conduct for Employees of the Executive Branch. Each nominee selected by the EPA Administrator before being formally appointed, is requested to submit a confidential statement of employment and financial interests, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

In accordance with section 25(d)(1) of FIFRA, the EPA Administrator shall require all nominees to the FIFRA SAP to furnish information concerning their professional qualifications, educational background, employment history, and scientific publications.

B. Applicability of Existing Regulations

With respect to the requirements of section 25(d) of FIFRA that the Administrator promulgate regulations regarding conflicts of interest, the charter provides that EPA's existing regulations applicable to Special Government Employees, which include advisory committee members, will apply to the members of the FIFRA SAP. These regulations appear in 5 CFR part 2635. In addition, the charter provides for open meetings with opportunities for public participation.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d) of FIFRA, EPA, in April 2009, requested that NIH and NSF nominate scientists for consideration to serve on the FIFRA SAP. The Agency requested nominations of experts in the field of environmental risk assessment including: planning, scoping, and problem formulation; analysis; and interpretation and risk characterization (including the interpretation and communication of uncertainty). NIH and NSF responded by letter, providing the Agency with a total of 14 nominees. Seven of the 14 nominees are interested and available to actively participate in FIFRA SAP meetings (see Unit IV.). The following 7 nominees are not available:

1. Blomquist, Gary, Ph.D., University of Nevada, Reno, NV.

2. Greer, Linda, Ph.D., National Resources Defense Council, San Francisco, CA.

3. Haws, Laurie C., Ph.D., DABT, ToxStrategies Inc., Austin, TX.

4. Kim, Amy, Ph.D., DABT, Genentech, Inc., San Francisco, CA.

5. Lanno, Roman P., Ph.D., Ohio State University, Columbus, OH.

6. Thomas, Russell S., MS, Ph.D., The Hamner Institutes for Health Sciences, Research Triangle Park, NC.

7. Tickner, Joel A., ScD, MSc, BA, University of Massachusetts– Lowell, Lowell, MA.

IV. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data of nominees being considered for membership on the FIFRA SAP. The Agency expects to select two of the nominees to fill the vacancies described in this notice.

1. *Nominee*. Braverman, Michael, Ph.D., Manager, Biopesticide Program—Rutgers University, Princeton, NJ.

i. *Expertise*. Efficacy and environmental fate of pesticides.

ii. *Education*. B.S., Agriculture/Biology, Murray State University, KY; M.S., Agronomy (Weed Science), University of Arkansas; Ph.D., Horticulture (Vegetable Crops), University of Florida.

iii. *Professional experience*. Dr. Michael Braverman is currently a Senior Scientist and Manager of the Biopesticide and Organic Support Program for the IR-4 Project at Rutgers University. He oversees a cooperative research project with the United States Department of Agriculture (USDA), State Agriculture Experimental Station, and industry scientists to develop data to support the registration of biopesticides on specialty crops. Dr. Braverman earned his Ph.D. in Horticulture from the University of Florida with an emphasis on herbicide fate and transport in muck soils. Dr. Braverman has 20 years experience in pesticide research and regulations involving efficacy, laboratory analysis of pesticide residues, herbicide physiology, and environmental fate. Dr. Braverman currently supervises a national efficacy grant program involving the review of research proposals designed to develop efficacy data involving biopesticides. Dr. Braverman has provided education, guidance, and technical expertise in the design, interpretation of research and scientific literature review aligned with EPA Product Chemistry, Residue, Human Health and Non-Target Ecotoxicology Guidelines on behalf of USDA, university scientists from other institutions and small businesses. The emphasis of his program has been in synchronization with EPA's Biopesticides and Pollution Prevention Division. He co-manages and co-reviews research programs with EPA's Office of Pollution Prevention and Toxics to promote the adoption of reduced risk products. He has also been an advisor to USDA's Agricultural Research Service (ARS) in regulation, risk assessment, and monitoring and distribution agreements of Plant Incorporated Protectants (PIPs) developed by USDA researchers. He has served as a panel member on several USDA's Cooperative State Research, Education, and Extension Service research grant review programs as well as editorial reviewer of research in the flagship journals of the Weed Science Society of America and the American Phytopathological Society. He has been a leader of intensive regulatory workshops for Agriculture and Ag Food Canada as well as a participant with EPA in workshops involving biopesticide regulations. He has trained M.S. and Ph.D. level graduate students, one of which currently works in EPA's Environmental Fate and Effects Division performing risk assessments on endangered species. On an international level, under the auspices of USDA's Foreign Agricultural Service, he has conducted regulatory workshops to develop regulatory expertise on how to conduct risk assessments in Benin, Colombia, Egypt, Ethiopia, Kenya, Mali, Nigeria, Senegal, South Africa, Tanzania, and Uganda for natural products, microorganism and biotechnology products. He is currently managing a global residue zoning project in over 20 countries in Africa, Asia, Australia, Europe, the Middle East, and North and South America in cooperation with EPA's Office of Pesticide Programs, Analytical Chemistry Laboratory, Fort Meade, MD.

2. *Nominee*. Fisher, Jeffrey W., Ph.D., Professor and Director, Interdisciplinary Toxicology Program, University of Georgia, Athens, GA.

i. *Expertise*. Development and application of biologically based mathematical models to ascertain health risks from environmental and occupational chemical exposures.

ii. *Education*. B.S., Biology, University of Nebraska at Kearney; M.S., Biology/Ecology, Wright State University, Dayton, OH; Ph.D., Zoology/Toxicology, Miami University of Ohio.

iii. *Professional experience*. Dr. Jeffrey W. Fisher is a Professor in the Department of Environmental Health Science, College of Public Health at the University of Georgia (UGA) and Director of the Interdisciplinary Toxicology Program. Dr. Fisher's research interests are in the development and application of biologically based mathematical models to ascertain health risks from environmental and occupational chemical exposures. Dr. Fisher's modeling experience includes working with chlorinated and non-chlorinated solvents, fuels, polychlorinated biphenyls, pyrethroids, and perchlorate. Dr. Fisher has published over 100

papers on computational modeling for dose response analyses in laboratory animals and humans. He has developed physiologically based pharmacokinetic models for use in cancer risk assessment, estimating lactational transfer of solvents, understanding *in utero* and neonatal dosimetry and quantifying metabolism of solvent mixtures. Over the last 10 years Dr. Fisher has developed systems biology models for the hypothalamic-pituitary-thyroid axis (biologically based dose response (BBDR) models in rodents and humans). He has trained several graduate students and postdoctoral fellows on the concepts and application of physiological and system biology models. Dr. Fisher's laboratory and computational research are funded through grants provided by EPA, Centers for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry (ATSDR); Air Force Office of Scientific Research; United States Air Force; Department of Energy; and occasionally subcontracts with nonprofit organizations or trade groups. He has served on several national panels and advisory boards for the Departement of Defense, ATSDR, EPA, and non-profit organizations. He also has been a U.S. delegate for the North Atlantic Treaty Organization. He is currently on the Science Advisory Board for EPA and is associate editor for *Toxicological Sciences*.

3. *Nominee*. Hattis, Dale, Ph.D., Research Professor, Center for Technology, Environment, and Development, George Perkins Marsh Institute, Clark University, Worcester, MA.

i. *Expertise*. Modeling and uncertainty analysis in risk assessment.

ii. *Education*. B.S., Biochemistry, University of California, Berkeley, CA; Ph.D., Genetics, Stanford University, Stanford, CA.

iii. *Professional experience*. Dr. Dale Hattis is a Research Professor with the George Perkins Marsh Institute at Clark University. For the past 3 decades he has been engaged in the development and application of methodology to assess the health, ecological, and economic impacts of regulatory actions. His work has focused on approaches to incorporate inter-individual variability data and quantitative mechanistic information into risk assessments for both cancer and non-cancer endpoints. Recent past research has explored age-related differences in sensitivity to carcinogenesis and other effects, a taxonomy of different non-mutagenic modes of action for carcinogenesis with likely differential implications for age-related sensitivity, and physiologically based pharmacokinetic (PBPK) modeling of acrylamide dose in rats and humans, and mechanism-based dose response modeling of carcinogenic effects from ionizing radiation. Current efforts are using PBPK modeling to better assess dose response relationships for human birth weight changes and developmental delays associated with exposure to the insecticide chlorpyrifos during pregnancy. He is a leader in efforts to replace the current system of uncertainty factors for non-cancer effects with distributions based on empirical observations. He is a member of the Clean Air Science Advisory Committee reviewing EPA efforts to reassess the National Ambient Air Quality Criteria for nitrogen oxides and sulfur oxides, and for several years he has served as a member of the Food Quality Protection Act Science Review Board. Until recently he has also been a member of the Environmental Health Committee of the EPA Science Advisory Board. For 2007 he was the Chair of the Dose Response Specialty Group of the Society for Risk Analysis. He has also served as a member of the National Research Council Committee on Estimating the Health-Risk-Reduction Benefits of Proposed Air Pollution Regulations. He has been a counselor and is a Fellow of the Society for Risk Analysis, and serves on the editorial board of its journal, *Risk Analysis*.

4. *Nominee*. Hayes, Tyrone B., Ph.D., Professor, University of California, Berkeley, CA.

i. *Expertise*. Role of steroid hormones in amphibian development and effects of pesticides on amphibian development, growth, reproduction, and immune function.

ii. *Education*. B.A., Biology, Harvard University, Cambridge, MA; Ph.D., Integrative Biology, University of California, Berkeley, CA.

iii. *Professional experience*. Dr. Tyrone B. Hayes' research focuses on the role of steroid hormones in amphibian development in laboratory and field studies in Africa and the United States. The two main areas of interest are metamorphosis and sex differentiation, but Dr. Hayes is also interested in growth (larval and adult) and hormonal regulation of reproductive behavior. His work addresses problems on several levels including ecological, organismal, and molecular questions. Studies of metamorphosis examine the effects of temperature on developmental rates, interactions between the thyroid hormones and steroids, and hormonal regulation of skin gland development. Dr. Hayes is also examining the effects of tadpole density on developmental rates and measuring metamorphic rates and hormone levels of tadpoles in the field and in the laboratory. His work on sex differentiation involves the African clawed frog (*Xenopus laevis*), and several other species for comparison. Studies in African Reedfrogs (*Hyperolius spp*), for example, examine the role of steroid hormones in both primary sex differentiation and in secondary sex differentiation. Ongoing studies also examine the role of steroids in sex differentiation in reptile species that display genetic sex determination. In all of his research, his main goal is to synthesize ecological/evolutionary, organismal/physiological, and biochemical/molecular studies to learn how an animal translates changes in its external environment to internal changes, how these internal changes are coordinated, what molecular mechanisms are involved, and in turn, how changes at the molecular level affect an animal's ability to adapt to the changes in its external environment.

Most recently, Dr. Hayes' studies have been used as models to develop laboratory and field techniques to examine the effects of endocrine disrupting contaminants on amphibian development. His current research in this area focuses on the effects of pesticides mixtures on larval development and the potential role of pesticides in amphibian declines of laboratory and field studies. This work has also expanded to use human cell lines and to examine the potential role of endocrine-disrupting contaminants in ethnic/racial disparities in cancer outcomes.

5. *Nominee*. LeBlanc, Gerald A., Ph.D., Professor and Head of the Department of Environmental and Molecular Toxicology, North Carolina State University, Raleigh, NC.

i. *Expertise*. Environmental endocrine toxicology.

ii. *Education*. B.S., Biology, University of Massachusetts, North Dartmouth, MA; M.A., Biology, Bridgewater State College, Bridgewater, MA; Ph.D., Biology, University of South Florida, Tampa, FL.

iii. *Professional experience*. Dr. Gerald A. LeBlanc maintains an active research program in environmental endocrine toxicology. This research involves elucidating processes that contribute to the endocrine regulation of reproduction and development and their disruption by environmental agents. Dr. LeBlanc's research also has been instrumental in developing modeling approaches for evaluating the toxicity of complex chemical mixtures. Dr. LeBlanc has published over 130

research articles and 12 text book chapters. He has served on numerous Federal and international science advisory committees, panels, and boards, including serving as chairman of the EPA Endocrine Disruptors Methods Validation Advisory Committee.

6. *Nominee.* Shah, Dilip M., Ph.D., Research Scientist and Principal Investigator, Donald Danforth Plant Science Center, St Louis, MO.

i. *Expertise.* Molecular biology and agricultural biotechnology.

ii. *Education.* B.S., Botany and Chemistry, South Gujarat University, India; M.S., Genetics, North Carolina State University, Raleigh, NC; Ph.D., Genetics, North Carolina State University, Raleigh, NC.

iii. *Professional experience.* Dr. Dilip M. Shah is a Research Scientist and Principal Investigator at the Donald Danforth Plant Science Center in Missouri where his lab is involved in studying the interactions of fungal pathogens with their host plants and developing strategies for the development of disease resistant mycotoxin-free transgenic crops. His lab is investigating the modes of action and biological roles of a group of proteins that act as antifungal agents on a broad-spectrum of fungal pathogens and expressing these proteins in transgenic crops for control of economically important fungal pathogens. Dr. Shah has over 25 years of experience in plant molecular biology and agricultural biotechnology. He has made substantial contributions to the development of herbicide- and virus-resistant crops and led a team of scientists working on fungus-resistant crops during his previous tenure at Monsanto Company. He played a major role in the establishment of Monsanto Company's Research and Development Center in India. He has served on the study section of NIH and has served on the review panel at NSF. He is a co-inventor on a number of patents and his patents on glyphosate-tolerant crops were listed as the ''Ten Patents That Changed the World'' in 2003 year-end publication of *Intellectual Property Worldwide.*

7. *Nominee.* Zacharewski, Timothy R., Ph.D., Professor, Department of Biochemistry and the National Food Safety and Toxicology Center, Michigan State University, East Lansing, MI.

i. *Expertise.* Mechanistic toxicology.

ii. *Education.* B.S., Chemistry with microbiology emphasis, University of Guelph, Guelph, Ontario, Canada; Ph.D., Toxicology, Texas A & M University, College Station, TX.

iii. *Professional experience.* Dr. Timothy R. Zacharewski is a Professor in the Department of Biochemistry and Molecular Biology and member of the Center for Integrative Toxicology and the National Food Safety and Toxicology Center at Michigan State University. He graduated with a Ph.D. in Toxicology in 1990 from Texas A&M University in the laboratory of Dr. Stephen Safe. He received a Medical Research Council of Canada Post Doctoral Fellowship to study with Professor Pierre Chambon in Strasbourg, France from 1990–1992. In 1992, Dr. Zacharewski accepted an Assistant Professor position in the Department of Pharmacology and Toxicology at the University of Western Ontario. In 1997, he relocated to Michigan State University where he has been pursuing research interests in the areas of mechanistic toxicology. More specifically, his research interests include the elucidation of receptor-mediated mechanisms of toxicity using comparative omic and computational approaches in order to inform science-based quantitative risk assessment, identify biomarkers of toxicity, and develop high through-put assays to screen drugs and chemicals for toxicity. He has published more than 100 peer-reviewed research papers, presented at numerous national and international meetings, and participated in various workshops addressing issues related to toxicogenomics, food safety, mixture toxicology, environmental risk assessment, stem cells in toxicology, endocrine disruptors, and mechanisms of toxicology. Dr. Zacharewski has served as a member on two committees for the National Academies of Science (i.e., Emerging Issues in Environmental Health Sciences, Identifying and Assessing Unintended Effects of Genetically Engineered Foods on Human Health), and as a consultant to the National Centers for Toxicogenomics, the Science Advisory Board for EPA, the International Life Sciences Institute/Health and Environmental Sciences Institute Technical Committee on the Application of Genomics to Mechanism-Based Risk Assessment, and the Science Advisory Panel for Chemical Industry Institute of Toxicology Centers for Health Research.

List of Subjects

Environmental protection.

Dated: August 7, 2009.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. E9–19313 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0540; FRL–8427–5]

Bromonitrostyrene; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellation of products containing the pesticide bromonitrostyrene, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an August 27, 2008 **Federal Register** Notice of Receipt of Requests from the bromonitrostyrene registrants to voluntarily cancel all their bromonitrostyrene product registrations. These are the last bromonitrostyrene products registered for sale or distribution in the United States. In the August 27, 2008 Notice, EPA indicated that it would issue an order accepting the requests for voluntary cancellation and implementing the cancellations, unless the Agency received substantive comments within the 30–day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests within this period. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order accepting the requested cancellations and cancelling the affected registrations. Any distribution, sale, or use of the bromonitrostyrene products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective August 12, 2009.

FOR FURTHER INFORMATION CONTACT: ShaRon Carlisle, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6427; fax number: (703) 308–8481; e-mail address: *carlisle.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including

environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0540. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces the cancellation of all end-use and manufacturing-use bromonitrostyrene products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.—BROMONITROSTYRENE PRODUCT CANCELLATIONS

Registration No.	Product Name
464–683	Giv-Gard BNS 25% AF
464–684	Bioban BNS 25% BA Industrial Preservative
464–686	Canguard 777 Industrial Preservative
74655-5	Spectrum RX-41
74655-8	Spectrum RX -45
74655-13	Spectrum RX -52

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS OF CANCELLED BROMONITROSTYRENE PRODUCTS

EPA Company No.	Company Name and Address
464	The Dow Chemical Company 1500 E. Lake Cook Road Buffalo Grove, IL 60089
74655	Hercules Incorporated Paper Technology and Ventures 7910 Baymeadows Way Jacksonville, FL 32256

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the August 27, 2008 **Federal Register** notice (73 FR 50614; FRL 8378–4) announcing the Agency's receipt of the requests for voluntary cancellation of all Bromonitrostyrene products.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of Bromonitrostyrene registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the Bromonitrostyrene product registrations identified in Table 1 of Unit II. are hereby cancelled. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stocks provisions.

List of Subjects

Environmental protection, Pesticides and pests, Bromonitrostyrene, Antimicrobials.

Dated: July 20, 2009.

Joan Harrigan Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E9–19312 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8944–2]

Proposed CERCLA Administrative Settlement; Circle DE Lumber Site, Klamath Falls, OR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for the recovery of past response costs incurred at the Circle DE Lumber Site in Klamath Falls, Oregon with settling parties: Mr. and Mrs. Daniel G. and V. Elouise Brown and associated entities including the Circle DE Lumber Company, Francis D. Brown and Son Logging, Inc., and the Daniel G. Brown Trust U.T.A.D. and Elouise Brown Trust U.T.A.D. The settlement requires the settling parties to implement institutional controls in the form of proprietary restrictions placed on the Circle DE Lumber Site, and to execute an Environmental Trust Agreement that assigns the rights under certain insurance policies issued to the settling parties to an environmental trust established for the benefit of the Agency. The settlement includes a covenant not to sue or take administrative action against the settling parties pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a). For thirty (30) days following

the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Region 10 offices, located at 1200 Sixth Avenue, Seattle, Washington 98101.

DATES: Comments must be submitted on or before September 11, 2009.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Region 10 offices, located at 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Carol Kennedy, Regional Hearing Clerk, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; (206) 553–0242. Comments should reference the Circle DE Lumber Site in Klamath Falls, Oregon, EPA Docket No. CERCLA–10–2009–0211 and should be addressed to Alexander Fidis, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Alexander Fidis, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; (206) 553–4710.

SUPPLEMENTARY INFORMATION: The Circle DE Lumber Site is located in Klamath Falls, Oregon (Site). Wood treating operations were conducted at the Site using a dip tank containing pentachlorophenol. These operations and others resulted in the release of hazardous substances including, but not limited to, pentachlorophenol, dioxin, diesel, poly aromatic hydrocarbons, total petroleum hydrocarbons, and metals. These hazardous substances were detected in soil and groundwater at the Site. The Agency conducted a time-critical removal action at the Site in February 2006 that involved removing the dip tank and associated structures, excavation and disposal of 437 cubic yards of contaminated soil, and the installation of monitoring wells to determine the extent of groundwater contamination. The Agency incurred approximately $605,834 in response costs at the Site.

The Site is currently owned by Mr. and Mrs. Daniel G. and V. Elouise Brown. Mr. Brown operated the Site as a lumber mill between 1975 and 2000 and currently leases the Site as a staging area for equipment. The entities associated with Mr. Brown's Site operations include the Circle DE Lumber Company and Francis D. Brown & Son Logging, Inc. The Agency determined that settling parties have limited financial ability to pay the response costs incurred at the Site. Therefore, the Agency is proposing to enter into an administrative settlement that would require the settling parties to record an easement and equitable servitude as an institutional control for the Site, and to execute an agreement assigning the rights under certain insurance policies issued to the settling parties to an Environmental Trust established for the benefit of the Agency. The proposed settlement will release the settling parties from liability for past response costs incurred by the Agency subject to certain reserved rights.

Dated: August 3, 2009.

Daniel D. Opalski,

Director, Office of Environmental Cleanup.

[FR Doc. E9–19304 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8937–5]

Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commonwealth of Puerto Rico is revising its approved Public Water System Supervision Program to adopt EPA's National Primary Drinking Water Regulations for Lead and Copper: Short Term Regulatory Revisions and Clarifications; Final Rule. The EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, the EPA intends to approve these program revisions. All interested parties may request a public hearing.

DATES: This determination to approve Puerto Rico's primacy program revision application is made pursuant to 40 CFR 142.12(d)(3). It shall become final and effective unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on his own motion. Any interested person, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the Regional Administrator at the address shown below September 11, 2009. If a substantial request for a public hearing is made within the requested thirty day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective September 11, 2009.

ADDRESSES: Any request for a public hearing shall include the following information: (1) Name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity. Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region 2, 290 Broadway, New York, New York 10007–1866.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Puerto Rico Department of Health, Public Water Supply Supervision Program, 9th Floor—Suite 903, Nacional Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico 00917.

U.S. Environmental Protection Agency—Region 2, 24th Floor Drinking Water Ground Water Protection Section, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Michael J. Lowy, Drinking Water Ground Water Protection Section, U.S. Environmental Protection Agency—Region 2, (212) 637–3830.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the United States Environmental Protection Agency (EPA) has determined to approve an application by the Commonwealth of Puerto Rico Department of Health to

revise its Public Water Supply Supervision Primacy Program to incorporate regulations no less stringent than the EPA's National Primary Drinking Water Regulations (NPDWR) for Lead and Copper: Short Term Regulatory Revisions and Clarifications; Final Rule, promulgated by EPA October 10, 2007 (72 FR 57782).

The application demonstrates that Puerto Rico has adopted drinking water regulations which satisfy the NPDWRs for the above. The USEPA has determined that Puerto Rico's regulations are no less stringent than the corresponding Federal Regulations and that Puerto Rico continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, 40 U.S.C. 300g–2, and 40 CFR 142.10, 142.12(d) and 142.13.

Dated: July 6, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

[FR Doc. E9–19321 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0592; FRL–8432–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by September 11, 2009 for these registrations, for which the registrant requested a waiver of the 180–day comment period, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than September 11, 2009 Comments must be received on or before September 11, 2009.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2009–0592, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Written withdrawal requests, Attention: Barbara Briscoe, Product Reregistration Branch, Special Review and Reregistration Division, (7508P).

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0592. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information for which 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Briscoe, Special Review and Reregistration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8177; e-mail address: *briscoe.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through 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.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 48 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
228–195	Riverdale DP-4 Amine	2,4-DP
352–694	Tenn-Cop 5E	Copper Salts
478–76	Real Kill Flying Insect Killer	Resmethrin
478–77	Real Kill Indoor/Outdoor Plus	Resmethrin
478–86	Real Kill Liquid House and Garden Bug Killer for House Plants	Resmethrin
478–122	Real Kill Automatic Indoor Plus	Resmethrin
769–628	SMCP Vapona Insecticide 50% Concentrate Solution	Aliphatic Solvents
769–646	x-Cel Oil plus Malathion	Aliphatic Solvents
769–728	Seven Brand Carbaryl Insecticide 5% Turf Insecticide Granules	Carbaryl
769–843	Pratt's Summer Spray Oil	Aliphatic Solvents
769–848	Pratt's 6N Superior Oil	Aliphatic Solvents
769–886	Agrisect Superior Oil	Aliphatic Solvents
769–928	Warner Enterprises Indoor Insect Fogger	Aliphatic Solvents
5481–428	NAA 800	Naphthalene Acetic Acid
5481–432	Technical 1-Naphthalene Acetic Acid Sodium Salt	Naphthalene Acetic Acid
8660–83	White Fly Spray	Resmethrin
8660–138	Flea and Tick Pet Spray	Resmethrin
8845–33	Vertagreen Professional Use with Dacthal	Resmethrin
8845–64	Vertagreen Weed & Feed	Resmethrin
8845–65	Vertagreen Copper Sulfate Crystals	Resmethrin
8845–74	Pro - Tek with Balan	Resmethrin
9688–21	Chemsico Insecticide for Flying Insects	Resmethrin
9688–48	Chemsico Wasp and Hornet Killer II	Resmethrin
9688–49	Chemsico Wasp and Hornet Killer III	Resmethrin
9688–102	Chemsico Home Insect Control Spray A	Resmethrin
9688–223	Chemsico Insecticide FR	Resmethrin
10807–208	Misty Root Killer	Copper Sulfate
46515–45	Wasp & Hornet Killer 4	Resmethrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
71368–32	Nufarm 2,4 DB Weed Killer	2,4 DB
71368–33	Nufarm Buticide 200 Weed Killer	2,4 DB
73049–317	Cyperkil EC	Cypermethrin
73049–318	Cyperkil WSB	Cypermethrin
75402–2	HILO Premises Spray	Piperonyl Butoxide
75402–3	Aloe Care Flea & Tick Shampoo	Piperonyl Butoxide
AL820033	Temik Brand 15G Aldicarb Pesticide-Use on Pecans	Aldicarb
AL870008	Pecans Growing Under Drip Irrigation	Aldicarb
AZ820015	Temik Brand 15G Aldicarb Pesticide-Pecans	Aldicarb
GA090004	Temik Brand 15G Aldicarb Pesticide	Aldicarb
GA820013	Temik Brand 15G Aldicarb Pesticide-Use on Pecans	Aldicarb
GA870003	Temik Brand 15G Aldicarb Pesticide-Use on Pecans Growing Under Drip Irrigation	Aldicarb
MS830009	Temik Brand 15G Aldicarb Pesticide-Use on Pecans	Aldicarb
NC780021	Temik Brand 15G Aldicarb Pesticide-Use on Flue-Cured Tobacco	Aldicarb
NC820008	Temik Brand 15G Aldicarb Pesticide-Use on Flue-Cured Tobacco	Aldicarb
NM820016	Temik Brand 15G Aldicarb Pesticide-Use on Pecans	Aldicarb
SC830009	Temik Brand 15G Aldicarb Pesticide-Use on Pecans	Aldicarb
SC090003	Temik Brand 15G Aldicarb Pesticide	Aldicarb
TX790010	Termik Brand 15G Aldicarb Pesticide	Aldicarb
VA820013	Termik Brand 15G Aldicarb Pesticide-Use on Flue-Cured Tobacco	Aldicarb

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 30–day period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATIONS

EPA Company No.	Company Name and Address
228	Nufarm Americas, Inc. 150 Harvester Dr., Suite 200 Burr Ridge, IL 60527
352	Dupont Crop Protection 1007 Market Street Wilmington, DE 19898
478	Div. of United Industries, Corp. PO Box 142642 St. Louis, MO 63114

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATIONS—Continued

EPA Company No.	Company Name and Address
769	Value Gardens Supply, LLC D/B/A Value Garden Supply PO Box 585 St Joseph, MO 64502
5481	Amvac Chemical Corp. D/B/A Amvac 4695 MacArthur Court, Suite 200 Newport Beach, CA 92660
8660	United Industries D/B/A Sylorr Plant Corp. PO Box 142642 St. Louis, MO 63114

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATIONS—Continued

EPA Company No.	Company Name and Address
8845	Spectrum Group Div. of United Industries Corp. PO Box 142642 St. Louis, MO 63114
9688	Chemsico Div. of United Industries Corp. PO Box 142642 St. Louis, MO 63114
10807	Amrep, Inc. 990 Industrial Park Drive Marietta, GA 30062
46515	Celex, Div. of United Industries Corp. PO Box 142642 St. Louis, MO 63114
71368	Nufarm, Inc. 150 Harvester Drive, Suite 200 Burr Ridge, IL 60527
73049	Valent Biosciences Corp. 870 Technology Way, Suite 100 Libertyville, IL 60068
75402	Boss Pet Products, Inc. 1645 Rockside Road, Suite 200 Maple Heights, OH 44137
AL820033	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
AL870008	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
AZ820015	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
GA090004	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
GA820013	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATIONS—Continued

EPA Company No.	Company Name and Address
GA870003	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
MS830009	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
NC780021	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
NC820008	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
NM820016	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
SC830009	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
SC090003	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
TX90010	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709
VA820013	Bayer Cropscience, LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked no later than September 11, 2009. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks until all stocks are exhausted, unless other factors (such as hazard) necessitate modified terms. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 5, 2009.

Patricia L. Moe,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–19311 Filed 8–11–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Advisory Committee on Diversity for Communications in the Digital Age

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Advisory Committee on Diversity for Communications in the Digital Age (''Diversity Committee'') will hold a meeting at 10 a.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street, SW., Washington, DC 20554. This will be the second meeting of the full Diversity Committee under its renewed charter and new membership.

DATES: September 22, 2009.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman, 202–418–1605; *Barbara.Kreisman@FCC.gov*.

SUPPLEMENTARY INFORMATION: At this meeting the Media, Telecom and Broadband, and Constitutional Issues working groups will each present a status report as to the matters they are considering. A formal recommendation from one of the groups may be proposed.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. The public may submit written comments before the meeting to: Barbara Kreisman, the FCC's Designated Federal Officer for the Diversity Committee, by email: *Barbara.Kreisman@fcc.gov* or U.S. Postal Service Mail (Barbara Kreisman, Federal Communications Commission, Room 2–A665, 445 12th Street, SW., Washington, DC 20554).

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Additional information regarding the Diversity Committee can be found at *http://www.fcc.gov/DiversityFAC*.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. E9–19345 Filed 8–11–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the agencies) 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.

On May 27, 2009, the Board, under the auspices of the Federal Financial Institutions Examination Council (FFIEC) and on behalf of the agencies, published a notice in the **Federal Register** (74 FR 25240) requesting public comment on the extension, without revision, of the currently approved information collection, the Country Exposure Report for U.S. Branches and Agencies of Foreign Banks (FFIEC 019). The comment period for this notice expired on July 27, 2009. No comments were received. The Board hereby gives notice that it plans to submit to OMB on behalf of the agencies a request for approval of the FFIEC 019.

DATES: Comments must be submitted on or before September 11, 2009.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies.

You may submit comments, identified by FFIEC 019 (7100–0213), by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the OMB control number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from Michelle Shore, Federal Reserve Board Clearance Officer, 202–452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869.

SUPPLEMENTARY INFORMATION:

Proposal To Request Approval From OMB of the Extension for Three Years, Without Revision, of the Following Currently Approved Collection of Information

Report Title: Country Exposure Report for U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 019.

OMB Number: 7100–0213.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 161.

Estimated Average Time per Response: 10 hours.

Estimated Total Annual Burden: 6,440 hours.

General Description of Reports

This information collection is mandatory: 12 U.S.C. 3906 for all agencies; 12 U.S.C. 3105 and 3108 for the Board; sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1820) for the FDIC; and the National Bank Act (12 U.S.C. 161) for the OCC. This information collection is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(8)).

Abstract

All individual U.S. branches and agencies of foreign banks that have more than $30 million in direct claims on residents of foreign countries must file the FFIEC 019 report quarterly. Currently, all respondents report adjusted exposure amounts to the five largest countries having at least $20 million in total adjusted exposure. The agencies collect this data to monitor the extent to which such branches and agencies are pursuing prudent country risk diversification policies and limiting potential liquidity pressures. No changes are proposed to the FFIEC 019 reporting form or instructions.

Request for Comment

Comments are invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

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

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

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimate and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, August 6, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–19252 Filed 8–11–09; 8:45 am]

BILLING CODE 6210–01–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 August 25, 2009.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Warbury Pincus Private Equity X, L.P., and Warbury Pincus X Partners, L.P., and their controlling affiliates which consist of, Warburg Pincus X, L.P., general partner of notificants, Warbury Pincus and Co., Warburg Pincus Partners, LLC, Warburg Pincus X, LLC, and Warburg Pincus LLC; to acquire additional voting shares of Webster Financial Corporation, Waterbury, Connecticut and thereby indirectly acquire Webster Bank, National Association, Waterbury, Connecticut.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Thomas H. Smith, Melinda G. Smith and Kerry A. Smith, all of Lawrenceburg, Kentucky; to acquire control of Century Bancshares, Inc., Lawrenceburg, Kentucky and thereby indirectly acquire voting shares of Century Bank of Kentucky, Inc., Lawrenceburg, Kentucky.

Board of Governors of the Federal Reserve System, August 7, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–19301 Filed 8–11–09; 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 September 8, 2009.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Alcar, LLC, New York, New York; to become a bank holding company by acquiring at least 90 percent of the voting shares of Darien Rowayton Bank, Darien, Connecticut.

B. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000

Peachtree Street, N.E., Atlanta, Georgia 30309:

1. USAAmeriBancorp, Inc., Largo, Florida; to acquire 83.3 percent of the outstanding shares of Aliant Financial Corporation, and its subsidiary, Aliant Bank, both of Alexander City, Alabama.

Board of Governors of the Federal Reserve System, August 7, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–19300 Filed 8–11–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 10:00 a.m. (Eastern Time), August 17, 2009.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: All parts will be open to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the July 20, 2009 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Investment Performance Report.
   c. Legislative Report.
3. Project Management Overview.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: August 7, 2009.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. E9–19418 Filed 8–10–09; 4:15 pm]

BILLING CODE 6760–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011794–011.

Title: COSCON/KL/YMUK/Hanjin Worldwide Slot Allocation & Sailing Agreement.

Parties: COSCO Container Lines Company, Limited; Kawasaki Kisen Kaisha, Ltd.; Yangming (UK) Ltd.; and Hanjin Shipping Co., Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West Fifth Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The amendment would reduce the vessel contributions and fleet capacities of the parties.

Agreement No.: 012032–001.

Title: CMA CGM/MSC/Maersk Line North and Central China-US Pacific Coast Two-Loop Space Charter, Sailing and Cooperative Working Agreement.

Parties: A.P. Moller-Maersk A/S, CMA CGM S.A., and Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher and Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment would suspend the operation of the parties' service loop covering central China, Hong Kong, Taiwan, and California and restructure the parties' remaining service loop between north and central China and California.

By Order of the Federal Maritime Commission.

Dated: August 7, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–19356 Filed 8–11–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

T.V.L. Global Logistics (N.Y.) Corp., 136–20 38th Ave., Ste. 11H, Flushing, NY 11354. *Officers:* Kang Chu, Vice President (Qualifying Individual), Chuang-Hsing Chueh, President.

High Cube, LLC, 23461 Robinbrook Pl., Diamond Bar, CA 91765. *Officer:* Chien H. Chen, General Manager (Qualifying Individual).

Slavica Trans Inc., 61 Langdon Pl., Lynbrook, NY 11563. *Officer:* Slavica Pulisic, President (Qualifying Individual).

C.E.I. Logistics, Inc., 340 E. Maple Ave., Ste. 305, Langhorne, PA 19047. *Officers:* William D. Pfender, President (Qualifying Individual), Patricia A. Gadaleta, Secretary.

Blue Ocean Logistics Corporation dba B.O Logistic Corp., 25835 Narbonne Ave., Ste. 280A, Lomita, CA 90717. *Officer:* Bok Kun Yeom, President (Qualifying Individual).

Deluxe Shipping Inc., 220 Ingraham St., Ste. 1C, Brooklyn, NY 11237. *Officer:* Taras Kordonsky, Secretary (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

The Inland Sea, Inc. dba TIS Worldwide, 9601 Carnegie Ave., Ste. 100, El Paso, TX 79925. *Officers:* Fritz Schult, Vice President (Qualifying Individual), Georg Keonigsmann, President.

Euroworld Transport System America Inc., 350 S. Northwest Hwy., Ste. 300, Park Ridge, IL 60068. *Officer:* Michael J. Smith, Vice President (Qualifying Individual).

Chelston Williams dba Willy Shipping, 308 New Hempstead Road, New City, NY 10956. *Officer:* Chelston E. Williams, CEO (Qualifying Individual).

SDC International Inc., 2033 Gateway Pl., 5th Floor, San Jose, CA 95110. *Officers:* Anthony Pineda, CFO (Qualifying Individual), Kfir Cohen, President.

Hardee Logistics, Inc., 404 Hardee Road, Coral Gables, FL 33146. *Officers:* Manuel Menendez, President (Qualifying Individual), Alina Menendez, Vice President.

Clark Worldwide Transportation, Inc., 121 New York Ave., Trenton, NJ 08638. *Officers:* Brian G. Gillen, President (Qualifying Individual), Gregory E. Burns, Director.

Total Transportation Services Worldwide, LLC, 2611 Waterway Parkway E Dr., Ste. 100, Indianapolis, IN 46214. *Officer:* Katherine A. Gerard, Vice President (Qualifying Individual).

JP Shipping and Son, Inc., 7860 NW. 80 St., Medley, FL 33166. *Officer:*

Leonard M. Perez, President (Qualifying Individual).

John William LaFargue dba Impex Services, 37 Locke Lane, Mill Valley, CA 94941. *Officers:* John W. LaFargue, Owner (Qualifying Individual), Elizabeth A. LaFargue, Dir. of Int'l. Logistics.

Propi U.S.A., Inc., 4229 NW. 167th St., Miami Gardens, FL 33055. *Officer:* Delvis Demendoza, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Dandino, Inc. dba Relo Moving, 626 E. 62nd St., Los Angeles, CA 90001. *Officer:* Yaniv Daniel, President (Qualifying Individual).

A.R. Savage & Son Ship's Agents, Charterer's Agents & Ocean Freight Forwarders, Inc., 701 Harbour Post Drive, Tampa, FL 33602. *Officer:* Arthur R. Savage, President (Qualifying Individual).

Folgueras Customs Broker Corp., 8100 W. 28th Court, Ste. 107, Hialeah, FL 33018. *Officers:* Fernando Folgueras, President (Qualifying Individual). Marisel U. Folgueras.

IVI Freight Systems Inc., 9112 NW. 120 Ter., Hialeah Gardens, FL 33018. *Officer:* Zoraya Ortega, President (Qualifying Individual).

Gruden USA, Inc., 51 Newark St., Ste. 302, Hoboken, NJ 07030. *Officer:* Carmella De Primo, Vice President (Qualifying Individual).

Dated: August 7, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–19358 Filed 8–11–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 021765N.

Name: AMA Freight USA, LLC.

Address: 12280 Rojas Drive, Ste. C, El Paso, TX 79936.

Date Revoked: July 27, 2009.

Reason: Surrendered license voluntarily.

License Number: 021306NF.

Name: Borderline Shipping Inc.

Address: 3004 SW. 26th Court, Cape Coral, FL 33914.

Date Revoked: July 29, 2009.

Reason: Failed to maintain valid bonds.

License Number: 016478NF.

Name: Cargo Venmex Corporation.

Address: P.O. Box 60514 AMF, Houston, TX 77205.

Date Revoked: July 31, 2009.

Reason: Surrendered license voluntarily.

License Number: 020076NF.

Name: Florida Freight Forwarders, LLC.

Address: 2041 NW. 12th Ave., Miami, FL 33127.

Date Revoked: July 22, 2009.

Reason: Failed to maintain valid bonds.

License Number: 020916N.

Name: Golden Sea (USA) Inc. dba M K D (USA).

Address: 155–06 So. Conduit Ave., Ste. 200, Jamaica, NY 11434.

Date Revoked: July 30, 2009.

Reason: Failed to maintain a valid bond.

License Number: 016258N.

Name: International Freight Consolidators, Inc.

Address: 1160 NW. 21st Terr., Miami, FL 33127.

Date Revoked: July 30, 2009.

Reason: Failed to maintain a valid bond.

License Number: 016037N.

Name: J.C. Express of Miami, Corp.

Address: 8545 NW. 72nd St., Miami, FL 33166.

Date Revoked: July 30, 2009.

Reason: Failed to maintain a valid bond.

License Number: 005800N.

Name: Innovative Freighting, Inc.

Address: 5362 NE. 112th Ave., Portland, OR 97220.

Date Revoked: July 27, 2009.

Reason: Surrendered license voluntarily.

License Number: 020668F.

Name: Valcad Construction, LLC.

Address: 3211 W. Northwest Highway, Ste. 200, Dallas, TX 75220.

Date Revoked: July 22, 2009.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–19360 Filed 8–11–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Report on Carcinogens (RoC); Request for Public Comments on the RoC Expert Panel's Recommendations on Listing Status for Glass Wool Fibers and the Scientific Justification for the Recommendations

AGENCY: National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Request for Comments.

SUMMARY: The NTP invites public comment on the recommendations from an expert panel on the listing status for glass wool fibers in the 12th RoC and the scientific justification for the recommendations. The recommendations and scientific justification are available electronically in part B of the Expert Panel Report (*http://ntp.niehs.nih.gov/go/29682*) or in printed text from the RoC Center (see ''**FOR FURTHER INFORMATION CONTACT**'' below). The RoC Center convened a nine-member, scientific expert panel on June 9–10, 2009, that was charged (1) To apply the RoC listing criteria to the relevant scientific evidence for glass wool fibers and make a recommendation regarding its listing status (*i.e.*, known to be a human *carcinogen, reasonably anticipated to be a human carcinogen,* or *not to list*) in the 12th RoC and (2) to provide a scientific justification for the recommendation.

DATES: The Expert Panel Report for Glass Wool Fibers (part B) will be available for public comment by August 3, 2009. The deadline for written comments is September 28, 2009.

ADDRESSES: Comments should be sent to Dr. Ruth Lunn, Director, RoC Center [NIEHS, P.O. Box 12233, MD K2–14, Research Triangle Park, NC 27709; FAX: 919–541–0144; or *lunn@niehs.nih.gov*. Courier address: NIEHS, Room 2006, 530 Davis Drive, Durham, NC 27713].

FOR FURTHER INFORMATION CONTACT: Dr. Ruth Lunn, RoC Center, 919–316–4637 or *lunn@niehs.nih.gov*.

SUPPLEMENTARY INFORMATION:

Background

Glass wool refers to fine glass fibers forming a mass resembling wool and most commonly used for insulation and filtration. Two categories of glass wool based on commercial use are (1) Insulation glass wools, which are used for applications such as thermal, electrical, and acoustical insulation and in weatherproofing, and (2) special-purpose glass fibers, which are used in

specialized products that include aircraft and aerospace insulation, battery separators, and high efficiency filters. Glass wool (respirable size) is currently listed in the 11th RoC as *reasonably anticipated to be a human carcinogen*.

As part of the review process for candidate substances for the 12th RoC (available at *http://ntp.niehs.nih.gov/go/15208*), the RoC Center convened a nine-member expert panel of independent scientists to evaluate glass wool fibers for possible listing in the 12th RoC. An additional, non-voting, scientist was also in attendance to respond to technical questions from the panel about glass wool. The expert panel met in a public forum at the Sheraton Chapel Hill Hotel, Chapel Hill, North Carolina on June 9–10, 2009. The panel was charged to peer review the draft background document for glass wool fibers and, once this task was completed, to make a recommendation on the listing status of glass wool fibers in the 12th RoC and to provide a scientific justification for that recommendation. Details about the meeting, including public comments received and the expert panel reports, are available on the RoC Web site (*http://ntp.niehs.nih.gov/go/29682*). The Glass Wool Fibers Expert Panel Report contains two parts: Part A has the peer review comments on the draft background document and part B has the recommendation on listing status and its scientific justification.

The expert panel decided to separate glass wool fibers into two categories for purposes of evaluating for the RoC. They recommended that special-purpose glass fibers (physical characteristics: longer, thinner, less soluble fibers, *e.g.,* ≥ 15 μm length with a k_{diss} of ≤100 ng/cm²/h) be listed as *reasonably anticipated to be a human carcinogen* in the 12th RoC. The panel recommended that glass wool fibers, with the exception of special fibers of concern (characterized above), not be listed in the 12th RoC either as *known to be a human carcinogen* or *reasonably anticipated to be a human carcinogen*.

Request for Comments

The RoC Center invites written public comments on the expert panel's two recommendations on the listing status for glass wool fibers and the scientific justification for those recommendations. The NTP is also particularly interested in comments on the expert panel's decision to separate glass wool fibers into two categories for purposes of listing in the RoC evaluation and on the set of physical characteristics that the panel used to classify the fibers into two categories. All comments received will be posted on the RoC Web site and identified by the submitters and, if applicable, their affiliation and/or sponsoring organization. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any) and send them to Dr. Lunn (see ''**ADDRESSES**'' above). The deadline for submission of written comments is September 28, 2009.

Next Steps

The RoC Center is in the process of finalizing the background document for glass wool fibers based upon the expert panel's peer review comments and the public comments received on the draft background document. Persons can register free-of-charge with the NTP listserve (*http://ntp.niehs.nih.gov/go/231*) to receive notification when the final background document is posted on the RoC Web site. As part of the RoC review process, two government groups will also conduct reviews of glass wool fibers; these meetings are not open to the public. Upon completion of its review, the NTP will (1) Draft a substance profile for glass wool fibers that contains its listing recommendation for the 12th RoC and the scientific information supporting that recommendation, (2) solicit public comment on the draft substance profile, and (3) convene a meeting of the NTP Board of Scientific Counselors to peer review the draft substance profile.

Background Information on the RoC

The RoC is a congressionally mandated document that identifies and discusses agents, substances, mixtures, or exposure circumstances (collectively referred to as ''substances'') that may pose a hazard to human health by virtue of their carcinogenicity. The RoC follows a formal, multi-step process for review and evaluation of candidate substances. Substances are listed in the report as either *known or reasonably anticipated human carcinogens*. The NTP prepares the RoC on behalf of the Secretary of Health and Human Services. Information about the RoC and the review process is available on its Web site (*http://ntp.niehs.nih.gov/go/roc*) or by contacting Dr. Lunn (see ''**FOR FURTHER INFORMATION CONTACT**'' above).

Dated: August 5, 2009.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. E9–19329 Filed 8–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Evaluation of Strategic Prevention Framework State Incentive Grant (SPF SIG) Program (OMB No. 0930–0279) Revision

SAMHSA's Center for Substance Abuse Prevention (CSAP) is responsible for the evaluation instruments of the Strategic Prevention Framework State Incentive Grant (SPF SIG) Program. The program is a major initiative designed to: (1) Prevent the onset and reduce the progression of substance abuse, including childhood and underage drinking; (2) reduce substance abuse related problems; and, (3) build prevention capacity and infrastructure at the State-, territorial-, tribal- and community-levels.

Five Steps Comprise the SPF

Step 1: Profile population needs, resources, and readiness to address the problems and gaps in service delivery.

Step 2: Mobilize and/or build capacity to address needs.

Step 3: Develop a comprehensive strategic plan.

Step 4: Implement evidence-based prevention programs, policies, and practices and infrastructure development activities.

Step 5: Monitor process, evaluate effectiveness, sustain effective programs/activities, and improve or replace those that fail.

An evaluation team is currently implementing a multi-method, quasi-experimental evaluation of the first two Strategic Prevention Framework State Incentive Grant (SPF SIG) cohorts receiving grants in FY 2004 and FY 2005. This notice invites comments for revision to the protocol for the ongoing cross-site evaluation for the Strategic Prevention Framework State Incentive Grant (SPF SIG) (OMB No. 0930–0279) which expires on 09/30/09. This revision includes two parts:

(1) Continuation of the use of the previously approved two-part

Community Level Instrument (CLI parts I and II) for Cohorts I and II.

(2) The use of three additional instruments to support the SPF SIG Cohorts III and IV Cross-site Evaluation. All three instruments are modified versions of data collection protocols used by Cohorts I and II. The three instruments are:

a. A Grantee-Level SPF Implementation Instrument,

b. A Grantee-Level Infrastructure Instrument, and

c. A two-part Community-Level SPF Implementation Instrument.

An additional Cohort III and IV evaluation component (*i.e.,* participant-level NOMs outcomes) is also included in this submission as part of the comprehensive evaluation, however, no associated burden from this evaluation activity is being imposed and therefore clearance to conduct the activities is not being requested. Specifically, Cohort III and IV SPF SIG grantees have been included in the currently OMB approved umbrella NOMs application (OMB No. 0930–0230) covering the collection of participant-level NOMs outcomes by all SAMHSA/CSAP grantees.

Every attempt has been made to make the evaluation for Cohorts III and IV comparable to Cohorts I and II. This notification reflects some streamlining of the original evaluation design. The primary evaluation objective is to determine the impact of SPF SIG on the reduction of substance abuse related problems, on building State prevention capacity and infrastructure, and preventing the onset and reducing the progression of substance abuse, as measured by the SAMHSA National Outcomes Measures (NOMs). Data collected at the grantee, community, and participant levels will provide information about process and system outcomes at the grantee and community levels as well as context for analyzing participant-level NOMS outcomes. The Grantee-Level Infrastructure and Implementation Instruments (Cohorts III and IV) and the Community-Level part I and part II (Cohorts I, II, III, and IV) Instruments are included in an OMB review package and are the main focus of this announcement.

Grantee-Level Data Collection (Cohort III and IV Revision)

Two Grantee-level Instruments (GLI) were developed to gather information about the infrastructure of the grantee's overall prevention system and collect data regarding the grantee's efforts and progress in implementing the Strategic Prevention Framework 5-step process. Both instruments are modified versions of the grantee-level interview protocols used in the SPF SIG Cohort I and II Cross-Site Evaluation (OMB No. 0930–0279). The total burden imposed by the original interview protocols has been reduced by restructuring the format of the original protocol, deleting several questions and replacing the majority of open-ended questions with multiple-choice-response questions. The Infrastructure Instrument will capture data to assess infrastructure change and to test the relationship of this change to outcomes. The Strategic Prevention Framework Implementation Instrument will be used to assess the relationship between SPF implementation and change in the NOMs. Information for both surveys will be gathered by the grantees' evaluators twice over the life of the SPF SIG award.

Based on the current 16 grantees funded in Cohort III and an estimated 20 to be funded in Cohort IV the estimated annual burden for grantee-level data collection is displayed below in Table 1. The burden estimates for the GLIs are based on the experience in the Cohort I and II SPF SIG evaluation as reported in the original OMB submission (OMB No. 0930–0279), less the considerable reduction in length of these instruments implemented by the Cohort III and IV evaluation team.

Community-Level Data Collection (Continuation and Revision)

Cohort I and II Continuation

The Community-level Instrument (CLI) is a two part, Web-based survey for capturing information about SPF SIG implementation at the community level (originally submitted as an addendum to OMB No. 0930–0279). Part I of this instrument was developed to assess the progress of communities as they implement the Strategic Prevention Framework (SPF), and part II was developed to gather descriptive information about the specific interventions being implemented at the community level and the populations being served including the gender, age, race, ethnicity, and number of individuals in target populations. Each SPF SIG funded community will complete a separate part II form for each intervention they implement.

The CLI (parts I and II) was designed to be administered two times a year (every six months) over the course of the SPF SIG Cohort I and II initiative. Four rounds of data are being collected under the current OMB approval period and the Cohorts I and II cross-site evaluation team plans to collect additional rounds once this request for a revision is approved. Data from this instrument will allow CSAP to assess the progress of the communities in their implementation of both the SPF and prevention-related interventions funded under the initiative. The data may also be used to assess obstacles to the implementation of the SPF and prevention-related interventions and facilitate mid-course corrections for communities experiencing implementation difficulties.

The estimated annual burden for community-level data collection is displayed below in Table 1. Note that the total burden reflects the 359 communities that have received SPF funds from their respective Cohort I States and 86 communities that have received SPF funds from their respective Cohort II States. Burden estimates are based on pilot respondents' feedback as well as the experience of the survey developers reported in the original OMB submission (OMB No. 0930–0279). Additionally, an individual community's burden may be lower than the burden displayed in Table 1 because all sections of the Community-level Instrument (parts I and II) may not apply for each reporting period as community partners work through the SPF steps and only report on the step-related activities addressed. Note also that some questions will be addressed only once and the responses will be used to pre-fill subsequent surveys.

Cohort III and IV Revision

The Community-Level Instrument to be completed by Cohort III and IV funded subrecipient communities is a modified version of the one in use in the SPF SIG Cohorts I and II Cross-Site Evaluation (OMB No. 0930–0279). The total burden imposed by the original instrument was reduced by reorganizing the format of the original instrument, optimizing the use of skip patterns, and replacing the majority of open-ended questions with multiple-choice-response questions.

Part I of the instrument will gather information on the communities' progress implementing the five SPF SIG steps and efforts taken to ensure cultural competency throughout the SPF SIG process. Subrecipient communities receiving SPF SIG awards will be required to complete part I of the instrument annually. Part 2 will capture data on the specific prevention intervention(s) implemented at the community level. A single prevention intervention may be comprised of a single strategy or a set of multiple strategies. A part II instrument will be completed for each prevention intervention strategy implemented

during the specified reporting period. Specific questions will be tailored to match the type of prevention intervention strategy implemented (*e.g.,* Prevention Education, Community-based Processes, and Environmental). Information collected on each strategy will include date of implementation, numbers of groups and participants served, frequency of activities, and gender, age, race, and ethnicity of population served/affected. Subrecipient communities' partners receiving SPF SIG awards will be required to update part II of the instrument a minimum of every six months.

The estimated annual burden for specific segments of the community-level data collection is displayed in Table 1. The burden estimates for the CLIs are based on the experience in the Cohort I and II SPF SIG evaluation as reported in the original OMB submission (OMB No. 0930–0279), less the considerable reduction in length of these instruments implemented by the Cohort III and IV evaluation team. The total burden assumes an average of 15 community-level subrecipients per grantee (n=36 Grantees) for a total of 540 community respondents, annual completion of the CLI part I, a minimum of two instrument updates per year for the CLI part II, and an average of three distinct prevention intervention strategies implemented by each community during a 6-month period. Additionally, some questions will be addressed only once and the responses will be used to pre-fill subsequent updates.

Participant-Level Data Collection (Cohort III and IV—New)

Participant-level change will be measured using the CSAP NOMs Adult and Youth Programs Survey Forms already approved by OMB (OMB No. 0930–0230). Subrecipient communities will have the opportunity to select relevant measures from the CSAP NOMs Adult and Youth Programs Survey Forms based on site-specific targeted program outcomes and may voluntarily select additional outcome measures that are relevant to their own initiatives. Cohort III and IV SPF SIG grantees have been included in the currently OMB approved umbrella NOMs application (OMB No. 0930–0230) covering all SAMHSA/CSAP grantees, therefore no additional burden for this evaluation activity is being imposed and clearance to conduct the activities is not being requested.

Total Estimates of Annualized Hour Burden

Estimates of total and annualized reporting burden for respondents by evaluation cohort are displayed below in Table 1. The estimated average annual burden of 5,620.8 hours is based on the completion of the Community Level-Instrument (CLI parts I and II) for Cohorts I and II and the Grantee-level Instruments (GLI) and the Community-Level Instrument (CLI) for Cohorts III and IV.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN TO RESPONDENTS

Instrument type	Respondent	Burden per response (hrs.)	No. of respondents	No. of responses per respondent	Total burden (hrs.)
Grantee-Level Burden Cohort 1					
Total/Average Burden Over 1 Reporting Year.	Grantee	1	21	2	42
Community-Level Burden Cohort 1					
CLI Part 1	Community	2.17	359	2	1,558.0
CLI Part 2	Community	2.17	359	6	4,674.2
Review of Past Responses	Community	2.5	359	2	1,795.0
Total/Average Burden Over 1 Reporting Year.	Community				8,027.2
Grantee-Level Burden Cohort 2					
Total Burden Over 2 Reporting Years.	Grantee	1	5	4	20
Average Annual Burden	Grantee				10
Community-Level Burden Cohort 2					
CLI Part 1	Community	2.17	86	4	746.5
CLI Part 2	Community	2.17	86	12	2,239.4
Review of Past Responses	Community	2.5	86	4	860.0
Total Burden Over 2 Reporting Years.	Community				3,845.9
Average Annual Burden	Community				1,923.0
Total Burden Cohorts 1 and 2					
Total Burden Over 2 Reporting Years.	Grantee				62
Community					11,873.1
Average Annual Burden	Grantee				31
Community					5,936.6
Grantee-Level Burden Cohorts 3 and 4					
GLI Infrastructure & Implementation Instruments (Reporting Years 1–4).	Grantee	4.75	36	2	342.0
CLI Part I, 1–20: Community Contact Information (Reporting Year 1).	Grantee	1.5	36	1	54.0
CLI Part I, 1–20: Community Contact Information (Reporting Years 2–4).	Grantee	0.25	36	3	27.0
Total Burden Over 4 Reporting Years.	Grantee				423.0
Average Annual Burden	Grantee				105.75

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN TO RESPONDENTS—Continued

Instrument type	Respondent	Burden per response (hrs.)	No. of respondents	No. of responses per respondent	Total burden (hrs.)
Community-Level Burden Cohorts 3 and 4					
CLI Part I, 21–172: Community SPF Activities (Reporting Year 1).	Community	3	540	1	1620.0
CLI Part II (Reporting Year 1)	Community	0.75	540	6	2,430.0
CLI Part I, 21–172: Community SPF Activities (Reporting Years 2–4).	Community	0.75	540	3	1,215
CLI Part II (Reporting Years 2–4)	Community	0.5	540	18	4,860.0
Total burden Over 4 Reporting Periods.	Community				10,125.0
Average Annual Burden	Community				2,531.25
Total Burden All Cohorts					
Total Burden Over 4 Reporting Years.	Grantee				485.0
	Community				21,998.1
Average Annual Burden	Grantee				121.3
	Community				5,499.6
	Overall				5,620.8

Written comments and recommendations concerning the proposed information collection should be sent by September 11, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 6, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–19291 Filed 8–11–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Infectious Diseases Clinical Studies and Trails.

Date: September 16, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Edward W. Schroder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19320 Filed 8–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council will meet on August 24, 2009 from 1 p.m. to 3 p.m. via teleconference.

The meeting will include discussion and evaluation of grant applications reviewed by Initial Review Groups. Therefore, the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, section 10(d).

Substantive program information, a summary of the meeting and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site at *http://www.nac.samhsa.gov*, or by contacting CSAT National Advisory Council's Designated Federal Official, Ms. Cynthia Graham (see contact information below).

Committee Name: SAMHSA Center for Substance Abuse Treatment National Advisory Council.

Dates/Times/Types: August 24, 2009, from 1 p.m. to 3 p.m.: Closed.

Place: SAMHSA Building, 1 Choke Cherry Road, Great Falls Room, Rockville, Maryland 20857.

Contact: Cynthia Graham, M.S., Designated Federal Official, SAMHSA CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1035, Rockville, Maryland 20857. *Telephone:* (240) 276–1692. *Fax:* (240) 276–

1690. *E-mail: cynthia.graham@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E9–19242 Filed 8–11–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences; Special Emphasis Panel ARRA Funds—Competitive Supplement.

Date: August 19, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS).

Dated: August 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19090 Filed 8–11–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council for Complementary and Alternative Medicine, September 11, 2009, 8:30 a.m. to September 11, 2009, 4 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on July 20, 2009, 74 FR 17204.

This meeting is being amended to change the meeting date to September 10, 2009 through September 11, 2009 and the time of the closed session on September 11, 2009. On September 10, 2009 the meeting will be held in open session from 8:30 a.m. to 5 p.m. at the Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852. On September 11, 2009 there will be an open session from 8:30 a.m. to 10 a.m. The closed session is scheduled from 10 a.m. to 12 p.m., and the open session will resume from 1 p.m. to 3 p.m. The location for September 11, 2009 remains the same.

Dated: August 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19323 Filed 8–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel. ARRA STRB September Meeting 1.

Date: September 8–11, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Mohan Viswanathan, PhD, Scientific Review Officer, National Center for Research Resources, National Institutes of Health, One Democracy Plaza, 6701 Democracy Blvd., Room 1084, Bethesda, MD 20892–4874. 301–435–0829. *mv10f@nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel. ARRA STRB September Meeting 2.

Date: September 8–11, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Mohan Viswanathan, PhD, Scientific Review Officer, National Center for Research Resources, National Institutes of Health, One Democracy Plaza, 6701 Democracy Blvd., Room 1084, Bethesda, MD 20892–4874. 301–435–0829. *mv10f@nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel. ARRA STRB September Meeting 3.

Date: September 8–11, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Carol Lambert, PhD, Scientific Review Officer, Office of Review, National Institutes of Health, NCRR, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892. (301)–435–0814. *lambert@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel. ARRA STRB September Meeting 4.

Date: September 8–11, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Carol Lambert, PhD, Scientific Review Officer, Office of Review, National Institutes of Health, NCRR, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892. (301)–435–0814. *lambert@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel. Comparative Medicine SEP.

Date: September 22, 2009.

Time: 12 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Lisa A Newman, SCD, Scientific Review Officer, National Institutes of Health, National Center for Research Resources, Office of Review, Room 1074, 6701 Democracy Blvd. MSC 4874, Bethesda, MD 20892. 301–435–0965. *newmanla2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure; 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: August 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19318 Filed 8–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, GO Applications.

Date: August 19, 2009.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *rc218u@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, CORE Applications.

Date: August 20, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *rc218u@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: August 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19316 Filed 8–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Translational Application.

Date: September 24, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892. 301–496–8683. *singhs@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, P50 Clinical Center Review.

Date: October 8, 2009.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892. 301–496–8683. *singhs@nidcd.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19325 Filed 8–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: September 22–23, 2009.

Closed: September 22, 2009, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Open: September 23, 2009, 8 a.m. to 1:45 p.m.

Agenda: Call to order and reports from the Task Force on Minority Aging Research and Working Group on Program; Comments from Retiring Members; Report on Council of Councils; Initial Report on the Division of Aging Biology Review; Presentation; and Program Highlights.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robin Barr, PhD, Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *barrr@nia.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19327 Filed 8–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Long-term Outcomes of Delirium.

Date: October 23, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705. *JOHNSONJ9@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Nursing Home Research.

Date: October 27, 2009.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. 301–402–7705. *JOHNSONJ9@NIA.NIH.GOV*.

(Catalogue of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 6, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–19328 Filed 8–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Declaration for Free Entry of Returned American Products

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Revision of an existing information collection: 1651–0011.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Declaration for Free Entry of Returned American Products. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 23876) on May 21, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before September 11, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Declaration of Free Entry of Returned American Products.

OMB Number: 1651–0011.

Form Number: Form-3311.

Abstract: When free entry is claimed for a shipment of returned American products under the Harmonized Tariff Schedules of the United States (HTSUS), Form-3311 is one of the supporting documents which substantiates the claim for duty free status. The burden hours were decreased for this information collection as a result of revised estimates by CBP. No substantive changes were made to this information collection.

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change).

Estimated Number of Respondents: 12,000.

Estimated Number of Annual Responses per Respondent: 35.

Estimated Number of Total Responses: 420,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 42,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: August 6, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–19290 Filed 8–11–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–27]

Notice of Proposed Information Collection: Comment Request; Debt Resolution Program

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 13, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12303, telephone 518–862–2806 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Debt Resolution Program.

OMB Control Number, if applicable: 2502–0483.

Description of the need for the information and proposed use: HUD is required to collect debt owed to the agency. As part of the collection process, demand for repayment is made on the debtor(s). In response, debtors opt to ignore the debt, pay the debt or dispute the debt. Disputes and offers to repay the debt result in information collections. Borrowers who wish to pay less than the full amount due must submit a Personal Financial Statement and Settlement Offer. HUD uses the information to analyze debtors' financial positions and then approve settlements, repayment agreements, and pre-authorized electronic payments to HUD. Borrowers who wish to dispute must provide information to support their position.

Agency form numbers, if applicable: HUD–56141, HUD–56142, HUD–56146 and HUD–92090.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 854. The number of respondents is 850, the number of responses is 2,790, the frequency of response is on occasion, and the burden hour per response is 1.49 hours.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 7, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–19368 Filed 8–11–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–26]

Notice of Proposed Information Collection: Comment Request; Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below

will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 13, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Joseph A. Sealey, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–2559 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications.

OMB Control Number, if applicable: 2502–0044.

Description of the need for the information and proposed use: Contractors use the form HUD–2328 to establish a schedule of values of construction items on which the monthly advances or mortgage proceeds are based. Contractors use the form HUD–92330–A to convey actual construction costs in a standardized format of cost certification. In addition to assuring that the mortgage proceeds have not been used for purposes other than construction costs, HUD–92330–A further protects the interest of the Department by directly monitoring the accuracy of the itemized trades on form HUD–2328. This form also serves as project data to keep Field Office cost data banks and cost estimates current and accurate. HUD–92205A is used to certify the actual costs of acquisition or refinancing of projects insured under Section 223(f) program.

Agency form numbers, if applicable: HUD–2328, HUD–92330–A, HUD–92205–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 3,680. The number of respondents is 675, the number of responses is 675, the frequency of response is on occasion, and the number of burden hours per response is 5.

Status of the proposed information collection: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 7, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–19373 Filed 8–11–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–61]

Title I Property Improvement and Manufactured Home Loan Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Financial institutions obtain insurance on loans for repair/improvement of property; purchase of a manufactured home and/or lot; the purchase of fire safety equipment in existing health care facilities; and the preservation of historic structures.

DATES: *Comments Due Date:* September 11, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0328) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Title I Property Improvement and Manufactured Home Loan Programs.

OMB Approval Number: 2502–0328.

Form Numbers: HUD–637, HUD–646, HUD–27029, HUD–27030, HUD–55013, HUD–55014, HUD–56001, HUD–56001–MH, HUD–56002, HUD–56002–MH, HUD–56004, HUD–92802, and SF–3881.

Description of the Need for the Information and its Proposed Use: Financial institutions obtain insurance on loans for repair/improvement of property; purchase of a manufactured home and/or lot; the purchase of fire

safety equipment in existing health care facilities; and the preservation of historic structures.

Frequency of Submission: Individuals or households, Business or other for-profit.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	14,522	9.40		0.233		31,838

Total Estimated Burden Hours: 31,838.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 4, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–19241 Filed 8–11–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8099–01; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the subsurface estate in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation. The lands are in the vicinity of Kuskokwim Delta Area, Alaska, and are located in:

Lot 3, U.S. Survey No. 10167, Alaska, that portion lying within Secs. 4 and 9, T. 1 S., R. 83 W., Seward Meridian, Alaska.
Containing approximately 23 acres.

Seward Meridian, Alaska

T. 17 N., R. 45 W.,
Secs. 19 and 30.
Containing approximately 1,273 acres.

T. 17 N., R. 46 W.,
Secs. 25, 26, and 36.
Containing approximately 1,920 acres.

T. 3 N., R. 79 W.,
Secs. 1 to 36, inclusive.
Containing approximately 21,864 acres.

T. 4 N., R. 81 W.,
Secs. 1 to 12, inclusive;
Sec. 18.
Containing approximately 6,880 acres.

T. 3 N., R. 82 W.,
Secs. 1 to 6, inclusive;
Secs. 10 to 16, inclusive;
Secs. 20 to 36, inclusive.
Containing approximately 13,144 acres.

T. 4 N., R. 82 W.,
Secs. 1 to 18, inclusive;
Secs. 22 to 27, inclusive;
Secs. 34, 35, and 36.
Containing approximately 11,992 acres.

T. 3 N., R. 83 W.,
Secs. 1 to 6, inclusive;
Secs. 15, 16, 21, and 22;
Secs. 23, 26, 27, and 28;
Secs. 34 and 36.
Containing approximately 1,775 acres.

T. 4 N., R. 83 W.,
Secs. 1 to 5, inclusive;
Secs. 8 to 17, inclusive.
Containing approximately 7,170 acres.

T. 7 S., R. 72 W.,
Secs. 13 and 24.
Containing approximately 1,257 acres.

T. 13 S., R. 72 W.,
Sec. 18;
Secs. 23 to 26, inclusive.
Containing approximately 3,166 acres.

T. 1 S., R. 83 W.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive.
Containing approximately 5,736 acres.

T. 3 S., R. 83 W.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28, 29, 30, and 33.
Containing approximately 6,012 acres.

T. 4 S., R. 83 W.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28, 29, and 30.
Containing approximately 5,262 acres.

T. 1 S., R. 84 W.,
Secs. 1 to 21, inclusive;
Secs. 28 to 32, inclusive.
Containing approximately 14,206 acres.
Aggregating approximately 101,680 acres.

Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 11, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. E9–19289 Filed 8–11–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8099–01; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the subsurface estate in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation. The lands are in the vicinity of Kuskokwim Delta Area, Alaska, and are located in:

Seward Meridian, Alaska

T. 4 N., R. 79 W.,
Secs. 2 to 11, inclusive;
Secs. 14 to 21, inclusive;
Secs. 25 to 36, inclusive.
Containing approximately 17,874 acres.

T. 5 N., R. 79 W.,
Secs. 1 to 36, inclusive.
Containing approximately 20,924 acres.

T. 6 N., R. 79 W.,
Secs. 1 to 12, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.
Containing approximately 13,607 acres.

T. 5 N., R. 80 W.,

Secs. 1 to 36, inclusive.
Containing approximately 22,139 acres.
T. 5 N., R. 81 W.,
Secs. 1 to 36, inclusive.
Containing approximately 19,302 acres.
T. 5 N., R. 82 W.,
Secs. 25 to 36, inclusive.
Containing approximately 5,475 acres.
Aggregating approximately 99,321 acres.

Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 11, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. E9–19409 Filed 8–10–09; 11:15 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Federal Water Pollution Control Act (''Clean Water Act'')

Notice is hereby given that on August 6, 2009, a proposed Consent Decree in *United States of America* v. *Aggregate Industries—Northeast Region, Inc.,* Civil Action No. 09–11321 was lodged with the United States District Court for the District of Massachusetts.

In this action the United States alleged that Defendant violated sections 301 and 308 of the Clean Water Act, 33 U.S.C. 1311 and 1318, at twenty-three of its facilities in Massachusetts and New Hampshire by failing to apply for permits required under the National Pollution Discharge Elimination System (''NPDES''), discharging process water and/or storm water without a permit, violating effluent limitations established in its NPDES permits, and failure to comply with the requirements of the Multi-Sector General Permit for storm water discharges. The Consent Decree requires Defendant to pay a civil penalty of $2.75 million within 30 days of entry of the decree, as well as implement a number of operational changes designed to ensure compliance with the Clean Water Act at all its facilities. These changes include performance of comprehensive evaluations of all construction materials facilities currently owned by Aggregate, as well as those acquired within three years of entry of the CD, hiring two employees with certification in storm water management who are responsible for compliance with the storm water permits, and providing annual storm water training for all employees with operational responsibilities.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Aggregate Industries—Northeast Region, Inc.,* D.J. Ref. 90–5–1–1–08932.

The Consent Decree may be examined at the Office of the United States Attorney, One Courthouse Way, John Joseph Moakley Courthouse, Boston, MA 02210, and at U.S. EPA Region 1, One Congress Street, Boston, MA 02114. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $16.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–19255 Filed 8–11–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *Union Pacific Railroad Company,* No. 2:09–CV–01453 (D. Nev.), was lodged with the United States District Court for the District of Nevada on August 6, 2009.

The proposed Consent Decree concerns a complaint filed by the United States against Union Pacific Railroad Company, pursuant to sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief and civil penalties against Union Pacific Railroad Company for the unauthorized discharge of pollutants in Lincoln and Clark Counties, Nevada, in violation of sections 301(a), 402, and 404 of the Clean Water Act, 33 U.S.C. 1311(a), 1342, & 1344, and for failure to timely submit information in violation of section 308 of the Clean Water Act, 33 U.S.C. 1318. The proposed Consent Decree resolves these allegations by requiring Union Pacific Railroad Company to restore the impacted areas, to perform mitigation, and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Andrew J. Doyle, Trial Attorney, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026, and refer to *United States* v. *Union Pacific Railroad Company,* DJ # 90–5–1–1–17847.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Nevada, Las Vegas, or via the court's case management and electronic docketing system at *https://ecf.nvd.uscourts.gov/cgi-bin/ShowIndex.pl.* In addition, the proposed Consent Decree may be viewed at

http://www.usdoj.gov/enrd/Consent_Decrees.html.

Maureen M. Katz,

Assistant Section Chief, Environment & Natural Resources Division.

[FR Doc. E9–19260 Filed 8–11–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Telephone Point of Purchase Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before October 13, 2009.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, telephone number 202–691–7628 (this is not a toll free number.) (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this survey is to develop and maintain a timely list of retail, wholesale, and service establishments where urban consumers shop for specified items. This information is used as the sampling universe for selecting establishments at which prices of specific items are collected and monitored for use in calculating the Consumer Price Index (CPI). The survey has been ongoing since 1980 and also provides expenditure data that allows items that are priced in the CPI to be properly weighted.

II. Current Action

Office of Management and Budget clearance is being sought for the Telephone Point of Purchase Survey (TPOPS).

Since 1997, the survey has been administered quarterly via a computer-assisted telephone interview. This survey is flexible and creates the possibility of introducing new products into the CPI in a timely manner. The data collected in this survey are necessary for the continuing construction of a current outlet universe from which locations are selected for the price collection needed for calculating the CPI. Furthermore, the TPOPS provides the weights used in selecting the items that are priced at these establishments. This sample design produces an overall CPI market basket that is more reflective of the prices faced and the establishments visited by urban consumers.

For this clearance, the BLS will be adding an address question to facilitate sending an advance letter before each wave. Additionally, the BLS is in the process of developing additional questions for TPOPS respondents in order to enhance survey results. Information obtained from these additional questions will be used to address non-response bias in the survey, to study approaches for increasing response rates, and for researching ways to improve the data.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information. including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Point of Purchase Survey.

OMB Number: 1220–0044.

Affected Public: Individuals or households.

Total Respondents: 21,649.

Frequency: Quarterly.

Total Responses: 56,071.

Average Time per Response: 11 minutes.

Estimated Total Burden Hours: 10,280 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 6th day of August 2009.

Kimberley D. Hill,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E9–19253 Filed 8–11–09; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Main Fan Operation and Inspection

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired

format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR 57.22204, Main Fan Operation.

DATES: Submit comments on or before October 13, 2009.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via E-mail to *Rowlett.John@dol.gov*. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Title 30, CFR 57.22204, which is applicable only to specific underground mines that are categorized as gassy requires main fans to have pressure-recording systems. Main fans are to be inspected daily while operating if persons are underground, and certification of the inspection is to be made by signature and date. When accumulations of explosive gases such as methane are not swept from the mine by the main fans, they may reasonably be expected to contact an ignition source. The results are usually disastrous and multiple fatalities may be expected to occur. The standard contains significantly more stringent requirements for main fans in ''gassy'' mines than for main fans in other mines.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice, or viewed on the internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules & Regs'', and then selecting ''FedReg. Docs''. On the next screen, select ''Paperwork Reduction Act Supporting Statement'' to view documents supporting the **Federal Register** Notice.

III. Current Actions

Information collected through the pressure recordings is used by the mine operator and MSHA for maintaining a constant vigil on mine ventilation, and to ensure that unsafe conditions are identified early and corrected. Technical consultants may occasionally review the information when solving problems.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Main Fan Operation and Inspection.

OMB Number: 1219–0030.

Recordkeeping: § 57.22204 requires that main fans are to be inspected daily while operating if persons are underground, and certification of the inspection is to be made by signature and date. Certifications and pressure recordings are to be kept for one year and made available to authorized representatives of the Secretary.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 6.

Total Responses: 3,960.

Total Burden Hours: 1,980 hours.

Total Burden Cost: $1,200.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 7th day of August 2009.

John Rowlett,

Director, Management Services Division.

[FR Doc. E9–19308 Filed 8–11–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Escape and Evacuation Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Section 77.1101; Escape and Evacuation Plans.

DATES: Submit comments on or before October 13, 2009.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Rowlett.John@dol.gov*. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: The employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Section 77.1101(a) requires operators of surface coal mines and surface work areas of underground coal mines to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire.

Section 77.1101(b) requires that all employees be instructed in current escape and evacuation plans, fire alarm signals, and applicable procedures to be followed in case of fire. The training and record keeping requirements associated with this standard are

addressed under OMB No. 1219–0070 (Certificate of Training, MSHA Form 5000–23).

Section 77.1101(c) requires escape and evacuation plans to include the designation and proper maintenance of an adequate means for exiting areas where persons are required to work or travel including buildings, equipment, and areas where persons normally congregate during the work shift.

While escape and evacuation plans are not subject to approval by MSHA district managers, MSHA inspectors evaluate the adequacy of the plans during their inspections of surface coal mines and surface work areas of underground coal mines.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules & Regs'', and then selecting ''FedReg. Docs''. On the next screen, select ''Paperwork Reduction Act Supporting Statement'' to view documents supporting the **Federal Register** Notice.

III. Current Actions

MSHA proposes to continue the information collection requirement related to escape and evacuation plans for surface coal mines and surface work areas of underground coal mines for an additional 3 years. MSHA believes that eliminating these requirements would expose miners to unnecessary risk of injury or death should a fire occur at or near their work location.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Escape and Evacuation Plans.
OMB Number: 1219–0051.
Frequency: On Occasion.
Affected Public: Business or other for-profit.
Respondents: 351.
Responses: 351.
Total Burden Hours: 1,695 hours.
Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 7th day of August 2009.

John Rowlett,

Director, Management Services Division.

[FR Doc. E9–19310 Filed 8–11–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request

ACTION: Notice. Proposed information collection request submitted for public comment and recommendations; Records of Preshift and Onshift Inspections of Slope and Shaft Areas (pertains to slope and shaft sinking operation at coal mines).

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR sections 77.1901—Records of Preshift and Onshift Inspections of Slope and Shaft Areas.

DATES: Submit comments on or before October 13, 2009.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via e-mail to *Rowlett.John@dol.gov*. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the ''**ADDRESSES**'' section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

§ 77.1901 requires operators to conduct examinations of slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiency, within 90 minutes before each shift, once during each shift, and before and after blasting. The surface area surrounding each slope and shaft is also required to be inspected for hazards.

§ 77.1901 also requires that records be kept of the results of the inspections. The record includes a description of any hazardous condition found and the corrective action taken to abate it. These records are necessary to ensure that the inspections and tests are conducted in a timely fashion and that corrective action is taken when hazardous conditions are identified, thereby ensuring a safe working environment for the slope and shaft sinking employees. The record is maintained at the mine site for the duration of the operation.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, *e.g.,* permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules & Regs'', and then selecting ''*FedReg. Docs*''. On the next screen, select ''Paperwork Reduction Act Supporting Statement'' to view documents supporting the **Federal Register** Notice.

III. Current Actions

§ 77.1901 requires operators to conduct examinations of slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiency, within 90 minutes before each shift, once during each shift, and before and after blasting. The surface area surrounding each slope and shaft is also required to be inspected for hazards. § 77.1901 also requires that records be kept of the results of the inspections.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Records of Preshift and Onshift Inspections of Slope and Shaft Areas.

OMB Number: 1219–0082.

Recordkeeping: The standard also requires that a record be kept of the results of the inspections. The record includes a description of any hazardous condition found and the corrective action taken to abate it. The record is necessary to ensure that the inspections and tests are conducted in a timely fashion and that corrective action is taken when hazardous conditions are identified, thereby ensuring a safe working environment for the slope and shaft sinking employees. The record is maintained at the mine site for the duration of the operation.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 35.

Total Burden Hours: 14,823 hours.

Total Burden Cost: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 7th day of August 2009.

John Rowlett,

Director, Management Services Division.

[FR Doc. E9–19309 Filed 8–11–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance Program; Designation of Certifying Officers

AGENCY: Employment and Training Administration; Labor.

ACTION: Notice of designation of certifying officers.

SUMMARY: The trade adjustment assistance (TAA) program operates under the Trade Act of 1974, as amended, to provide assistance to domestic workers adversely affected in their employment by certain types of foreign trade. The Trade and Globalization Adjustment Assistance Act of 2009 amended the Trade Act of 1974, expanded TAA coverage to more workers and firms, including workers and firms in the service sector; made benefits available to workers whose jobs have been off-shored to any country, as opposed to only covering certain shifts in production; and improved workers' training opportunities and opportunities for health insurance coverage. The new law also included additional funding for employment services and case management, extended income support, increased funding for training, and provided for earlier access to training. Workers become eligible for program benefits only if the worker group is certified under the Act as eligible to apply for adjustment assistance. From time to time the agency issues an Order designating or redesignating officials of the agency authorized to act as certifying officers, responsible for reviewing and signing adjustment assistance determinations. Employment and Training Order No. 1–09 was issued to revise the listing of officials designated as certifying officers, superseding the previous Order. The Employment and Training Order No. 1–09 is published below.

FOR FURTHER INFORMATION CONTACT: Erin FitzGerald, 202–693–3560.

EMPLOYMENT AND TRAINING ORDER NO. 1–09

TO: NATIONAL AND REGIONAL OFFICES
FROM: JANE OATES
Assistant Secretary for Employment and Training
SUBJECT: Trade Adjustment Assistance Program (Trade Act of 1974)—Designation of Certifying Officers

1. *Purpose.* To designate certifying officers to carry out functions under the Trade Adjustment Assistance (TAA) program under chapter 2 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2271 *et seq.*), and the implementing regulations at 29 CFR part 90.

2. *Directive Affected.* Employment and Training Order No. 1–05, February 1, 2005, 70 FR 6754 (February 8, 2005), which designated Certifying Officers, is superseded.

3. *Background.* Regulations at 29 CFR part 90 vest persons designated as certifying officers with the authority and responsibility to make determinations and redeterminations and to issue certifications of eligibility of groups of workers to apply for adjustment assistance under the TAA program.

4. *Designation of Officials.* By virtue of my authority under Secretary's Order No. 03–2009, January 9, 2009 (74 FR 2270, Jan. 14, 2009), I designate or redesignate as certifying officers for the TAA program:

a. Del Min Amy Chen, Program Analyst, Division of Trade Adjustment Assistance.

b. Richard Church, Program Analyst, Division of Trade Adjustment Assistance.

c. Michael W. Jaffe, Program Analyst, Division of Trade Adjustment Assistance.

d. Elliott S. Kushner, Program Analyst, Division of Trade Adjustment Assistance.

e. Linda G. Poole, Program Analyst, Division of Trade Adjustment Assistance.

The foregoing officials are delegated authority and assigned responsibility, subject to the general direction and control of the Assistant Secretary and Deputy Assistant Secretaries of the Employment and Training Administration, and the director of the Division of Trade Adjustment Assistance or the successor office, to carry out the duties and functions of certifying officers under 29 CFR part 90 and any succeeding regulations.

5. *Effective Date.* This order is effective on date of issuance.

This order rescinds ETO 1–05.

Dated: Signed this 7th day of August 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–19322 Filed 8–11–09; 8:45 am]

BILLING CODE 4510–FN–P

LIBRARY OF CONGRESS

Copyright Office

Notification of Agreements Under the Webcaster Settlement Act of 2009

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of agreements.

SUMMARY: The Copyright Office is publishing four agreements which set rates and terms for the reproduction and performance of sound recordings made by certain webcasters under two statutory licenses. Webcasters who meet the eligibility requirements may choose to operate under the statutory licenses in accordance with the rates and terms set forth in the agreements published herein rather than the rates and terms of any determination by the Copyright Royalty Judges.

FOR FURTHER INFORMATION CONTACT: Stephen Ruwe, Attorney Advisor, or Tanya M. Sandros, Deputy General Counsel, Copyright Office, GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366. See the final paragraph of the **SUPPLEMENTARY INFORMATION** for information on where to direct questions regarding the rates and terms set forth in the agreement.

SUPPLEMENTARY INFORMATION: On June 30, 2009, President Obama signed into law the Webcaster Settlement Act of 2009 (''WSA''), Public Law 111–36, which amends section 114 of the Copyright Act, title 17 of the United States Code, as it relates to webcasters. Section 114(f)(5) as amended by the WSA allows SoundExchange, the Receiving Agent designated by the Librarian of Congress in his June 20, 2002, order for collecting royalty payments made by eligible nonsubscription transmission services under the section 112 and section 114 statutory licenses, *see* 67 FR 45239 (July 8, 2002), to enter into agreements on behalf of all copyright owners and performers to set rates, terms and conditions for webcasters operating under the section 112 and section 114 statutory licenses for a period of not more than 11 years beginning on January 1, 2005. The authority to enter into such settlement agreements expired at 11:59 p.m. Eastern time on July 30, 2009, the 30th day after the enactment of the WSA.

Unless otherwise agreed to by the parties, the rates and terms set forth in the agreement apply only to the time periods specified in the agreement and have no precedential value in any proceeding concerned with the setting of rates and terms for the public performance or reproduction in ephemeral phonorecords. To make this point clear, Congress included language expressly addressing the precedential value of agreements made under the WSA. Specifically, section 114(f)(5)(C), states that: ''Neither subparagraph (A) nor any provisions of any agreement entered into pursuant to subparagraph (A), including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth therein, shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral recordings or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice and recordkeeping requirements by the Copyright Royalty Judges under paragraph (4) or section 112(e)(4). It is the intent of Congress that any royalty rates, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b). This subparagraph shall not apply to the extent that the receiving agent and a webcaster that are party to an agreement entered into pursuant to subparagraph (A) expressly authorize the submission of the agreement in a proceeding under this subsection.'' 17 U.S.C. 114(f)(5)(C) (2009).[1]

On July 30, 2009, SoundExchange notified the Copyright Office that it had negotiated four separate agreements for the reproduction and performance of sound recordings by certain webcasters under the section 112 and section 114 statutory licenses. Thus, in accordance with the requirement set forth in section 114(f)(5)(B), the Copyright Office is publishing the submitted agreements, as Appendix A (Agreement with Sirius XM Radio Inc.); Appendix B (Agreement with College Broadcasters, Inc.); Appendix C (Agreement with the Corporation for Public Broadcasting); and Appendix D (Agreement with Northwestern College), thereby making the rates and terms in the agreements available to any webcasters meeting the respective eligibility conditions of the agreements as an alternative to the rates and terms of any determination by the Copyright Royalty Judges.

The Copyright Office has no responsibility for administering the rates and terms of the agreements beyond the publication of this notice. For this reason, questions regarding the rates and terms set forth in the agreements should be directed to SoundExchange (for contact information, *see http://www.soundexchange.com*).

Dated: August 5, 2009.

Marybeth Peters,

Register of Copyrights.

Note: The following Appendix Will Not Be Codified in the Code of Federal Regulations.

Appendix A—Agreed Rates and Terms for Webcasts by Commercial Webcasters

Article 1—Definitions

1.1 *General.* In general, words used in the rates and terms set forth herein (the ''Rates and Terms'') and defined in 17 U.S.C. 112(e) or 114 or 37 CFR Part 380 shall have the meanings specified in those provisions as in effect on the date hereof, with such exceptions or clarifications set forth in Section 1.2.

1.2 Additional Definitions

(a) ''Commercial Webcaster'' shall mean a webcaster as defined in 17 U.S.C. 114(f)(5)(E)(iii) that (i) has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make Eligible Transmissions and related ephemeral recordings; (ii) complies with all applicable provisions of Sections 112(e) and 114 and applicable regulations; (iii) is not a Broadcaster (as defined in Section 1.2(a) of the agreement published in the **Federal Register** on March 3, 2009 at 74 FR 9299); (iv) is not a noncommercial webcaster as defined in 17 U.S.C. 114(f)(5)(E)(i); and (v) has not elected to be subject to any other rates and terms adopted pursuant to the Webcaster Settlement Act of 2008 or the Webcaster Settlement Act of 2009.

(b) ''*Eligible Transmission*'' shall mean an eligible nonsubscription transmission, or a transmission through a new subscription service, made by a Commercial Webcaster over the Internet, that is in full compliance with the eligibility and other requirements of Sections 112(e) and 114 of the Copyright Act and their implementing regulations, except as expressly modified in these Rates and Terms, and of a type otherwise subject to the payment of royalties under 37 CFR Part 380.

(c) ''*SoundExchange*'' shall mean SoundExchange, Inc. and shall include its successors and assigns.

Article 2—Agreement Pursuant to Webcaster Settlement Act of 2009

2.1 *Availability of Rates and Terms.* Pursuant to the Webcaster Settlement Act of

[1] Appendix A (Section 5.3) & Appendix B (Section 6.2) expressly authorize the submission of the relevant agreements in a proceeding under 17 U.S.C. 114(f).

2009, and subject to the provisions set forth below, Commercial Webcasters may elect to be subject to these Rates and Terms in their entirety, with respect to such Commercial Webcasters' Eligible Transmissions and related ephemeral recordings, for all of the period beginning on January 1, 2009, and ending on December 31, 2015, in lieu of other rates and terms from time to time applicable under 17 U.S.C. 112(e) and 114, by complying with the procedure set forth in Section 2.2 hereof. Any person or entity that does not satisfy the eligibility criteria to be a Commercial Webcaster must comply with otherwise applicable rates and terms.

2.2 *Election Process in General.* To elect to be subject to these Rates and Terms, in lieu of any royalty rates and terms that otherwise might apply under 17 U.S.C. 112(e) and 114, for all of the period beginning on January 1, 2009, and ending on December 31, 2015, a Commercial Webcaster shall submit to SoundExchange a completed and signed election form (available on the SoundExchange Web site at *http://www.soundexchange.com*) by the later of (i) 15 days after publication of these Rates and Terms in the **Federal Register**; or (ii) in the case of a Commercial Webcaster that is not making Eligible Transmissions as of the publication of these Rates and Terms in the **Federal Register** but begins doing so at a later time, 30 days after the Commercial Webcaster begins making such Eligible Transmissions. Notwithstanding anything else in these Rates and Terms, a person or entity otherwise qualifying as a Commercial Webcaster that is participating in any way in any appeal of the Final Determination of the Copyright Royalty Judges concerning royalty rates and terms under Sections 112(e) and 114 of the Copyright Act for the period January 1, 2006, through December 31, 2010 published in the **Federal Register** at 72 FR 24084 (May 1, 2007) (the ''Final Determination''), any proceedings on remand from such appeal, Docket No. 2009–1 CRB Webcasting III, as noticed in the **Federal Register** at 74 FR 318–19 (Jan. 5, 2009), or any other proceedings to determine royalty rates and terms for Eligible Transmissions (as defined in Section 1.2(b)) or related ephemeral phonorecords under Section 112(e) or 114 of the Copyright Act for all or any part of the period January 1, 2006, through December 31, 2015 shall not have the right to elect to be treated as a Commercial Webcaster or claim the benefit of these Rates and Terms, unless it withdraws from such proceedings prior to submitting to SoundExchange a completed and signed election form as contemplated by this Section 2.2.

2.3 *Representation of Compliance and Non-waiver.* By electing to operate pursuant to these Rates and Terms, an entity represents and warrants that it qualifies as a Commercial Webcaster. By accepting an election by a transmitting entity or payments or reporting made pursuant to these Rates and Terms, SoundExchange does not acknowledge that the transmitting entity qualifies as a Commercial Webcaster or that it has complied with the eligibility or other requirements of the statutory licenses under Sections 112(e) and 114 of the Copyright Act (including these Rates and Terms). It is the responsibility of each transmitting entity to ensure that it is in full compliance with applicable requirements of the statutory licenses under Sections 112(e) and 114 of the Copyright Act. SoundExchange is not in a position to, and does not, make determinations as to whether each of the many services that rely on the statutory licenses is eligible for statutory licensing or any particular royalty payment classification, nor does it continuously verify that such services are in full compliance with all applicable requirements. Accordingly, a Commercial Webcaster agrees that SoundExchange's acceptance of its election, payment or reporting does not give or imply any acknowledgment that it is in compliance with the requirements of the statutory licenses (including these Rates and Terms) and shall not be used as evidence that it is in compliance with the requirements of the statutory licenses (including these Rates and Terms). SoundExchange and copyright owners reserve all their rights to take enforcement action against a transmitting entity that is not in compliance with all applicable requirements.

Article 3—Scope

3.1 *In General.* Commercial Webcasters that have made a timely election to be subject to these Rates and Terms as provided in Section 2.2 are entitled to publicly perform sound recordings within the scope of the statutory license provided by Section 114 by means of Eligible Transmissions, and to make related ephemeral recordings for use solely for purposes of such Eligible Transmissions within the scope of Section 112(e), in accordance with and subject to the limitations set forth in these Rates and Terms and in strict conformity with the provisions of 17 U.S.C. 112(e) and 114 and their implementing regulations, in lieu of other rates and terms from time to time applicable under 17 U.S.C. 112(e) and 114, for all of the period beginning on January 1, 2009, and ending on December 31, 2015.

3.2 *Applicability to All Eligible Services Operated by or for a Commercial Webcaster.* If a Commercial Webcaster has made a timely election to be subject to these Rates and Terms as provided in Section 2.2, these Rates and Terms shall apply to all Eligible Transmissions made by or for the Commercial Webcaster.

3.3 *No Implied Rights.* These Rates and Terms extend only to electing Commercial Webcasters and grant no rights, including by implication or estoppel, to any other person or except as specifically provided herein. Without limiting the generality of the foregoing, these Rates and Terms do not grant (i) any copyright ownership interest in any sound recording; (ii) any trademark or trade dress rights; (iii) any rights outside the United States (as defined in 17 U.S.C. 101); (iv) any rights of publicity or rights to any endorsement by SoundExchange or any other person; or (v) any rights with respect to performances or reproductions outside the scope of these Rates and Terms or the statutory licenses under 17 U.S.C. 112(e) and 114.

Article 4—Royalties

4.1 *Minimum Fees.* Each Commercial Webcaster will pay an annual, nonrefundable minimum fee of $500 for each of its individual channels, including each of its individual side channels, and each of its individual stations, through which (in each case) it makes Eligible Transmissions, for each calendar year or part of a calendar year during 2009–2015 during which the Commercial Webcaster is a licensee pursuant to licenses under 17 U.S.C. 112(e) and 114, provided that a Commercial Webcaster shall not be required to pay more than $50,000 in minimum fees in the aggregate (for 100 or more channels or stations) in any one year. Upon payment of the minimum fee, the Commercial Webcaster will receive a credit in the amount of the minimum fee against any royalties payable for the same calendar year for the same channel or station.

4.2 *Royalty Rates.* Royalties for Eligible Transmissions made pursuant to 17 U.S.C. 114, and the making of related ephemeral recordings pursuant to 17 U.S.C. 112(e), shall be payable on a per-performance basis, as follows:

Year	Rate per performance
2009	$0.0016
2010	0.0017
2011	0.0018
2012	0.0020
2013	0.0021
2014	0.0022
2015	0.0024

4.3 *Ephemeral Royalty.* The royalty payable under 17 U.S.C. 112(e) for any ephemeral reproductions made by a Commercial Webcaster and covered hereby is deemed to be included within the royalty payments set forth above. SoundExchange may allocate payments hereunder between the statutory licenses under Sections 112(e) and 114 in the same manner as statutory webcasting royalties for the period 2011–2015.

4.4 *Payment.* Payments of all amounts specified in these Rates and Terms shall be made to SoundExchange. Minimum fees shall be paid by January 31 of each year. Once a Commercial Webcaster's royalty obligation under Section 4.2 with respect to a channel or station for a year exceeds the minimum fee it has paid for that channel or station and year, thereby recouping the credit provided by Section 4.1, the Commercial Webcaster shall make monthly payments at the per-performance rates provided in Section 4.2 beginning with the month in which the minimum fee first was recouped.

4.5 *Monthly Obligations.* Commercial Webcasters must make monthly payments where required by Section 4.4 and provide statements of account and reports of use, for each month on the 45th day following the end of the month in which the Eligible Transmissions subject to the payments, statements of account, and reports of use were made.

4.6 *Past Periods.* Notwithstanding Sections 4.4 and 4.5, a Commercial Webcaster's first monthly payment after

electing to be subject to these Rates and Terms shall be adjusted to reflect any differences between (i) the amounts payable under these Rates and Terms for all of 2009 to the end of the month for which the payment is made and (ii) the Commercial Webcaster's previous payments for all of 2009 to the end of the month for which the payment is made. Late fees under 37 CFR 380.4(e) shall apply to any payment previously due and not made on time, or to any late payment hereunder.

Article 5—Additional Provisions

5.1 *Applicable Regulations.* To the extent not inconsistent with the Rates and Terms herein, all applicable regulations, including 37 CFR Parts 370 and 380, shall apply to activities subject to these Rates and Terms.

5.2 *Participation in Specified Proceedings.* A Commercial Webcaster that elects to be subject to these Rates and Terms agrees that it has elected to do so in lieu of any different statutory rates and terms that may otherwise apply during any part of the 2009–2015 period and in lieu of participating at any time in a proceeding to set rates and terms for Eligible Transmissions and related ephemeral recordings for any part of the 2006–2015 period. Thus, once a Commercial Webcaster has elected to be subject to these Rates and Terms, it shall not at any time participate as a party, intervenor, *amicus curiae* or otherwise, or give evidence or otherwise support or assist, in *Intercollegiate Broadcasting Sys.* v. *Copyright Royalty Board* (DC Circuit Docket Nos. 07–1123, 07–1168, 07–1172, 07–1173, 07–1174, 07–1177, 07–1178, 07–1179), any proceedings on remand from such appeal, *Digital Performance Right in Sound Recordings and Ephemeral Recordings* (Copyright Royalty Judges' Docket No. 2009–1 CRB Webcasting III), or any other proceedings to determine royalty rates and terms for Eligible Transmissions and reproduction of related ephemeral phonorecords under Section 112(e) or 114 of the Copyright Act for all or any part of the period 2006–2015, including any appeal of the foregoing or any proceedings on remand from such an appeal, unless subpoenaed on petition of a third party (without any action by a Commercial Webcaster to encourage or suggest such a subpoena or petition) and ordered to testify or provide documents in such proceeding.

5.3 *Use of Agreement in Future Proceedings.* Pursuant to 17 U.S.C. 114(f)(5)(C), submission of these Rates and Terms in a proceeding under 17 U.S.C. 114(f) is expressly authorized.

5.4 *Effect of Direct Licenses.* Any copyright owner may enter into a voluntary agreement with any Commercial Webcaster setting alternative rates and terms governing the Commercial Webcasters' transmission of copyrighted works owned by the copyright owner, and such voluntary agreement may be given effect in lieu of the Rates and Terms set forth herein.

Article 6—Miscellaneous

6.1 *Acknowledgement.* The parties acknowledge this agreement was entered into knowingly and willingly. The parties further acknowledge that any transmission made by a Commercial Webcaster in violation of these Rates and Terms or Section 112(e) or 114 or their implementing regulations (except to the extent such implementing regulations are inconsistent with these Rates and Terms), outside the scope of these Rates and Terms or Section 112(e) or 114, or after the expiration or termination of these Rates and Terms shall be fully subject to, among other things, the copyright owners' rights under 17 U.S.C. 106 and the remedies in 17 U.S.C. 501–506, and all limitations, exceptions and defenses available with respect thereto.

6.2 *Applicable Law and Venue.* These Rates and Terms shall be governed by, and construed in accordance with, the laws of the District of Columbia (without giving effect to conflicts of law principles thereof). All actions or proceedings arising directly or indirectly from or in connection with these Rates and Terms shall be litigated only in the United States District Court for the District of Columbia located in Washington, DC. SoundExchange and Commercial Webcasters consent to the jurisdiction and venue of the foregoing court, waive any objection thereto on forum *non conveniens* or similar grounds, and consent that any process or notice of motion or other application to said court or a judge thereof may be served inside or outside the District of Columbia by registered mail, return receipt requested, directed to the person for which it is intended at its last known address (and service so made shall be deemed complete five (5) days after the same has been posted as aforesaid) or by personal service or in such other manner as may be permissible under the rules of that court.

6.3 *Rights Cumulative.* The rights, remedies, limitations, and exceptions provided in these Rates and Terms and available under applicable law shall be cumulative and shall not preclude assertion by any party of any other rights, defenses, limitations, or exceptions or the seeking of any other remedies against another party hereto. These Rates and Terms shall not constitute a waiver of any violation of Section 112 or 114 or their implementing regulations. No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver of such right, power or privilege. No single or partial exercise of any right, power or privilege granted under these Rates and Terms or available under applicable law shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver by any party of full performance by another party in any one or more instances shall be a waiver of the right to require full and complete performance of these Rates and Terms and of obligations under applicable law thereafter.

6.4 *Entire Agreement.* These Rates and Terms represent the entire and complete agreement between SoundExchange and a Commercial Webcaster with respect to their subject matter and supersede all prior and contemporaneous agreements and undertakings of SoundExchange and a Commercial Webcaster with respect to the subject matter hereof.

Appendix B—Agreed Rates and Terms for Noncommercial Educational Webcasters

Article 1—Definitions

1.1 *General.* In general, words used in the rates and terms set forth herein (the *''Rates and Terms''*) and defined in 17 U.S.C. 112(e) or 114 or 37 CFR Part 380 shall have the meanings specified in those provisions as in effect on the date hereof, with such exceptions or clarifications set forth in Section 1.2.

1.2 Additional Definitions

1.2.1 *''Noncommercial Educational Webcaster''* shall mean a Noncommercial Webcaster (as defined in 17 U.S.C. 114(f)(5)(E)(i)) that (i) has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make Eligible Transmissions and related ephemeral recordings; (ii) complies with all applicable provisions of Sections 112(e) and 114 and applicable regulations; (iii) is directly operated by, or is affiliated with and officially sanctioned by, and the digital audio transmission operations of which are staffed substantially by students enrolled at, a domestically-accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution, and (iv) is not a ''public broadcasting entity'' (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

1.2.2 *''Eligible Transmission''* shall mean an eligible nonsubscription transmission made by a Noncommercial Educational Webcaster over the Internet.

1.2.3 *''SoundExchange''* shall mean SoundExchange, Inc. and shall include its successors and assigns.

1.2.4 *''ATH'' or ''Aggregate Tuning Hours''* shall mean the total hours of programming that a Noncommercial Educational Webcaster has transmitted during the relevant period to all listeners within the United States over all channels and stations that provide audio programming consisting, in whole or in part, of Eligible Transmissions, including from any archived programs, less the actual running time of any sound recordings for which the Noncommercial Educational Webcaster has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a Noncommercial Educational Webcaster transmitted one hour of programming to 10 simultaneous listeners, the Noncommercial Educational Webcaster's Aggregate Tuning Hours would equal 10. If three minutes of that hour consisted of transmission of a directly licensed recording, the Noncommercial Educational Webcaster's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one listener listened to a Noncommercial Educational Webcaster for 10 hours (and none of the recordings transmitted during that time was directly licensed), the Noncommercial Educational Webcaster's Aggregate Tuning Hours would equal 10.

Article 2—Agreement Pursuant to Webcaster Settlement Act of 2009

2.1 *Availability of Rates and Terms.* Pursuant to the Webcaster Settlement Act of 2009, and subject to the provisions set forth below, Noncommercial Educational Webcasters may elect to be subject to the rates and terms set forth herein in their entirety, with respect to Eligible Transmissions and related ephemeral recordings, for all of any one or more calendar years during the period beginning on January 1, 2011, and ending on December 31, 2015 (the *''Term''*), in lieu of other rates and terms from time to time applicable under 17 U.S.C. 112(e) and 114, by complying with the procedure set forth in Section 2.2.1 hereof. In addition, Noncommercial Educational Webcasters may elect to be subject to the provisions of Article 5 only, for all of the period beginning on January 1, 2009, and ending on December 31, 2010 (the *''Special Reporting Term''*), in lieu of reporting under 37 CFR Part 370.3, by complying with the procedure set forth in Section 2.2.3 hereof. Any person or entity that does not satisfy the eligibility criteria to be a Noncommercial Educational Webcaster must comply with otherwise applicable rates and terms.

2.2 Election Process

2.2.1 *In General.* To elect to be subject to these Rates and Terms, in their entirety, in lieu of any royalty rates and terms that otherwise might apply under 17 U.S.C. 112(e) and 114, for any calendar year during the Term, a Noncommercial Educational Webcaster shall submit to SoundExchange a completed and signed election form (available on the SoundExchange Web site at *http://www.soundexchange.com*) by January 31st of each such calendar year or, in the case of a Noncommercial Educational Webcaster that has not made Eligible Transmissions as of January 31st of a calendar year within the Term but begins doing so at a later time that year and seeks to be subject to these Rates and Terms for that year, 45 days after the end of the month in which the Noncommercial Educational Webcaster begins making such Eligible Transmissions. Even if an entity has once elected to be treated as a Noncommercial Educational Webcaster, it must make a separate, timely election in each subsequent calendar year in which it wishes (and is eligible) to be treated as such. A Noncommercial Educational Webcaster may instead elect other available rates for which it is eligible. However, a Noncommercial Educational Webcaster may not elect different rates for a given calendar year after it has elected to be subject to these Rates and Terms or for any year in which it has already paid royalties.

2.2.2 *Contents of Election Form.* On its election form(s) pursuant to Section 2.2.1, the Noncommercial Educational Webcaster must, among other things, provide a certification, signed by an officer or another duly authorized faculty member or administrator of the institution with which the Noncommercial Educational Webcaster is affiliated, on a form provided by SoundExchange, that the Noncommercial Educational Webcaster (i) qualifies as a Noncommercial Educational Webcaster for the relevant year, and (ii) did not exceed 159,140 total ATH in any month of the prior year for which the Noncommercial Educational Webcaster did not submit a Statement of Account and pay required Usage Fees. At the same time the Noncommercial Educational Webcaster must identify all its stations making Eligible Transmissions. If, subsequent to making an election, there are changes in the Noncommercial Educational Webcaster's corporate name or stations making Eligible Transmissions, or other changes in its corporate structure that affect the application of these Rates and Terms, the Noncommercial Educational Webcaster shall promptly notify SoundExchange thereof. On its election form(s), the Noncommercial Educational Webcaster must, among other things, identify which of the reporting options set forth in Section 5.1 it elects for the relevant year (provided that it must be eligible for the option it elects).

2.2.3 *Election for Special Reporting Term.* A Noncommercial Educational Webcaster may elect to be subject to the provisions of Article 5 only, for all of the Special Reporting Term, in lieu of reporting under 37 CFR Part 370.3 as it may from time to time exist. To do so, the Noncommercial Educational Webcaster shall submit to SoundExchange a completed and signed election form (available on the SoundExchange Web site at *http://www.soundexchange.com*), which SoundExchange may combine with its form of Statement of Account. Such form must be submitted with timely payment of the Noncommercial Educational Webcaster's minimum fee for 2010 under 37 CFR 380.4(d) and the Proxy Fee described in Section 5.1.1 for both 2009 and 2010 if applicable. On any such election form, the Noncommercial Educational Webcaster must, among other things, provide (i) a certification, signed by an officer or another duly authorized faculty member or administrator of the institution with which the Noncommercial Educational Webcaster is affiliated, that the Noncommercial Educational Webcaster qualifies as a Noncommercial Educational Webcaster for the Special Reporting Term, and (ii) identification of all its stations making Eligible Transmissions and which of the reporting options set forth in Section 5.1 it elects for the Special Reporting Term (provided that it must be eligible for the option it elects for the entire Special Reporting Term).

2.2.4 *Participation in Specified Proceedings.* Notwithstanding anything else in these Rates and Terms, a person or entity otherwise qualifying as a Noncommercial Educational Webcaster that has participated or is participating in any way in any appeal of the Final Determination of the Copyright Royalty Judges concerning royalty rates and terms under Sections 112(e) and 114 of the Copyright Act for the period January 1, 2006, through December 31, 2010 published in the **Federal Register** at 72 FR 24084 (May 1, 2007) (the ''Final Determination''), any proceedings on remand from such appeal, *Digital Performance Right in Sound Recordings and Ephemeral Recordings* (Copyright Royalty Judges' Docket No. 2009–1 CRB Webcasting III), *Digital Performance Right in Sound Recordings and Ephemeral Recordings for a New Subscription Service* (Copyright Royalty Judges' Docket No. 2009–2 CRB New Subscription II), or any other proceeding to determine royalty rates or terms under Sections 112(e) or 114 of the Copyright Act for all or any part of the period January 1, 2006, through December 31, 2015 (all of the foregoing, including appeals of the proceedings identified above, collectively *''Specified Proceedings''*) shall not have the right to elect to be treated as a Noncommercial Educational Webcaster or claim the benefit of these Rates and Terms, unless it withdraws from such proceeding(s) prior to submitting to SoundExchange a completed and signed election form as contemplated by Section 2.2.1 or 2.2.3, as applicable. In addition, once a Noncommercial Educational Webcaster has elected to be subject to these Rates and Terms, either for the Special Reporting Term or any part of the Term, it shall not at any time participate as a party, intervenor, *amicus curiae* or otherwise, or give evidence or otherwise support or assist, in any Specified Proceeding, unless subpoenaed on petition of a third party (without any action by a Noncommercial Educational Webcaster to encourage or suggest such a subpoena or petition) and ordered to testify or provide documents in such proceeding.

2.3 *Representation of Compliance and Non-Waiver.* By electing to operate pursuant to the Rates and Terms, either for the Special Reporting Term or any part of the Term, an entity represents and warrants that it qualifies as a Noncommercial Educational Webcaster and is eligible for the reporting option set forth in Section 5.1 that it elects. By accepting an election by a transmitting entity pursuant to these Rates and Terms or any payments or reporting made by a transmitting entity, SoundExchange does not acknowledge that the transmitting entity qualifies as a Noncommercial Educational Webcaster or for a particular reporting option or that it has complied with the eligibility or other requirements of the statutory licenses under Sections 112(e) and 114 of the Copyright Act (including these Rates and Terms). It is the responsibility of each transmitting entity to ensure that it is eligible for the statutory licenses under Sections 112(e) and 114 of the Copyright Act and in full compliance with applicable requirements thereof. SoundExchange is not in a position to, and does not, make determinations as to whether each of the many services that rely on the statutory licenses is eligible for statutory licensing or any particular royalty payment classification, nor does it continuously verify that such services are in full compliance with all applicable requirements. Accordingly, a transmitting entity agrees that SoundExchange's acceptance of its election, payment or reporting does not give or imply any acknowledgment that it is in compliance with the requirements of the statutory licenses (including these Rates and Terms) and shall not be used as evidence that it is in compliance with the requirements of the statutory licenses (including these Rates and Terms). SoundExchange and copyright

owners reserve all their rights to take enforcement action against a transmitting entity that is not in compliance with all applicable requirements that are not inconsistent with these Rates and Terms.

Article 3—Scope

3.1 *In General.* Noncommercial Educational Webcasters that have made a timely election to be subject to these Rates and Terms as provided in Section 2.2.1 are entitled to publicly perform sound recordings within the scope of the statutory license provided by Section 114 by means of Eligible Transmissions, and to make related ephemeral recordings for use solely for purposes of such Eligible Transmissions within the scope of Section 112(e), in accordance with and subject to the limitations set forth in these Rates and Terms and in strict conformity with the provisions of 17 U.S.C. 112(e) and 114 and their implementing regulations (except as otherwise specifically provided herein), in lieu of other rates and terms from time to time applicable under 17 U.S.C. 112(e) and 114, for each calendar year within the Term that they have made a timely election to be subject to these Rates and Terms.

3.2 *Applicable to All Services Operated by or for a Noncommercial Educational Webcaster.* If a Noncommercial Educational Webcaster has made a timely election to be subject to these Rates and Terms as provided in Section 2.2.1, these Rates and Terms shall apply to all Eligible Transmissions made by or for the Noncommercial Educational Webcaster and related ephemeral recordings. For clarity, a Noncommercial Educational Webcaster may not rely upon these Rates and Terms for its Eligible Transmissions of one broadcast channel or station and upon different Section 112(e) and 114 rates and terms for its Eligible Transmissions of other broadcast channels or stations. However, a single educational institution may have more than one webcasting station making Eligible Transmissions. If so, each such station may determine individually whether it elects to be subject to these Rates and Terms as a Noncommercial Educational Webcaster. It is expressly contemplated that within a single educational institution, one or more Noncommercial Educational Webcasters and one or more public broadcasting entities (as defined in 17 U.S.C. 118(g)) may exist simultaneously, each paying under a different set of rates and terms.

3.3 *No Implied Rights.* These Rates and Terms extend only to electing Noncommercial Educational Webcasters and grant no rights, including by implication or estoppel, to any other person or entity, or except as specifically provided herein. Without limiting the generality of the foregoing, these Rates and Terms do not grant (i) any copyright ownership interest in any sound recording; (ii) any trademark or trade dress rights; (iii) any rights outside the United States (as defined in 17 U.S.C. 101); (iv) any rights of publicity or rights to any endorsement by SoundExchange or any other person; or (v) any rights with respect to performances or reproductions outside the scope of these Rates and Terms or the statutory licenses under 17 U.S.C. 112(e) and 114.

Article 4—Royalties

4.1 *Minimum Fee.* Each Noncommercial Educational Webcaster shall pay an annual, nonrefundable minimum fee of $500 (the *''Minimum Fee''*) for each of its individual channels, including each of its individual side channels, and each of its individual stations, through which (in each case) it makes Eligible Transmissions, for each calendar year it elects to be subject to these Rates and Terms. For clarity, each individual stream (*e.g.*, HD radio side channels, different stations owned by a single licensee) will be treated separately and be subject to a separate minimum. In addition, a Noncommercial Educational Webcaster electing the reporting waiver described in Section 5.1.1 shall pay a $100 annual fee (the *''Proxy Fee''*) to SoundExchange.

4.2 *Additional Usage Fees.* If, in any month, a Noncommercial Educational Webcaster makes total transmissions in excess of 159,140 Aggregate Tuning Hours (*''ATH''*) on any individual channel or station, the Noncommercial Educational Webcaster shall pay additional usage fees (*''Usage Fees''*) for the Eligible Transmissions it makes on that channel or station after exceeding 159,140 total ATH at the following per-performance rates:

Year	Rate per performance
2011	$0.0017
2012	0.0020
2013	0.0022
2014	0.0023
2015	0.0025

For a Noncommercial Educational Webcaster unable to calculate actual total performances and not required to report ATH or actual total performances under Section 5.1.3, the Noncommercial Educational Webcaster may pay Usage Fees on an ATH basis, provided that the Noncommercial Educational Webcaster shall pay Usage Fees at the per-performance rates provided above in this Section 4.2 based on the assumption that the number of sound recordings performed is 12 per hour. SoundExchange may distribute royalties paid on the basis of ATH hereunder in accordance with its generally-applicable methodology for distributing royalties paid on such basis.

A Noncommercial Educational Webcaster offering more than one channel or station shall pay Usage Fees on a per channel or station basis.

4.3 *Ephemeral Royalty.* The royalty payable under 17 U.S.C. 112(e) for any ephemeral reproductions made by a Noncommercial Educational Webcaster and covered hereby is deemed to be included within the royalty payments set forth above. SoundExchange may allocate payments hereunder between the statutory licenses under Sections 112(e) and 114 in the same manner as statutory webcasting royalties for the period 2011–2015.

4.4 Statements of Account and Payment

4.4.1 *Minimum Fee.* Noncommercial Educational Webcasters shall submit the Minimum Fee, and Proxy Fee if applicable, accompanied by a statement of account in a form available on the SoundExchange Web site at *http://www.soundexchange.com* (*''Statement of Account''*) by the date specified in Section 2.2.1 for making the Noncommercial Educational Webcaster's election to be subject to these Rates and Terms for the applicable calendar year.

4.4.2 *Usage Fees.* Noncommercial Educational Webcasters required to pay Usage Fees shall submit a Minimum Fee and Statement of Account in accordance with Section 4.4.1, and in addition, a Statement of Account accompanying any Usage Fees owed pursuant to Section 4.2. Such a Statement of Account and accompanying Usage Fees shall be due 45 days after the end of the month in which the excess usage occurred.

4.4.3 *Identification of Statements of Account.* Noncommercial Educational Webcasters shall include on each of their Statements of Account (i) the name of the Noncommercial Educational Webcaster, exactly as it appears on its notice of use, and (ii) if the Statement of Account covers a single station only, the call letters or name of the station.

4.4.4 *Payment.* Payments of all amounts specified in these Rates and Terms shall be made to SoundExchange.

4.5 *Late Fees.* A Noncommercial Educational Webcaster shall pay a late fee for each instance in which any payment, any Statement of Account or any Report of Use (as defined in Section 5.1 below) is not received by SoundExchange in compliance with these Rates and Terms and applicable regulations by the due date. The amount of the late fee shall be 1.5% of the late payment, or 1.5% of the payment associated with a late Statement of Account or Report of Use, per month, compounded monthly, or the highest lawful rate, whichever is lower. The late fee shall accrue from the due date of the payment, Statement of Account or Report of Use until a fully compliant Payment, Statement of Account or Report of Use (as applicable) is received by SoundExchange, provided that, in the case of a timely provided but noncompliant Statement of Account or Report of Use, SoundExchange has notified the Noncommercial Educational Webcaster within 90 days regarding any noncompliance that is reasonably evident to SoundExchange.

Article 5—Reporting

5.1 *Provision of Reports of Use.* Noncommercial Educational Webcasters shall have the following three options, as applicable, with respect to provision of reports of use of sound recordings (*''Reports of Use''*):

5.1.1 *Reporting Waiver.* In light of the unique business and operational circumstances currently existing with respect to these services, a Noncommercial Educational Webcaster that did not exceed 55,000 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and that does not expect to exceed 55,000 total ATH for any individual channel or station for any calendar month during the applicable calendar year may elect to pay a nonrefundable, annual Proxy Fee of $100 in

lieu of providing Reports of Use for the calendar year. In addition, a Noncommercial Educational Webcaster that unexpectedly exceeded 55,000 total ATH on one or more channels or stations for more than one month during the immediately preceding calendar year may elect to pay the Proxy Fee and receive the reporting waiver described in this Section 5.1.1 during a calendar year, if it implements measures reasonably calculated to ensure that it will not make Eligible Transmissions exceeding 55,000 total ATH per month during that calendar year. SoundExchange shall distribute the aggregate royalties paid by electing Noncommercial Educational Webcasters based on proxy usage data in accordance with a methodology adopted by SoundExchange's Board of Directors. The Proxy Fee is intended to defray SoundExchange's costs associated with this reporting waiver, including development of proxy usage data. The Proxy Fee shall be paid by the date specified in Section 2.2.1 for making the Noncommercial Educational Webcaster's election to be subject to these Rates and Terms for the applicable calendar year (or in the case of the Special Reporting Term, by the date specified in Section 2.2.3) and shall be accompanied by a certification on a form provided by SoundExchange, signed by an officer or another duly authorized faculty member or administrator of the applicable educational institution, stating that the Noncommercial Educational Webcaster is eligible for the Proxy Fee option because of its past and expected future usage, and if applicable, measures to ensure that it will not make excess Eligible Transmissions in the future.

5.1.2 *Sample-Basis Reports.* A Noncommercial Educational Webcaster that did not exceed 159,140 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and that does not expect to exceed 159,140 total ATH for any individual channel or station for any calendar month during the applicable calendar year may elect (as described in Section 2.2.2) to provide Reports of Use on a sample basis (two weeks per calendar quarter) in accordance with the regulations at 37 CFR 370.3 as they existed at January 1, 2009, except that notwithstanding 37 CFR 370.3(c)(2)(vi), such an electing Noncommercial Educational Webcaster shall not be required to include ATH or actual total performances and may in lieu thereof provide channel or station name and play frequency (*i.e.*, number of spins). Notwithstanding the foregoing, a Noncommercial Educational Webcaster that is able to report ATH or actual total performances is encouraged to do so. These Reports of Use shall be submitted to SoundExchange no later than January 31st of the year immediately following the year to which they pertain.

5.1.3 *Census-Basis Reports.* If any of the following three conditions is satisfied, a Noncommercial Webcaster must report pursuant to this Section 5.1.3: (i) The Noncommercial Educational Webcaster exceeded 159,140 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year, (ii) the Noncommercial Educational Webcaster expects to exceed 159,140 total ATH for any individual channel or station for any calendar month in the applicable calendar year, or (iii) the Noncommercial Educational Webcaster otherwise does not elect (as described in Section 2.2.2) to be subject to Section 5.1.1 or 5.1.2. A Noncommercial Educational Webcaster required to report pursuant to this Section 5.1.3 shall provide Reports of Use to SoundExchange quarterly on a census reporting basis (*i.e.*, Reports of Use shall include every sound recording performed in the relevant quarter), containing information otherwise complying with applicable regulations (but no less information than required by 37 CFR 370.3 as of January 1, 2009), except that notwithstanding 37 CFR 370.3(c)(2)(vi), such a Noncommercial Educational Webcaster shall not be required to include ATH or actual total performances, and may in lieu thereof provide channel or station name and play frequency (*i.e.*, number of spins), during the first calendar year it is required to report in accordance with this Section 5.1.3. For the avoidance of doubt, after a Noncommercial Educational Webcaster has been required to report in accordance with this Section 5.1.3 for a full calendar year, it must thereafter include ATH or actual total performances in its Reports of Use. All Reports of Use under this Section 5.1.3 shall be submitted to SoundExchange no later than the 45th day after the end of each calendar quarter.

5.2 *Delivery of Reports.* Reports of Use submitted by Noncommercial Educational Webcasters shall conform to the following additional requirements:

5.2.1 Noncommercial Educational Webcasters shall either submit a separate Report of Use for each of their stations, or a collective report of use covering all of their stations but identifying usage on a station-by-station basis.

5.2.2 Noncommercial Educational Webcasters shall transmit each Report of Use in a file the name of which includes (i) the name of the Noncommercial Educational Webcaster, exactly as it appears on its notice of use, and (ii) if the Report of Use covers a single station only, the call letters or name of the station.

5.2.3 Noncommercial Educational Webcasters shall submit reports of use with headers, as such headers are described in 37 CFR 370.3(d)(7).

5.3 *Server Logs.* To the extent not already required by the current regulations set forth in 37 CFR Part 380, as they existed on January 1, 2009, Noncommercial Educational Webcasters shall retain for a period of at least three full calendar years server logs sufficient to substantiate all information relevant to eligibility, rate calculation and reporting hereunder. To the extent that a third-party web hosting or service provider maintains equipment or software for a Noncommercial Educational Webcaster and/or such third party creates, maintains, or can reasonably create such server logs, the Noncommercial Educational Webcaster shall direct that such server logs be created and maintained by said third party for a period of at least three full calendar years and/or that such server logs be provided to, and maintained by, the Noncommercial Educational Webcaster.

Article 6—Additional Provisions

6.1 *Applicable Regulations.* To the extent not inconsistent with the Rates and Terms herein, all applicable regulations, including 37 CFR Parts 370 and 380, shall apply to activities subject to these Rates and Terms. Without limiting the foregoing, the provisions of applicable regulations for the retention of records and verification of statutory royalty payments (presently 37 CFR 380.4(h) and 380.6) shall apply hereunder. Noncommercial Educational Webcasters shall cooperate in good faith with any such verification, and the exercise by SoundExchange of any right with respect thereto shall not prejudice any other rights or remedies of SoundExchange or sound recording copyright owners.

6.2 *Use of Agreement in Future Proceedings.* Pursuant to 17 U.S.C. 114(f)(5)(C), submission of these Rates and Terms in a proceeding under 17 U.S.C. 114(f) by any participant in such proceeding is expressly authorized.

6.3 *Effect of Direct Licenses.* Any copyright owner may enter into a voluntary agreement with any Noncommercial Educational Webcaster setting alternative rates and terms governing the Noncommercial Educational Webcaster's transmission of copyrighted works owned by the copyright owner, and such voluntary agreement may be given effect in lieu of the Rates and Terms set forth herein.

6.4 *Default.* A Noncommercial Educational Webcaster shall comply with all the requirements of these Rates and Terms. If it fails to do so, SoundExchange may give written notice to the Noncommercial Educational Webcaster that, unless the breach is remedied within 30 days from the date of receipt of notice, the Noncommercial Educational Webcaster's authorization to make public performances and ephemeral reproductions under these Rates and Terms may be terminated by further written notice; provided, however, that such period shall be 60 (rather than 30) days in the case of any such notice sent by SoundExchange between May 15 and August 15 or between December 1 and January 30. No such cure period shall apply before termination in case of material noncompliance that has been repeated multiple times so as to constitute a pattern of noncompliance, provided that SoundExchange has given at least two notices of noncompliance. Any transmission made by a Noncommercial Educational Webcaster in violation of these Rates and Terms or Section 112(e) or 114 or their implementing regulations (except to the extent such implementing regulations are inconsistent with these Rates and Terms), outside the scope of these Rates and Terms or Section 112(e) or 114, or after the expiration or termination of these Rates and Terms shall be fully subject to, among other things, the copyright owners' rights under 17 U.S.C. 106 and the remedies in 17 U.S.C. 501–506, and all limitations, exceptions and defenses available with respect thereto.

Article 7—Miscellaneous

7.1 *Acknowledgement.* The parties acknowledge these Rates and Terms were entered into knowingly and willingly.

7.2 *Applicable Law and Venue.* These Rates and Terms shall be governed by, and construed in accordance with, the laws of the District of Columbia (without giving effect to conflicts of law principles thereof). All actions or proceedings arising directly or indirectly from or in connection with these Rates and Terms shall be litigated only in the United States District Court for the District of Columbia located in Washington, DC. SoundExchange and each Noncommercial Educational Webcaster consent to the jurisdiction and venue of the foregoing court and consent that any process or notice of motion or other application to said court or a judge thereof may be served inside or outside the District of Columbia by registered mail, return receipt requested, directed to the person for which it is intended at its last known address (and service so made shall be deemed complete five (5) days after the same has been posted as aforesaid) or by personal service or in such other manner as may be permissible under the rules of that court.

7.3 *Rights Cumulative.* The rights, remedies, limitations, and exceptions provided in these Rates and Terms and available under applicable law shall be cumulative and shall not preclude assertion by any party of any other rights, defenses, limitations, or exceptions or the seeking of any other remedies against another party hereto. These Rates and Terms shall not constitute a waiver of any violation of Section 112 or 114 or their implementing regulations (except to the extent such implementing regulations are inconsistent with these Rates and Terms). No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver of such right, power or privilege. No single or partial exercise of any right, power or privilege granted under these Rates and Terms or available under applicable law shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver by any party of full performance by another party in any one or more instances shall be a waiver of the right to require full and complete performance of these Rates and Terms and of obligations under applicable law thereafter.

7.4 *Entire Agreement.* These Rates and Terms represent the entire and complete agreement between SoundExchange and any Noncommercial Educational Webcaster with respect to their subject matter and supersede all prior and contemporaneous agreements and undertakings of SoundExchange and a Noncommercial Educational Webcaster with respect to the subject matter hereof.

Appendix C—Agreement Concerning Rates and Terms for Public Radio

This Agreement Concerning Rates and Terms for Public Radio (''*Agreement''*), dated as of July 30, 2009 (''*Execution Date''*), is made by and between SoundExchange, Inc. (''*SoundExchange''*) and the Corporation for Public Broadcasting (''*CPB''*), on behalf of all Covered Entities (SoundExchange, and CPB each a ''*Party''* and, jointly, the ''*Parties''*). Capitalized terms used herein are defined in Article 1 below.

Whereas, SoundExchange is the ''receiving agent'' as defined in 17 U.S.C. 114(f)(5)(E)(ii) designated for collecting and distributing statutory royalties received from Covered Entities for their Web Site Performances;

Whereas, the Webcaster Settlement Act of 2009 (Pub. L. 111–36; to be codified at 17 U.S.C. 114(f)(5)) authorizes SoundExchange to enter into agreements for the reproduction and performance of Sound Recordings under Sections 112(e) and 114 of the Copyright Act that, once published in the **Federal Register**, shall be binding on all Copyright Owners and Performers, in lieu of any determination by the Copyright Royalty Judges;

Whereas, in view of the unique business, economic and political circumstances of CPB, Covered Entities, SoundExchange, Copyright Owners and Performers at the Execution Date, the Parties have agreed to the royalty rates and other consideration set forth herein for the period January 1, 2011 through December 31, 2015;

Now, Therefore, pursuant to 17 U.S.C. 114(f)(5), and in consideration of the mutual promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Article 1—Definitions

The following terms shall have the meanings set forth below:

1.1 ''*Agreement*'' shall have the meaning set forth in the preamble.

1.2 ''*ATH*'' or ''*Aggregate Tuning Hours*'' means the total hours of programming that Covered Entities have transmitted during the relevant period to all listeners within the United States from all Covered Entities that provide audio programming consisting, in whole or in part, of Web Site Performances, less the actual running time of any sound recordings for which the Covered Entity has obtained direct licenses apart from this Agreement. By way of example, if a Covered Entity transmitted one hour of programming to ten (10) simultaneous listeners, the Covered Entity's Aggregate Tuning Hours would equal ten (10). If three (3) minutes of that hour consisted of transmission of a directly licensed recording, the Covered Entity's Aggregate Tuning Hours would equal nine (9) hours and thirty (30) minutes. As an additional example, if one listener listened to a Covered Entity for ten (10) hours (and none of the recordings transmitted during that time was directly licensed), the Covered Entity's Aggregate Tuning Hours would equal 10.

1.3 ''*Authorized Web Site*'' means any Web Site operated by or on behalf of any Covered Entity that is accessed by Web Site Users through a Uniform Resource Locator (''*URL*'') owned by such Covered Entity and through which Web Site Performances are made by such Covered Entity.

1.4 ''*CPB*'' shall have the meaning set forth in the preamble.

1.5 ''*Collective*'' shall have the meaning set forth in 37 CFR 380.2(c).

1.6 ''*Copyright Owners*'' are Sound Recording copyright owners who are entitled to royalty payments made pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(f).

1.7 ''*Covered Entities*'' means NPR, American Public Media, Public Radio International, and Public Radio Exchange, and, in calendar year 2011, up to four-hundred and ninety (490) Originating Public Radio Stations as named by CPB. CPB shall notify SoundExchange annually of the eligible Originating Public Radio Stations to be considered Covered Entities hereunder (subject to the numerical limitations set forth herein). The number of Originating Public Radio Stations considered to be Covered Entities is permitted to grow by no more than 10 Originating Public Radio Stations per year beginning in calendar year 2012, such that the total number of Covered Entities at the end of the Term will be less than or equal to 530. The Parties agree that the number of Originating Public Radio Stations licensed hereunder as Covered Entities shall not exceed the maximum number permitted for a given year without SoundExchange's express written approval, except that CPB shall have the option to increase the number of Originating Public Radio Stations that may be considered Covered Entities as provided in Section 4.4.

1.8 ''*Ephemeral Phonorecord*'' shall have the meaning set forth in Section 3.1(b).

1.9 ''*Execution Date*'' shall have the meaning set forth in the preamble.

1.10 ''*License Fee*'' shall have the meaning set forth in Section 4.1.

1.11 ''*Music ATH*'' means ATH of Web Site Performances of Sound Recordings of musical works.

1.12 ''*NPR*'' shall mean National Public Radio, with offices at 635 Massachusetts Avenue, NW., Washington, DC 20001.

1.13 ''*Originating Public Radio Stations*'' shall mean a noncommercial terrestrial radio broadcast station that (i) is licensed as such by the Federal Communications Commission; (ii) originates programming and is not solely a repeater station; (iii) is a member or affiliate of NPR, American Public Media, Public Radio International, or Public Radio Exchange, a member of the National Federation of Community Broadcasters, or another public radio station that is qualified to receive funding from the Corporation for Public Broadcasting pursuant to its criteria; (iv) qualifies as a ''noncommercial webcaster'' under 17 U.S.C. 114(f)(5)(E)(i); and (v) either (a) offers Web Site Performances only as part of the mission that entitles it to be exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501), or (b) in the case of a governmental entity (including a Native American Tribal governmental entity), is operated exclusively for public purposes.

1.14 ''*Party*'' shall have the meaning set forth in the preamble.

1.15 ''*Performers*'' means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the individuals and entities identified in 17 U.S.C. 114(g)(2)(D).

1.16 ''*Person*'' means a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, any governmental authority or any other entity or organization.

1.17 ''*Phonorecords*'' shall have the meaning set forth in 17 U.S.C. 101.

1.18 ''*Side Channel*'' means any Internet-only program available on an Authorized Web Site or an archived program on such Authorized Web Site that, in either case, conforms to all applicable requirements under 17 U.S.C. 114.

1.19 ''*SoundExchange*'' shall have the meaning set forth in the preamble and shall include any successors and assigns to the extent permitted by this Agreement.

1.20 ''*Sound Recording*'' shall have the meaning set forth in 17 U.S.C. 101.

1.21 ''*Term*'' shall have the meaning set forth in Section 7.1.

1.22 ''*Territory*'' means the United States, its territories, commonwealths and possessions.

1.23 ''*URL*'' shall have the meaning set forth in Section 1.3.

1.24 ''*Web Site*'' means a site located on the World Wide Web that can be located by a Web Site User through a principal URL.

1.25 ''*Web Site Performances*'' means all public performances by means of digital audio transmissions of Sound Recordings, including the transmission of any portion of any Sound Recording, made through an Authorized Web Site in accordance with all requirements of 17 U.S.C. 114, from servers used by a Covered Entity (*provided that* the Covered Entity controls the content of all materials transmitted by the server), or by a sublicensee authorized pursuant to Section 3.2, that consist of either (a) the retransmission of a Covered Entity's over-the-air terrestrial radio programming or (b) the digital transmission of nonsubscription Side Channels that are programmed and controlled by the Covered Entity. This term does not include digital audio transmissions made by any other means.

1.26 ''*Web Site Users*'' means all those who access or receive Web Site Performances or who access any Authorized Web Site.

Article 2—Agreement Pursuant to Webcaster Settlement Act of 2009

2.1 *General.* This Agreement is entered into pursuant to the Webcaster Settlement Act of 2009 (Pub. L. 111–36; to be codified at 17 U.S.C. 114(f)(5)).

2.2 *Eligibility Conditions.* The only webcasters (as defined in 17 U.S.C. 114(f)(5)(E)(iii)) eligible to avail themselves of the terms of this Agreement as contemplated by 17 U.S.C. 114(f)(5)(B) are the Covered Entities, as expressly set forth herein. The terms of this Agreement shall apply to the Covered Entities in lieu of other rates and terms applicable under 17 U.S.C. 112 and 114.

2.3 *Agreement Nonprecedential.* Consistent with 17 U.S.C. 114(f)(5)(C), this Agreement, including any rate structure, fees, terms, conditions, and notice and recordkeeping requirements set forth therein, is nonprecedential and shall not be introduced nor used by any Person, including the Parties and any Covered Entities, as evidence or otherwise taken into account in any administrative, judicial, or other proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements by the Copyright Royalty Judges under 17 U.S.C. 114(f)(4) or 112(e)(4), or any administrative or judicial proceeding pertaining to rates, terms or reporting obligations for any yet-to-be-created right to collect royalties for the performance of Sound Recordings by any technology now or hereafter known. Any royalty rates, rate structure, definitions, terms, conditions and notice and recordkeeping requirements included in this Agreement shall be considered as a compromise motivated by the unique business, economic and political circumstances of webcasters, copyright owners, and performers, and the participation by NPR on behalf of itself and its member stations in *Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2009–1 CRB Webcasting III (the pending proceeding before the Copyright Royalty Judges to set statutory rates and terms for 2011–2015), rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in Section 801(b) of the Copyright Act.

2.4 *Reservation of Rights.* The Parties agree that the entering into of this Agreement shall be without prejudice to any of their respective positions in any proceeding with respect to the rates, terms or reporting obligations to be established for the making of Ephemeral Phonorecords or the digital audio transmission of Sound Recordings after the Term of this Agreement on or by Covered Entities under 17 U.S.C. 112 and 114 and their implementing regulations. The Parties further acknowledge and agree that the entering of this Agreement, the performance of its terms, and the acceptance of any payments and reporting by SoundExchange (i) do not express or imply any acknowledgement that CPB, Covered Entities, or any other persons are eligible for the statutory license of 17 U.S.C. 112 and 114, and (ii) shall not be used as evidence that CPB, the Covered Entities, or any other persons are acting in compliance with the provisions of 17 U.S.C. 114(d)(2)(A) or (C) or any other applicable laws or regulations.

Article 3—Scope of Agreement

3.1 General

(a) *Public Performances.* In consideration for the payment of the License Fee by CPB, SoundExchange agrees that Covered Entities that publicly perform under Section 114 all or any portion of any Sound Recordings through an Authorized Web Site, within the Territory, by means of Web Site Performances, may do so in accordance with and subject to the limitations set forth in this Agreement; *provided that:* (i) Such transmissions are made in strict conformity with the provisions of 17 U.S.C. 114(d)(2)(A) and (C); and (ii) such Covered Entities comply with all of the terms and conditions of this Agreement and all applicable copyright laws. For clarity, there is no limit to the number of Web Site Performances that a Covered Entity may transmit during the Term under the provisions of this Section 3.1(a), if such Web Site Performances otherwise satisfy the requirements of this Agreement.

(b) *Ephemeral Phonorecords.* In consideration for the payment of the License Fee by CPB, SoundExchange agrees that Covered Entities that make and use solely for purposes of transmitting Web Site Performances as described in Section 3.1(a), within the Territory, Phonorecords of all or any portion of any Sound Recordings (''*Ephemeral Phonorecords*''), may do so in accordance with and subject to the limitations set forth in this Agreement; *provided that:* (i) Such Phonorecords are limited solely to those necessary to encode Sound Recordings in different formats and at different bit rates as necessary to facilitate Web Site Performances licensed hereunder; (ii) such Phonorecords are made in strict conformity with the provisions set forth in 17 U.S.C. 112(e)(1)(A)–(D); and (iii) the Covered Entities comply with 17 U.S.C. 112 (a) and (e) and all of the terms and conditions of this Agreement.

3.2 *Limited Right to Sublicense.* Rights under this Agreement are not sublicensable, except that a Covered Entity may employ the services of a third Person to provide the technical services and equipment necessary to deliver Web Site Performances on behalf of such Covered Entity pursuant to Section 3.1, but only through an Authorized Web Site. Any agreement between a Covered Entity and any third Person for such services shall (i) contain the substance of all terms and conditions of this Agreement and obligate such third Person to provide all such services in accordance with all applicable terms and conditions of this Agreement, including, without limitation, Articles 3, 5 and 6; (ii) specify that such third Person shall have no right to make Web Site Performances or any other performances or Phonorecords on its own behalf or on behalf of any Person or entity other than a Covered Entity through the Covered Entity's Authorized Web Site by virtue of this Agreement, including in the case of Phonorecords, pre-encoding or otherwise establishing a library of Sound Recordings that it offers to a Covered Entity or others for purposes of making performances, but instead must obtain all necessary licenses from SoundExchange, the copyright owner or another duly authorized Person, as the case may be; (iii) specify that such third Person shall have no right to grant any further sublicenses; and (iv) provide that SoundExchange is an intended third-party beneficiary of all such obligations with the right to enforce a breach thereof against such third party.

3.3 Limitations

(a) *Reproduction of Sound Recordings.* Except as provided in Section 3.2, nothing in this Agreement grants Covered Entities, or authorizes Covered Entities to grant to any other Person (including, without limitation, any Web Site User, any operator of another Web Site or any authorized sublicensee), the right to reproduce by any means, method or process whatsoever, now known or hereafter developed, any Sound Recordings, including, but not limited to, transferring or

downloading any such Sound Recordings to a computer hard drive, or otherwise copying the Sound Recording onto any other storage medium.

(b) *No Right of Public Performance*. Except as provided in Section 3.2, nothing in this Agreement authorizes Covered Entities to grant to any Person the right to perform publicly, by means of digital transmission or otherwise, any Sound Recordings.

(c) *No Implied Rights*. The rights granted in this Agreement extend only to Covered Entities and grant no rights, including by implication or estoppel, to any other Person, except as expressly provided in Section 3.2. Without limiting the generality of the foregoing, this Agreement does not grant to Covered Entities (i) any copyright ownership interest in any Sound Recording; (ii) any trademark or trade dress rights; (iii) any rights outside the Territory; (iv) any rights of publicity or rights to any endorsement by SoundExchange or any other Person; or (v) any rights outside the scope of a statutory license under 17 U.S.C. 112(e) and 114.

(d) *Territory*. The rights granted in this Agreement shall be limited to the Territory.

(e) *No Syndication Rights*. Nothing in this Agreement authorizes any Web Site Performances to be accessed by Web Site Users through any Web Site other than an Authorized Web Site.

3.4 *Effect of Non-Performance by any Covered Entity*. In the event that any Covered Entity breaches or otherwise fails to perform any of the material terms of this Agreement it is required to perform (including any obligations applicable under Section 112 or 114), or otherwise materially violates the terms of this Agreement or Section 112 or 114 or their implementing regulations, the remedies of SoundExchange shall be specific to that Covered Entity only, and shall include, without limitation, (i) termination of that Covered Entity's rights hereunder upon written notice to CPB, and (ii) the rights of SoundExchange and Copyright owners under applicable law. SoundExchange's remedies for such a breach or failure by an individual Covered Entity shall not include termination of this Agreement in its entirety or termination of the rights of other Covered Entities, except that if CPB breaches or otherwise fails to perform any of the material terms of this Agreement, or such a breach or failure by a Covered Entity results from CPB's inducement, and CPB does not cure such breach or failure within thirty (30) days after receiving notice thereof from SoundExchange, then SoundExchange may terminate this Agreement in its entirety, and a prorated portion of the License Fee for the remainder Term shall, after deduction of any damages payable to SoundExchange by virtue of the breach or failure, be credited to statutory royalty obligations of Covered Entities to SoundExchange for the Term as specified by CPB.

Article 4—Consideration

4.1 *License Fee*. The total license fee for all Web Site Performances and Ephemeral Phonorecords made during the Term shall be two million four hundred thousand dollars ($2,400,000) (the ''*License Fee*''), unless additional payments are required as described in Section 4.3 or 4.4. CPB shall pay such amount to SoundExchange in five equal installments of four hundred eighty thousand dollars ($480,000) each, which shall be due December 31, 2010 and annually thereafter through December 31, 2014.

4.2 *Calculation of License Fee*. The Parties acknowledge that the License Fee includes: (i) an annual minimum fee of five hundred dollars ($500) for each Covered Entity for each year during the Term; (ii) additional usage fees calculated at a royalty rate equal to one third the royalty rate applicable to commercial broadcasters under the Webcaster Settlement Act of 2008 (*see* 74 FR 9299 (March 3, 2009)); and (iii) a discount that reflects the administrative convenience to SoundExchange of receiving annual lump sum payments that cover a large number of separate entities, as well as the protection from bad debt that arises from being paid in advance.

4.3 Total Music ATH True-Up

(a) If the total Music ATH for all Covered Entities, in the aggregate for any calendar year during the period 2011–2015, as reported or estimated in accordance with Attachment 1, is greater than the Music ATH cap for the year specified in the table below, CPB shall make an additional payment to SoundExchange for all such Music ATH in excess of such Music ATH cap for all Covered Entities in the aggregate on the basis of the per performance rate for the year specified in the table below, which shall be applied to excess Music ATH by assuming twelve (12) performances for each hour of excess Music ATH:

Year	Music ATH cap	Per performance rate
2011	279,500,000	$0.00057
2012	280,897,500	0.00067
2013	282,301,988	0.00073
2014	283,713,497	0.00077
2015	285,132,065	0.00083

(b) Payments under Section 4.3(a) shall be due no later than March 1 of the year following the year to which they pertain. SoundExchange may distribute royalties paid under Section 4.3(a) in accordance with its generally-applicable methodology for distributing royalties paid on the basis of ATH.

(c) Notwithstanding the foregoing provisions of this Section 4.3, CPB shall not be required to make payments under this Section 4.3 exceeding four hundred eighty thousand dollars ($480,000) in the aggregate during the Term. Because the limitation stated in the immediately preceding sentence is to be applied in the aggregate over the Term, CPB shall make all payments otherwise due under this Section 4.3 for excess Music ATH until such time as such payments, if any, for the Term reach four hundred eighty thousand dollars ($480,000) in the aggregate, and thereafter CPB shall owe no further payments under Section 4.3(a) regardless of the amount of excess Music ATH.

4.4 *Station Growth True-Up:* If the total number of Originating Public Radio Stations that wish to make Web Site Performances in any calendar year exceeds the number of such Originating Public Radio Stations considered Covered Entities in the relevant year, and the excess Originating Public Radio Stations do not wish to pay royalties for such Web Site Performances apart from this Agreement, CPB may elect by written notice to SoundExchange to increase the number of Originating Public Radio Stations considered Covered Entities in the relevant year effective as of the date of the notice. To the extent of any such elections, CPB shall make an additional payment to SoundExchange for each calendar year or part thereof it elects to have an additional Originating Public Radio Station considered a Covered Entity, in the amount of five hundred dollars ($500) per Originating Public Radio Station per year. Such payment shall accompany the notice electing to have an additional Originating Public Radio Station considered a Covered Entity.

4.5 *Late Fee*. The Parties hereby agree to the terms set forth in 37 CFR 380.4(e) as if that section (and the applicable definitions provided in 37 CFR 380.2) were set forth herein.

4.6. Payments to Third Persons

(a) SoundExchange and CPB agree that, except as provided in Section 4.6(b), all obligations of, *inter alia*, clearance, payment or attribution to third Persons, including, by way of example and not limitation, music publishers and performing rights organizations (PROs) for use of the musical compositions embodied in Sound Recordings, shall be solely the responsibility of CPB and the Covered Entities.

(b) SoundExchange and CPB agree that all obligations of distribution of the License Fee to Copyright Owners and Performers in accordance with 37 CFR 380.4(g) shall be solely the responsibility of SoundExchange. In making such distribution, SoundExchange has discretion to allocate the License Fee between Section 112 and 114 in the same manner as the majority of other webcasting royalties.

Article 5—Reporting, Auditing and Confidentiality

5.1 *Reporting*. CPB and Covered Entities shall submit reports of use and other information concerning Web Site Performances as set forth in Attachments 1 and 2.

5.2 *Verification of Information*. The Parties hereby agree to the terms set forth in 37 CFR 380.4(h) and 380.6 as if those sections (and the applicable definitions provided in 37 CFR 380.2) were set forth herein. The exercise by SoundExchange of any right under this Section 5.2 shall not prejudice any other rights or remedies of SoundExchange.

5.3 *Confidentiality*. The Parties hereby agree to the terms set forth in 37 CFR 380.5 as if that section (and the applicable definitions provided in 37 CFR 380.2) were set forth herein, except that:

(a) The following shall be added to the end of the first sentence of § 380.5(b): ''or documents or information that become publicly known through no fault of

SoundExchange or are known by SoundExchange when disclosed by CPB'';

(b) the following shall be added at the end of § 380.5(c): ''and enforcement of the terms of this Agreement''; and

(c) the following shall be added at the end of § 380.5(d)(4): ''subject to the provisions of Section 2.3 of this Agreement''.

Article 6—Non-Participation in Further Proceedings

CPB and any Covered Entity making Web Site Transmissions in reliance on this Agreement shall not directly or indirectly participate as a party, *amicus curiae* or otherwise, or in any manner give evidence or otherwise support or assist, in any further proceedings to determine royalty rates and terms for digital audio transmission or the reproduction of Ephemeral Phonorecords under Section 112 or 114 of the Copyright Act for all or any part of the Term, including *Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2009–1 CRB Webcasting III, any appeal of the determination in such case, any proceedings on remand from such an appeal, or any other related proceedings, unless subpoenaed on petition of a third party (without any action by CPB or a Covered Entity to encourage such a petition) and ordered to testify in such proceeding. Notwithstanding anything to the contrary herein, any entity that is eligible to be treated as a ''Covered Entity'' but that that does not elect to be treated as a Covered Entity may elect to participate in such proceedings.

Article 7—Term and Termination

7.1 *Term.* The term of this Agreement commences as of January 1, 2011, and ends as of December 31, 2015 (''*Term*''). Through August 27, 2009, CPB shall have the right to rescind this Agreement in its entirety by notifying SoundExchange in writing that it wishes to exercise such right; provided however, that CPB may only exercise such right in the event that the Board of Directors of CPB fails to approve CPB's entering into the Agreement. As conditions precedent to reliance on the terms of this Agreement by any Covered Entity, (a) CPB must pay the License Fee as and when specified in Section 4.1, and (b) NPR must withdraw from participation in the proceeding before the Copyright Royalty Judges entitled *Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2009–1 CRB Webcasting III (*see* 74 FR 318 (Jan. 5, 2009)) by no later than September 3, 2009 (which NPR has agreed to do if CPB does not exercise its right of rescission).

7.2 *Mutual Termination.* This Agreement may be terminated in writing upon mutual agreement of the Parties.

7.3 Consequences of Termination

(a) *Survival of Provisions.* In the event of the expiration or termination of this Agreement for any reason, the terms of this Agreement shall immediately become null and void, and cannot be relied upon for making any further Web Site Performances or Ephemeral Phonorecords, except that (i) Articles 6 and 8 and Sections 2.3, 2.4, 3.3, 5.2, 5.3 and 7.3 shall remain in full force and effect; and (ii) Article 4 and Section 5.1 shall remain in effect after the expiration or termination of this Agreement to the extent obligations under Article 4 or Section 5.1 accrued prior to any such termination or expiration.

(b) *Applicability of Copyright Law.* Any Web Site Performances made by a Covered Entity or other Originating Public Radio Station in violation of the terms of this Agreement or Section 112 or 114 or their implementing regulations (except to the extent such implementing regulations are inconsistent with this Agreement), outside the scope of this Agreement, or after the expiration or termination of this Agreement for any reason shall be fully subject to, among other things, the copyright owners' rights under 17 U.S.C. 106(6), the remedies in 17 U.S.C. 501 *et seq.*, the provisions of 17 U.S.C. 112(e) and 114, and their implementing regulations unless the Parties have entered into a new agreement for such Web Site Performances.

Article 8—Miscellaneous

8.1 *Applicable Law and Venue.* This Agreement shall be governed by, and construed in accordance with, the laws of the District of Columbia (without giving effect to conflicts of law principles thereof). All actions or proceedings arising directly or indirectly from or in connection with this Agreement shall be litigated only in the United States District Court for the District of Columbia located in Washington, DC, or if it does not have subject matter jurisdiction, other courts located in the District of Columbia. The Parties and Covered Entities, to the extent permitted under their State or Tribal law, consent to the jurisdiction and venue of the foregoing court and consent that any process or notice of motion or other application to said court or a judge thereof may be served inside or outside the District of Columbia by registered mail, return receipt requested, directed to the Person for which it is intended at its address set forth in this Agreement (and service so made shall be deemed complete five (5) days after the same has been posted as aforesaid) or by personal service or in such other manner as may be permissible under the rules of that court.

8.2 *Rights Cumulative.* The remedies provided in this Agreement and available under applicable law shall be cumulative and shall not preclude assertion by any Party of any other rights or the seeking of any other remedies against the other Party hereto. This Agreement shall not constitute a waiver of any violation of Section 112 or 114 or their implementing regulations (except to the extent such implementing regulations are inconsistent with this Agreement). No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver of such right, power or privilege. Neither this Agreement nor any such failure or delay shall give rise to any defense in the nature of laches or estoppel. No single or partial exercise of any right, power or privilege granted under this Agreement or available under applicable law shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver by either Party of full performance by the other Party in any one or more instances shall be a waiver of the right to require full and complete performance of this Agreement and of obligations under applicable law thereafter or of the right to exercise the remedies of SoundExchange under Section 3.4.

8.3 *Severability.* Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provisions shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

8.4 *Amendment.* This Agreement may be modified or amended only by a writing signed by the Parties.

8.5 *Entire Agreement.* This Agreement expresses the entire understanding of the Parties and supersedes all prior and contemporaneous agreements and undertakings of the Parties with respect to the subject matter hereof.

8.6 *Headings.* The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

In Witness Whereof, the Parties hereto have executed this Agreement as of the date first above written.

Attachment 1—Reporting

1. *Definitions.* The following terms shall have the meaning set forth below for purposes of this Attachment 1. All other capitalized terms shall have the meaning set forth in Article 1 of the Agreement.

(a) ''*Content Logs''* shall have the meaning set forth in Section 3(a)(ii) of this Attachment 1.

(b) ''*Major Format Group''* shall mean each of the following format descriptions characterizing the programming offered by various Covered Entities: (i) Classical; (ii) jazz; (iii) music mix; (iv) news and information; (v) news/classical; (vi) news/jazz; (vii) news/music mix; and (viii) adult album alternative. A Covered Entity's Major Format Group is determined based on the format description best describing the programming of the principal broadcast service offered by the Covered Entity and will include all channels streamed.

(c) ''*Reporting Data''* shall mean, for each Sound Recording for which Reporting Data is to be provided, (1) the relevant Covered Entity (including call sign and community of license of any terrestrial broadcast station and any Side Channel(s)); (2) the title of the song or track performed; (3) the featured recording artist, group, or orchestra; (4) the title of the commercially available album or other product on which the Sound Recording is found; (5) the marketing label of the commercially available album or other product on which the sound recording is found; and (6) play frequency.

2. *General.* All data required to be provided hereunder shall be provided to SoundExchange electronically in the manner provided in 37 CFR 370.3(d), except to the extent the parties agree otherwise. CPB shall consult with SoundExchange in advance

concerning the content and format of all data to be provided hereunder, and shall provide data that is accurate, to the best of CPB's and the relevant Covered Entity's knowledge, information and belief. The methods used to make estimates, predictions and projections of data shall be subject to SoundExchange's prior written approval, which shall not be unreasonably withheld.

3. *Data Collection and Reporting.* CPB shall provide data regarding Web Site Performances during the Term to SoundExchange, and Covered Entities shall provide such data to CPB, consistent with the following terms:

(a) *ATH and Content Logs.* For each calendar quarter during the Term:

(i) *Music ATH Reporting.* CPB shall provide reports (the ''ATH Reports'') of Music ATH by all Covered Entities. Such ATH reports shall be accompanied by the Content Logs described in Section 3(a)(ii) for the periods described therein for all Covered Entities. All ATH Reports and Content Logs for a quarter shall be provided by CPB together in one single batch, but all data shall be broken out by Covered Entity and identify each Covered Entity's Major Format Group. The ATH Reports shall be in a form similar to CPB's Streaming Census Report dated October 18, 2007, except as otherwise provided in this Section 3(a)(i).

(ii) *Reporting Period and Data.* The information about Music ATH referenced in Section 3(a)(i) shall be collected from Covered Entities for two 7-consecutive-day reporting periods per quarter. The ATH Reports shall be provided within thirty (30) days of the end of each calendar quarter. During these reporting periods, Covered Entities shall prepare logs containing Reporting Data for all their Web Site Performances (''*Content Logs''*). These Content Logs shall be compared with server-based logs of Music ATH throughout the reporting period before the ATH Report is submitted to SoundExchange.

(iii) *Additional Data Reporting.* Each quarter, CPB shall, for Covered Entities representing the highest 30% of reported Music ATH, provide SoundExchange Reporting Data collected continuously during each 24 hour period for the majority of their Web Site Performances, along with the Covered Entity's Music ATH, for the relevant quarter. If during any calendar quarter of the Term, additional Covered Entities, in the ordinary course of business, collect Reporting Data continuously during each 24 hour period for the majority of their Web Site Performances, CPB shall provide SoundExchange such data, along with each such Covered Entity's Music ATH, for the relevant quarter.

(b) *ATH and Format Surveys.* CPB shall semiannually survey all Covered Entities to ascertain the number, format and Music ATH of all channels (including but not limited to Side Channels) over which such Covered Entities make Web Site Performances. CPB shall provide the results of such survey to SoundExchange within sixty (60) days after the end of the semiannual period to which it pertains.

(c) *Consolidated Reporting.* Each quarter, CPB shall provide the information required by this Section 3 in one delivery to SoundExchange, with a list of all Covered Entities indicating whether any are not reporting for such quarter.

(d) *Timing.* Except as otherwise provided above, all information required to be provided to SoundExchange under this Section 3 shall be provided as soon as practicable, and in any event by no later than sixty (60) days after the end of the quarter to which it pertains. Such data shall be provided in a format consistent with Attachment 2.

Attachment 2—Reporting Format

1. *Format for Reporting Data.* All Reporting Data provided under Attachment 1, Section 3(a)(ii) shall be delivered to SoundExchange in accordance with the following format:

Column 1 Station or Side Channel
Column 2 Sound Recording Title
Column 3 Featured Artist, Group or Orchestra
Column 4 Album
Column 5 Marketing Label
Column 6 Play Frequency

2. *Format for Music ATH.* All Music ATH reporting by Covered Entities under Attachment 1 shall be delivered to SoundExchange in accordance with the following format:

Column 1 Station or Side Channel
Column 2 Major Format Group
Column 3 ATH
Column 4 Reporting Period

3. *Major Format Groups.* All requirements to provide ''Major Format Group'' as that term is defined in Attachment 1, Section 1(b), shall correspond with one of the following:

Major Format Groups
Classical
Jazz
Music Mix
News and Information
News/Classical
News/Jazz
News/Music Mix
Adult Album Alternative

Appendix D—Agreed Rates and Terms for Noncommercial Webcasters

Article 1—Definitions

1.1 *General.* In general, words used in the rates and terms set forth herein (the ''Rates and Terms'') and defined in 17 U.S.C. 112(e) or 114 or 37 CFR Part 380 shall have the meanings specified in those provisions as in effect on the date hereof, with such exceptions or clarifications set forth in Section 1.2.

1.2 Additional Definitions

(a) ''*Aggregate Tuning Hour'' or ''ATH''* shall have the same meaning as set forth in the applicable regulations at 37 CFR 380.2(a) as it existed on July 30, 2009.

(b) ''*Broadcast Retransmissions''* shall mean Eligible Transmissions that are retransmissions of terrestrial over-the-air broadcast programming transmitted by the Noncommercial Webcaster through its AM or FM radio station, including ones with substitute advertisements or other programming occasionally substituted for programming for which requisite licenses or clearances to transmit over the Internet have not been obtained. For the avoidance of doubt, a Broadcast Retransmission does not include programming transmitted on an Internet-only side channel.

(c) ''*Eligible Transmission''* shall mean an eligible nonsubscription transmission made by a Noncommercial Webcaster over the Internet.

(d) ''*Noncommercial Microcaster''* shall mean a Noncommercial Webcaster that for any of its channels or stations over which it transmits Broadcast Retransmissions, and for all of its channels and stations over which it transmits other Eligible Transmissions in the aggregate, in any calendar year in which it is to be considered a Noncommercial Microcaster, meets the following additional eligibility criteria: (i) During the prior year did not make eligible nonsubscription transmissions exceeding 44,000 aggregate tuning hours; and (ii) during the applicable year reasonably does not expect to make eligible nonsubscription transmissions exceeding 44,000 aggregate tuning hours; provided that, one time during the period 2006–2015, a Noncommercial Webcaster that qualified as a Noncommercial Microcaster under the foregoing definition as of January 31 of one year, elected Noncommercial Microcaster status for that year, and unexpectedly made Eligible Transmissions on one or more channels or stations in excess of 44,000 aggregate tuning hours during that year, may choose to be treated as a Noncommercial Microcaster during the following year notwithstanding clause (i) above if it implements measures reasonably calculated to ensure that it will not make Eligible Transmissions exceeding 44,000 aggregate tuning hours during that following year. Without limitation, as to channels or stations over which a Noncommercial Webcaster transmits Broadcast Retransmissions, the Noncommercial Webcaster may elect Noncommercial Microcaster status only with respect to its channels or stations that meet both of the foregoing criteria.

(e) ''*Noncommercial Webcaster''* shall mean a noncommercial webcaster as defined in 17 U.S.C. 114(f)(5)(E)(i). A Noncommercial Webcaster that owns or operates multiple terrestrial AM or FM radio stations may elect to treat each such terrestrial AM or FM radio station as a separate Noncommercial Webcaster.

(f) ''*SoundExchange''* shall mean SoundExchange, Inc. and shall include its successors and assigns.

Article 2—Agreement Pursuant to Webcaster Settlement Act of 2009

2.1 *Availability of Rates and Terms.* Pursuant to the Webcaster Settlement Act of 2009, and subject to the provisions set forth below, a Noncommercial Webcaster may elect to be subject to the rates and terms set forth herein (the ''Rates and Terms'') in their entirety, with respect to such Noncommercial Webcaster's Eligible Transmissions and related ephemeral recordings, for any calendar year that it qualifies as a Noncommercial Webcaster during the period beginning on January 1, 2006, and ending on December 31, 2015, in lieu of other rates and

terms from time to time applicable under 17 U.S.C. 112(e) and 114, by complying with the procedure set forth in Section 2.2 hereof. Any person or entity that does not satisfy the eligibility criteria to be a Noncommercial Webcaster and make a timely election pursuant to Section 2.2 must comply with otherwise applicable rates and terms.

2.2 *Election Process in General.* A Noncommercial Webcaster that wishes to elect to be subject to these Rates and Terms, in lieu of any royalty rates and terms that otherwise might apply under 17 U.S.C. 112(e) and 114, for any calendar year that it qualifies as a Noncommercial Webcaster during the period beginning on January 1, 2006, and ending on December 31, 2015, shall submit to SoundExchange a completed and signed election form (available on the SoundExchange Web site at *http://www.soundexchange.com*) by no later than January 31 of the applicable year, except that election forms for 2006–2009 shall be due by no later than September 15, 2009. Notwithstanding the immediately preceding sentence, if a Noncommercial Webcaster has not previously made digital audio transmissions of sound recordings under the section 114 statutory license, the Noncommercial Webcaster may make its election by no later than 30 days after the Noncommercial Webcaster begins making such transmissions under the section 114 statutory license. On any such election form, the Noncommercial Webcaster must, among other things, certify that it qualifies as a Noncommercial Webcaster, and SoundExchange shall require only such information on that form as is reasonably necessary to determine the Noncommercial Webcaster's election. If a Noncommercial Webcaster has elected to be treated as a Noncommercial Webcaster in any calendar year, that election shall apply to subsequent calendar years unless the Noncommercial Webcaster notifies SoundExchange by January 31 of the relevant year that it is revoking that election in favor of otherwise applicable rates. Notwithstanding anything else in these Rates and Terms, a person or entity otherwise qualifying as a Noncommercial Webcaster that has participated in any way in the appeal of the Final Determination of the Copyright Royalty Judges concerning royalty rates and terms under Sections 112(e) and 114 of the Copyright Act for the period January 1, 2006, through December 31, 2010 published in the **Federal Register** at 72 FR 24084 (May 1, 2007) (the ''Final Determination''), any proceedings before the Copyright Royalty Judges on remand from such appeal, or any proceeding before the Copyright Royalty Judges to determine royalty rates and terms under Sections 112(e) and 114 of the Copyright Act for the period January 1, 2011, through December 31, 2015 (including Docket No. 2009–1 CRB Webcasting III and Docket No. 2009–2 CRB New Subscription II, as noticed in the **Federal Register** at 74 FR 318–20 (Jan. 5, 2009)) shall not have the right to elect to be treated as a Noncommercial Webcaster or claim the benefit of these Rates and Terms, unless, prior to submitting to SoundExchange a completed and signed election form as contemplated by this Section 2.2, it withdraws from (a) any such proceedings before the Copyright Royalty Judges and (b) the appeal of the Final Determination if the U.S. Court of Appeals of the DC Circuit still retains jurisdiction over that appeal at the time such election is made.

2.3 *Election of Noncommercial Microcaster Status.* A Noncommercial Webcaster that elects to be subject to these Rates and Terms and qualifies as a Noncommercial Microcaster may elect to be treated as a Noncommercial Microcaster for any one or more calendar years that it qualifies as a Noncommercial Microcaster. To do so, the Noncommercial Webcaster shall submit to SoundExchange a completed and signed election form (available on the SoundExchange Web site at *http://www.soundexchange.com*) by no later than January 31 of the applicable year, except that election forms for 2006–2009 shall be due by no later than September 15, 2009. Notwithstanding the immediately preceding sentence, if a Noncommercial Webcaster has not previously made digital audio transmissions of sound recordings under the section 114 statutory license, the Noncommercial Webcaster may make its election to be treated as a Noncommercial Microcaster by no later than 30 days after the Noncommercial Webcaster begins making such transmissions under the section 114 statutory license. On any such election form, the Noncommercial Webcaster must, among other things, certify that it qualifies as a Noncommercial Microcaster; provide information about its prior year aggregate tuning hours and the genres of music it uses; and use commercially reasonable efforts to provide such other information as may be reasonably requested by SoundExchange for use in creating a royalty distribution proxy. Even if a Noncommercial Webcaster has once elected to be treated as a Noncommercial Microcaster, it must make a separate, timely election in each subsequent year in which it wishes to be treated as a Noncommercial Microcaster.

2.4 *Representation of Compliance and Non-waiver.* By accepting an election by a transmitting entity or payments or reporting made pursuant to these Rates and Terms, SoundExchange does not acknowledge that the transmitting entity qualifies as a Noncommercial Webcaster or Noncommercial Microcaster or that it has complied with the eligibility or other requirements of the statutory licenses under Sections 112(e) and 114 of the Copyright Act (including these Rates and Terms). SoundExchange is not in a position to, and does not, make determinations as to whether each of the many services that rely on the statutory licenses is eligible for statutory licensing or any particular royalty payment classification, nor does it continuously verify that such services are in full compliance with all applicable requirements. Accordingly, a transmitting entity agrees that SoundExchange's acceptance of its election, payment or reporting does not give or imply any acknowledgment that it is in compliance with the requirements of the statutory licenses (including these Rates and Terms). SoundExchange and copyright owners reserve all their rights to take enforcement action against a transmitting entity that is not in compliance with those requirements.

Article 3—Scope

3.1 *In General.* In consideration for the payment of royalties pursuant to Article 4 and such other consideration specified herein, Noncommercial Webcasters that have made a timely election to be subject to these Rates and Terms as provided in Section 2.2 are entitled to publicly perform sound recordings within the scope of the statutory license provided by Section 114 by means of Eligible Transmissions, and to make related ephemeral recordings for use solely for purposes of such Eligible Transmissions within the scope of Section 112(e), in accordance with and subject to the limitations set forth in these Rates and Terms and with the provisions of 17 U.S.C. 112(e) and 114 and their implementing regulations (except as otherwise specifically provided herein), in lieu of other rates and terms from time to time applicable under 17 U.S.C. 112(e) and 114, for any calendar year that they qualify as a Noncommercial Webcaster, and have made such an election, during the period beginning on January 1, 2006, and ending on December 31, 2015.

3.2 *Applicability to All Eligible Services Operated by or for a Noncommercial Webcaster.* If a Noncommercial Webcaster has made a timely election to be subject to these Rates and Terms as provided in Section 2.2, these Rates and Terms shall apply to all Eligible Transmissions made by or for the Noncommercial Webcaster that qualify as Performances under 37 CFR 380.2(i), and related ephemeral recordings. For the avoidance of doubt, a Noncommercial Webcaster may not rely upon these Rates and Terms for its Eligible Transmissions of one broadcast channel or station and upon different Section 114 rates and terms for its Eligible Transmissions of other broadcast channels or stations.

3.3 *No Implied Rights.* These Rates and Terms extend only to electing Noncommercial Webcasters and grant no rights, including by implication or estoppel, to any other person or except as specifically provided herein. Without limiting the generality of the foregoing, these Rates and Terms do not grant (i) any copyright ownership interest in any sound recording; (ii) any trademark or trade dress rights; (iii) any rights outside the United States (as defined in 17 U.S.C. 101); (iv) any rights of publicity or rights to any endorsement by SoundExchange or any other person; or (v) any rights with respect to performances or reproductions outside the scope of these Rates and Terms or the statutory licenses under 17 U.S.C. 112(e) and 114.

Article 4—Royalties

4.1 *Minimum Fees.* Each Noncommercial Webcaster shall pay SoundExchange an annual, nonrefundable minimum fee of $500 for each of its individual channels or stations over which it makes Eligible Transmissions, including each of its individual side channels and each of its individual Broadcast Retransmission stations, for each calendar year or part of a calendar year during 2006–2015 during which the Noncommercial

Webcaster is a licensee pursuant to licenses under 17 U.S.C. 112(e) and 114. Upon payment of the minimum fee, the Noncommercial Webcaster will receive a credit in the amount of the minimum fee against any royalties payable hereunder for the same calendar year for the same channel or station. In addition, an electing Noncommercial Microcaster also shall pay a $100 annual fee (the ''Proxy Fee'') to SoundExchange for the reporting waiver discussed in Section 5.1. Minimum fees and, where applicable, the Proxy Fee shall be paid by January 31 of each year.

4.2 Royalty Rates

(a) The nonrefundable minimum fee payable under Section 4.1 shall constitute full payment for Eligible Transmissions totaling not more than 159,140 aggregate tuning hours per month on the relevant channel or station. If, in any month, a Noncommercial Webcaster makes Eligible Transmissions on a channel or station in excess of 159,140 aggregate tuning hours, the Noncommercial Webcaster shall pay SoundExchange additional royalties for those Eligible Transmissions in excess of 159,140 aggregate tuning hours at the following rates, subject to an election as provided in Section 4.3:

(i) 2006–2010:

(a) $0.0002176 per performance; or

(b) $0.00251 per ATH, except in the case of channels or stations where substantially all of the programming is reasonably classified as news, talk, sports or business programming, in which case the royalty rate shall be $.0002 (.02¢) per aggregate tuning hour;

(ii) 2011–2015:

Year	Per performance rate
2011	$0.00057
2012	0.00067
2013	0.00073
2014	0.00077
2015	0.00083

(b) For a transitional period, to enable Noncommercial Webcasters to implement systems that enable payment on a per performance basis, for years 2011–2013, the Noncommercial Webcaster may pay for those Eligible Transmissions in excess of 159,140 aggregate tuning hours on an ATH basis, assuming 12 performances per hour, except in the case of channels or stations where substantially all of the programming is reasonably classified as news, talk, sports or business programming, in which case the Noncommercial Webcaster may assume one performance per hour, and calculate its payment based on the per performance rates in Section 4.2(a) above. In addition, in years 2014–2015, for a Noncommercial Webcaster unable to calculate actual total performances and not required to report ATH or actual total performances under Section 5.3, the Noncommercial Webcaster may pay for those Eligible Transmissions in excess of 159,140 aggregate tuning hours on an ATH basis using the estimates set forth in this provision and calculating its payment based on the per performance rates in Section 4.2(a) above. SoundExchange may distribute royalties paid on the basis of ATH hereunder in accordance with its generally applicable methodology for distributing royalties paid on such basis.

(c) For the avoidance of doubt, a Noncommercial Webcaster shall calculate its aggregate tuning hours of Eligible Transmissions on each channel or station each month and shall pay any additional royalties owed for such month as provided above in this Section 4.2, but the Noncommercial Webcaster shall not owe any additional royalties for any subsequent months until such time as the Noncommercial Webcaster again exceeds the 159,140 aggregate tuning hour threshold on any channel or station during a given month.

4.3 *Election of Per Performance or Aggregate Tuning Hour Rate.* A Noncommercial Webcaster must consistently pay any additional royalties hereunder based on either the per performance royalties or the aggregate tuning hour royalties set forth in Section 4.2 for all of its channels and stations within any calendar year. The first time each year a Noncommercial Webcaster is required to pay additional royalties under Section 4.2, the Noncommercial Webcaster shall elect to pay all of its additional royalties under Section 4.2 for all of its channels and stations during the remainder of the year based on either the per performance royalties or the aggregate tuning hour royalties set forth in Section 4.2. Thus, for example, a Noncommercial Webcaster may not in one month when its Eligible Transmissions exceed 159,140 aggregate tuning hours calculate its additional royalties based on the per performance royalty and in another month calculate its additional royalties based on the aggregate tuning hour royalty.

4.4 *Ephemeral Royalty.* The royalty payable under 17 U.S.C. 112(e) for any ephemeral reproductions made by a Noncommercial Webcaster and covered hereby is deemed to be included within the royalty payments set forth above. SoundExchange may allocate payments hereunder between the statutory licenses under Sections 112(e) and 114 in the same manner as statutory webcasting royalties for the period 2011–2015.

4.5 *Statements of Account.* A Noncommercial Webcaster shall submit to SoundExchange a monthly statement of account identifying its aggregate tuning hours of Eligible Transmissions for the month, regardless of whether the Noncommercial Webcaster is obligated to pay additional royalties under Section 4.2. Statements of Account, together with any payments required by Section 4.2, shall be due by the 45th day after the end of each month. Each statement of account shall identify (i) the name of the Noncommercial Webcaster, exactly as it appears on its notice of use, and (ii) if the statement covers a single AM or FM radio station only, the call letters of the station.

4.6 *Past Periods.* Notwithstanding anything else in this Agreement, to the extent that a Noncommercial Webcaster that elects to be subject to these Rates and Terms has not paid royalties for all or any part of the period beginning on January 1, 2006, and ending on July 31, 2009, any amounts payable under these Rates and Terms for Eligible Transmissions during such period for which payment has not previously been made shall be paid by no later than September 15, 2009, and for purposes of Section 4.7, any such outstanding payments shall be considered due no earlier than July 30, 2009. If a Noncommercial Webcaster has paid royalties to SoundExchange under the 17 U.S.C. 112(e) and 114 statutory licenses that exceed the amount due under these Rates and Terms, SoundExchange shall credit the amount of such overpayment against anticipated future royalties owed by that Noncommercial Webcaster under these Rates and Terms. If the Noncommercial Webcaster reasonably anticipates that it will not incur royalty payment obligations under these Rates and Terms that exceed the amount of such overpayment on or before December 31, 2010, SoundExchange shall return any excess amounts previously paid by that Noncommercial Webcaster.

4.7 *Late Fees.* A Noncommercial Webcaster shall pay a late fee for each instance in which any payment, any Statement of Account or any report of use is not received by SoundExchange in compliance with these Rates and Terms and applicable regulations by the due date. The amount of the late fee shall be 1.5% of the late payment, or 1.5% of the payment associated with a late Statement of Account or report of use, per month, compounded monthly, or the highest lawful rate, whichever is lower. The late fee shall accrue from the due date of the payment, statement of account or report of use until a fully-compliant payment, statement of account or report of use is received by SoundExchange, provided that, in the case of a timely provided but noncompliant statement of account or report of use, SoundExchange has notified the Noncommercial Webcaster within 90 days regarding any noncompliance that is reasonably evident to SoundExchange.

Article 5—Reporting

5.1 *In General.* On an experimental basis, for purposes of these Rates and Terms only, and in light of the unique business and operational circumstances currently existing with respect to these Noncommercial Webcasters, these Rates and Terms require less than census reporting in certain circumstances and require full census reporting in other circumstances. SoundExchange hopes that offering graduated reporting options to electing Noncommercial Webcasters will promote compliance with statutory license obligations and thereby increase the pool of royalties available to be distributed to copyright owners and performers.

5.2 *Noncommercial Microcasters.* Electing Noncommercial Microcasters shall not be required to provide reports of their use of sound recordings for Eligible Transmissions and related ephemeral recordings. The immediately preceding sentence applies even if the Noncommercial Microcaster actually makes Eligible Transmissions for the year exceeding 44,000 aggregate tuning hours, so long as it qualified

as a Noncommercial Microcaster at the time of its election for that year. Instead, SoundExchange shall distribute the aggregate royalties paid by electing Noncommercial Microcasters based on proxy usage data in accordance with a methodology adopted by SoundExchange's Board of Directors. In addition to minimum royalties hereunder, electing Noncommercial Microcasters shall pay to SoundExchange a $100 Proxy Fee to defray costs associated with this reporting waiver, including development of proxy usage data. SoundExchange hopes that selection of a proxy believed by SoundExchange to represent fairly the playlists of the smallest webcasters will allow payment to more copyright owners and performers than would be possible with any other reasonably available option. If it is practicable for a Noncommercial Webcaster to report its usage pursuant to Section 5.4, it may wish not to elect Noncommercial Microcaster status.

5.3 *Census Reporting for Services Paying Usage-Based Additional Royalties for 2011–2015.* Beginning in 2011, a Noncommercial Webcaster must report its usage as provided in this Section 5.3 in the year following any year in which its average monthly Eligible Transmissions exceeds 159,140 aggregate tuning hours (i) on any channel or station over which it transmits Broadcast Retransmissions, or (ii) for all of its channels and stations over which it transmits other Eligible Transmissions in the aggregate. Such Noncommercial Webcasters shall submit reports of use in full compliance with then-applicable regulations (presently 37 CFR 370.3), except that notwithstanding the provisions of applicable regulations from time to time in effect, Noncommercial Webcasters shall submit reports of use on a census reporting basis (*i.e.,* reports of use shall include every sound recording performed in the relevant quarter and the number of plays thereof) and may report on an aggregate tuning hour basis as set forth in 5.4(a) below, and the provisions of Section 5.5 shall apply. Such reports must be submitted for any such channel or station over which it transmits Broadcast Retransmissions, and for all of its channels and stations over which it transmits other Eligible Transmissions in the aggregate, if the same had average monthly Eligible Transmissions exceeding 159,140 aggregate tuning hours. For the avoidance of doubt, if a Noncommercial Webcaster providing reports on a census basis pursuant to this provision does not make average monthly Eligible Transmissions exceeding 159,140 aggregate tuning hours on a channel or station for which it is submitting census reports pursuant to this section in a given calendar year, the Noncommercial Webcaster is entitled to revert to providing reports on a sample basis in accordance with Section 5.4(b) (*i.e.,* two weeks per calendar quarter) beginning in the following calendar year.

5.4 *Other Reporting by Noncommercial Webcasters.* A Noncommercial Webcaster that is not a Noncommercial Microcaster and is not required to report its usage under Section 5.3 must report its usage as provided in this Section 5.4. Such Noncommercial Webcasters shall submit reports of use in compliance with then-applicable regulations (presently 37 CFR 370.3), except that notwithstanding the provisions of applicable regulations from time to time in effect:

(a) Such Noncommercial Webcasters may report on an aggregate tuning hour basis (*i.e.,* reporting their total ATH on a channel, program or station) in lieu of providing actual total performances.

(b) Such Noncommercial Webcasters may report on a sample basis as presently provided in 37 CFR 370.3(c)(3) (*i.e.,* reporting their usage for two weeks per calendar quarter).

(c) The provisions of Section 5.5 shall apply.

5.5 *Detailed Requirements for Reports of Use.* Notwithstanding the provisions of applicable regulations from time to time in effect, the following provisions shall apply to all reports of use required hereunder:

(a) Noncommercial Webcasters shall submit reports of use to SoundExchange on a quarterly basis.

(b) Noncommercial Webcasters shall submit reports of use by no later than the 45th day following the last day of the quarter to which they pertain.

(c) Noncommercial Webcasters that are broadcasters transmitting Broadcast Retransmissions shall either submit a separate report of use for each of their stations transmitting Broadcast Retransmissions, or a collective report of use covering all of their stations but identifying usage on a station-by-station basis.

(d) Noncommercial Webcasters shall transmit each report of use in a file the name of which includes (i) the name of the Noncommercial Webcaster, exactly as it appears on its notice of use, and (ii) if the report covers a single AM or FM radio station only, the call letters of the station.

Article 6—Additional Provisions

6.1 *Applicable Regulations.* To the extent not inconsistent with the terms herein, use of sound recordings by Noncommercial Webcasters shall be governed by, and Noncommercial Webcasters shall comply with, applicable regulations, including 37 CFR Parts 370 and 380. Without limiting the foregoing, the provisions of applicable regulations for the retention of records and verification of statutory royalty payments (presently 37 CFR 380.4(h) and 380.6) shall apply hereunder. Noncommercial Webcasters shall cooperate in good faith with any such verification, and the exercise by SoundExchange of any right with respect thereto shall not prejudice any other rights or remedies of SoundExchange or sound recording copyright owners.

6.2 *Participation in Proceedings.* A Noncommercial Webcaster that elects to be subject to these Rates and Terms agrees that it has elected to do so in lieu of any different statutory rates and terms that may otherwise apply during any part of the 2006–2015 period and in lieu of participating at any time in a proceeding to set rates and terms for any part of the 2006–2015 period. Thus, once a Noncommercial Webcaster has elected to be subject to these Rates and Terms, it shall not at any time directly or indirectly participate as a party, intervenor, *amicus curiae* or otherwise, or in any manner give evidence or otherwise support or assist except pursuant to a subpoena or other formal discovery request, in any further proceedings to determine royalty rates and terms for reproduction of ephemeral phonorecords or digital audio transmission under Section 112(e) or 114 of the Copyright Act for all or any part of the period 2006–2015, including any appeal of the Final Determination, any proceedings on remand from such an appeal, any proceeding before the Copyright Royalty Judges to determine royalty rates and terms applicable to the statutory licenses under Sections 112(e) and 114 of the Copyright Act for the period 2011–2015, any appeal of such proceeding, or any other related proceedings.

6.3 *Use of Agreement in Future Proceedings.* Noncommercial Webcasters and SoundExchange agree that neither the Webcaster Settlement Act nor any provisions of these Rates and Terms shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements by the Copyright Royalty Judges. These Rates and Terms shall be considered as a compromise motivated by the unique business, economic and political circumstances of Noncommercial Webcasters, copyright owners and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller. No person or entity may, in any way, seek to use in any way these Rates and Terms in any such proceeding.

6.4 *Effect of Direct Licenses.* Any copyright owner may enter into a voluntary agreement with any Noncommercial Webcaster setting alternative rates and terms governing the Noncommercial Webcasters' transmission of copyrighted works owned by the copyright owner, and such voluntary agreement may be given effect in lieu of the Rates and Terms set forth herein.

6.5 *Default.* A Noncommercial Webcaster shall comply with all the requirements of these Rates and Terms. If it fails to comply in all material respects with the requirements of these Rates and Terms, SoundExchange may give written notice to the Noncommercial Webcaster that, unless the breach is remedied within 30 days from the date of receipt of notice, the Noncommercial Webcaster's authorization to make public performances and ephemeral reproductions under these Rates and Terms may be terminated upon further written notice. No such cure period shall apply before termination in case of material noncompliance that has been repeated multiple times so as to constitute a pattern of noncompliance, provided that SoundExchange has given repeated notices of noncompliance. Any transmission made by a Noncommercial Webcaster outside the scope of Section 112(e) or 114 or these Rates and Terms, or after the expiration or termination of these Rates and Terms shall be fully

subject to, among other things, the copyright owners' rights under 17 U.S.C. 106 and the remedies in 17 U.S.C. 501–506, and all limitations, exceptions and defenses available with respect thereto.

Article 7—Miscellaneous

7.1 *Applicable Law.* These Rates and Terms shall be governed by, and construed in accordance with, the laws of the District of Columbia (without giving effect to conflicts of law principles thereof). All actions or proceedings arising under these Rates and Terms shall be litigated only in the United States District Court for the District of Columbia located in Washington, DC, or if it does not have subject matter jurisdiction, in other courts located in Washington, DC. SoundExchange and Noncommercial Webcasters consent to the jurisdiction and venue of the foregoing courts and consent that any process or notice of motion or other application to said courts or a judge thereof may be served inside or outside the District of Columbia by registered mail, return receipt requested, directed to the person for which it is intended at its last known address (and service so made shall be deemed complete five (5) days after the same has been posted as aforesaid) or by personal service or in such other manner as may be permissible under the rules of that court.

7.2 *Rights Cumulative.* The remedies provided in these Rates and Terms and available under applicable law shall be cumulative and shall not preclude assertion by any party of any other rights or the seeking of any other remedies against another party hereto. These Rates and Terms shall not constitute a waiver of any violation of Section 112(e) or 114 or their implementing regulations (except to the extent such implementing regulations are inconsistent with these Rates and Terms). No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver of such right, power or privilege. Neither these Rates and Terms nor any such failure or delay shall give rise to any defense in the nature of laches or estoppel. No single or partial exercise of any right, power or privilege granted under these Rates and Terms or available under applicable law shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver by any party of full performance by another party in any one or more instances shall be a waiver of the right to require full and complete performance of these Rates and Terms and of obligations under applicable law thereafter.

7.3 *Entire Agreement.* These Rates and Terms represent the entire and complete agreement between SoundExchange and a Noncommercial Webcaster with respect to their subject matter and supersede all prior and contemporaneous agreements and undertakings of SoundExchange and a Noncommercial Webcaster with respect to the subject matter hereof.

[FR Doc. E9–19299 Filed 8–11–09; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 74 FR 12153, and no substantial comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain*. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, *Attention:* Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA, 22230, or by e-mail to *splimpto@nsf.gov*.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Research in Disabilities Education Program On-Line Project Data Management System.

OMB Control No.: 3145–0164.

Abstract

The National Science Foundation (NSF) requests a reinstatement of the information collection for the Program for Persons with Disabilities, now called the Research in Disabilities Education (RDE) program. This on-line, annual data collection will describe and track the impact of RDE program funding on Nation's science, technology, engineering and mathematics (STEM) education and STEM workforce.

NSF funds grants, contracts, and cooperative agreements to colleges, universities, and other eligible institutions, and provides graduate research fellowships to individuals in all parts of the United States and internationally. The Directorate for Education and Human Resources (EHR), a unit within NSF, promotes rigor and vitality within the Nation's STEM education enterprise to further the development of the 21st century's STEM workforce and public scientific literacy. EHR does this through diverse projects and programs that support research, extension, outreach, and hands-on activities serving STEM learning and research at all institutional (*e.g.* pre-school through postdoctoral) levels in formal and informal settings; and individuals of all ages (birth and beyond). The RDE program focuses specifically on broadening the participation and achievement of people with disabilities in all fields of STEM education and associated professional careers. The RDE program has been funding this objective since 1994 under the prior name Program for Persons with Disabilities. Particular emphasis is placed on contributing to the knowledge base by addressing disability related differences in secondary and post-secondary STEM learning and in the educational, social and pre-professional experiences that influence student interest, academic performance, retention in STEM degree programs,

STEM degree completion, and career choices. Research and demonstration projects also investigate effective practices for transitioning students with disabilities across critical academic junctures, retaining students in undergraduate and graduate STEM degree programs, and graduating students with STEM associate, baccalaureate and graduate degrees. Research, demonstration, and enrichment project results inform the delivery of innovative, transformative and successful practices employed by the Alliances for Students with Disabilities in STEM to increase the number of students with disabilities completing associate, undergraduate and graduate degrees in STEM and to increase the number of students with disabilities entering our nation's science and engineering workforce. RDE projects contribute to closing the gaps occurring for people with disabilities in STEM fields by successfully disseminating findings, project evaluation results, and proven good practices and products to the public.

The original information collection, approved by OMB in 1996, surveyed three groups of students: students with disabilities in STEM fields, student with disabilities in other fields, and students without disabilities in STEM fields. These data allowed NSFD to understand more fully the population of students with disabilities in STEM fields and the issues they faced. The collection that will be submitted for reinstatement focuses more specifically on the outcomes of the RDE program, and how alliances and researchers receiving NSF RDE funding have improved the academic environment for students with disabilities. This information collection will consist of an on-line data instrument that RDE awardees will use to submit annual data on their project activities and participants, as well as future evaluation activities.

Use of the Information

This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project and strategic goals, as required by the President's Management agenda as represented by the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART) and the NSF's Strategic Plan. The Foundation's FY 2006–2011 Strategic Plan describes four strategic outcome goals of Discovery, Learning, Research Infrastructure, and Stewardship. NSF's complete strategic plan may be found at: *http://www.nsf.gov/publications/pubsumm.jsp?ods_key=nsf0648.*

Data collected will be used for accountability purposes, including responding from queries from Committees of Visitors and other scientific experts, and for separate research and evaluation studies.

Estimate of Burden

Respondents: Principal Investigators and/or project staff receiving NSF RDE awards.

Number of Respondents: 45.

Estimated Total Annual Burden on Respondents: 1220 hours.

Frequency of Responses: Data will be collected from awardees annually, and on an as-needed basis for future evaluation work.

Dated: August 7, 2009.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E9–19343 Filed 8–11–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0074; Docket No. 50–414]

Duke Energy Carolinas, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Energy Carolinas, LLC (the licensee) to withdraw its November 20, 2008, application, as supplemented by letter dated February 26, 2009, for proposed amendment to Facility Operating License No. 50–414 for Catawba Nuclear Station, Unit 2 (Catawba 2), located in York County, South Carolina.

The proposed amendment would have updated the leak-before-break evaluation for Catawba 2 and made associated updates to the Updated Final Safety Analysis Report for this unit.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 24, 2009 (74 FR 8273). However, by letter dated March 31, 2009, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 20, 2008, the supplement to the amendment dated February 26, 2009, and the licensee's letter dated March 31, 2009, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of August 2009.

For the Nuclear Regulatory Commission.

Jon H. Thompson,

Project Manager, Plant Licensing Branch 2–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–19296 Filed 8–11–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0351]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1236, ''Initial Startup Test Program to Demonstrate Remote Shutdown Capability for Water-Cooled Nuclear Power Plants.''

FOR FURTHER INFORMATION CONTACT: Jonathan Ortega-Luciano, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–1159 or e-mail *Jonathan.Ortega-Luciano@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the

staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, ''Initial Startup Test Program to Demonstrate Remote Shutdown Capability for Water-Cooled Nuclear Power Plants,'' is temporarily identified by its task number, DG–1236, which should be mentioned in all related correspondence. DG–1236 is proposed Revision 2 of Regulatory Guide 1.68.2, dated July 1978.

This guide describes an initial startup test program acceptable to the NRC staff for demonstrating hot shutdown capability and the potential for cold shutdown from outside the control room. This guide is applicable to water-cooled nuclear power plants.

Title 10, Part 50, of the *Code of Federal Regulations* (10 CFR Part 50), ''Domestic Licensing of Production and Utilization Facilities,'' and 10 CFR Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' 10 CFR 50.34, ''Contents of Applications; Technical Information,'' and 10 CFR 52.79, ''Contents of Application, Technical Information in FSAR,'' require, in part, that an applicant for a license to operate a production or utilization facility provide a safety analysis report (SAR) that includes the principal design criteria for the proposed facility. The introduction to Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR Part 50 states that these principal design criteria are to establish the necessary design, fabrication, construction, testing, and performance requirements for structures, systems, and components (SSCs) important to safety (*i.e.,* SSCs that provide reasonable assurance that the facility can be operated without undue risk to the health and safety of the public).

II. Further Information

The NRC staff is soliciting comments on DG–1236. Comments may be accompanied by relevant information or supporting data and should mention DG–1236 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, Mail Stop: TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0351]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–1236 may be directed to the NRC contact, Jonathan Ortega-Luciano at (301) 251–7627 or e-mail to *Jonathan.Ortega-Luciano@nrc.gov.*

Comments would be most helpful if received by October 9, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1236 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML091210435.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 4th day of August, 2009.

For the Nuclear Regulatory Commission.

John N. Ridgely,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–19295 Filed 8–11–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting

Board meeting: September 23, 2009–National Harbor, MD; the U.S. Nuclear Waste Technical Review Board will meet to discuss the implications of fuel-cycle technologies for nuclear waste management and disposal.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board will meet at National Harbor, Maryland, on Wednesday, September 23, 2009, to discuss the implications of alternative technological strategies for the management and disposal of spent nuclear fuel and high-level radioactive waste. The Board will receive an update on the Fuel Cycle Study being conducted at the Massachusetts Institute of Technology, and a panel of industry representatives will discuss their proposals to the U.S. Department of Energy (DOE) for recycling, reprocessing, and burning spent nuclear fuel in fast reactors. The Board also has invited a representative of the Nuclear Energy Agency to present an overview of efforts in other countries to manage and dispose of nuclear waste.

Information presented at the meeting will be used by the Board as part of its ongoing effort to inform Congress, the Secretary of Energy, and a blue-ribbon commission of technical issues and questions that should be addressed related to waste-management alternatives. The Nuclear Waste Policy Amendments Act of 1987 requires the Board to conduct an independent review of the technical and scientific validity of DOE activities related to nuclear waste management, including transporting, packaging, and disposing of spent nuclear fuel and high-level radioactive waste.

The Board meeting will be held at the Gaylord Hotel; 201 Waterfront Street; National Harbor, MD 20745; (tel.) 301–965–2000, (fax) 301–965–2039.

A detailed meeting agenda will be available on the Board's Web site, *http://www.nwtrb.gov,* approximately one week before the meeting. The agenda also may be obtained by telephone

request at that time. The meeting will be open to the public, and opportunities for public comment will be provided.

The meeting will begin at 8 a.m. on Wednesday morning. Time has been set aside at the end of the day for public comments. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

Transcripts of the meeting will be available on the Board's Web site, by e-mail, on computer disk, and on library-loan in paper format from Davonya Barnes of the Board's staff no later than October 19, 2009.

A block of rooms has been reserved for meeting attendees at the Gaylord Hotel. When making a reservation, please ask for the Nuclear Waste Technical Review Board rate, Group Code: NWTRB. Reservations should be made by September 1, 2009, to ensure receiving the meeting rate. To make reservations, call 301–965–4000 or go to the online link: *https://reservations.gaylordnational.gaylordhotels.comlcgi-bin/lansaweb?procfun+rn+resnet+NAT+funcparms+UP(A2560):;x-nclr9;?.*

Transportation options can be found on the hotel's Web site.

For information on the meeting, contact Daniel Metlay; for information on lodging or logistics, contact Linda Coultry; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495.

Dated: August 6, 2009.

Karyn D. Severson,

Acting Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. E9–19150 Filed 8–11–09; 8:45 am]

BILLING CODE 6820–AM–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; September 17, 2009 Board of Directors Meeting

TIME AND DATE: Thursday, September 17, 2009, 10 a.m. (OPEN Portion), 10:15 a.m. (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting OPEN to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of December 11, 2008 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 10:15 a.m.)

1. Report from Audit Committee.
2. Proposed FY2011 Budget and Allocation of Retained Earnings.
3. Proposed Amendment to OPIC Bylaws.
4. Finance Project—Mexico.
5. Finance Project—Global.
6. Finance Project—Iraq.
7. Approval of December 11, 2008 Minutes (Closed Portion).
8. Pending Major Projects.
9. Reports.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: August 10, 2009.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. E9–19422 Filed 8–10–09; 4:15 pm]

BILLING CODE 3210–01–P

DEPARTMENT OF STATE

[Public Notice 6669]

Shipping Coordinating Committee; Notice of Subcommittee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Thursday, August 27, 2009, in Room 10–0718 of Jemal's Riverside Building, 1900 Half Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the Second Intersessional of the International Maritime Organization (IMO) Standards of Training and Watchkeeping (STW) to be held be held at the IMO Headquarters, United Kingdom, from September 7 to September 11, 2009.

The primary matters to be considered include:

—Comprehensive review of the STCW Convention and the STCW Code;

—Amendments to the various chapters of the Convention, and include;

—Chapter I—General Provisions;

—Chapter II—Master and deck department;

—Chapter III—Engine department;

—Chapter V—Special training requirements for personnel on certain types of ships;

—Chapter VI—Emergency, occupational safety, security, medical care and survival functions;

—Chapter VII—Alternative Certification;

—Chapter VIII—Watchkeeping.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should contact the meeting coordinator; Ms. Zoe Goss by e-mail at *zoe.a.goss@uscg.mil*, by phone at (202) 372–1425, by fax at (202) 372–1926, or in writing at Commandant (CG–5212), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1308, Washington, DC 20593–0001 not later than 72 hours before the meeting. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. A member of the public needing reasonable accommodation should make his or her request by August 20th. Requests made after that date might not be possible to fulfill.

Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/hq/cg5/imo.*

Dated: August 6, 2009.

J. Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E9–19352 Filed 8–11–09; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 6667]

Industry Advisory Panel: Notice of Open Meeting

The Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, September 3, 2009 from 9:30 a.m. until 3:30 p.m. Eastern Standard Time. The meeting will be held in room 1107 of the U.S. Department of State, located at 2201 C Street, NW. (entrance on 23rd Street), Washington, DC. For logistical and security reasons, it is imperative that everyone enter and exit using only the 23rd Street entrance. The majority of the meeting will be devoted to an exchange of ideas between the Department's Bureau of Overseas Buildings Operations' senior management and the panel members, on design, operations, and building maintenance. There will be a reasonable time provided for members of the public to provide comment.

Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should

provide, by August 21, 2009, their name, professional affiliation, date of birth, citizenship, and a valid government-issued ID number (*i.e.,* U.S. government ID, U.S. military ID, passport, or drivers license with state) by e-mailing: *iapr@state.gov*. Requests for reasonable accommodation should be sent to the same e-mail address by August 27th. Requests made after that time will be considered, but might not be able to be fulfilled. Because of space restrictions, we request that companies interested in attending send only one representative.

If you have any questions, please contact Jonathan Blyth at *BlythJJ@State.Gov* or on (703) 875–4131.

Dated: July 29, 2009.

Adam Namm,

Director, Acting, Bureau of Overseas Building Operations, Department of State.

[FR Doc. E9–19363 Filed 8–11–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 6639]

Shipping Coordinating Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Thursday, September 10, 2009, in Room 1303 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593. The primary purpose of the meeting is to prepare for the 14th Session of the International Maritime Organization (IMO) Sub-Committee on Dangerous Goods, Solid Cargoes and Containers (DSC 14) to be held at the IMO Headquarters in London, England from September 21 to September 25, 2009.

The primary matters to be considered at DSC 14 include:

—Amendments to the International Maritime Dangerous Goods (IMDG) Code and Supplements including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods.

—Amendments to the International Maritime Solid Bulk Cargoes Code (IMSBC Code) including evaluation of properties of solid bulk cargos.

—Amendments to the Code of Safe Practice for Cargo Stowage and Securing (CSS Code).

—Casualty and incident reports and analysis.

—Review of the Code of Practice for the Safe Unloading and Loading of Bulk Carriers (BLU Code).

—Review of the Recommendations on the Safe Use of Pesticides in Ships.

—Guidance on protective clothing.

—Revision of the Code of Safe Practice for Ships Carrying Timber Deck Cargoes.

—Stowage of water-reactive materials.

—Amendments to the International Convention for Safe Containers, 1972 and associated circulars.

—Review of the Guidelines for packing of cargo transport units.

—Review of documentation requirements for dangerous goods in packaged form.

—Amendments to MARPOL Annex III.

—Revision of the Recommendations for entering enclosed spaces aboard ships.

—Consideration for the efficacy of Container Inspection Programme.

—Installation of equipment for detection of radioactive sources or radioactive contaminated objects in ports.

Members of the public may attend the September 10, 2009 meeting up to the seating capacity of the room. The Coast Guard Headquarters building is accessible by taxi and privately owned conveyance. Please note that parking in the vicinity of the building is extremely limited and that public transportation is not generally available. For members of the public that cannot attend the meeting in person, telephone conferencing may be available upon request. To facilitate the building security process or to obtain additional meeting information please contact Mr. R. Bornhorst by mail at U.S. Coast Guard (CG–5223), 2100 Second Street, SW STOP 7126, Washington, DC 20593–7126; by e-mail at *Richard.C.Bornhorst@uscg.mil*; or by calling (202) 372–1426. A member of the public needing reasonable accommodation should make his or her request by September 3rd. Requests submitted after that date will be considered, but might not be able to be fulfilled. Additional information regarding this and other SHC public meetings and associated IMO meetings may be found at: *http://www.uscg.mil/imo*.

Dated: August 6, 2009.

J. Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E9–19354 Filed 8–11–09; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 6638]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet on September 14th and September 15th at the Department of State, 2201 ''C'' Street, NW., Washington, DC. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Nathaniel Smith, Office of the Historian (202–663–3268) no later than September 10, 2009, to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/State, passport number/country, or US government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Nathaniel Smith for acceptable alternative forms of picture identification. In addition, any requests for reasonable accommodation should be made prior to September 7, 2009. Requests for reasonable accommodation received after that time will be considered, but might be impossible to fulfill.

The Committee will meet in open session from 1:30 p.m. through 2:30 p.m. on Monday, September 14, 2009, in the Department of State, 2201 ''C'' Street NW., Washington, DC, in Conference Room 1107, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions from 2:45 p.m. until 5 p.m. on Monday, September 14, 2009, and 9 a.m. until 12 p.m. on Tuesday, September 15, 2009, will be closed in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure. Questions concerning the meeting should be directed to Ambassador John Campbell, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the

Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: July 29, 2009.

Ambassador John Campbell,

Executive Secretary, Department of State.

[FR Doc. E9–19355 Filed 8–11–09; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 6723]

Defense Trade Advisory Group; Notice of Membership

AGENCY: Department of State.

ACTION: Notice.

The U.S. Department of State's Bureau of Political-Military Affairs' Defense Trade Advisory Group (DTAG) is accepting membership applications for the 2010–2012 term. The Bureau of Political-Military Affairs is interested in applications from representatives of the United States defense industry, relevant trade and labor associations, academia, and foundation personnel.

The DTAG was established as a continuing committee under the authority of 22 U.S.C. Sections 2651a and 2656 and the Federal Advisory Committee Act, 5 U.S.C. App. (''FACA''). The purpose of the DTAG is to provide the Bureau of Political-Military Affairs with a formal channel for regular consultation and coordination with U.S. private sector defense exporters and defense trade specialists on issues involving U.S. laws, policies, and regulations for munitions exports. The DTAG advises the Bureau on its support for and regulation of defense trade to help ensure that impediments to legitimate exports are reduced while the foreign policy and national security interests of the United States continue to be protected and advanced in accordance with the Arms Export Control Act (AECA), as amended. Major topics addressed by the DTAG include (a) Policy issues on commercial defense trade and technology transfer; (b) regulatory and licensing procedures applicable to defense articles, services, and technical data; (c) technical issues involving the U.S. Munitions List (USML); and (d) questions relating to actions designed to carry out the AECA and International Traffic in Arms Regulations (ITAR).

Members are appointed by the Assistant Secretary of State for Political-Military Affairs as representatives of their organizations, companies, or sectors, on the basis of substantive and technical expertise and qualifications. The 2010–2012 DTAG will be expected to represent the views of their organizations, being selected from a representative cross-section of subject matter experts from the United States defense industry, relevant trade and labor associations, academia, and foundation personnel. All DTAG members shall be aware of the Department of State's mandate that arms transfers must further U.S. national security and foreign policy interests. DTAG members also shall be versed in the complexity of commercial defense trade and industrial competitiveness, and all members must be able to advise the Bureau on these matters.

DTAG members' responsibilities include:

- Service for a consecutive two-year term which may be renewed or terminated at the discretion of the Assistant Secretary of State for Political-Military Affairs (membership shall automatically terminate for members who fail to attend two consecutive DTAG plenary meetings).
- Making recommendations in accordance with the DTAG Charter and the FACA.
- Making policy and technical recommendations within the scope of the U.S. commercial export control regime as mandated in the AECA, the ITAR, and appropriate directives.

Please note that DTAG members may not be reimbursed by the Department of State or any other USG agency for travel, per diem, and other expenses incurred in connection with their duties as DTAG members.

How to apply: Applications in response to this notice must contain the following information: (1) Name of applicant; (2) affirmation of U.S. citizenship; (3) organizational affiliation and title, as appropriate; (4) mailing address; (5) work telephone number; (6) e-mail address; (7) résumé; and (8) summary of qualifications for DTAG membership.

This information may be provided via two methods:

- *E-mailed to the following address: Frantza@state.gov.* In the subject field, please write, ''DTAG Application.''
- *Send in hardcopy to the following address:* Alexandra Frantz, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

All applications must be postmarked by October 9, 2009.

Dated: August 5, 2009.

Robert S. Kovac,

Designated Federal Official, Defense Trade Advisory Group, Department of State.

[FR Doc. E9–19359 Filed 8–11–09; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 1, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2007–0066.

Date Filed: July 29, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 19, 2009.

Description: Application of Hainan Airlines Co., Limited (''Hainan Airlines'') requesting that the Department amend its foreign air carrier permit to enable it to engage in scheduled air transportation of persons, property and mail between Beijing, People's Republic of China (PEK), on the one hand, and Honolulu, Hawaii (HNL), on the other hand. Hainan Airlines also requests exemption authority to the extent necessary so that it may exercise the rights requested in this application prior to the issuance of an amended foreign air carrier permit.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–19369 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0152]

Think Technology AS; Grant of Application for a Temporary Exemption From the Advanced Air Bag Requirements of Federal Motor Vehicle Safety Standard No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for temporary exemption from certain advanced air bag requirements of Federal Motor Vehicle Safety Standard No. 208.

SUMMARY: This document grants the Think Technology AS (Think) application for a temporary exemption from certain advanced air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.* The exemption applies to the Think City EV vehicle line. In accordance with 49 CFR Part 555, the basis for the grant is that the exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably lower the safety or impact protection level of that vehicle. The exemption is effective from February 1, 2010 through January 31, 2012.

NHTSA published a notice of receipt of the application on September 16, 2008 and afforded an opportunity for public comment.

DATES: The exemption is effective February 1, 2010 through January 31, 2012.

FOR FURTHER INFORMATION CONTACT: Ari Scott, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41–326, Washington, DC 20590. *Telephone:* (202) 366–2992; *Fax:* (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as ''advanced air bags.'' [1] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemption granted by this agency. In the present case, we are addressing a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of a small electric-powered car.

II. Overview of Think's Petition for Low-Emission Vehicle Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Think has petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that the exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably lower the safety or impact protection level of the vehicle. Think requested the exemption for a period of two years. The petitioner stated that the vehicle will be equipped with standard air bags.

III. Background of Manufacturer

The Think City EV is a two-seat hatchback vehicle that originally began as a project started in 1998 by PIVCO AS in Norway. According to the petitioner, in 2000, the PIVCO project was acquired by Ford Motor Company, a major U.S. automobile manufacturer, as part of an effort to comply with the State of California's Zero Emissions Vehicle mandate. Ford created a project called Think, which produced 350 Think City EV cars based on the PIVCO project in 2000, which were leased as part of a demonstration and testing project. However, in light of the California Air Resources Board's decision in 2003 to essentially end the requirement for ''pure'' electric cars, Ford sold the Think project to KamKorp, a company based in Switzerland. In 2006, a new ownership occurred creating Think Global AS.

Think Technology AS is a wholly-owned subsidiary of Think Global AS, a holding company that possesses the intellectual property rights to the Think City EV. The current owners of Think Global AS include the founders of the PIVCO project, the precursor to the Think City EV, as well as various other entities in Norway and other countries. Neither Think Global AS nor Think Technology AS (hereinafter, ''Think'') has sold any vehicles in the U.S. to date.

IV. Statutory Basis for Requested Part 555 Exemption

The National Traffic and Motor Vehicle Safety Act, codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for this section to NHTSA.

NHTSA established Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions. Vehicle manufacturers may apply for temporary exemptions on several bases, one of which is that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle.

A petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301.

To be considered, a petition submitted on the basis that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle must include specified information set forth at

[1] *See* 65 FR 30680 (May 12, 2000).

§ 555.6(c). The main requirements of this section include: (1) Substantiation that the vehicle is a low-emission vehicle; (2) documentation establishing that a temporary exemption would not unreasonably degrade the safety of the vehicle; (3) substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle; (4) a statement of whether the petitioner intends to conform to the standard at the end of the exemption period; and (5) a statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted.

NHTSA notes that while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a ''temporary basis,'' [2] the statute also provides that an exemption may be renewed on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will grant renewal petitions, thereby potentially imparting semi-permanent exemption from a safety standard. Exempted manufacturers contemplating seeking renewal should bear in mind that the agency is directed to consider not only whether an exemption would make the development or field evaluation of a low-emission motor vehicle easier but other factors such as whether an exemption is in the public interest and consistent with the Safety Act generally.

V. Think's Petition

As indicated above, Think has petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. Think requested an exemption for a period of two years upon the grant of the petition, although in a subsequent communication it requested that the starting date for that period be delayed until February 1, 2010.

The requested exemption includes the advanced air bag requirements in S14.5.2 of FMVSS No. 208, the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

The basis for the petition was that the exemption would facilitate the development of a low-emission vehicle and would not unreasonably lower the safety or impact protection level of the vehicle. Think asserted that the Think City EV emits zero pollutants, would not unreasonably degrade safety, has substantial public interest value, and that the exemption is necessary to facilitate the development. The following is a brief summary of the salient points of Think's petition, and more complete information can be found by examining the notice of receipt or the petition itself, available in the NHTSA docket (NHTSA–2008–0152).

Think asserts that the Think City EV is a low-emission vehicle. It states that 49 U.S.C. 30113(a) defines a low-emission vehicle as one that conforms to the applicable standards for new vehicles contained in section 202 of the Clean Air Act (42 U.S.C. 7521), and whose emissions are significantly below one of those standards. Section 202 of the Clear Air Act currently controls hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter. Think asserts that the Think City EV emits none of the listed pollutants. It also asserts that the vehicle has no additional systems installed that could produce the named pollutants, *e.g.*, a fuel-fired heating system.

Think also stated that the requested exemption would not unreasonably degrade the safety of the Think City EV. While it is requesting an exemption from the advanced air bag requirements, the Think City EV is not without air bags. Think states that the Think City EV will comply with the pre-advanced air bag requirements of FMVSS No. 208. As stated in the petition, the only differences between a compliant vehicle and the Think City EV are the test requirements discussed above in the requested exemption.

Additionally, Think cited several safety features of the Think City EV that will help to prevent injuries. The petitioner stated that the vehicle was designed, engineered and tested by Ford to meet all applicable NHTSA requirements for the 2003 model year. It stated further that the Think City EV will: (1) Meet the new belted test requirements of S14.5.1(a), which imposes more stringent limits for head injury criteria, chest deflection, and neck injury than the old version to which the vehicle was originally designed; (2) meet the criteria for injury prevention under S13, with regard to the unbelted sled test; (3) have FMVSS No. 209 and 210 compliant belts and anchorages, together with pretensioners and load limiters; (4) have a passenger air bag on-off switch permitted by FMVSS No. 208; and (5) meet all other requirements of the FMVSSs. Given these features, the petitioner argues that the Think City EV will not unreasonably degrade safety or impact protection, and that the risk to safety is *de minimis*.

Think states that the temporary exemption it seeks would facilitate the evaluation and development of the Think City EV. The petitioner claims that it currently does not have the ability to design or acquire an air bag system that meets the advanced air bag requirements of Standard No. 208. While the Think City EV's air bag system is a dual stage system, it is currently designed with a fixed phase delay as Think does not yet have hardware, such as seat position sensing, that can be utilized to meet all of the advanced air bag requirements. Think also asserts that off-the-shelf systems that meet the requirements are not currently available, and that the sourcing of a custom-designed system is not straightforward or financially viable at this time. According to that company, the requested exemption would facilitate the development of the Think City EV by allowing Think to enter the U.S. market, a key target market for the vehicle at issue. Think states that this would enable the company to evaluate the vehicle, and based on this evaluation, continue development, including successive models. Specifically, Think claims that the requested two year exemption would permit:

- Evaluation and further development of alternative battery concepts;
- Evaluation and further development of vehicle systems based on real-world usage under U.S.-specific driving and storage conditions;
- Product evaluation through U.S. warranty analysis and customer feedback;
- Further evaluation of the company's plan to establish a U.S. manufacturing operation; and
- Development of a compliant advanced air bag system.

Think stated that at the end of the exemption period, it intends to conform with all advanced air bag requirements.

Finally, Think set forth reasons why the granting of the petition would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301. Think believes that the Think City EV is a major step forward in transportation that will benefit the environment, and that granting the exemption will protect U.S. consumer choice. According to the petitioner, battery electric vehicles like the Think City EV can reduce dependence on oil and are more energy efficient compared to Internal Combustion Engine powered cars.

[2] 49 U.S.C. 30113(b)(1).

Think also asserted that battery recharging costs are more predictable than gasoline prices, and not as subject to volatile international incidents.

VI. Notice of Receipt

On September 16, 2008, we published in the **Federal Register** (73 FR 54660) a notice announcing receipt of an application from Think Technology AS for a temporary exemption from the advanced air bag requirements of FMVSS No. 208 for the Think City EV. We invited public comment on Think's application. The only comment we received was from Think, indicating that due to a delay in its production schedule, it was requesting that the exemption begin on November 1, 2009. In a subsequent e-mail, Think requested that the commencement of the exemption be further delayed until February 1, 2010.

VII. Final Decision

The following discussion provides our decision regarding Think's temporary exemption request pertaining to the advanced air bag requirements of FMVSS No. 208.

We are granting Think's petition for the Think City EV to be exempted from the following portions of the advanced air bag requirements of FMVSS No. 208: S14.5.2, S15, S17, S19, S21, S23, and S25. The exemption is for a two year period. The agency's rationale for this decision is as follows.

First, we believe it is manifestly in the public interest to accelerate the development of electrically driven vehicles. Electric vehicles can help reduce the reliance of the nation on oil, and reduce greenhouse gas and other emissions. Moreover, development of electric vehicles contributes to the expansion of consumer choices.

NHTSA further agrees that the requested exemption would make the development or field evaluation of a low-emission vehicle easier. Think has stated that there are a number of concepts that need evaluation and further development at this time. There are, at this time, very few other fully battery-operated vehicles available in the U.S. Think stated that substantial further evaluation of the market and available technologies is needed to further the development of these types of vehicles.

Think explained that the exemption would, among other things, permit evaluation and further development of alternative battery concepts, evaluation and further development of vehicle systems based on real-world usage under U.S.-specific driving and storage conditions, and product evaluation through U.S. warranty analysis and customer feedback. We agree that the exemption would permit that company to engage in these activities, and thereby make the development or field evaluation of a low-emissions vehicle easier.

NHTSA also concludes that granting this exemption would not unreasonably lower the safety or impact protection level of the vehicle. Of particular note, the Think City EV will have air bags and will be certified to meet the pre-advanced air bag requirements of FMVSS No. 208. Moreover, with exception of the advanced air bag requirements, it will be required to be certified to meet all other requirements contained in the applicable FMVSSs.

Furthermore, while the Think City EV lacks an advanced air bag that meets the requirements of FMVSS No. 208, it does employ a two-stage air bag that uses a fixed delay. The Think City EV is also equipped with an air bag on-off switch, which can be used to turn off the front passenger air bag when children are seated in the right front passenger seat.

Additionally, Think stated in its petition that while it is requesting an exemption from the requirements of S14.5.2, with regard to the unbelted tests, the Think City EV will meet the 50th percentile adult male dummy sled test requirements in S13, as well as the injury criteria in S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 (the criteria specified in S14.5.2).

We also observe that only a limited number of vehicles would be produced under the requested exemption. Manufacturers granted exemptions on the basis of furthering the development of low-emission vehicles are limited to selling 2,500 exempted vehicles in any 12-month period. Given that this is a two-year exemption, no more than 5,000 vehicles could be built that lack the advanced air bag protection of FMVSS No. 208. In its petition, Think stated that it projected selling 500 vehicles during the first year of the requested exemption and 2,500 vehicles during the second year.

Based on the above discussion concerning safety, we believe that any impact on safety from granting the requested exemption would be negligible.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable FMVSSs in effect on the date of manufacture ''except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. __.'' This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label. The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a FMVSS.

In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, ''except for S14.5.2, S15, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *.'' We note that the phrase ''Advanced Air Bag Requirements'' is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

In consideration of the foregoing, we conclude that granting the requested exemption from the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection,* would facilitate the field evaluation and development of a low-emission vehicle, and would not unreasonably lower the safety or impact protection level of that vehicle. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(iii), Think Technology AS is granted NHTSA Temporary Exemption No. EX 09–02, from S14.5.2, S15, S17, S19, S21, S23, and S25 of FMVSS No. 208. The exemption is for the Think City electric vehicle and shall run from February 1, 2010 until January 31, 2012 as indicated in the **DATES** section of this notice. The exemption may not be used for more than 2,500 vehicles to be sold in the United States in any 12-month period.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: July 30, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–19380 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below.

[Docket Number FRA–2009–0069]

Applicant: Norfolk Southern Corporation, Mr. B. T. Fennell, Division Superintendent, Harrisburg Division, 4600 Deer Path Road, Harrisburg, Pennsylvania 17111.

The Norfolk Southern Corporation (NS) requests a waiver from the requirements of 49 CFR 236.566; Locomotive of each train operating in train stop, train control, or cab signal territory; equipped.

The request is to permit NS to use non-equipped, remote-controlled locomotives to operate as controlling units on the NS Morrisville Line, in 261–CSS territory, between CP–MA, Milepost (MP) MV 4.7 and CP–Lang, MP MV 6.3.

The reason given for the proposed waiver is to provide head room out of the Morrisville Yard for remotely operated non-equipped locomotives onto the Main Track and Signaled Siding for switching operations. It is limited to switching movements West of CP–MA into equipped territory and reversing back into Morrisville Yard.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA–2009–0069 and may be submitted by one of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; or
- *Hand Delivery:* Room W12–140 of the U.S. Department of Transportation West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC on August 6, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–19279 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

[Docket Number FRA–2009–0079]

Applicant: Norfolk Southern Corporation. Mr. B. L. Sykes, Chief Engineer C&S Engineering, 1200 Peachtree Street, NE., Atlanta, Georgia 30309.

The Norfolk Southern Corporation (NS) seeks approval of the proposed discontinuance and removal of the control signals and the conversion of a power-operated crossover to hand-operation at CP–111, Milepost EP–73.4, on the NS Harrisburg Division, Port Road Branch, Running Tracks B & C, Harrisburg, Pennsylvania. Four signals are to be removed and the power-operated crossover is to be converted to hand-operation.

The reason given for the proposed changes is to eliminate facilities no longer needed for present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA–2009–0079 and may be submitted by one of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200

New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; or

• *Hand Delivery:* Room W12–140 of the U.S. Department of Transportation West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on August 6, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–19278 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Fiscal Year 2010 Safety Grants

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: This notice is to inform the public of FMCSA's Fiscal Year (FY) 2010 safety grant opportunities and FMCSA's changes to its application and award processes for grant programs. The Agency instituted procedural changes in an effort to simplify and streamline its grants application and award processes. The 11 safety programs include the Motor Carrier Safety Assistance Program (MCSAP) Basic grants; MCSAP Incentive grants; MCSAP New Entrant Safety Audit grants; MCSAP High Priority grants; Commercial Motor Vehicle (CMV) Operator Safety Training grants; Border Enforcement grants (BEG); Commercial Driver's License Program Improvement (CDLPI) grants; Commercial Driver's License Information System (CDLIS) Modernization grants; Performance and Registration Information Systems Management (PRISM) grants; Safety Data Improvement Program grants (SaDIP); and the Commercial Vehicle Information Systems and Networks (CVISN) grants. Each grant program was provided for in the Agency's most recent authorization, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The purpose of this notice is to provide grantees with information on the Agency's FY 2010 safety grant application deadlines.

FOR FURTHER INFORMATION CONTACT: Please contact the following FMCSA staff with questions or needed information on the Agency's grant programs:

MCSAP New Entrant Safety Audit Grants—Arthur Williams, *arthur.williams@dot.gov*, 202–366–3695, Border Enforcement Grants—Carla Vagnini, *carla.vagnini@dot.gov*, 202–366–3771, MCSAP High Priority Grants—Cim Weiss, *cim.weiss@dot.gov*, 202–366–0275, CMV Operator Safety Training Grants—Julie Otto, *julie.otto@dot.gov*, 202–366–0710, CDLPI Grants—Brandon Poarch, *brandon.poarch@dot.gov*, 202–366–3030, CDLIS Modernization Grants—Brandon Poarch, *brandon.poarch@dot.gov*, 202–366–3030, SaDIP Grants—Betsy Benkowski, *betsy.benkowski@dot.gov*, 202–366–4808, PRISM Grants—Tom Lawler, *tom.lawler@dot.gov*, 202–366–3866, CVISN Grants—Julie Lane, *julie.lane@dot.gov*, 202–385–2391.

All staff may be reached at FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 24, 2009, FMCSA published a notice with request for comments in the **Federal Register** (74 FR 12437) regarding the establishment of Fiscal Year (FY) 2010 grant application due dates and other grant program changes.

Background and Purpose

FMCSA recognizes that State governments and other grantees are dependent on its safety grants to develop and maintain important commercial motor vehicle (CMV) safety programs. FMCSA further acknowledges that delays in awarding grant funds may have an adverse impact on these important safety programs. As a result, FMCSA conducted a grants process review, in an effort to identify ways to streamline the application, award, and grants management processes, and to award grant funds earlier each fiscal year. In addition, FMCSA made changes in the grants application, award and oversight processes to standardize application forms, increase the use of electronic documents, standardize quarterly reports and reduce the number of needed grant amendments.

Discussion of Comments

Five comments were received in the docket. All commenters supported FMCSA's changes, especially any efforts to award funds earlier in the fiscal year. One commenter suggested delaying on the proposed application dates until FY 2011. Another commenter suggested one due date for all grants. Other comments included suggestions beyond the scope of FMCSA's current changes. This information will be considered during future grant program modifications.

FY 2010 Safety Grants Program

First, the schedule for the FY 2010 grant applications is as follows:

MCSAP Basic and Incentive Grants—August 1, 2009.

New Entrant Safety Audit Grants—September 1, 2009.

Border Enforcement Grants—September 15, 2009.

CMV Operator Safety Training Grants—October 1, 2009.

SaDIP Grants—October 2, 2009.

MCSAP High Priority Grants—October 15, 2009.

CDLPI Grants—November 1, 2009.

CDLIS Modernization Grants—November 15, 2009.

PRISM Grants—December 1, 2009.

CVISN Grants—December 1, 2009.

Second, consistent with its contract authority, FMCSA will enter into grant agreements beginning October 1 or as soon thereafter as administratively practicable. FMCSA intends to enter into grant agreements no later than 90 days from the date the application is due but not prior to October 1.

Third, for all grants other than MCSAP Basic and Incentive, FMCSA will use a standard grant application form and a new quarterly reporting process. In its grant announcements on grants.gov, FMCSA will use Standard Form 424 (''Application for Federal Assistance'') and its attachments for all of its grant programs. While each grant

program may request different data in some of the data fields on the form, the use of the Standard Form 424 will be mandatory. FMCSA must adopt the Standard Form—Project Progress Report (SF–PPR) as its preferred form for quarterly reporting. Therefore, the SF–PRR would be mandatory for quarterly reporting. However, individual grant programs may require additional SF–PRR attachments. Additional guidance will be provided to grant recipients upon award.

Fourth, FMCSA is increasing the use of electronic documents. As a result, the number of original copies of grant agreements required to be signed by Grantees and submitted to FMCSA is now two. In addition, FMCSA will provide most grant agreement documents electronically to its financial processing office. Grantees are, however, still required to submit the Automated Clearing House (ACH) Vendor Payment Form (SF–3881) directly to FMCSA's financial processing office by U.S. Postal Service, courier service or secure fax.

Application Information for FY 2010 Grants

General information about FMCSA grant programs is available in the Catalog of Federal Domestic Assistance which can be found on the internet at *http://www.cfda.gov*. To apply for funding, applicants must register with grants.gov at *http://www.grants.gov/applicants/get–registered.jsp* and submit an application in accordance with instructions provided for each grant program.

If funds remain available within each grant program, applications filed after the deadline will be considered.

Evaluation Factors: The following evaluation factors will be used in reviewing the applications for all FMCSA discretionary grants:

(1) *Prior performance*—Completion of identified programs and goals per the project plan.

(2) *Effective Use of Prior Grants*—Demonstrated timely use and expensing of available funds.

(3) *Cost Effectiveness*—Applications will be evaluated and prioritized on the expected safety impact relative to the investment of grant funds. Where appropriate, costs per unit will be calculated and compared with national averages to determine effectiveness. In other areas, proposed costs will be compared with historical information to confirm reasonableness.

(4) *Applicability to announced priorities*—If national priorities are included in the grants.gov notice, those proposals that specifically address these issues will be given priority consideration.

(5) Ability of the applicant to support the strategies and activities in the proposal for the entire project period of performance.

(6) Use of innovative approaches in executing a project plan to address identified safety issues.

(7) Feasibility of overall program coordination and implementation based upon the project plan.

(8) Grant specific evaluation factors as described in the grants.gov application information.

Issued on: August 6, 2009.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

David Anewalt,

Acting Associate Administrator for Research and Information Technology.

[FR Doc. E9–19285 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Seattle-Tacoma International Airport, Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Seattle-Tacoma International Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before August 6, 2009.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Ms. Carol Suomi, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Ave., SW., Suite 250, Renton, Washington 98057.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Allan Royal, Manager, Port of Seattle Real Estate Development, P.O. Box 68727, Seattle, Washington, 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Roman Pinon, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98057.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Seattle-Tacoma International Airport under the provisions of the AIR 21.

On June 17, 2009, the FAA determined that the request to release property at the Seattle Tacoma International Airport submitted by the Port of Seattle, Washington met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole or in part, no later than August 6, 2009.

The following is a brief overview of the request:

The Seattle-Tacoma International Airport requests the release of 495,653 square feet of non-aeronautical airport property to Port of Seattle, Washington. The current property is vacant and has no ability to have an aviation use associated with the land. The purpose of this release is to allow the Port to sell the subject land that no longer serves any aeronautical purpose at the airport to the City of Des Moines, WA for use as a jail site.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, inspect the application, notice and other documents germane to the application in person at the Seattle-Tacoma International Airport, 17801 International Blvd., Seattle, Washington, 98188.

Issued in Renton, Washington on July 6, 2009.

Carol Suomi,

Manager, Seattle Airports District Office.

[FR Doc. E9–19055 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being

requested, and the petitioner's arguments in favor of relief.

City of Crystal Lake, Illinois

[Waiver Petition Docket Number FRA–2009–0013]

The City of Crystal Lake, Illinois (City) seeks a permanent waiver of compliance from a certain provision of the Use of Locomotive Horns at Highway-Rail Grade Crossings, Title 49 CFR part 222. The City is seeking a waiver from the rule that requires active grade crossing warning devices at public crossings within a quiet zone be equipped with constant warning time devices. Specifically, the City is seeking a waiver from the provisions of 49 CFR 222.35(b)(1), so that the active grade crossing warning devices at Prairie Street are not required to be equipped with constant warning time devices.

49 CFR 222.35(b)(1) reads as follows: ''Each public highway-rail grade crossing in a New Quiet Zone established under this part must be equipped, no later than the quiet zone implementation date, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing and that conform to the standards contained in the MUTCD. Such warning devices shall be equipped with constant warning time devices, if reasonably practical, and power-out indicators.'' The purpose of constant warning time devices (CWT) is so that the crossing warning devices provide the same amount of warning time regardless of the speed of the approaching train.

The City is in the process of establishing a new quiet zone along the Union Pacific Railroad's (UP) McHenry Subdivision, which would extend from approximately Milepost (MP) 58.21 to MP 59.35. The quiet zone will consist of two public at-grade crossings, one of which is at IL Route 176 (DOT # 178 803B) and the other is at Prairie Street (DOT #178 802 U).

Prairie Street is a two lane, 40 foot wide, asphalt road with an average daily traffic of 1,450 and a posted speed limit of 30 miles per hour (mph). The crossing has two railroad tracks, one of which is the main track and the other is an industrial track. There are nine train movements per day (six on the main track and three on the industrial track) with a maximum timetable speed of 20 mph. The automatic warning devices at the crossing are standard flashing lights with gates. CWT is present for detecting trains on the main track and DC circuits are used on the industrial track.

The lack of CWT on the industrial track was first raised at a diagnostic review meeting on February 22, 2008. Since that date, the City has attempted to resolve the question as to whether or not CWT was ''reasonably practical'' as used in the rule with the Railroad, FRA and the Illinois Commerce Commission (ICC) without success. An FRA representative indicated that it usually leaves the determination of this up to the State agency responsible for crossing safety, which is ICC in this case and the railroad. Neither party in this instance is willing to make a determination.

The City cites the Manual on Uniform Traffic Control Devices Section 8D.06 which states that CWT shall be used where the speed of trains on a given track vary considerably under normal operation. The City also refers to the Illinois Department of Transportation Bureau of Local Road's manual chapter 40–2.04, which provides in part that CWT should be considered where trains operate at variable speeds on the line.

The City's position is that CWT is not reasonably practical for a number of reasons. There are relatively few trains through the crossing and they travel at a low constant speed. Prairie Street is a low volume street which has not had a crossing collision within the last 5 years. The City is working on removing the on-the-street bike route in the future which will enhance safety. It also states that a quiet zone can be established without making any improvements at Prairie Street and notes that UP did not raise the issue of the crossing not having CWT during the 60 day comment period on the Notice of Intent to establish a quiet zone. Lastly, the City points out that the money necessary to install CWT would be taking away funds that could be used to improve the City's roadways which are in need of improvements.

The City states that it attempted to reach an agreement with UP in regard to their requirement for CWT through numerous correspondence; however, no resolution was attained. Due to the unresolved issue, the City is not filing a joint waiver. It is the opinion of the City that the absence of a joint waiver that included UP would not significantly contribute to public safety as is described in its petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2009–0013) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC on August 6, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–19276 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions

involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

City of Pendleton, Oregon (Waiver Petition Docket Number FRA–2008–0120)

The City of Pendleton, Oregon (City), seeks a permanent waiver of compliance from a certain provision of the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR part 222. The City is seeking a waiver from the rule that requires a train-automobile collision that occurred on June 12, 2006, be counted as a ''relevant collision'' for the purpose of determining whether there has been a ''relevant collision'' pursuant to 49 CFR 222.41(a)(1)(iii). Specifically, the City is seeking a waiver from the provisions of 49 CFR 222.9, wherein ''relevant collision'' is defined. The waiver petition requests that FRA stay any action to revoke the City's quiet zone until 120 days after the final decision on this waiver to allow the City to address supplemental safety measures that could be installed if the waiver is denied.

49 CFR 222.9 defines a relevant collision as follows: Relevant collision means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision in which the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car. With respect to the Pre-Rule Partial Quiet Zones, a relevant collision shall not include collisions that occur during the time period within which the locomotive horn is routinely sounded.

The City received a letter from FRA dated August 15, 2008, informing that the annual risk review required under 49 CFR 222.51(b)(1) for its quiet zone had revealed that the Quiet Zone Risk Index (QZRI) was 20,454.05 and that the current value of the National Significant Risk Threshold (NSRT) was 17,610. Since the QZRI was less than twice the NSRT (35,220) and there had been a relevant collision on June 12, 2006, at the S.W. Frazier Avenue and 9th Street S.W. crossing (DOT Number 809 011 C), the quiet zone was no longer qualified per 49 CFR 222.51(b)(2)(iii) and that the quiet zone would terminate in 6 months unless the City took the steps required in 49 CFR 222.51(b)(4). In order to retain its quiet zone, the City would be required to provide FRA within 6 months a written commitment to lower the risk in the quiet zone and detail the specific steps that would be taken. The City would have to implement the steps to reduce the risk no later than August 15, 2011, or the quiet zone would be terminated. The quiet zone would have remained qualified if the collision of June 12, 2006, had not been deemed a relevant collision.

The City claims that due to the unusual circumstances of this collision, it should not be classified as a relevant collision. If this was the case, then the quiet zone would still be in compliance and the City would not have to take the actions required in 49 CFR 222.51(b)(4).

The collision in question occurred at the S.W. Frazier Avenue and 9th Street S.W. crossing. S.W. Frazier Avenue is a one-way street with traffic traveling east that has flashing lights and gates that completely block the street when the gates are lowered. The flashing lights and gates are located immediately west of the track. 9th Street S.W. is a two-way street that runs north and south and has flashing lights and a gate for northbound traffic only. The Union Pacific Railroad's (UP) track runs diagonally through the intersection of the two streets from the southeast to the northwest with a slight curve towards the north. The crossing is within the City's quiet zone.

The vehicle that was involved in the collision was backing out of a driveway located on the north side of S.W. Frazier Avenue immediately east of the UP's tracks. According to a citizen witness, the conductor and engineer, the vehicle backed out of the driveway and stopped on the crossing immediately before the locomotive entered the crossing. The engineer and conductor stated that the train was traveling between 23 and 25 miles per hour. The locomotive was approximately 20 feet from the crossing when the vehicle began to back out and the vehicle was traveling at a high rate of speed before stopping on the crossing. The engineer then sounded the locomotive's horn and initiated an emergency application of the train's brakes. The driver indicated that she had backed out farther than anticipated due to her foot slipping off the clutch. She stated that she tried to put the car into a forward gear and ''missed it.'' The vehicle was struck by the lead locomotive while the vehicle was stopped on the crossing. The automatic warning devices (flashing lights and gates) that were located on the west side of the tracks operated as intended.

The City argues the presence or absence of additional safety measures on this, or any other crossing in the quiet zone, would not have affected this collision. According to the police report, the train horn did sound but the driver did not respond. The City feels that the presence of train horns at this or other crossings in the vicinity would not likely have changed the incident. The City states that where the collision is independent of the train horn or supplement safety measures, the collision should not be considered a ''relevant collision.''

The City states that it made several efforts to obtain UP's support for the waiver but failed to reach an agreement and thus was not able to file a joint waiver. The City sent an e-mail on October 2, 2008, to UP's Manager of Industry and Public Projects that has responsibility in Oregon, to notify the railroad of its intent to file a waiver and asking for help in identifying the appropriate contact on the railroad to whom discussions could be directed. The request was resent on October 8, 2008, via fax along with a draft copy of the waiver. On October 9, 2008, the City had a conversation with the manager who stated that he could not state at that time whether the railroad would join in the application. The City tried to contact him again on October 14, 2008, without success.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2008–0120) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the

above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC on August 6, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–19277 Filed 8–11–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35281]

CSX Transportation, Inc.—Trackage Rights Exemption—Commonwealth Railway Incorporated

Pursuant to a written trackage rights agreement,[1] Commonwealth Railway Incorporated (CWRY) has agreed to grant non-exclusive overhead trackage rights to CSX Transportation, Inc. (CSXT), over CWRY's line of railroad between Suffolk, VA, milepost 16.50, and Churchland, VA, milepost 9.90, a distance of approximately 6.60 miles.[2]

The earliest this transaction may be consummated is August 26, 2009, the effective date of the exemption (30 days after the amendment to the notice of exemption was filed). The purpose of the trackage rights agreement is to improve CSXT's access to the Maersk Terminal in the port of Norfolk and to provide competitive service for intermodal and other traffic originating at, and destined for, the port.

Pursuant to 49 CFR 1180.4(g)(i), CSXT discloses that the agreement contains a provision prohibiting CSXT from using the line for interchange with any third-party carrier, wherever one may connect with, and create an interchange point on, the line.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed at least 7 days before the exemption becomes effective.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35281, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Steven C. Armbrust, CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202 and Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 6, 2009.

By the Board,

Rachel D. Campbell,

Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–19258 Filed 8–11–09; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the proposed trackage rights agreement between CSXT and CWRY was filed with the notice of exemption. The full version of the draft agreement was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision. As required by 49 CFR 1180.6(a)(7)(ii), the parties must file a copy of the executed agreement within 10 days of the date the agreement is executed.

[2] On July 27, 2009, CSXT filed an amendment to its verified notice of exemption to comply with the information required by 49 CFR 1180.4(g)(4)(i), thereby making July 27, 2009, the official filing date for the notice. Parties are reminded that, when filing a notice of exemption for transactions that may limit future interchange with a third-party connecting carrier, parties must provide the following additional information: (1) Disclose the existence of the provision or agreement that limits or restricts interchange; (2) disclose the affected interchange points; and (3) file a confidential, complete version of the documents containing the provision or agreement that limits or restricts interchange.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 23 and Form 23–EP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 23, Application for Enrollment to Practice Before the Internal Revenue Service, and Form 23–EP, Application for Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent (ERPA).

DATES: Written comments should be received on or before October 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Enrollment to Practice Before the Internal Revenue Service. Application for Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent (ERPA).

OMB Number: 1545–0950.

Form Number: Form 23 and Form 23–EP.

Abstract: Form 23 must be completed by those who desire to be enrolled to practice before the Internal Revenue

Service. The information on the form will be used by the Director of Practice to determine the qualifications and eligibility of applicants for enrollment. Form 23–EP is the application form for Enrolled Retirement Plan Agents (ERPA's).

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and the Federal government.

Estimated Number of Respondents: 4,800.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–19263 Filed 8–11–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–IC–DISC, Schedules K and P

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–IC–DISC, Interest Charge Domestic International Sales Corporation Return, Schedule K (Form 1120–IC–DISC), Shareholder's Statement of IC–DISC Distributions, and Schedule P (Form 1120–IC–DISC), Intercompany Transfer Price or Commission.

DATES: Written comments should be received on or before October 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 1120–IC–DISC, Interest Charge Domestic International Sales Corporation Return, Schedule K (Form 1120–IC–DISC), Shareholder's Statement of IC–DISC Distributions, and Schedule P (Form 1120–IC–DISC), Intercompany Transfer Price or Commission.

OMB Number: 1545–0938.

Form Numbers: 1120–IC–DISC, Schedules K and P.

Abstract: U.S. corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120–IC–DISC to report their income and deductions. The IC–DISC is not taxed, but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule K (Form 1120–IC–DISC) is used to report income to shareholders. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Time per Respondent: 201 hours, 57 minutes.

Estimated Total Annual Burden Hours: 242,340.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 31, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–19264 Filed 8–11–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5500–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5500–EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

DATES: Written comments should be received on or before October 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, 202–622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

OMB Number: 1545–0956.

Form Number: 5500–EZ.

Abstract: Form 5500–EZ is an annual return filed by a one-participant or one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the Internal Revenue Code or whether the plan should be audited.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 250,000.

Estimated Time per Respondent: 27 hours, 5 minutes.

Estimated Total Annual Burden Hours: 6,770,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 31, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–19266 Filed 8–11–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3468

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3468, Investment Credit.

DATES: Written comments should be received on or before October 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–7381, or through the Internet at *Evelyn.J.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Investment Credit.

OMB Number: 1545–0155.

Abstract: Form 3468 is used to compute Taxpayers' credit against their income tax for certain expenses incurred for their trades or businesses. The information collected is used by the IRS to verify that the credit has been correctly computed.

Current Actions: As a result of Public Law 110–343 Div. C, section 301(b) and Public Law 110–289, section 3022(c) several changes were made to Form 3468.

Type of Review: Revision to a current OMB approval.

Affected Public: Business or other for-profit.

Estimated Number of Responses: 15,345.

Estimated Time per Response: 34 hours, 36 minutes.

Estimated Total Annual Burden Hours: 530,937.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–19270 Filed 8–11–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 944, Form 944(SP) and Form 944–X

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 944, Employer's Annual Employment Tax Return, Form 944(SP), Declaracion Federal Anual de Impuestos del Patrono o Empleador and Form 944–X, Adjusted Employer's Annual Federal Tax Return or Claim for Refund.

DATES: Written comments should be received on or before October 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer's Annual Employment Tax Return.

OMB Number: 1545–2007.

Form Number: Forms 944, 944(SP) and 944–X.

Abstract: The information on Form 944 will be collected to ensure the smallest nonagricultural and nonhousehold employers are paying the correct amount of social security tax, Medicare tax, and withheld federal income tax. Information on line 13 will be used to determine if employers made any required deposits of these taxes. Form 944(SP) is the Spanish version of the Form 944. 944–X is used to correct errors made on Form 944.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households, Businesses and other for-profit organizations, Not-for-profit institutions, and State, Local, and tribal Governments.

Estimated Number of Respondents: 1,020,000.

Estimated Time per Respondent: 13 hours 44 minutes.

Estimated Total Annual Burden Hours: 14,019,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–19272 Filed 8–11–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–141402–02]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–141402–02, Limitation on Use of the Nonaccrual-Experience Method Under Section 448(d)(5).

DATES: Written comments should be received on or before October 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Dawn Bidne at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3933, or through the Internet at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limitation on Use of the Nonaccrual-Experience Method Under Section 448(d)(5).

OMB Number: 1545–1855.

Regulation Project Number: REG–141402–02.

Abstract: This document provides final regulations under § 448(d)(5) for

the use of nonaccrual experience method of accounting by taxpayers using the accrual method of accounting and performing service. These final regulations provide taxpayers with safe harbor nonaccrual experience methods that will be presumed to clearly reflect a taxpayer's nonaccrual experience.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 8,000.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 24,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–19273 Filed 8–11–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13614

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13614, Interview and Intake Sheet.

DATES: Written comments should be received on or before October 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack, at (202) 622–7381, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Evelyn.J.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Interview and Intake Sheet.

OMB Number: 1545–1964.

Form Number: Form 13614–C.

Abstract: The SPEC function developed the Form 13614 that contains a standardized list of required intake questions to guide volunteers in asking taxpayers basic questions about themselves. The intake sheet is an effective tool ensuring that critical taxpayer information is obtained and applied during the interview process.

Current Actions: The number of taxpayers assisted through the volunteer return preparation program has significantly increased, therefore the burden hours increased. The time needed by each respondent to complete the form decreased by two minutes.

Type of Review: Revision to a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, and not-for-profit institutions, and Federal Government.

Estimated Number of Responses: 3,150,000.

Estimated Time per Response: 10 min.

Estimated Total Annual Burden Hours: 525,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–19274 Filed 8–11–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–88–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–88–86 (TD 9272), Real Estate Mortgage Investment Conduits (§§ 1.860E–2(a)(5), 1.860E–2(a)(7), and 1.860E–2(b)(2)).

DATES: Written comments should be received on or before October 13, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Evelyn J. Mack, (202) 622–7381, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Evelyn.J.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Real Estate Mortgage Investment Conduits.

OMB Number: 1545–1276.

Regulation Project Number: FI–88–86.

Abstract: Final, temporary, and proposed regulations under section 860G of the Code relate to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. The regulations accelerate the time when income is recognized for withholding tax purposes to conform to the timing of income recognition for general income tax purposes.

Current Actions: TD 9272 was introduced July 31, 2006; it supersedes TD 8614, TD 9004, TD 9128, and TD 8458.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,600.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 525.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–19275 Filed 8–11–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
August 12, 2009

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing Seven Brazilian Bird Species as Endangered Throughout Their Range; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R9–IA–2009–0028; 96100–1671–0000–B6]

RIN 1018–AV74

Endangered and Threatened Wildlife and Plants; Listing Seven Brazilian Bird Species as Endangered Throughout Their Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the following seven Brazilian bird species and subspecies (collectively referred to as ''species'' for purposes of this proposed rule) as endangered under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*): black-hooded antwren (*Formicivora erythronotos*), Brazilian merganser (*Mergus octosetaceus*), cherry-throated tanager (*Nemosia rourei*), fringe-backed fire-eye (*Pyriglena atra*), Kaempfer's tody-tyrant (*Hemitriccus kaempferi*), Margaretta's hermit (*Phaethornis malaris margarettae*), and southeastern rufous-vented ground-cuckoo (*Neomorphus geoffroyi dulcis*). This proposal, if made final, would extend the Act's protection to these species. The Service seeks data and comments from the public on this proposed rule.

DATES: We will accept comments received or postmarked on or before October 13, 2009. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by September 28, 2009.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–IA–2009–0028; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, Chief, Branch of Listing, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2105; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the taxonomy, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(3) Any information on the biological or ecological requirements of these species.

(4) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species.

(5) Any information concerning the effects of climate change on these species or their habitats.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Endangered Species Program, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171.

Background

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

The following seven Brazilian bird species are addressed in this proposed rule: Black-hooded antwren (*Formicivora erythronotos*), previously recognized under the genus *Myrmotherula*; Brazilian merganser (*Mergus octosetaceus*); cherry-throated tanager (*Nemosia rourei*); fringe-backed fire-eye (*Pyriglena atra*), previously referred to as Swainson's fire-eye; Kaempfer's tody-tyrant (*Hemitriccus kaempferi*), previously recognized under the genus *Idioptilon*; Margaretta's hermit (*Phaethornis malaris margarettae*), previously referred to as the Klabin Farm long-tailed hermit and recognized at the species level as *P. margarettae*; and southeastern rufous-vented ground-cuckoo (*Neomorphus geoffroyi dulcis*). All of the above species are found in the Atlantic Forest and neighboring regions of southeastern Brazil.

We are addressing the seven Brazilian bird species identified above under a single proposed rule primarily for three reasons. First, all of these species are found in the Atlantic Forest and neighboring regions of southeastern Brazil, thus addressing them together makes sense from a regional conservation perspective. Second, these seven species are subject to similar threats of comparable magnitude, primarily the loss and degradation of habitat due to deforestation and other ongoing development practices affecting southeastern Brazil, as well as concomitant threats due to severely restricted distributions and small population sizes (such as potential loss of genetic viability). Combining species that face similar threats within the same general geographic area into one proposed rule allows us to maximize our limited staff resources, thus increasing our ability to complete the listing process for warranted-but-precluded species.

Previous Federal Actions

On November 28, 1980, we received a petition (the 1980 petition) from Dr. Warren B. King, Chairman, United States Section of the International Council for Bird Preservation (ICBP), to add 60 foreign bird species to the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)), including 5 of the 7 Brazilian bird species (black-hooded antwren, cherry-throated tanager, fringe-backed fire-eye, Margaretta's hermit, and southeastern rufous-vented ground-cuckoo) that are the subject of this proposed rule. Two of the foreign species identified in the petition were already listed under the Act; therefore, in response to the 1980 petition, we published a substantial 90-day finding on May 12, 1981 (46 FR 26464), for 58 foreign species and initiated a status review. On January 20, 1984 (49 FR 2485), we published a 12-month finding within an annual review on pending petitions and description of progress on all pending petition findings. In that notice, we found that all 58 foreign bird species from the 1980 petition were warranted but precluded by higher priority listing actions. On May 10, 1985, we published the first annual notice (50 FR 19761) in which we continued to find that listing all 58 foreign bird species from the 1980 petition was warranted but precluded. We published additional annual notices on the 58 species included in the 1980 petition on January 9, 1986 (51 FR 996), July 7, 1988 (53 FR 25511), December 29, 1988 (53 FR 52746), April 25, 1990 (55 FR 17475), November 21, 1991 (56 FR 58664), and May 21, 2004 (69 FR 29354). These notices indicated that the black-hooded antwren, cherry-throated tanager, fringe-backed fire-eye, Margaretta's hermit, and southeastern rufous-vented ground-cuckoo, along with the remaining species in the 1980 petition, continued to be warranted but precluded.

On May 6, 1991, we received a second petition (the 1991 petition) from ICBP to add an additional 53 foreign bird species to the List of Endangered and Threatened Wildlife, including the 2 remaining Brazilian bird species (Brazilian merganser and Kaempfer's tody-tyrant) that are the subject of this proposed rule. In response to the 1991 petition, we published a substantial 90-day finding on December 16, 1991 (56 FR 65207), for all 53 species and initiated a status review. On March 28, 1994 (59 FR 14496), we published a 12-month finding on the 1991 petition, along with a proposed rule to list 30 African birds under the Act (15 each from the 1980 petition and 1991 petition). In that document, we announced our finding that listing the remaining 38 species from the 1991 petition, including the Brazilian merganser and Kaempfer's tody-tyrant, was warranted but precluded by higher priority listing actions. We made a subsequent warranted-but-precluded finding for all outstanding foreign species from the 1980 and 1991 petitions, including the seven Brazilian bird species that are the subject of this proposed rule, as published in our annual notice of review (ANOR) on May 21, 2004 (69 FR 29354).

Per the Service's listing priority guidelines (September 21, 1983; 48 FR 43098), our 2007 ANOR identified the listing priority numbers (LPNs) (ranging from 1 to 12) for all outstanding foreign species. The LPNs for the seven Brazilian bird species that are the subject of this proposed rule are as follows: The black-hooded antwren, Brazilian merganser, cherry-throated tanager, fringe-backed fire-eye, and Kaempfer's tody-tyrant (LPN 2); and the Margaretta's hermit and southeastern rufous-vented ground-cuckoo (LPN 3). Listing priorities of 2 and 3 indicate that the subject species and subspecies, respectively, face imminent threats of high magnitude. With the exception of listing priority ranking of 1, which addresses monotypic genera that face imminent threats of high magnitude, categories 2 and 3 represent the Service's highest priorities.

On July 29, 2008 (73 FR 44062), we published in the **Federal Register** a notice announcing our annual petition findings for foreign species. In that notice, we announced listing to be warranted for 30 foreign bird species, including the seven Brazilian bird species which are the subject of this proposed rule, and stated that we would ''promptly publish proposals to list these 30 taxa.''

On September 8, 2008, the Service received a 60-day notice of intent to sue from the Center for Biological Diversity (CBD) over violations of section 4 of the Act for the Service's failure to promptly publish listing proposals for the 30 ''warranted'' species identified in our 2008 ANOR. Under a settlement agreement approved by the U.S. District Court for the Northern District of California on June 15, 2009, (*CDB* v. *Salazar,* 09–cv–02578–CRB), the Service must submit to the **Federal Register** proposed listing rules for the black-hooded antwren, Brazilian merganser, cherry-throated tanager, fringe-backed fire-eye, Kaempfer's tody-tyrant, Margaretta's hermit, and southeastern rufous-vented ground-cuckoo by July 31, 2009.

Species Information and Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five factors are: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

If we consider that wildlife habitat is not only defined by substrates (vegetation, soil, water), but also atmospheric conditions, then changes in air temperature and moisture can effectively change a species' habitat. Climate change is characterized by variations in the earth's temperature and precipitation causing changes in atmospheric, oceanic, and terrestrial conditions (Parmesan and Mathews 2005, p. 334). Global climate change and other periodic climatic patterns (*e.g.*, El Niño and La Niña) can cause or exacerbate such negative impacts on a broad range of terrestrial ecosystems and neotropical bird populations (Crick 2004, p. 1; England 2000, p. 86;

Holmgren *et al.* 2001, p. 89; Plumart 2007, pp. 1–2). For example, trees cool their area of influence through high rates of evapotranspiration, or water loss to the atmosphere from their leaves (Parmesan and Mathews 2005, p. 337). Areas where trees have been replaced with pastures have lower evapotranspiration rates, thus causing local areas to be warmer (Parmesan and Mathews 2005, p. 337). According to the Intergovernmental Panel on Climate Change (IPCC), climate change can contribute to modifications of Amazonian rainforest habitats that are affected by deforestation (IPCC 1997, p. 11). Parmesan and Mathews (2005, p. 373) suggest that climate change is more likely to cause range reductions rather than range shifts. This may be due to the lack of areas where a species could shift to or the spaces between habitat patches are too large for individuals to reach. This suggests that climate change could be an agent of habitat loss or modification.

Despite the fact that global climate changes are occurring and affecting habitat, the climate change models that are currently available are not yet able to make meaningful predictions of climate change for specific, local areas (Parmesan and Matthews 2005, p. 354), such as the Atlantic Forest and Cerrado (savanna) bioregions. In addition, we do not have models to predict how the climate in the range of these Brazilian bird species will change, and we do not know how any change that may occur, would affect these species. We also do not have information on past and future weather patterns within the specific range of these species. Therefore, based on the current lack of information and data, we did not evaluate climate change as a threat to these species. We are, however, seeking additional information on this subject (see Public Comments) that can be used in preparing the final rule.

Below is a species-by-species analysis of the five factors. The species are considered in alphabetical order, beginning with the black-hooded antwren, followed by the Brazilian merganser, cherry-throated tanager, fringe-backed fire-eye, Kaempfer's tody-tyrant, Margaretta's hermit, and the southeastern rufous-vented ground-cuckoo.

I. Black-hooded Antwren (Formicivora erythronotos)

Species Description

The black-hooded antwren measures 10.5 to 11.5 centimeters (cm) (4 to 4.5 inches (in)) (BirdLife International (BLI) 2007d, p. 1; Sisk 1993, p. 414). Males are black with a reddish-brown back. They have a black narrow bill and a long tail. There are three thin white stripes on the wings. Females have similar coloring, except they have brown-olive feathers where black feathers appear on males (BLI 2007d, p. 1).

Taxonomy

The black-hooded antwren is a small member of the diverse ''antbird'' family (Thamnophilidae). The species was previously recognized under the genus *Myrmotherula* (BLI 2007d, p. 1; Collar *et al.* 1992, p. 667; Sick 1993, p. 414).

Habitat and Life History

The Atlantic Forest biome encompasses a region of tropical and subtropical moist forests, tropical dry forests, and mangrove forests, that extend along the Atlantic coast of Brazil from Rio Grande do Norte in the north to Rio Grande do Sul in the south, and inland as far as Paraguay and Misiones Province of northeastern Argentina (Conservation International 2007a, p. 1; Höfling 2007, p. 1; Morellato and Haddad 2000, pp. 786–787). The black-hooded antwren inhabits lush understories of remnant old-growth and early successional secondary-growth coastal forests, and it may also occur in dense understories of modified ''restinga,'' (''restinga'' is a Brazilian term that describes a patchwork of vegetation types consisting of beach vegetation, open shrubby vegetation, and dry and swamp forests distributed over coastal plains from northeastern to southeastern Brazil (McGinley 2007, pp. 1–2)), swampy woodlands, abandoned banana plantations, and eucalyptus stands (BLI 2007d, p. 1; Tobias and Williams 1996, p. 64).

Although the specific habitat requirements of the black-hooded antwren are still unclear, the species is not considered a tropical forest specialist. The black-hooded antwren typically forages in pairs or small family groups and consumes various insects, spiders, and small frogs (Collar *et al.* 1992, p. 667; del Hoyo 2003, p. 616; Sick 1993, p. 405; Tobias and Williams 1996, p. 65). Black-hooded antwrens usually forage in dense vegetation within approximately 3 meters (m) (10 feet (ft)) of the ground, but they are also known to feed higher up (ca. 7 m (23 ft)).

Females typically lay two eggs in fragile nests resembling small cups made of plant material (*e.g.*, rootlets, stems, moss) that are attached to horizontal branches within roughly 1 m (3.3 ft) of the ground (Collar *et al.* 1992, p. 667; Sick 1993, p. 405). Both sexes help to build the nests, brood clutches, and attend their young.

Range and Distribution

The black-hooded antwren is endemic to the Atlantic Forest biome in the southeast of the state of Rio de Janeiro (BLI 2007d, p. 1; Collar *et al.* 1992, p. 667). Currently, the only confirmed population is believed to be restricted to remnant patches of forest habitat along roughly 30 kilometers (km) (19 miles (mi)) of coast in southern Rio de Janeiro, near the border with São Paulo (Browne 2005, p. 95; Tobias and Williams 1996, p. 64). However, there have also been recent unconfirmed reports that the species may occur at the state Ecological Reserve of Jacarepiá, located roughly 75 km (47 mi) northeast of the city of Rio de Janeiro (ADEJA 2007, p. 3; WorldTwitch 2007, p. 12).

Population Estimates

The black-hooded antwren was known from 20 specimens that were purportedly collected in the 1800s in montane forest habitats of central Rio de Janeiro, Brazil. The species had not been reported since that collection until it was rediscovered in 1987 in the Atlantic forest in south Rio de Janeiro (BLI 2007d, p. 1).

The extant population is estimated to be between 1,000 and 2,499 birds, and is fragmented among seven occupied sites, including Bracuí, Frade, São Gonçalo, Taquari and Barra Grande, Ariró, and Vale do Mambucaba. Vale do Mambucaba has the highest known density of pairs (156 pairs per square kilometer (km^2)), followed by Mambucaba (densities of 89 pairs/km^2). There are no known estimates for the other locations, but it is believed that the numbers are few (BLI 2007d, p. 1). At least one of the fragmented populations is believed to be reproductively isolated. The population, as a whole, is also believed to be declining rapidly due to continued loss of habitat (BLI 2007d, pp. 1–3).

Conservation Status

The IUCN considers the black-hooded antwren to be ''Endangered'' because ''it has a very small and severely fragmented range that is likely to be declining rapidly in response to habitat loss'' (BLI 2007d, p. 3). The species is also protected by Brazilian law and occurs in the buffer area of Serra da Bocaína National Park (BLI 2007d, p. 2).

Summary of Factors Affecting the Black-hooded Antwren

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

Based on a number of recent estimates, 92 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of various human activities (Butler 2007, p. 2; Conservation International 2007a, p. 1; Höfling 2007, p. 1; Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854; The Nature Conservancy 2007, p. 1; Saatchi *et al.* 2001, p. 868; World Wildlife Fund 2007, pp. 2–41). In addition to the overall loss and degradation of native habitats within this biome, the remaining tracts of habitat are severely fragmented. The current rate of habitat decline is unknown.

The region has the two largest cities in Brazil, São Paulo and Rio de Janeiro, and is home to approximately 70 percent of Brazil's 169 million people (CEPF 2002; IBGE 2007). The major human activities that have resulted in the loss, degradation, and fragmentation of native habitats within the Atlantic Forest biome include extensive establishment of agricultural fields (*e.g.*, soy beans, sugarcane, corn), plantations (*e.g.*, eucalyptus, pine, coffee, cocoa, rubber, bananas), livestock pastures, centers of human habitation, and industrial developments (*e.g.*, charcoal production, steel plants, hydropower reservoirs). Forestry practices (*e.g.*, commercial logging, subsistence activities, fuelwood collection) and changes in fire frequencies (BLI 2003a, p. 4; Júnior *et al.* 1995, p. 147; The Nature Conservancy 2007, p. 2; Nunes and Kraas 2000, p. 44; Peixoto and Silva 2007, p. 5; Saatchi *et al.* 2001, pp. 868–869; Scott and Brooke 1985, p. 118; World Wildlife Fund 2007, pp. 3–51) also contribute to the degradation of native habitat.

The black-hooded antwren is not strictly tied to primary forest habitats and can make use of secondary-growth forests or other disturbed areas, such as modified ''restinga,'' eucalyptus stands, abandoned banana plantations, and recently burned sites (BLI 2007d, p. 1; Tobias and Williams 1996, p. 64). However, this does not necessarily lessen the threat to the species from the effects of deforestation and habitat degradation. Atlantic Forest birds, such as the black-hooded antwren, which are tolerant of secondary-growth forests or other disturbed sites, are also rare or have severely restricted ranges (*i.e.*, less than 21,000 km^2 (8,100 square miles (mi^2))). Thus habitat degradation can adversely impact such species, just as equally as it impacts primary forest-obligate species (Harris and Pimm 2004, pp. 1612–1613). While the black-hooded antwren is relatively abundant locally, the entire range of the species encompasses only about 130 km^2 (50 mi^2), with only 45 percent of this area considered occupied (BLI 2007d, pp. 3–4).

The susceptibility to habitat destruction of limited-range species that are tolerant of secondary-growth forests or other disturbed sites can occur for a variety of reasons, such as when a species' remaining population is already too small or its distribution too fragmented such that it may not be demographically or genetically viable (Harris and Pimm 2004, pp. 1612–1613). In addition, while the black-hooded antwren may be tolerant of secondary-growth forests or other disturbed sites, these areas may not represent optimal conditions for the species, which would include dense understories and abundant prey species. For example, management of plantations often involves intensive control of the site's understory vegetation and long-term use of pesticides, which eventually results in severely diminished understory cover and potential prey species (Rolim and Chiarello 2004, pp. 2687–2691; Saatchi *et al.* 2001, pp. 868–869; Scott and Brooke 1985, p. 118). Such management activities make these sites unsuitable for the black-hooded antwren (BLI 2007d, p. 2).

Impacts associated with the destruction of native habitat by human activities within the Atlantic Forest biome include extensive fragmentation of the remaining tracts of forested habitat potentially used by the black-hooded antwren (see Factor E). As a secondary impact, habitat destruction of these remaining tracts increases the potential introduction of disease vectors or exotic predators within the species' historic range (see Factor C). Furthermore, even when potentially occupied sites may be formally protected, such as the state Ecological Reserve of Jacarepiá (see Factor D), the remaining fragments of forested habitat will likely undergo further degradation due to their altered dynamics and isolation (ADEJA 2007, pp. 1–2; Tabanez and Viana 2000, pp. 929–932). Altered dynamics and isolation are characterized by a decrease in gene flow and inbreeding, which decrease the fitness of forest species (Tabanez and Viana 2000, pp. 929–932). In addition, fragmented Atlantic forests of Brazil are observed to be overtaken by lianas (long-stemmed woody vines), which cause tree falls and gaps in the forest structure. These gaps in the forest encourage gap-opportunistic vegetation to grow. Hence, a decrease in gene flow, and increases in inbreeding, liana density, and presence of gap-opportunistic species change the character and dynamics of the Atlantic Forest biome and isolate fragmented habitat patches (Tabanez and Viana 2000, pp. 930–931). These changes may result in the loss of important species that comprise the black-hooded antwren habitat. As a result of these secondary impacts, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Therefore, even without further habitat loss or degradation, the black-hooded antwren remains at risk from past impacts to its suitable habitats.

The black-hooded antwren occurs in one of the most densely populated regions of Brazil, and most of the tropical forest habitats believed to have been used historically by the species have been converted or are severely degraded due to the wide range of human activities identified above (BLI 2003a, p. 4; BLI 2007d, p. 2; Collar *et al.* 1992, p. 667; Conservation International 2007a, p. 1; del Hoyo 2003, p. 616; Höfling 2007, p. 1; The Nature Conservancy 2007, p. 1; World Wildlife Fund 2007, pp. 3–51). In addition, the remaining tracts of suitable habitat in Rio de Janeiro and São Paulo are threatened by ongoing development of coastal areas, primarily for tourism enterprises (*e.g.*, large hotel complexes, beachside housing) and associated infrastructure support, as well as widespread clearing for expansion of livestock pastures and plantations, primarily for *Euterpe* palms (BLI 2003a, p. 4; BLI 2007d, p. 2; Collar *et al.* 1992, p. 667; del Hoyo 2003, p. 616; World Wildlife Fund 2007, pp. 7 and 36–37). These impacts have recently reduced suitable habitats at various key sites known to be occupied by the black-hooded antwren such as Vale do Mambucaba and Ariró, and the remaining occupied habitats at these sites are subject to ongoing human disturbances, such as off-road vehicle use, burning, and recreational activities (BLI 2007d, p. 2; Collar *et al.* 1994, p. 134; del Hoyo 2003, p. 616).

Summary of Factor A

A significant portion of Atlantic Forest habitats have been, and continue to be, lost and degraded by various ongoing human activities, including

logging, establishment and expansion of plantations and livestock pastures, urban and industrial developments (including many new hydroelectric dams), slash-and-burn clearing, intentional and accidental ignition of fires, and establishment of invasive species (CEPF 2001, pp. 9–15). Even with the recent passage of a national forest policy and in light of many other legal protections in Brazil (see Factor D), the rate of habitat loss throughout the Atlantic Forest biome has increased since the mid-1990s (CEPF 2001, p. 10; Hodge *et al.* 1997, p. 1; Rocha *et al.* 2005, p. 270), and native habitats at many of the remaining sites may be lost over the next several years (Rocha *et al.* 2005, p. 263). Furthermore, because the black-hooded antwren's extant population is already small, highly fragmented, and believed to be declining (BLI 2007d, pp. 1–3), any further loss or degradation of its remaining suitable habitat represents a significant threat to the species (see Factor E). Therefore, we find that destruction and modification of habitat are threats to the continued existence of the black-hooded antwren throughout its range.

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

The extant population of the black-hooded antwren is considered to be small, fragmented, and declining. The species was deliberately not collected when it was rediscovered in 1987 (Collar *et al.* 1992, p. 667). This is because the removal or dispersal of just a few individuals from any of the black-hooded antwren's subpopulations or even a slight decline in their fitness due to intentional or inadvertent hunting, specimen collection, or other human disturbances (*e.g.*, scientific research, birding) could represent significant risks to the species' overall viability (see Factor E). However, while these potential influences remain a concern for future management of the species, we are not aware of any other information currently available that indicates the use of this species for any commercial, recreational, scientific, or educational purpose. As a result, we are not considering overutilization to be a contributing factor to the continued existence of the black-hooded antwren.

C. Disease or Predation

Large, stable populations of wildlife species have adapted to natural levels of disease and predation within their historic ranges. However, the extant population of the black-hooded antwren is considered to be small, fragmented, and declining. In addition, extensive human activity in previously undisturbed or isolated areas can lead to the introduction and spread of exotic diseases, some of which (*e.g.*, West Nile virus) can negatively impact endemic bird populations (Naugle *et al.* 2004, p. 704; Neotropical News 2003, p. 1). Extensive human activity in previously undisturbed or isolated areas can also result in altered predator populations and the introduction of various exotic predator species, some of which (*e.g.*, feral cats (*Felis catus*) and rats (*Ratus* sp.)) can be especially harmful to populations of endemic bird species (American Bird Conservancy 2007, p. 1; Courchamp *et al.* 1999, p. 219; Duncan and Blackburn 2007, pp. 149–150; Salo *et al.* 2007, pp. 1241–1242; Small 2005, p. 257). Any additive mortality to the black-hooded antwren's subpopulations or a decrease in their fitness due to an increase in the incidence of disease or predation could represent significant threats to the species' overall viability (see Factor E).

Although disease and predation may be a concern for future management of the black-hooded antwren, we are not aware of any species-specific information currently available that indicates that disease or predation poses a threat to the species. As a result, we are not considering disease or predation to be a contributing factor to the continued existence of the black-hooded antwren.

D. The Inadequacy of Existing Regulatory Mechanisms

The black-hooded antwren is formally recognized as ''endangered'' in Brazil (Order No. 1.522) and is directly protected by various laws promulgated by the Brazilian government (BLI 2007d, p. 2; Collar *et al.* 1992, p. 667; ECOLEX 2007, pp. 1–2). For example, there are measures that prohibit, or regulate through Federal agency oversight, the following activities with regard to endangered species: export and international trade (*e.g.*, Decree No. 76.623, Order No. 419–P), hunting (*e.g.*, Act No. 5.197), collection and research (Order No. 332), captive propagation (Order No. 5), and general harm (*e.g.*, Decree No. 3.179). In addition, there are a wide range of regulatory mechanisms in Brazil that indirectly protect the black-hooded antwren through measures that protect its remaining suitable habitat (ECOLEX 2007, pp. 2–5). For example, there are measures that: (1) Prohibit exploitation of the remaining primary forests within the Atlantic Forest biome (*e.g.*, Decree No. 750, Resolution No. 10); (2) govern various practices associated with the management of primary and secondary forests, such as logging, charcoal production, reforestation, recreation, and water resources (*e.g.*, Resolution No. 9, Act No. 4.771, Decree No. 1.282, Decree No. 3.420, Order No. 74–N, Act No. 7.803); (3) establish provisions for controlling forest fires (*e.g.*, Decree No. 97.635, Order No. 231–P, Order No. 292–P, Decree No. 2.661); and (4) regulate industrial developments, such as hydroelectric plants and biodiesel production (*e.g.*, Normative Instruction No. 65, Law No. 11.116). Finally, there are various measures (*e.g.*, Law No. 11.516, Act No. 7.735, Decree No. 78, Order No. 1, Act No. 6.938) that direct Federal and state agencies to promote the protection of lands and natural resources under their jurisdictions (ECOLEX 2007, pp. 5–6).

There are also various regulatory mechanisms in Brazil that govern the formal establishment and management of protected areas to promote conservation of the country's natural resources (ECOLEX 2007, pp. 6–7). These mechanisms generally aim to protect endangered wildlife and plant species, genetic resources, overall biodiversity, and native ecosystems on Federal, state, and privately owned lands (*e.g.*, Law No. 9.985, Law No. 11.132, Resolution No. 4, Decree No. 1.922). Brazil's formally established protection areas are categorized based on their overall management objectives (*e.g.*, National Parks versus Biological Reserves); and based on those categories, they allow varying uses and provide varying levels of protection for specific resources (Costa 2007, pp. 5–19).

The black-hooded antwren occurs in the buffer zone around Serra da Bocaina National Park and, possibly, within Tamoios Environmental Protection Area and the Ecological Reserve of Jacarepiá (BLI 2007d, p. 2; del Hoyo 2003, p. 616; WorldTwitch 2007, p. 12). It has been recommended that some of these sites should be expanded and other sites designated to ensure the species' currently occupied range is encompassed within protected areas. However, for various reasons (*e.g.*, lack of funding, personnel, or local management commitment), some of Brazil's protected areas exist without the current capacity to achieve their stated natural resource objectives (ADEJA 2007, pp. 1–2; Bruner *et al.* 2001, p. 125; Costa 2007, p. 7; IUCN 1999, pp. 23–24; Neotropical News 1996, pp. 9–10; Neotropical News 1999, p. 9). Therefore, even with the expansion or further designation of protected areas, it is likely that not all of the identified resource concerns for

the black-hooded antwren (*e.g.*, residential and agricultural encroachment, resource extraction, unregulated tourism, grazing) would be sufficiently addressed at these sites.

In the past, the Brazilian government, through various regulations, policies, incentives, and subsidies, has actively encouraged settlement of previously undeveloped lands in southeastern Brazil, which helped facilitate the large-scale habitat conversions that have occurred throughout the Atlantic Forest biome (Brannstrom 2000, p. 326; Butler 2007, p. 3; Conservation International 2007c, p. 1; Pivello 2007, p. 2; Ratter *et al.* 1997, pp. 227–228; Saatchi *et al.* 2001, p. 874). More recently, the Brazilian government has given greater recognition to the environmental consequences of such rapid expansion, and has taken steps to better manage some of the natural resources potentially impacted (Butler 2007, p. 7; Costa 2007, p. 7; Neotropical News 1997a, p. 10; Neotropical News 1997b, p. 11; Neotropical News 1998b, p. 9; Neotropical News 2003, p. 13; Nunes and Kraas 2000, p. 45). Despite these efforts, pressures to develop coastal areas containing black-hooded antwren habitat for tourism (*e.g.*, large hotel complexes, beachside housing) and plantation agriculture continue to be a threat to the species (ADEJA 2007, pp. 1–2; BLI 2007d, p. 2; Tobias and Williams 1996, p. 65).

Summary of Factor D

Brazil's wide variety of laws requiring resource protection that would ultimately benefit the black-hooded antwren are tested by the intense development pressure that exists in coastal areas south of Rio de Janeiro. Despite the existence of these regulatory mechanisms, habitat loss throughout the Atlantic Forest biome has increased for more than a decade. The existing regulatory mechanisms have proven difficult to enforce (BLI 2003a, p. 4; Conservation International 2007c, p. 1; Costa 2007, p. 7; The Nature Conservancy 2007, p. 2; Neotropical News 1997b, p. 11; Peixoto and Silva 2007, p. 5; Scott and Brooke 1985, pp. 118, 130). As a result, threats to the black-hooded antwren's remaining habitat are ongoing (see Factor A) due to the challenges that Brazil faces to balance its competing development and environmental priorities. Therefore, when combined with Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the black-hooded antwren throughout its range.

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

Under this factor we explore whether three risks, represented by demographic, genetic, and environmental stochastic events, are substantive to threaten the continued existence of the black-hooded antwren. In basic terms, demographic stochasticity is defined by chance changes in the population growth rate for the species (Gilpin and Soulé 1986, p. 27). Population growth rates are influenced by individual birth and death rates (Gilpin and Soulé 1986, p. 27), immigration and emigration rates, as well as changes in population sex ratios. Natural variation in survival and reproductive success of individuals and chance disequilibrium of sex ratios may act in concert to contribute to demographic stochasticity (Gilpin and Soulé 1986, p. 27). Genetic stochasticity is caused by changes in gene frequencies due to genetic drift, and diminished genetic diversity, and/or effects due to inbreeding (*i.e.*, inbreeding depression) (Lande 1995, p. 786). Inbreeding can have individual or population-level consequences either by increasing the phenotypic expression (the outward appearance, or observable structure, function, or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Charlesworth and Charlesworth 1987, p. 231; Shaffer 1981, p. 131). Environmental stochasticity is defined as the susceptibility of small, isolated populations of wildlife species to natural levels of environmental variability and related ''catastrophic'' events (*e.g.*, severe storms, prolonged drought, extreme cold spells, wildfire) (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412). Each risk will be analyzed specifically for the black-hooded antwren.

Small, isolated populations of wildlife species are susceptible to demographic and genetic problems (Shaffer 1981, pp. 130–134). These threat factors, which may act in concert, include: natural variation in survival and reproductive success of individuals, chance disequilibrium of sex ratios, changes in gene frequencies due to genetic drift, diminished genetic diversity and associated effects due to inbreeding (*i.e.*, inbreeding depression), dispersal of just a few individuals, a few clutch failures, a skewed sex ratio in recruited offspring over just one or a few years, and chance mortality of just a few reproductive-age individuals.

There is very little information available regarding the historic distribution and abundance of the black-hooded antwren. However, the species' historic population was likely larger and more widely distributed than today, and it must have maintained a minimum level of genetic interchange among its local subpopulations in order for them to have persisted (Middleton and Nisbet 1997, p. 107; Vilà *et al.* 2002, p. 91; Wang 2004, p. 332). The available information indicates that suitable habitats currently occupied by the black-hooded antwren are highly fragmented and that the species' extant population is small and declining (BLI 2007d, pp. 1–3). Without efforts to maintain buffer areas and reconnect some of the remaining tracts of suitable habitat near the species' currently occupied sites, it is doubtful that the individual tracts are currently large enough to support viable populations of many birds endemic to the Atlantic Forest, like the black-hooded antwren, and the eventual loss of any small, isolated populations appears to be inevitable (Goerck 1997, p. 117; Harris and Pimm 2004, pp. 1609–1610; IUCN 1999, pp. 23–24; Machado and Da Fonseca 2000, pp. 914, 921–922; Saatchi *et al.* 2001, p. 873; Scott and Brooke 1985, p. 118).

Various past and ongoing human activities and their secondary influences continue to impact all of the remaining suitable habitats that may still harbor the black-hooded antwren (see Factors A and D). We expect that any additional loss or degradation of habitats that are used by the black-hooded antwren will have disproportionately greater impacts on the species due to the population's fragmented state. This is because with each contraction of an existing subpopulation, the likelihood of interchange with other subpopulations within patches decreases, while the likelihood of its complete reproductive isolation increases.

The combined effects of habitat fragmentation (Factor A) and genetic and demographic stochasticity on a species population are referred to as patch dynamics. Patch dynamics can have profound effects on fragmented subpopulations and can potentially reduce a species' respective effective population by orders of magnitude (Gilpin and Soulé 1986, p. 31). For example, an increase in habitat fragmentation can separate subpopulations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics of a population and a reduction in genetic fitness (Gilpin and Soulé 1986,

p. 31). Furthermore, as a species' status continues to decline, often as a result of deterministic forces such as habitat loss or overutilization, it will become increasingly vulnerable to a broad array of other forces. If this trend continues, its ultimate extinction due to one or more stochastic events becomes more likely.

We expect that the black-hooded antwren's increased vulnerability to demographic stochasticity and inbreeding will be operative even in the absence of any human-induced threats or stochastic environmental events, which only act to further exacerbate the species' vulnerability to local extirpations and eventual extinction. Demographic and genetic stochastic forces typically operate synergistically. Initial effects of one threat factor can later exacerbate the effects of other threat factors, as well as itself (Gilpin and Soulé 1986, pp. 25–26). For example, any further fragmentation of the populations will, by definition, result in the further removal or dispersal of individuals, which will exacerbate the other threats. Conversely, lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches.

Small, isolated populations of wildlife species, such as the black-hooded antwren, are also susceptible to natural levels of environmental variability and related ''catastrophic'' events (*e.g.*, severe storms, prolonged drought, extreme cold spells, wildfire), which we will refer to as environmental stochasticity (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412). A single stochastic environmental event can severely reduce existing wildlife populations and, if the affected population is already small or severely fragmented, it is likely that demographic stochasticity or inbreeding will become operative, which would place the population in jeopardy (Gilpin and Soulé 1986, p. 27; Lande 1995, pp. 787–789).

Summary of Factor E

The small and declining numbers that make up the black-hooded antwren's population makes it susceptible to natural environmental variability or chance events. In addition to its declining numbers, the high level of population fragmentation makes the species susceptible to genetic and demographic stochasticity. Therefore, we find that demographic, genetic, and environmental stochastic events are a threat to the continued existence of the black-hooded antwren throughout its range.

Status Determination for the Black-hooded Antwren

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the black-hooded antwren. The species is currently at risk throughout all of its range due to ongoing threats of habitat destruction and modification (Factor A), and demographic, genetic, and environmental stochastic events associated with the species' high level of population fragmentation (Factor E). Furthermore, we have determined that the existing regulatory mechanisms (Factor D) are not adequate to ameliorate the current threats to the species.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Based on the threats to the black-hooded antwren throughout its entire range, as described above, we determine that the black-hooded antwren is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are proposing to list the black-hooded antwren as an endangered species throughout all of its range.

II. Brazilian Merganser (Mergus Octosetaceus)

Species Description

The 49–56 cm (19–22 in) (BLI 2007a, p. 1) Brazilian merganser is described as resembling a cormorant (Sisk 1993, p. 163). The bird has a white wing speculum and red feet. The breast is pale grey with dark markings, and there is dark grey coloring in the upper breast (BLI 2007a, p. 1). The species has a distinctive green crest that extends over the nape of the neck (more developed in the male) (Sisk 1993, p. 163).

Taxonomy

The Brazilian merganser was first described by Vieillot in 1817 (Partridge 1956, p. 473). The species belongs in the family Anatidae (BLI 2007a, p. 1).

Habitat and Life History

The Brazilian merganser is highly adapted to shallow, rapid, clear-water streams and rivers, typically bordered by dense, tropical forest (Bruno *et al.* 2006, p. 26; Collar *et al.* 1992, pp. 80–86; Ducks Unlimited 2007, p. 1; Hughes *et al.* 2006, p. 23; Partridge 1956, pp. 478–480; Sibley and Monroe 1990, p. 41). Where suitable riverine conditions exist, the Brazilian merganser also occurs in the Cerrado biome, which is characterized by open tropical savannah and comparatively sparse ''gallery'' forest at the river margins, indicating that the species is not strictly tied to tropical forest habitats (Bianchi *et al.* 2005, p. 73; Braz *et al.* 2003, p. 70).

Brazilian mergansers are strong swimmers and divers. They typically feed in river rapids or in pools adjacent to waterfalls, whereas they rest and perch in more slack water areas or at the river edges (Braz *et al.* 2003, p. 70; Hughes *et al.* 2006, p. 21; Partridge 1956, pp. 481–482). Brazilian mergansers feed primarily on a variety of fish species, with sizes up to approximately 19 cm (7.5 in), and occasionally on insects, snails, and other aquatic macro-invertebrates (Hughes *et al.* 2006, p. 32; Partridge 1956, p. 483).

Brazilian mergansers are believed to be monogamous and sedentary. Breeding pairs appear to maintain their territories along a stretch of river (up to ca. 12 km (7.5 mi)) throughout the year (Braz *et al.* 2003, p. 70; Ducks Unlimited 2007, p. 1; Hughes *et al.* 2006, pp. 23, 33; Partridge 1956, p. 477). The breeding season begins in June and young hatch around August (Partridge 1956, p. 487). Females establish their nests relatively high up (25 m (82 ft)) in the cavities of tall trees that overlook the river and incubate their eggs alone, although males are attentive and remain nearby feeding and perching at the river shoreline (Bruno *et al.* 2006, p. 29; Lamas and Santos 2004, p. 38; Partridge 1956, pp. 484–485). Females may also locate their nests lower down (10 m (33 ft)) in the cavities of cliffs or rocky outcrops near preferred riverine habitat in areas where suitable nesting trees are absent (Lamas and Santos 2004, pp. 38–39).

Range and Distribution

The Brazilian merganser occurs in a few fragmented locations in south-central Brazil, including the upper-tributaries of rivers within the Atlantic Forest biome and to the east in the Cerrado (savanna) biome (BLI 2007a, p. 1). The species is a diving duck that occurred historically in riverine habitats throughout southeastern Brazil, northeastern Argentina, and eastern Paraguay (Hughes *et al.* 2006, p. 24). Currently, the species is found in extremely low numbers at six highly disjunct localities, of which five are in southeastern Brazil and one is in northeastern Argentina and, possibly,

extreme eastern Paraguay (BLI 2007a, pp. 1–5; Hughes *et al.* 2006, pp. 28–31). The vast majority of the species' extant population and remaining suitable habitats occur in Brazil, including its largest subpopulation that is estimated to contain fewer than 50 individuals (BLI 2007a, p. 5).

The Brazilian merganser is thought to have been extirpated from Mato Grosso do Sul, São Paolo, Rio de Janeiro, and Santa Catarina (BLI 2007a, pp. 1–2). There is only a single recent record of the Brazilian merganser (ca. 2002) in the province of Misiones, Argentina, while the last confirmed sighting of the species in Paraguay is from 1984 (BLI 2007a, p. 2; Hughes *et al.* 2006, p. 31). For purposes of this proposed rule, our analysis will focus on the most current estimates of the species, which are based in Brazil.

The species likely still occurs in the Brazilian states of Tocantins, Bahia, Goiás, Minas Gerais, and Paraná (Hughes *et al.* 2006, pp. 51–52). Along with other recent sightings of the species in previously undocumented areas of Brazil (Bianchi *et al.* 2005, p. 72; Pineschi 1999, p. 1), this information indicates that the Brazilian merganser may be more abundant and widespread than previously considered.

Population Estimates

The extant population is estimated to be between 50 and 249 individuals and is presumed to be declining, as evidenced by the species' recent history of extirpation from major portions of its historic range (BLI 2007a, p. 1).

Conservation Status

IUCN considers the Brazilian merganser to be ''Critically Endangered'' because ''although recent records from Brazil, and particularly a recent northerly range extension, indicate that this species' status is better than previously thought, the remaining population is still extremely small and severely fragmented, and the perturbation and pollution of rivers continues to cause declines'' (BLI 2007a, p. 1). In addition, the species occurs in three parks in Brazil and in the Uruguaí Provincial Park in Argentina (BLI 2007a, p. 1).

Summary of Factors Affecting the Brazilian Merganser

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

Based on a number of recent estimates, 92 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of various human activities (Conservation International 2007a, p. 1; Höfling 2007, p. 1; Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854; The Nature Conservancy 2007, p. 1; Saatchi *et al.* 2001, p. 868; World Wildlife Fund 2007, pp. 2–41). The Cerrado biome has also been heavily impacted by human activities, and current estimates indicate that between 67 and 80 percent of the tropical savannah habitat historically comprising this biome has been converted or severely degraded (Butler 2007, p. 1; Conservation International 2007b, p. 1; Mantovani and Pereira 1998, p. 1455; Myers *et al.* 2000, p. 854; World Wildlife Fund 2007, p. 50). In addition to the overall loss and degradation of native habitat within these biomes, the remaining tracts of habitat are severely fragmented. The current rate of habitat loss in the Atlantic Forest and Cerrado biomes is unknown.

The region has the two largest cities in Brazil, São Paulo and Rio de Janeiro, and is home to approximately 70 percent of Brazil's 169 million people (CEPF 2002; IBGE 2007). The major human activities that have resulted in the loss, degradation, and fragmentation of native habitats within these biomes include extensive establishment of agricultural fields (*e.g.,* soy beans, sugarcane, and corn), plantations (*e.g.,* eucalyptus, pine, coffee, cocoa, rubber, and bananas), livestock pastures, centers of human habitation, and industrial developments (*e.g.,* diamond mining, hydropower reservoirs, and charcoal production). Forestry practices (*e.g.,* commercial logging), subsistence activities (*e.g.,* collection of fuelwood), and changes in fire frequencies also contribute to the degradation of native habitat (BLI 2003a, p. 4; BLI 2003b, pp. 1–2; Butler 2007, p. 1; Hughes *et al.* 2006, pp. 37–48; Júnior *et al.* 1995, p. 147; Nunes and Kraas 2000, p. 44; Pivello 2007, pp. 1–2; Ratter *et al.* 1997, pp. 227–228; Saatchi *et al.* 2001, pp. 868–869; World Food Prize 2007, pp. 1–5; World Wildlife Fund 2007, pp. 3–51).

The Brazilian merganser is extremely susceptible to habitat loss and degradation, habitat fragmentation, and hydrological changes from human activity (Collar *et al.* 1992, pp. 83–84; Hughes *et al.* 2006, pp. 36–41; Silveira 1998, p. 58). The loss of appropriate aquatic and terrestrial habitats throughout the historic range of the Brazilian merganser due to the above human activities is believed to have drastically reduced the species' abundance and extent of occupied range, and these activities currently represent a significant risk to the species' continued existence because populations are being limited to highly fragmented patches of habitat (Benstead 1994, p. 8; Benstead *et al.* 1994, p. 36; BLI 2007a, pp. 1–6; Collar and Andrew 1988, p. 21; Collar *et al.* 1992, pp. 83–84; Collar *et al.* 1994, p. 51; Hughes *et al.* 2006, pp. 37–48; Silveira 1998, pp. 57–58).

The species is highly adapted to shallow, rapid-flowing riverine conditions and, therefore, can not occupy the lacustrine conditions of reservoirs that result from dam building activities within their occupied range (Hughes *et al.* 2006, pp. 23, 41). The loss of the species' terrestrial habitat has occurred due to the removal of forest cover and suitable nesting trees adjacent to occupied river corridors.

A variety of secondary impacts that degrade suitable habitats have also resulted from the above activities and represent significant risks to the Brazilian merganser. These secondary impacts include increased runoff and severe siltation from agricultural fields, livestock pastures, deforestation, diamond mining, and population centers; changes in hydrologic conditions and local water tables as a result of dam operations (*e.g.,* flood control, power generation) and excessive pumping for irrigation or domestic and industrial water use; and increases in water pollutants due to agricultural, industrial, and domestic waste products (Benstead 1994, p. 8; Bianchi *et al.* 2005, p. 73; BLI 2007a, pp. 1–6; Braz *et al.* 2003, p. 70; Collar *et al.* 1994, p. 51; del Hoyo *et al.* 1992, p. 625; Ducks Unlimited 2007, p. 1; Hughes *et al.* 2006, pp. 40–48; Lamas and Santos 2004, p. 40; Pineschi 1999, p. 1). These secondary impacts negatively affect the Brazilian merganser by reducing water clarity, altering water depths and flow patterns, removing or limiting populations of preferred prey species; introducing toxic compounds; and creating barriers to movements and producing hazardous conditions along river corridors that limit interchange between the species' remaining subpopulations (see Factor E). These secondary impacts also increase the risk of introducing disease vectors and expanding populations of potential predator and competitor species into areas occupied by the Brazilian merganser (see Factor C).

Summary of Factor A

The above mentioned human activities and their secondary impacts have significantly reduced the amount of suitable habitat for the Brazilian merganser (Benstead 1994, p. 8;

Benstead *et al.* 1994, p. 36; BLI 2007a, pp. 1–6; Collar and Andrew 1988, p. 21; Collar *et al.* 1992, pp. 83–84; Collar *et al.* 1994, p. 51; Hughes *et al.* 2006, pp. 37–48; Silveira 1998, pp. 57–58), and the remaining areas of occupied habitat are highly fragmented (see Factor E). In addition, these activities are ongoing and continue to adversely impact all of the remaining suitable habitat within the Atlantic Forest and Cerrado biomes that may still harbor the Brazilian merganser (BLI 2003a, p. 4; BLI 2003b, pp. 1–2; BLI 2007a, pp. 1–7; Brannstrom 2000, p. 326; Ducks Unlimited 2007, p. 1; Harris and Pimm 2004, p. 1610; Hughes *et al.* 2006, pp. 37–48; Morellato and Haddad 2000, p. 786; Saatchi *et al.* 2001, pp. 868–873; Tabanez and Viana 2000, pp. 929–932). Even with the recent passage of national forest policy and in light of many other legal protections in Brazil (see Factor D), the rate of habitat loss throughout southeastern Brazil has increased since the mid-1990s (CEPF 2001, p. 10; Hodge *et al.* 1997, p. 1; Rocha *et al.* 2005, p. 270). Furthermore, because the Brazilian merganser's extant population is already extremely small, highly fragmented, and believed to be declining (BLI 2007a, pp. 1–4), any further loss or degradation of its remaining suitable habitat will severely impact the species (see Factor E). Therefore, we find that destruction and modification of habitat are threats to the continued existence of the Brazilian merganser throughout its range.

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

Historically, there was likely little range-wide hunting pressure on the Brazilian merganser, presumably due to the species' secretive nature, naturally low densities in relatively inaccessible areas, and poor palatability (Partridge 1956, p. 478). However, low levels of subsistence hunting of some local populations still occurs, most notably in Argentina (Benstead 1994, p. 8; del Hoyo *et al.* 1992, p. 625; Hughes *et al.* 2006, p. 48).

Since the first formal description of the species in the early 1800s, the Brazilian merganser has also been collected for scientific study and museum exhibition (BLI 2007a, p. 2; Hughes *et al.* 2006, p. 46). Past hunting and specimen collection may have contributed to the species' decline in some areas (Hughes *et al.* 2006, p. 46). These activities continue today, although presumably at low levels (Benstead 1994, p. 8; Hughes *et al.* 2006, p. 48; Lamas and Santos 2004, p. 39).

Summary of Factor B

Species collection for scientific study and museum exhibition, and hunting, are believed to affect the population of the Brazilian merganser. Considering the extremely small size and level of fragmentation of the extant Brazilian merganser population, the removal or dispersal of any individuals from a local area, or even a slight decline in the population's fitness, represent significant risks to the species' overall viability (see Factor E). However, we do not have information on the extent of species collection or hunting to determine whether these activities are a threat to the continued existence of the species. As a result, we are not considering overutilization to be a contributing factor to the continued existence of the Brazilian merganser.

C. Disease or Predation

Extensive human activity in previously undisturbed or isolated areas can lead to the introduction and spread of exotic diseases, some of which (*e.g.,* West Nile virus) can negatively impact endemic bird populations (Neotropical News 2003, p. 1; Naugle *et al.* 2004, p. 704). In addition, there are a number of suspected predators of the Brazilian merganser (Hughes *et al.* 2006, p. 44; Lamas and Santos 2004, p. 39; Partridge 1956, p. 486). Partridge (1956, p. 480) hypothesized that the species' distribution may be naturally limited to upper river tributaries above waterfalls due to predation of their young by large predatory fish, such as the dourado (*Salminus brasiliensis,* syn. *maxillosus*). Finally, extensive human activity in previously undisturbed or isolated areas can result in altered predator or competitor (*e.g.,* cormorant (*Phalacrocorax* sp.)) populations and the introduction of various exotic predator species, such as feral dogs (*Canis familiaris*) and game fish like largemouth bass (*Micropterus salmoides*) (Hughes *et al.* 2006, pp. 44–45).

The available information indicates that there is a greatly expanded human population within the Brazilian merganser's historic range and that the species' extant population is extremely small, highly fragmented, and likely declining. Although large, stable populations of wildlife species have adapted to natural levels of disease and predation within their historic ranges, any additive mortality to the Brazilian merganser population or a decrease in its fitness due to an increase in the incidence of disease or predation could adversely impact the species' overall viability (see Factor E). However, while these potential influences remain a concern for future management of the species, we are not aware of any information currently available that specifically indicates the occurrence of disease in the Brazilian merganser, or that documents actual predation levels incurred by any of the species' local subpopulations. As a result, we are not considering disease or predation to be a contributing factor to the continued existence of the Brazilian merganser.

D. The Inadequacy of Existing Regulatory Mechanisms

The Brazilian merganser is legally protected by national legislation promulgated by the governments in all three countries where it historically occurred (Hughes *et al.* 2006, pp. 50–57). In Brazil, where the vast majority of the species' extant population and remaining suitable habitats occur (BLI 2007a, pp. 1–2; Hughes *et al.* 2006, pp. 28–31), the Brazilian merganser is formally recognized as ''endangered'' (Order No. 1.522), and there are regulatory mechanisms that require direct protection of the species (ECOLEX 2007, pp. 1–2). These include measures that prohibit, or regulate through Federal agency oversight, the following activities with regard to endangered species: export and international trade (*e.g.,* Decree No. 76.623, Order No. 419–P), hunting (*e.g.,* Act No. 5.197), collection and research (Order No. 332), captive propagation (Order No. 5), and general harm (*e.g.,* Decree No. 3.179).

There are also a wide range of regulatory mechanisms in Brazil that indirectly protect the Brazilian merganser through measures that protect its remaining suitable habitats (ECOLEX 2007, pp. 2–5). For example, there are measures that: (1) Prohibit exploitation of the remaining primary forests within the Atlantic Forest biome and gallery forests adjacent to river corridors (*e.g.,* Decree No. 750, Resolution No. 10, Act No. 7.754); (2) govern various practices associated with the management of primary and secondary forests, such as logging, charcoal production, reforestation, recreation, and water resources (*e.g.,* Resolution No. 9, Act No. 4.771, Decree No. 1.282, Decree No. 3.420, Order No. 74–N, Act No. 7.803); (3) establish provisions for controlling forest fires (*e.g.,* Decree No. 97.635, Order No. 231–P, Order No. 292–P, Decree No. 2.661); and (4) regulate industrial developments, such as hydroelectric plants and biodiesel production (*e.g.,* Normative Instruction No. 65, Law No. 11.116). Measures also exist (*e.g.,* Law No. 11.516, Act No. 7.735, Decree No.

78, Order No. 1, Act No. 6.938) that direct Federal and State agencies to promote the protection of lands and natural resources under their jurisdictions (ECOLEX 2007, pp. 5–6).

Regulatory mechanisms in Brazil govern the formal establishment and management of protected areas to promote conservation of the country's natural resources (ECOLEX 2007, pp. 6–7). These mechanisms generally aim to protect endangered wildlife and plant species, genetic resources, overall biodiversity, and native ecosystems on Federal, State, and privately owned lands (*e.g.,* Law No. 9.985, Law No. 11.132, Resolution No. 4, Decree No. 1.922). Brazil's formally established protection areas are categorized based on their overall management objectives (*e.g.,* National Parks versus Biological Reserves) and, based on those categories, allow varying uses and provide varying levels of protection for specific resources (Costa 2007, pp. 5–19). Four of Brazil's protected areas represent the major sites where the Brazilian merganser still occurs (Hughes *et al.* 2006, pp. 53–54). These areas are considered critical for protecting some of the species' key remaining subpopulations (Bianchi *et al.* 2005, pp. 72–74; BLI 2007a, pp. 1–2; Braz *et al.* 2003, pp. 68–71; Bruno *et al.* 2006, p. 30; Collar *et al.* 1992, pp. 84–85; del Hoyo *et al.* 1992, p. 625; Lamas and Santos 2004, pp. 39–40; Silveira 1998, pp. 57–58). Notable among these areas are the Serra da Canastra National Park in Minas Gerais, which currently encompasses a portion of the species' largest known subpopulation (Bruno *et al.* 2006, p. 25), and the Chapada dos Veadeiros National Park in Goiás (Bianchi *et al.* 2005, pp. 72–73). The Service recently provided funding for a project to develop and strengthen conservation partnerships with local agricultural producers in the Serra da Canastra region, which could benefit the Brazilian merganser (USFWS 2006, p. 3).

Although four categories of protected areas under Brazilian law include important sites where the species occurs, unregulated tourism, resource extraction, and livestock grazing continue in these areas and pose threats to the Brazilian merganser. In addition, not all of the remaining Brazilian mergansers occur in these protected areas. Some key areas where the species occurs are currently not formally protected and are subject to ongoing threats, such as proposed hydropower projects, logging, and continuing development.

Due to various reasons (*e.g.,* lack of funding, personnel, or local management commitment), some of Brazil's protected areas exist without current capacity to achieve their stated natural resource objectives (IUCN 1999, pp. 23–24; Neotropical News 1996, pp. 9–10; Neotropical News 1999, p. 9; Costa 2007, p. 7). For example, the Worldwide Fund for Nature found in its study that 47 of 86 protected areas were found to be below the minimum level of implementation of Federal requirements, with only 7 considered to be fully implemented (Neotropical News 1999, p. 9).

Despite the existence of these regulatory mechanisms, habitat loss throughout the Atlantic Forest biome has increased for more than a decade (BLI 2003a, p. 4; BLI 2003b, pp. 1–2; Braz *et al.* 2003, p. 70; Collar *et al.* 1992, p. 84; Hughes *et al.* 2006, p. 61; Lamas and Santos 2004, p. 40; The Nature Conservancy 2007, p. 2; Neotropical News 1997b, p. 11; Scott and Brooke 1985, p. 118). Illegal or unauthorized activities that continue to impact the Brazilian merganser include logging of gallery forests within riverine buffer areas; encroachment of logging, livestock grazing, and subsistence activities within protected primary and secondary forests; hunting; intentional burning; and collection of eggs and adult birds from the wild (BLI 2003b, p. 1; Hughes *et al.* 2006, p. 61; The Nature Conservancy 2007, p. 2).

In the past, the Brazilian government, through various regulations, policies, incentives, and subsidies, has actively encouraged settlement of previously undeveloped lands in southeastern Brazil, which helped facilitate the large-scale conversions that have occurred in the Atlantic Forest and Cerrado biomes (Brannstrom 2000, p. 326; Butler 2007, p. 3; Conservation International 2007c, p. 1; Pivello 2007, p. 2; Ratter *et al.* 1997, pp. 227–228; Saatchi *et al.* 2001, p. 874). Some of these projects, if developed, would impact important sites for the Brazilian merganser and would affect habitat within and adjacent to established protection areas. These projects include further development of dams for hydroelectric power, irrigation, or municipal water supplies; expansion of agricultural practices, primarily for soybean production; and increasing tourism enterprises (Braz *et al.* 2003, p. 70; Hughes *et al.* 2006, pp. 51–56).

Summary of Factor D

Brazil's wide variety of laws requiring resource protection would ultimately benefit the Brazilian merganser, but they are tested by the intense development pressure that exists within the species' range. Government-sponsored measures in Brazil continue to facilitate development projects, however regulatory mechanisms also exist that require protection of the Brazilian merganser and its habitat. Despite the existence of these regulatory mechanisms, there are a few challenges, including the fact that protected areas do not address all the threats to the Brazilian merganser, protected areas do not encompass all occupied habitat of the species, there are government sponsored programs that encourage development within the range of the species, and protections that would benefit the species are not adequately enforced. As a result, threats to the species' remaining habitat are ongoing (see Factor A). Therefore, when combined with Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the Brazilian merganser throughout its range.

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

Under this factor we explore whether three risks, represented by demographic, genetic, and environmental stochastic events, are substantive to threaten the continued existence of the Brazilian merganser. In basic terms, demographic stochasticity is defined by chance changes in the population growth rate for the species (Gilpin and Soulé 1986, p. 27). Population growth rates are influenced by individual birth and death rates (Gilpin and Soulé 1986, p. 27), immigration and emigration rates, as well as changes in population sex ratios. Natural variation in survival and reproductive success of individuals and chance disequilibrium of sex ratios may act in concert to contribute to demographic stochasticity (Gilpin and Soulé 1986, p. 27). Genetic stochasticity is caused by changes in gene frequencies due to genetic drift, and diminished genetic diversity, and/or effects due to inbreeding (*i.e.,* inbreeding depression) (Lande 1995, p. 786). Inbreeding can have individual or population-level consequences either by increasing the phenotypic expression (the outward appearance or observable structure, function or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Charlesworth and Charlesworth 1987, p. 231; Shaffer 1981, p. 131). Environmental stochasticity is defined as the susceptibility of small, isolated populations of wildlife species to natural levels of environmental variability and related ''catastrophic'' events (*e.g.,* severe storms, prolonged drought, extreme cold spells, wildfire)

(Young 1994, pp. 410–412; Mangel and Tier 1994, p. 612; Dunham *et al.* 1999, p. 9). Each risk will be analyzed specifically for the Brazilian merganser.

Small, isolated populations of wildlife species are susceptible to demographic and genetic problems (Shaffer 1981, pp. 130–134). These threat factors, which may act in concert, include: natural variation in survival and reproductive success of individuals, chance disequilibrium of sex ratios, changes in gene frequencies due to genetic drift, diminished genetic diversity and associated effects due to inbreeding (*i.e.,* inbreeding depression), dispersal of just a few individuals, a few clutch failures, a skewed sex ratio in recruited offspring over just one or a few years, and chance mortality of just a few reproductive-age individuals.

The Brazilian merganser has likely always been a rare species, with small local populations occupying the naturally restricted sites of suitable habitat within the upper-tributaries of river systems in east-central South America (Lamas and Santos 2004, pp. 38–39; Partridge 1956, pp. 477–478). In addition, while there is no direct evidence currently available, Yamashita (in Hughes *et al.* 2006, p. 43) speculated that the species has likely always had a naturally low level of genetic variability as a result of its life history strategy.

It was further speculated that inbreeding in the Brazilian merganser has not significantly affected the species, presumably due to the species' natural tolerance for low genetic variability (Hughes *et al.* 2006, p. 43). However, relatively low levels of genetic interchange between local subpopulations can act to maintain the genetic viability of a metapopulation (Vilà *et al.* 2002, p. 91; Wang 2004, p. 332) and, historically, it seems likely that the Brazilian merganser maintained such minimum levels of interchange across its occupied range in order for its subpopulations to have persisted (Middleton and Nisbet 1997, p. 107).

In the absence of more species-specific life history data, a general approximation of a minimum viable population size is referred to as the 50/500 rule (Franklin 1980, p. 147). This rule states that an effective population (N_e) of 50 individuals is the minimum size required to avoid imminent risks from inbreeding. N_e represents the number of animals in a population that actually contribute to reproduction, and is often much smaller than the total number of individuals in the population (N). For example, not all individuals reproduce. Furthermore, the rule states that the long-term fitness of a population requires an N_e of at least 500 individuals so that it will not lose its genetic diversity over time and will maintain an enhanced capacity to adapt to changing conditions.

The available information indicates that the extant Brazilian merganser population is extremely small (*i.e.,* between 50 and 249 individuals) and highly fragmented. The lower limit of the population (50 individuals) teeters on the edge of the minimum number of individuals required to avoid imminent risks from inbreeding ($N_e = 50$). The current maximum estimate of 249 individuals for the entire population (BLI 2007a, p. 1) is only half of the upper threshold ($N_e = 500$) required to maintain genetic diversity over time and to maintain an enhanced capacity to adapt to changing conditions. Furthermore, these small, fragmented populations are likely reproductively isolated due to extensive habitat modifications that have taken place throughout the species' historic distribution (see Factor A). As such, we currently consider the Brazilian merganser to be at risk due to its lack of near- and long-term genetic viability.

Available information indicates that the Brazilian merganser is still subject to low levels of hunting, specimen collection, and other human disturbances (see Factors E and D). For species with large and/or well-interconnected subpopulations, low levels of the above influences would normally be of little consequence. However, considering the extremely small size and likely isolation of the species' extant subpopulations, and the likelihood of continued fragmentation of its occupied habitats, the removal or dispersal of any individuals from a local area, or even a slight decline in the individual or population fitness of these birds, represent significant risks to the continued existence of the Brazilian merganser.

Various past and ongoing human activities and their secondary influences continue to impact all of the remaining suitable habitats that may still harbor the Brazilian merganser (see Factors A and D). We expect that any additional loss or degradation of habitats that are used by the Brazilian merganser will have disproportionately greater impacts on the species due to the population's fragmented state. This is because with each contraction of an existing subpopulation, the likelihood of interchange with other subpopulations within patches decreases, while the likelihood of its complete reproductive isolation increases.

The combined effects of habitat fragmentation (Factor A) and genetic and demographic stochasticity on a species population are referred to as patch dynamics. Patch dynamics can have profound effects on fragmented subpopulations and can potentially reduce a species' respective effective population by orders of magnitude (Gilpin and Soulé 1986, p. 31). For example, an increase in habitat fragmentation can separate subpopulations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics of a population and a reduction in genetic fitness (Gilpin and Soulé 1986, p. 31). Without efforts to maintain buffer areas and reconnect some of the remaining tracts of suitable habitat near the species' currently occupied sites, it is doubtful that the individual tracts are currently large enough to support viable populations, and the eventual loss of any small, isolated populations appears to be inevitable (Goerck 1997, p. 117; Harris and Pimm 2004, pp. 1609–1610; IUCN 1999, pp. 23–24; Machado and Da Fonseca 2000, pp. 914, 921–922; Saatchi *et al.* 2001, p. 873; Scott and Brooke 1985, p. 118). Furthermore, as a species' status continues to decline, often as a result of deterministic forces such as habitat loss or overutilization, it will become increasingly vulnerable to a broad array of other forces. If this trend continues, its ultimate extinction due to one or more stochastic events becomes more likely.

We expect that the Brazilian merganser's increased vulnerability to demographic stochasticity and inbreeding will be operative even in the absence of any human-induced threats or stochastic environmental events, which only act to further exacerbate the species' vulnerability to local extirpations and eventual extinction. Demographic and genetic stochastic forces typically operate synergistically. Initial effects of one threat factor can later exacerbate the effects of other threat factors, as well as itself (Gilpin and Soulé 1986, pp. 25–26). For example, any further fragmentation of populations will, by definition, result in the further removal or dispersal of individuals, which will exacerbate the other threats. Conversely, lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches.

Small, isolated populations of wildlife species, such as the Brazilian merganser, are also susceptible to natural levels of environmental variability and related ''catastrophic'' events (*e.g.,* severe storms, prolonged

drought, extreme cold spells, wildfire), which we will refer to as environmental stochasticity (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412). A single stochastic environmental event can severely reduce existing wildlife populations and, if the affected population is already small or severely fragmented, it is likely that demographic stochasticity or inbreeding will become operative, which would place the population in jeopardy (Gilpin and Soulé 1986, p. 27; Lande 1995, pp. 787–789).

In addition to these stochastic threats, the Brazilian merganser is sensitive to human disturbance activities. Each breeding pair of the Brazilian merganser requires relatively long segments of river (up to *ca.* 12 km (7.5 mi)) (Braz *et al.* 2003, p. 70; Bruno *et al.* 2006, p. 30; Silvera 1998, pp. 57–58). Breeding success and recruitment of young in a local area is believed to be negatively affected by human disturbance. Sources of human disturbance include various ongoing activities associated with a vastly expanded human population within the species' occupied range, including tourism (*e.g.,* birding, river rafting, trekking, off-road vehicle use) and scientific research programs (Braz *et al.* 2003, p. 70; Bruno *et al.* 2006, p. 30; Silvera 1998, pp. 57–58).

Summary of Factor E

The small and declining numbers that make up the Brazilian merganser's population makes it susceptible to natural environmental variability or chance events. In addition to its declining numbers, the high level of population fragmentation makes the species susceptible to genetic and demographic stochasticity. Therefore, we find that demographic, genetic, and environmental stochastic events are a threat to the continued existence of the Brazilian merganser throughout its range.

Status Determination for the Brazilian merganser

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the Brazilian merganser. Activities associated with a vastly expanded human population within the species' occupied range, including tourism (*e.g.,* birding, river rafting, trekking, off-road vehicle use), scientific research programs, livestock grazing, and infrastructure development, all represent multiple sources of additional disturbance to the Brazilian merganser. The species is currently at risk throughout all of its range due to ongoing threats of habitat destruction and modification (Factor A), and its lack of near- and long-term genetic viability due to threats associated with demographic, genetic, and environmental stochasticity (Factor E). Furthermore, we have determined that the existing regulatory mechanisms (Factor D) are not adequate to ameliorate the current threats to the species.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Based on the threats to the Brazilian merganser throughout its entire range, as described above, we determine that the Brazilian merganser is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are proposing to list the Brazilian merganser as an endangered species throughout all of its range.

III. Cherry-throated Tanager (Nemosia rourei)

Species Description

The cherry-throated tanager has distinctive black plumage on its head with a white crown, black coloring on the back and wings, white feathers on its undersides, and red coloring on its throat and upper chest (BLI 2007g, p. 1).

Taxonomy

The cherry-throated tanager is a member of the Thraupidae family. It was first described by Cabanis in 1870 (BLI 2007g, p. 1).

Habitat and Life History

The cherry-throated tanager is endemic to the Atlantic Forest biome and inhabits the upper canopies of trees within humid, montane, primary forests (Bauer *et al.* 2000, pp. 97–104; BLI 2007g, pp. 1–2; Venturini *et al.* 2005, pp. 60–64). The cherry-throated tanager is a primary forest-obligate species that typically forages within the interior crowns of tall, epiphyte-laden trees and occasionally within lower levels (ca. 2 m (6.6 ft)) at the forest edge. The species' diet includes caterpillars, butterflies, ants, and various other arthropods (Bauer *et al.* 2000, BLI 2007g, p. 1; p. 104; Venturini *et al.* 2005, p. 65). Cherry-throated tanagers can be found in mixed-species flocks and appear to require relatively large territories (ca. 3.99 km^2 (1.544 mi^2)) (Venturini *et al.* 2005, p. 66). Within its current distribution, the species makes sporadic use of coffee (*Coffea* spp.), pine (*Pinus* spp.), and eucalyptus (*Eucalyptus* spp.) plantations, presumably as travel corridors between remaining patches of primary forest (Venturini *et al.* 2005, p. 66).

Little is known about the breeding behavior of the cherry-throated tanager. However, a single field observation indicates that perhaps both sexes help build nests (Venturini *et al.* 2002, pp. 43–44). An observed nest was constructed of moss, and possibly thin twigs, and the material was placed in natural depressions of branches near the trunk within the mid-canopy (Venturini *et al.* 2002, pp. 43–44).

Range and Distribution

The cherry-throated tanager is found in primary forest habitats in Espírito Santo and, possibly, Minas Gerais and Rio de Janeiro, Brazil (BLI 2007g, p. 1). Since 1998, the cherry-throated tanager has been documented at two sites of remnant primary forest in south-central Espírito Santo. One site is located in Fazenda Pindobas IV in the municipality of Conceição; the other is found in Caetés, in the Vargem Alta municipality in southern Espírito Santo (30 km (18.6 mi) southeast of Pindobas) (Venturini *et al.* 2005, p. 61).

Population Estimates

The cherry-throated tanager was presumed to be extinct because the species was only known from a single specimen collected in the 1800s and a reliable sighting of eight individuals from 1941 (Collar *et al.* 1992, p. 896; Ridgely and Tudor 1989, p. 34; Scott and Brooke 1985, p. 126). However, the species was rediscovered in 1998 (Bauer *et al.* 2000, p. 97; Venturini *et al.* 2005, p. 60). IUCN estimates the population to range from 50 to 249 individuals, and it is believed to be declining (BLI 2007g, p. 1). However, Venturini *et al.* (2005, p. 66) speculate that the IUCN population estimate is too high, considering that the maximum number of individuals recently recorded was 14, including 6 birds in Pindobas and 8 birds in Caetés.

Conservation Status

IUCN considers the cherry-throated tanager to be ''Critically Endangered'' because its extant population is extremely small (estimated to be between 50 and 249 individuals), highly fragmented, and presumed to be declining (BLI 2007g, p. 1).

Summary of Factors Affecting the Cherry-Throated Tanager

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

Based on a number of recent estimates, 92 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of human activities (Butler 2007, p. 2; Conservation International 2007a, p. 1; Höfling 2007, p. 1; Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854; The Nature Conservancy 2007, p. 1; Saatchi *et al.* 2001, p. 868; World Wildlife Fund 2007, pp. 2–41). In addition to the overall loss and degradation of native habitat within this biome, the remaining tracts of habitat are severely fragmented. The current rate of habitat decline within the Atlantic Forest is unknown.

The region has the two largest cites in Brazil, São Paulo and Rio de Janeiro, and is home to approximately 70 percent of Brazil's 169 million people (CEPF 2002; IBGE 2007). The major human activities that have resulted in the loss, degradation, and fragmentation of native habitats within the Atlantic Forest biome include extensive establishment of agricultural fields (*e.g.,* soy beans, sugarcane, and corn), plantations (*e.g.,* eucalyptus, pine, coffee, cocoa, rubber, and bananas), livestock pastures, centers of human habitation, and industrial developments (*e.g.,* charcoal production, steel plants, and hydropower reservoirs). Forestry practices (*e.g.,* commercial logging), subsistence activities (*e.g.,* fuelwood collection), and changes in fire frequencies also contribute to the degradation of native habitat (BLI 2003a, p. 4; Júnior *et al.* 1995, p. 147; The Nature Conservancy 2007, p. 2; Nunes and Kraas 2000, p. 44; Peixoto and Silva 2007, p. 5; Saatchi *et al.* 2001, pp. 868–869; Scott and Brooke 1985, p. 118; World Wildlife Fund 2007, pp. 3–51).

Most of the tropical forest habitats believed to have been used historically by the cherry-throated tanager have been converted or are severely degraded due to the above human activities (Bauer *et al.* 2000, pp. 98–105; BLI 2007, p. 2; Ridgely and Tudor 1989, p. 34; Venturini *et al.* 2005, p. 68). Degraded and fragmented forests experience a decrease in gene flow, which may cause inbreeding and decreased fitness of forest species (Tabanez and Viana 2000, pp. 929–932). In addition, increased liana density has been observed in degraded and fragmented Atlantic forests of Brazil. Liana infestation of these forest fragments cause tree falls and encourage gap-opportunistic species to take over (Tabanez and Viana 2000, pp. 929–932), thus altering the old forest structure and the cherry-throated tanager's habitat.

Secondary impacts that are associated with forest fragmentation and degradation include the potential introduction of disease vectors or exotic predators within the species' historic range (see Factor C). As a result of these secondary impacts, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Therefore, even without further habitat loss or degradation, the cherry-throated tanager remains at risk from past impacts to its primary forest habitats.

Summary of Factor A

The above human activities and their secondary impacts continue to threaten the last known tracts of habitat within the Atlantic Forest biome that may still harbor the cherry-throated tanager (BLI 2003a, p. 4; BLI 2007g, p. 5; Conservation International 2007a, p. 1; Höfling 2007, p. 1; The Nature Conservancy 2007, p. 1; Venturini *et al.* 2005, p. 68; World Wildlife Fund 2007, pp. 3–51). Because the species' extant population is extremely small, highly fragmented, and believed to be declining (BLI 2007g, p. 1), any further loss or degradation of its remaining suitable habitat will adversely impact the cherry-throated tanager. Therefore, we find that past and ongoing destruction and modification of the cherry-throated tanager's habitat are threats to the continued existence of the species throughout its range.

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

The extant population of the cherry-throated tanager is considered to be extremely small, highly fragmented, and declining (BLI 2007g, p. 1; Venturini *et al.* 2005, p. 66). Because of the cherry-throated tanager's rarity, it has been recommended that no further specimen collection of the species occur (Collar *et al.* 1992, p. 896). However we do not have specific information as to the level of specimen collection, scientific research, or birding that occurs. Although the removal or dispersal of any individuals or even a slight decline in the species' fitness due to any intentional or inadvertent disturbances would represent significant risks to the cherry-throated tanager's overall viability (see Factor E), we are not aware of any information currently available that indicates overutilization of the cherry-throated tanager for commercial, recreational, scientific, or educational purposes is occurring. As a result, we are not considering overutilization to be a contributing factor to the continued existence of the cherry-throated tanager.

C. Disease or Predation

Large, stable populations of wildlife species have adapted to natural levels of disease and predation within their historic ranges. However, the extant population of the cherry-throated tanager is considered to be extremely small, highly fragmented, and declining, making it particularly vulnerable to slight levels of disease and predation.

Extensive human activity in previously undisturbed or isolated areas can lead to the introduction and spread of exotic diseases, some of which (*e.g.,* West Nile virus) can negatively impact endemic bird populations (Naugle *et al.* 2004, p. 704; Neotropical News 2003, p. 1). It can also result in altered predator populations and the introduction of exotic predator species, some of which (*e.g.,* feral cats (*Felis catus*) and rats (*Ratus* sp.)) can be especially harmful to populations of endemic bird species (American Bird Conservancy 2007, p. 1; Courchamp *et al.* 1999, p. 219; Duncan and Blackburn 2007, pp. 149–150; Salo *et al.* 2007, pp. 1241–1242; Small 2005, p. 257). Any additive mortality to the cherry-throated tanager population or a decrease in its fitness due to an increase in the incidence of disease or predation would represent significant risks to the species' overall viability (see Factor E). However, while these potential influences remain a concern for future management of the species, we are not aware of any information currently available that indicates the occurrence of disease in the cherry-throated tanager, or that documents any predation incurred by the species. As a result, we are not considering disease or predation to be a contributing factor to the continued existence of the cherry-throated tanager.

D. The Inadequacy of Existing Regulatory Mechanisms

The cherry-throated tanager is formally recognized as ''endangered'' in Brazil (Order No. 1.522) and is directly protected by various laws promulgated by the Brazilian government (BLI 2007, p. 2; Collar *et al.* 1992, p. 896; ECOLEX 2007, pp. 1–2). For example, there are measures that prohibit, or regulate through Federal agency oversight, the following activities with regard to endangered species: export and international trade (*e.g.,* Decree No.

76.623, Order No. 419–P), hunting (*e.g.,* Act No. 5.197), collection and research (Order No. 332), captive propagation (Order No. 5), and general harm (*e.g.,* Decree No. 3.179).

In addition, there are a wide range of regulatory mechanisms in Brazil that indirectly protect the cherry-throated tanager through measures that protect its remaining suitable habitat (ECOLEX 2007, pp. 2–5). For example, there are measures that: (1) Prohibit exploitation of the remaining primary forests within the Atlantic Forest biome (*e.g.,* Decree No. 750, Resolution No. 10); (2) govern various practices associated with the management of primary and secondary forests, such as logging, charcoal production, reforestation, recreation, and water resources (*e.g.,* Resolution No. 9, Act No. 4.771, Decree No. 1.282, Decree No. 3.420, Order No. 74–N, Act No. 7.803); (3) establish provisions for controlling forest fires (*e.g.,* Decree No. 97.635, Order No. 231–P, Order No. 292–P, Decree No. 2.661); and (4) regulate industrial developments, such as hydroelectric plants and biodiesel production (*e.g.,* Normative Instruction No. 65, Law No. 11.116). Finally, there are various measures (*e.g.,* Law No. 11.516, Act No. 7.735, Decree No. 78, Order No. 1, Act No. 6.938) that direct Federal and state agencies to promote the protection of lands and natural resources under their jurisdictions (ECOLEX 2007, pp. 5–6).

There are also various regulatory mechanisms in Brazil that govern the formal establishment and management of protected areas to promote conservation of the country's natural resources (ECOLEX 2007, pp. 6–7). These mechanisms generally aim to protect endangered wildlife and plant species, genetic resources, overall biodiversity, and native ecosystems on Federal, state, and privately owned lands (*e.g.*, Law No. 9.985, Law No. 11.132, Resolution No. 4, Decree No. 1.922). Brazil's formally established protection areas are categorized based on their overall management objectives (*e.g.*, National Parks versus Biological Reserves) and, based on those categories, allow varying uses and provide varying levels of protection for specific resources (Costa 2007, pp. 5–19).

Few sites have recent confirmed observations of the cherry-throated tanager. There have been possible sightings of the cherry-throated tanager in the Augusto Ruschi Biological Reserve (also known as Nova Lombardia Biological Reserve), which comprises approximately 5,000 hectares (ha) (12,355 acres (ac)) in Espiritu Santo; however, there is doubt that the species occupies the reserve due to a lack of records by ornithologists, since the 1970s, of birds that frequent the area (BLI 2007, p. 2; Bauer *et al.* 2000, p. 106; Scott 1997, p. 62). One of the key sites still occupied by the species is the Pindobas IV Farm. It has been recommended that the farm be formally designated as a protected area to help ensure the species' future protection, and the owners of this farm have expressed interest in this recommendation (Bauer *et al.* 2000, p. 106; BLI 2007g, p. 2). Under Brazilian law, the remaining native forest on the owner's land could be designated as a Private Natural Heritage Reserve.

For various reasons (*e.g.*, lack of funding, personnel, or local management commitment), some of Brazil's protected areas exist without the current capacity to achieve their stated natural resource objectives (ADEJA 2007, pp. 1–2; Bruner *et al.* 2001, p. 125; Costa 2007, p. 7; IUCN 1999, pp. 23–24; Neotropical News 1996, pp. 9–10; Neotropical News 1999, p. 9). Enforcement has been a challenge to implement. Therefore, even with the further designation of protected areas, it is unlikely that all of the identified resource concerns for the cherry-throated tanager (*e.g.*, residential and agricultural encroachment, resource extraction, unregulated tourism, and grazing) would be sufficiently addressed at these sites.

In the past, the Brazilian government, through various regulations, policies, incentives, and subsidies, has actively encouraged settlement of previously undeveloped lands in southeastern Brazil (Brannstrom 2000, p. 326; Butler 2007, p. 3; Conservation International 2007c, p. 1; Pivello 2007, p. 2; Ratter *et al.* 1997, pp. 227–228; Saatchi *et al.* 2001, p. 874). More recently, the Brazilian government has given greater recognition to the environmental consequences of such rapid expansion, and has taken steps to better manage some of the natural resources potentially impacted (Butler 2007, p. 7; Costa 2007, p. 7; Neotropical News 1997a, p. 10; Neotropical News 1997b, p. 11; Neotropical News 1998b, p. 9; Neotropical News 2003, p. 13; Nunes and Kraas 2000, p. 45; Venturini *et al.* 2005, p. 68). Despite these efforts, pressures to develop areas containing cherry-throated tanager habitat continue (ADEJA 2007, pp. 1–2; BLI 2007d, p. 2; Tobias and Williams 1996, p. 65).

Summary of Factor D

Brazil is faced with competing priorities of encouraging development for economic growth and resource protection. Although there are various government-sponsored measures that remain in place in Brazil that continue to facilitate development projects, there are also a wide variety of regulatory mechanisms in Brazil that require protection of the cherry-throated tanager and its habitat throughout the species' potentially occupied range. Due to competing priorities, threats to the species' remaining habitat are ongoing (see Factor A). Therefore, when combined with Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the cherry-throated tanager throughout its range.

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

Under this factor we explore whether three risks, represented by demographic, genetic, and environmental stochastic events, are substantive to threaten the continued existence of the cherry-throated tanager. In basic terms, demographic stochasticity is defined by chance changes in the population growth rate for the species (Gilpin and Soulé 1986, p. 27). Population growth rates are influenced by individual birth and death rates (Gilpin and Soulé 1986, p. 27), immigration and emigration rates, as well as changes in population sex ratios. Natural variation in survival and reproductive success of individuals and chance disequilibrium of sex ratios may act in concert to contribute to demographic stochasticity (Gilpin and Soulé 1986, p. 27). Genetic stochasticity is caused by changes in gene frequencies due to genetic drift, and diminished genetic diversity, and/or effects due to inbreeding (*i.e.*, inbreeding depression) (Lande 1995, p. 786). Inbreeding can have individual or population-level consequences either by increasing the phenotypic expression (the outward appearance or observable structure, function or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Charlesworth and Charlesworth 1987, p. 231; Shaffer 1981, p. 131). Environmental stochasticity is defined as the susceptibility of small, isolated populations of wildlife species to natural levels of environmental variability and related ''catastrophic'' events (*e.g.*, severe storms, prolonged drought, extreme cold spells, wildfire) (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412). Each risk will be analyzed specifically for the cherry-throated tanager.

Small, isolated populations of wildlife species are susceptible to demographic

and genetic problems (Shaffer 1981, pp. 130–134). These threat factors, which may act in concert, include: Natural variation in survival and reproductive success of individuals, chance disequilibrium of sex ratios, changes in gene frequencies due to genetic drift, diminished genetic diversity and associated effects due to inbreeding (*i.e.*, inbreeding depression), dispersal of just a few individuals, a few clutch failures, a skewed sex ratio in recruited offspring over just one or a few years, and chance mortality of just a few reproductive-age individuals.

The cherry-throated tanager is believed to have been rare historically with a naturally patchy, low density distribution, as indicated by the paucity of confirmed sightings of this colorful bird in areas that have been heavily visited by experienced birders (Bauer *et al.* 2000, p. 98; Collar *et al.* 1994, p. 190; Venturini *et al.* 2005, pp. 63–64; BLI 2007g, p. 1). However, the species must have maintained a minimum level of genetic interchange among its local subpopulations in order for them to have persisted (Middleton and Nisbet 1997, p. 107; Vilà *et al.* 2002, p. 91; Wang 2004, p. 332).

In the absence of more species-specific life history data, a general approximation of a minimum viable population size is referred to as the 50/500 rule (Franklin 1980, p. 147), as described under Factor E of the Brazilian merganser. Currently, the cherry-throated tanager is only known from two occupied sites where an approximate total of 14 birds have been observed since 1998 (Venturini *et al.* 2005, p. 66). Given this information, current population estimates are 50 to 249 individuals, or below (BLI 2007g, p. 1; Venturini *et al.* 2005, p. 66). The lower limit of the population is at or below the minimum number of individuals required to avoid imminent risks from inbreeding ($N_e = 50$). The current maximum estimate of 249 individuals for the entire population is only half of the upper threshold ($N_e = 500$) required to maintain genetic diversity over time and to maintain an enhanced capacity to adapt to changing conditions. As such, we currently consider the species to be at risk due to its lack of near- and long-term genetic viability.

Various past and ongoing human activities and their secondary influences continue to impact all of the remaining suitable habitats that may still harbor the cherry-throated tanager (see Factors A and D). We expect that any additional loss or degradation of habitats that are used by the cherry-throated tanager will have disproportionately greater impacts on the species due to the population's fragmented state. This is because with each contraction of an existing subpopulation, the likelihood of interchange with other subpopulations within patches decreases, while the likelihood of its complete reproductive isolation increases.

The combined effects of habitat fragmentation (Factor A) and genetic and demographic stochasticity on a species population are referred to as patch dynamics. Patch dynamics can have profound effects on fragmented subpopulations and can potentially reduce a species' respective effective population by orders of magnitude (Gilpin and Soulé 1986, p. 31). For example, an increase in habitat fragmentation can separate subpopulations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics of a population and a reduction in genetic fitness (Gilpin and Soulé 1986, p. 31). Without efforts to maintain buffer areas and reconnect some of the remaining tracts of suitable habitat near the species' currently occupied sites, it is doubtful that the individual tracts are currently large enough to support viable populations of many birds endemic to the Atlantic Forest, and the eventual loss of any small, isolated populations appears to be inevitable (Goerck 1997, p. 117; Harris and Pimm 2004, pp. 1609–1610; IUCN 1999, pp. 23–24; Machado and Da Fonseca 2000, pp. 914, 921–922; Saatchi *et al.* 2001, p. 873; Scott and Brooke 1985, p. 118). Furthermore, as a species' status continues to decline, often as a result of deterministic forces such as habitat loss or overutilization, it will become increasingly vulnerable to a broad array of other forces. If this trend continues, its ultimate extinction due to one or more stochastic events becomes more likely.

We expect that the cherry-throated tanager's increased vulnerability to demographic stochasticity and inbreeding will be operative even in the absence of any human-induced threats or stochastic environmental events, which only act to further exacerbate the species' vulnerability to local extirpations and eventual extinction. Demographic and genetic stochastic forces typically operate synergistically. Initial effects of one threat factor can later exacerbate the effects of other threat factors, as well as itself (Gilpin and Soulé 1986, pp. 25–26). For example, any further fragmentation of populations will, by definition, result in the further removal or dispersal of individuals, which will exacerbate the other threats. Conversely, lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches.

Small, isolated populations of wildlife species, such as the cherry-throated tanager, are also susceptible to natural levels of environmental variability and related ''catastrophic'' events (*e.g.*, severe storms, prolonged drought, extreme cold spells, wildfire), which we will refer to as environmental stochasticity (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412). A single stochastic environmental event can severely reduce existing wildlife populations and, if the affected population is already small or severely fragmented, it is likely that demographic stochasticity or inbreeding will become operative, which would place the population in jeopardy (Gilpin and Soulé 1986, p. 27; Lande 1995, pp. 787–789).

Summary of Factor E

The small and declining numbers that make up the cherry-throated tanager's population makes it susceptible to natural environmental variability or chance events. In addition to its declining numbers, the high level of population fragmentation makes the species susceptible to genetic and demographic stochasticity. Therefore, we find that demographic, genetic, and environmental stochastic events are a threat to the continued existence of the cherry-throated tanager throughout its range.

Status Determination for the Cherry-throated Tanager

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the cherry-throated tanager. The species is currently at risk throughout all of its range due to ongoing threats of habitat destruction and modification (Factor A), and its lack of near- and long-term genetic viability due to threats associated with demographic, genetic, and environmental stochasticity (Factor E). Furthermore, we have determined that the existing regulatory mechanisms (Factor D) are not adequate to ameliorate the current threats to the cherry-throated tanager.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a ''threatened species'' as ''any species which is likely to become

an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Based on the threats to the cherry-throated tanager throughout its entire range, as described above, we determine that the cherry-throated tanager is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are proposing to list the cherry-throated tanager as an endangered species throughout all of its range.

IV. Fringe-backed Fire-eye (Pyriglena atra)

Species Description

The fringe-backed fire-eye has distinctive red eyes and measures approximately 17.5 cm (7 in). Males are black with a small patch on their backs of black feathers lined with white edges. Females are more of a reddish-brown color, with a black tail, brown underparts and a whitish throat (BLI 2007e, p. 1).

Taxonomy

The fringe-backed fire-eye belongs in the ''antbird'' family Thamnophilidae, and was first described by Swainson in 1825 (BLI 2007e, p. 1). Sick (1991, p. 416) describes this species to be similar to the white-backed fire-eye (*Pyriglena leuconota*). The fringe-backed fire-eye was previously referred to as Swainson's fire-eye, and is also called ''Alapi noir'' in French, ''Fleckenmantel-Feuerauge'' in German, and ''Ojodefuego de Bahía'' in Spanish (del Hoyo 2003, p. 637).

Habitat and Life History

The fringe-backed fire-eye is endemic to the Atlantic Forest biome and typically inhabits dense understories at the edges of lowland primary tropical forests (BLI 2007e, p. 2; Collar *et al.* 1992, p. 677; del Hoyo *et al.* 2003, p. 637). The species has also been found to occupy degraded forests and dense understories of secondary-growth forest stands. It can also occupy early-successional forest stands, but avoids any areas with open understories (*e.g.*, sunny openings, interior forest) (del Hoyo *et al.* 2003, p. 637).

The fringe-backed fire-eye forages in dense, tangled vegetation with numerous horizontal perches within approximately 3 m (10 ft) of the ground, although it occasionally feeds higher up (ca. 10 m (33 ft)) (Collar *et al.* 1992, p. 677; del Hoyo *et al.* 2003, p. 637). The species typically occurs as individual birds, in closely associated pairs, or in small family groups. The bird often relies on army ant (*Eciton* sp.) swarms to flush their prey, which may include cockroaches (superfamily Blattoidea), grasshoppers (family Acrididae), winged ants (class Chilopoda), caterpillars (order Lepidoptera), and geckos (family Gekkonidae) (del Hoyo *et al.* 2003, pp. 637–638; Sick 1993, pp. 403–404).

Limited specific information is known about the species' breeding behavior (del Hoyo *et al.* 2003, p. 638). However, females of this genus typically lay two eggs in spherical nests that are approximately 10 cm (4 in) in diameter, have a side entrance, and are attached to vegetation within roughly 1 m (3.3 ft) of ground (Sick 1993, pp. 405–406). In addition, both sexes in this genus typically help to build nests, brood clutches, and attend their young (Sick 1993, pp. 405–406).

Range and Distribution

The fringe-backed fire-eye occurs along a narrow belt of coastal forest habitats from southern Sergipe to northeastern Bahia, Brazil (BLI 2007e, p. 1; Collar *et al.* 1992, p. 677; del Hoyo *et al.* 2003, p. 637; Sick 1993, p. 416). The species' entire population was previously believed to be restricted to a few sites of remnant primary forest, totaling roughly 9 km^2 (3.5 mi^2) in northeastern Bahia. In 2002, approximately 18 individuals were observed in a forested site in Sergipe (del Hoyo *et al.* 2003, p. 638). This discovery extended the species' known range to the north by approximately 175 km (109 mi) (del Hoyo *et al.* 2003, p. 638). However, the fringe-backed fire-eye has not been located at several sites from where it was previously known in Bahia (del Hoyo *et al.* 2003, p. 638).

Population Estimates

The fringe-backed fire-eye's extant population is estimated to be between 1,000 and 2,499 individuals. The available information indicates that the species' population is fragmented among 6 to 10 occupied areas, with the largest subpopulation between 50 and 249 individuals (BLI 2007e, p. 3). Its population, along with the extent and quality of its habitat, continues to decline (BLI 2007e, p. 1).

Conservation Status

IUCN considers the fringe-backed fire-eye to be ''Endangered'' because it has ''a very small fragmented range, within which the extent and quality of its habitat are continuing to decline and where it is only known from a few localities'' (BLI 2007e, p. 1). In addition, the species is protected under Brazilian law (Collar *et al.* 1992, p. 678).

Summary of Factors Affecting the Fringe-backed Fire-eye

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

The fringe-backed fire-eye occurs in one of the most densely populated regions of Brazil, and most of the tropical forest habitats believed to have been used historically by the species have been converted or are severely degraded due to the wide range of human activities (BLI 2003a, p. 4; BLI 2007e, p. 2; Collar and Andrew 1988, p. 102; Collar *et al.* 1992, p. 678; Collar *et al.* 1994, p. 135; Conservation International 2007a, p. 1; del Hoyo *et al.* 2003, p. 638; Höfling 2007, p. 1; The Nature Conservancy 2007, p. 1; Sick 1993, p. 407; World Wildlife Fund 2007, pp. 3–51). Based on a number of recent estimates, 92 to 95 percent of the area (over 1,250,000 km^2 (482,628 mi^2)) historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of various human activities (Butler 2007, p. 2; Conservation International 2007a, p. 1; Höfling 2007, p. 1; IUCN 1999; Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854; The Nature Conservancy 2007, p. 1; Saatchi *et al.* 2001, p. 868; World Wildlife Fund 2007, pp. 2–41). The current rate of habitat decline within the Atlantic Forest biome is unknown.

In addition to the overall loss and degradation of native habitat within this biome, the remaining tracts of habitat are severely fragmented. The region has the two largest cites in Brazil, São Paulo and Rio de Janeiro, and is home to approximately 70 percent of Brazil's 169 million people (CEPF 2002; IBGE 2007). The major human activities that have resulted in the loss, degradation, and fragmentation of native habitats within the Atlantic Forest biome include extensive establishment of agricultural fields (*e.g.*, soy beans, sugarcane, and corn), plantations (*e.g.*, eucalyptus, pine, coffee, cocoa, rubber, and bananas), livestock pastures, centers of human habitation, and industrial developments (*e.g.*, charcoal production, steel plants, and hydropower reservoirs). Forestry practices (*e.g.*, commercial logging), subsistence activities (*e.g.*, fuelwood collection), and changes in fire frequencies also contribute to the degradation of the native habitat (BLI 2003a, p. 4; Júnior *et al.* 1995, p. 147; The Nature Conservancy 2007, p. 2; Nunes and Kraas 2000, p. 44; Peixoto and Silva 2007, p. 5; Saatchi *et al.* 2001, pp. 868–869; Scott and Brooke 1985,

p. 118; World Wildlife Fund 2007, pp. 3–51).

The fringe-backed fire-eye is not strictly tied to primary forest habitats and can make use of early-successional, secondary-growth forests with dense understory vegetation (BLI 2007e, p. 2; Collar *et al.* 1992, p. 677; del Hoyo *et al.* 2003, p. 637). However, this does not necessarily lessen the risk to the species from the effects of deforestation and habitat degradation. Atlantic Forest birds, such as the fringe-backed fire-eye, which are tolerant of secondary-growth forests, are also rare or have severely restricted ranges (*i.e.*, less than 21,000 km^2 (8,100 mi^2)). Thus habitat degradation can adversely impact such species as equally as it impacts primary forest-obligate species (Harris and Pimm 2004, pp. 1612–1613). The entire range of the fringe-backed fire-eye encompasses approximately 4,990 km^2 (1,924 mi^2), with only 20 percent of this area considered occupied (BLI 2007e, pp. 1–4).

The susceptibility to extirpation of limited-range species that are tolerant of secondary-growth forests or other disturbed sites can occur for a variety of reasons, such as when a species' remaining population is already too small or its distribution too fragmented such that it may not be demographically or genetically viable (Harris and Pimm 2004, pp. 1612–1613). In addition, while the fringe-backed fire-eye may be tolerant of secondary-growth forests or other disturbed sites, these areas may not represent optimal conditions for the species, which would include dense understories and abundant prey species. For example, management of plantations often involves intensive control of the site's understory vegetation and long-term use of pesticides, which eventually result in severely diminished understory cover and potential prey species (Rolim and Chiarello 2004, pp. 2687–2691; Saatchi *et al.* 2001, pp. 868–869; Scott and Brooke 1985, p. 118). Such management practices eventually result in the loss of native understory plant species, creating relatively open understories, which the fringe-backed fire-eye avoids (BLI 2007e, p. 2; Collar *et al.* 1992, p. 677; del Hoyo *et al.* 2003, p. 637).

Secondary impacts that are associated with the above human activities that fragment the remaining tracks of Atlantic forest used by the fringe-backed fire-eye include the potential introduction of disease vectors or exotic predators within the species' historic range (see Factor C). As a result of these secondary impacts, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Even when potentially occupied sites may be formally protected (see Factor D), the remaining fragments of forested habitat will likely undergo further degradation due to their altered dynamics and isolation (through infestation of gap-opportunistic species, which alter forest structure, and decrease in gene flow between species) (Tabanez and Viana 2000, pp. 929–932). Therefore, even without further habitat loss or degradation, the fringe-backed fire-eye remains at risk from past impacts to its suitable habitats.

Summary of Factor A

Most of the tropical forest habitats believed to have been used historically by the fringe-backed fire-eye have been converted or are severely degraded due to the above human activities (BLI 2003a, p. 4; BLI 2007e, p. 2; Collar and Andrew 1988, p. 102; Collar *et al.* 1992, p. 678; Collar *et al.* 1994, p. 135; Conservation International 2007a, p. 1; del Hoyo *et al.* 2003, p. 638; Höfling 2007, p. 1; The Nature Conservancy 2007, p. 1; Sick 1993, p. 407; World Wildlife Fund 2007, pp. 3–51). In addition, the remaining tracts of suitable habitat potentially used by the species, including many secondary-growth forests, are subject to ongoing clearing for agriculture fields and plantations (*e.g.*, sugar cane and oil palm), livestock pastures, and industrial and residential developments (Collar and Andrew 1988, p. 102; Collar *et al.* 1992, p. 678).

Even with the recent passage of national forest policy and in the face of many other legal protections in Brazil (see Factor D), the rate of habitat loss throughout the Atlantic Forest biome has increased since the mid-1990s (CEPF 2001, p. 10; Hodge *et al.* 1997, p. 1; Rocha *et al.* 2005, p. 270), and native habitats at many of the remaining sites may be lost over the next several years (Rocha *et al.* 2005, p. 263). Furthermore, because the species' extant population is already small, highly fragmented, and believed to be declining (BLI 2007e, p. 1), any further loss or degradation of its remaining suitable habitat represent significant threat to the species (see Factor E). Therefore, we find that destruction and modification of habitat are threats to the continued existence of the fringe-backed fire-eye throughout its range.

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

The extant population of the fringe-backed fire-eye is considered to be small, fragmented, and declining. Therefore, the removal or dispersal of just a few individuals from any of the species' subpopulations or even a slight decline in their fitness due to intentional or inadvertent hunting or specimen collection could represent a significant threat to the fringe-backed fire-eye's overall viability (see Factor E). However, while these potential influences remain a concern for future management of the species, we are not aware of any information currently available that indicates that this species is being used for any commercial, recreational, scientific, or educational purpose. As a result, we are not considering overutilization to be a contributing factor to the continued existence of the fringe-backed fire-eye.

C. Disease or Predation

Extensive human activity in previously undisturbed or isolated areas can lead to the introduction and spread of exotic diseases, some of which (*e.g.*, West Nile virus) can negatively impact endemic bird populations (Naugle *et al.* 2004, p. 704; Neotropical News 2003, p. 1). It can also result in altered predator populations and the introduction of exotic predator species, some of which (*e.g.*, feral cats (*Felis catus*) and rats (*Ratus* sp.)) can be especially harmful to populations of endemic bird species (American Bird Conservancy 2007, p. 1; Courchamp *et al.* 1999, p. 219; Duncan and Blackburn 2007, pp. 149–150; Salo *et al.* 2007, pp. 1241–1242; Small 2005, p. 257).

Although large, stable populations of wildlife species have adapted to natural levels of disease and predation within their historic ranges, the extant population of the fringe-backed fire-eye is considered to be small, fragmented, and declining (BLI 2007e, p. 1). Any additive mortality to the fringe-backed fire-eye's subpopulations or a decrease in their fitness due to an increase in the incidence of disease or predation could adversely impact the species' overall viability (see Factor E). However, while these potential influences remain a concern for future management of the species, we are not aware of any information currently available that specifically indicates the occurrence of disease in the fringe-backed fire-eye, or that documents any predation incurred by the species. As a result, we are not considering disease or predation to be a contributing factor to the continued existence of the fringe-backed fire-eye.

D. The Inadequacy of Existing Regulatory Mechanisms

The fringe-backed fire-eye is formally recognized as ''endangered'' in Brazil

(Order No. 1.522) and is directly protected by various laws promulgated by the Brazilian government (BLI 2007e, p. 2; Collar *et al.* 1992, p. 678; ECOLEX 2007, pp. 1–2). For example, there are measures that prohibit, or regulate through Federal agency oversight, the following activities with regard to endangered species: Export and international trade (*e.g.*, Decree No. 76.623, Order No. 419–P), hunting (*e.g.*, Act No. 5.197), collection and research (Order No. 332), captive propagation (Order No. 5), and general harm (*e.g.*, Decree No. 3.179). In addition, there are a wide range of regulatory mechanisms in Brazil that indirectly protect the fringe-backed fire-eye through measures that protect its remaining suitable habitat (ECOLEX 2007, pp. 2–5). For example, there are measures that: (1) Prohibit exploitation of the remaining primary forests within the Atlantic Forest biome (*e.g.*, Decree No. 750, Resolution No. 10); (2) govern various practices associated with the management of primary and secondary forests, such as logging, charcoal production, reforestation, recreation, and water resources (*e.g.*, Resolution No. 9, Act No. 4.771, Decree No. 1.282, Decree No. 3.420, Order No. 74–N, Act No. 7.803); (3) establish provisions for controlling forest fires (*e.g.*, Decree No. 97.635, Order No. 231–P, Order No. 292–P, Decree No. 2.661); and (4) regulate industrial developments, such as hydroelectric plants and biodiesel production (*e.g.*, Normative Instruction No. 65, Law No. 11.116). Finally, there are various measures (*e.g.*, Law No. 11.516, Act No. 7.735, Decree No. 78, Order No. 1, Act No. 6.938) that direct Federal and state agencies to promote the protection of lands and natural resources under their jurisdictions (ECOLEX 2007, pp. 5–6).

There are also various regulatory mechanisms in Brazil that govern the formal establishment and management of protected areas to promote conservation of the country's natural resources (ECOLEX 2007, pp. 6–7). These mechanisms generally aim to protect endangered wildlife and plant species, genetic resources, overall biodiversity, and native ecosystems on Federal, State, and privately owned lands (*e.g.*, Law No. 9.985, Law No. 11.132, Resolution No. 4, Decree No. 1.922). Brazil's formally established protection areas are categorized based on their overall management objectives (*e.g.*, National Parks versus Biological Reserves), and based on those categories they allow varying uses and provide varying levels of protection for specific resources (Costa 2007, pp. 5–19).

Currently, the fringe-backed fire-eye does not occur within any protected areas, although it has been recommended that some of the key sites it still occupies should be formally designated as protected areas to help ensure the species' future protection (BLI 2007e, p. 2; Collar *et al.* 1992, p. 678; del Hoyo *et al.* 2003, p. 638). However, for various reasons (*e.g.*, lack of funding, personnel, or local management commitment), some of Brazil's protected areas exist without the current capacity to achieve their stated natural resource objectives (Bruner *et al.* 2001, p. 125; Costa 2007, p. 7; IUCN 1999, pp. 23–24; Neotropical News 1996, pp. 9–10; Neotropical News 1999, p. 9). Therefore, even with any future designation of protected areas, it is unlikely that all of the identified resource concerns for the fringe-backed fire-eye (*e.g.*, residential and agricultural encroachment, resource extraction, unregulated tourism, and grazing) would be sufficiently addressed at these sites.

In the past, the Brazilian government, through various regulations, policies, incentives, and subsidies, has actively encouraged settlement of previously undeveloped lands in southeastern Brazil (Brannstrom 2000, p. 326; Butler 2007, p. 3; Conservation International 2007c, p. 1; Pivello 2007, p. 2; Ratter *et al.* 1997, pp. 227–228; Saatchi *et al.* 2001, p. 874). More recently, the Brazilian government has given greater recognition to the environmental consequences of such rapid expansion, and has taken steps to better manage some of the natural resources potentially impacted (Butler 2007, p. 7; Costa 2007, p. 7; Neotropical News 1997a, p. 10; Neotropical News 1997b, p. 11; Neotropical News 1998b, p. 9; Neotropical News 2003, p. 13; Nunes and Kraas 2000, p. 45). Despite these efforts, development projects continue to degrade and clear potentially occupied habitat for plantations within the Atlantic Forest biome (Butler 2007, p. 3; Collar *et al.* 1992, p. 678; Neotropical News 1998a, p. 10; Ratter *et al.* 1997, pp. 227–228; Saatchi *et al.* 2001, p. 874).

Summary of Factor D

Brazil is faced with competing priorities of encouraging development for economic growth and resource protection. Although there are various government-sponsored measures that remain in place in Brazil that continue to facilitate potentially harmful development projects, there are also a wide variety of regulatory mechanisms in Brazil that require protection of the fringe-backed fire-eye and its habitat throughout the species' potentially occupied range. Due to competing priorities, significant threats to the species' remaining habitat are ongoing (see Factor A). Therefore, when combined with Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the fringe-backed fire-eye throughout its range.

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

Under this factor we explore whether three risks, represented by demographic, genetic, and environmental stochastic events, are substantive to threaten the continued existence of the fringe-backed fire-eye. In basic terms, demographic stochasticity is defined by chance changes in the population growth rate for the species (Gilpin and Soulé 1986, p. 27). Population growth rates are influenced by individual birth and death rates (Gilpin and Soulé 1986, p. 27), immigration and emigration rates, as well as changes in population sex ratios. Natural variation in survival and reproductive success of individuals and chance disequilibrium of sex ratios may act in concert to contribute to demographic stochasticity (Gilpin and Soulé 1986, p. 27). Genetic stochasticity is caused by changes in gene frequencies due to genetic drift, and diminished genetic diversity, and/or effects due to inbreeding (*i.e.*, inbreeding depression) (Lande 1995, p. 786). Inbreeding can have individual or population-level consequences either by increasing the phenotypic expression (the outward appearance or observable structure, function or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Charlesworth and Charlesworth 1987, p. 231; Shaffer 1981, p. 131). Environmental stochasticity is defined as the susceptibility of small, isolated populations of wildlife species to natural levels of environmental variability and related ''catastrophic'' events (*e.g.*, severe storms, prolonged drought, extreme cold spells, wildfire) (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412). Each risk will be analyzed specifically for the fringe-backed fire-eye.

Small, isolated populations of wildlife species are susceptible to demographic and genetic problems (Shaffer 1981, pp. 130–134). These threat factors, which may act in concert, include: Natural variation in survival and reproductive success of individuals, chance disequilibrium of sex ratios, changes in

gene frequencies due to genetic drift, diminished genetic diversity and associated effects due to inbreeding (*i.e.*, inbreeding depression), dispersal of just a few individuals, a few clutch failures, a skewed sex ratio in recruited offspring over just one or a few years, and chance mortality of just a few reproductive-age individuals.

There is very little information available regarding the historic abundance and distribution of the fringe-backed fire-eye. However, the species' historic population was likely larger and more widely distributed than today (BLI 2007e, p. 1), and it must have maintained a minimum level of genetic interchange among its local subpopulations in order for them to have persisted (Middleton and Nisbet 1997, p. 107; Vila *et al.* 2002, p. 91; Wang 2004, p. 332).

In the absence of more species-specific life history data, the 50/500 rule (as explained under Factor E for the Brazilian merganser) may be used to approximate minimum viable population size (Franklin 1980, p. 147). The available information indicates that the fringe-backed fire-eye population is fragmented among 6 to 10 occupied areas, with little likelihood for interchange of individuals among the species' subpopulations (BLI 2007e, p. 3–4). The largest subpopulation is estimated between 50 and 249 individuals, and therefore, it is at or just below the minimum number of individuals required to avoid imminent risks from inbreeding (N_e = 50). The current maximum estimate of 249 individuals for the largest subpopulation (BLI 2007e, p. 3) is only half of the upper threshold (N_e = 500) required to maintain genetic diversity over time and to maintain an enhanced capacity to adapt to changing conditions. As such, we currently consider the species to be at risk due to its lack of near- and long-term genetic viability.

Available information also indicates that suitable habitats currently occupied by the fringe-backed fire-eye are highly fragmented and that the species' extant population is small and declining. In addition, the fringe-backed fire-eye has not been located at several sites from where it was previously known in Bahia, and the subpopulation recently discovered in Sergipe only included approximately 18 individuals (del Hoyo *et al.* 2003, p. 638). Continued loss of suitable habitats (see Factor A) will exacerbate fragmentation of the remaining occupied patches and will act to further isolate the species' subpopulations.

Various past and ongoing human activities and their secondary influences continue to impact all of the remaining suitable habitats that may still harbor the fringe-backed fire-eye (see Factors A and D). We expect that any additional loss or degradation of habitats that are used by the fringe-backed fire-eye will have disproportionately greater impacts on the species due to the population's fragmented state. This is because with each contraction of an existing subpopulation, the likelihood of interchange with other subpopulations within patches decreases, while the likelihood of its complete reproductive isolation increases.

The combined effects of habitat fragmentation (Factor A) and genetic and demographic stochasticity on a species population are referred to as patch dynamics. Patch dynamics can have profound effects on fragmented subpopulations and can potentially reduce a species' respective effective population by orders of magnitude (Gilpin and Soulé 1986, p. 31). For example, an increase in habitat fragmentation can separate subpopulations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics of a population and a reduction in genetic fitness (Gilpin and Soulé 1986, p. 31). Without efforts to maintain buffer areas and reconnect some of the remaining tracts of suitable habitat near the species' currently occupied sites, it is doubtful that the individual tracts are currently large enough to support viable populations of many birds endemic to the Atlantic Forest, such as the fringe-backed fire-eye, and the eventual loss of any small, isolated populations appears to be inevitable (Goerck 1997, p. 117; Harris and Pimm 2004, pp. 1609–1610; IUCN 1999, pp. 23–24; Machado and Da Fonseca 2000, pp. 914, 921–922; Saatchi *et al.* 2001, p. 873; Scott and Brooke 1985, p. 118). Furthermore, as a species' status continues to decline, often as a result of deterministic forces such as habitat loss or overutilization, it will become increasingly vulnerable to a broad array of other forces. If this trend continues, its ultimate extinction due to one or more stochastic events becomes more likely.

We expect that the fringe-backed fire-eye's increased vulnerability to demographic stochasticity and inbreeding will be operative even in the absence of any human-induced threats or stochastic environmental events, which only act to further exacerbate the species' vulnerability to local extirpations and eventual extinction. Demographic and genetic stochastic forces typically operate synergistically. Initial effects of one threat factor can later exacerbate the effects of other threat factors, as well as itself (Gilpin and Soulé 1986, pp. 25–26). For example, any further fragmentation of populations will, by definition, result in the further removal or dispersal of individuals, which will exacerbate the other threats. Conversely, lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches.

Small, isolated populations of wildlife species, such as the fringe-backed fire eye, are also susceptible to natural levels of environmental variability and related ''catastrophic'' events (*e.g.*, severe storms, prolonged drought, extreme cold spells, wildfire), which we will refer to as environmental stochasticity (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412). A single stochastic environmental event can severely reduce existing wildlife populations and, if the affected population is already small or severely fragmented, it is likely that demographic stochasticity or inbreeding will become operative, which would place the population in jeopardy (Gilpin and Soulé 1986, p. 27; Lande 1995, pp. 787–789).

Summary of Factor E

The small and declining numbers that make up the fringe-backed fire-eye's population makes it susceptible to natural environmental variability or chance events. In addition to its declining numbers, the high level of population fragmentation makes the species susceptible to genetic and demographic stochasticity. Therefore, we find that demographic, genetic, and environmental stochastic events are a threat to the continued existence of the fringe-backed fire-eye throughout its range.

Status Determination for the Fringe-Backed Fire-Eye

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the fringe-backed fire-eye. The species is currently at risk throughout all of its range due to ongoing threats of habitat destruction and modification (Factor A), and its lack of near- and long-term genetic viability due to threats associated with demographic, genetic, and environmental stochasticity (Factor E). Furthermore, we have determined that the existing regulatory mechanisms

(Factor D) are not adequate to ameliorate the current threats to the species.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Based on the threats to the fringe-backed fire-eye throughout its entire range, as described above, we determine that the fringe-backed fire-eye is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are proposing to list the fringe-backed fire-eye as an endangered species throughout all of its range.

V. Kaempfer's Tody-tyrant (Hemitriccus kaempferi)

Species Description

The Kaempfer's tody-tyrant is an olive-green bird measuring 10 cm (4 in) (BLI 2007f, p. 1). The head and face have olive-brown coloring, while the upper parts and breast are a dull olive-green, the underparts are a pale greenish-yellow, and the throat is a pale yellow color. The primary wings are dark and the secondary wings have greenish-yellow borders. Each eye has a pale ring (BLI 2007f, p. 1).

Taxonomy

The Kaempfer's tody-tyrant is a member of the flycatcher family (Tyrannidae) (BLI 2007f, p. 1). The species was previously recognized under the genus *Idioptilon*, and was first described by Zimmer in 1953 (BLI 2007f, p. 1).

Habitat and Life History

The Kaempfer's tody-tyrant is endemic to the Atlantic Forest biome and inhabits well shaded edges of medium-height (ca. 12 to 15 m (39 to 49 ft)) primary- and secondary-growth forests that are typically in close proximity to rivers. The species appears to avoid tall, mature, primary forest habitats (Barnett *et al.* 2000, pp. 372–373; BLI 2007f, pp. 1–2; Collar *et al.* 1992, p. 776). The Kaempfer's tody-tyrant feeds predominantly in the outer canopies of trees within roughly 1 to 3 m (3.3 to 10 ft) of the ground, but may also feed higher up (ca. 6 m (20 ft)).

There is little information available describing the diet of the Kaempfer's tody-tyrant; however, similar species within the Tyrannidae family feed on a variety of insects, which they often catch while in flight (Sick 1993, pp. 452–453). Breeding pairs typically forage together and appear to maintain small, well-defined, permanent territories (Barnett *et al.* 2000, p. 373; BLI 2007f, p. 2).

Both sexes help to build their nests, which can be located up to approximately 6 m (20 ft) above the ground and 2–3 m (6.6–10 ft) within the primary forest margin. Nests resemble elongated cups that can be up to 45 cm (18 in) long and are made of live mosses, grass, and dead leaves wrapped around a horizontal branch near the main trunk (Barnett *et al.* 2000, p. 373).

Range and Distribution

The Kaempfer's tody-tyrant inhabits humid, lowland forests in northeastern Santa Catarina, Brazil (Barnett *et al.* 2000, p. 371; BLI 2007f, p. 1; Collar *et al.* 1992, p. 776; Collar *et al.* 1994, p. 139). The Kaempfer's tody-tyrant is only known with certainty from three localities in the state of Santa Catarina: Brusque, Itapoá, and Vila Nova and nearby areas. The last record for Brusque is from 1950, and the area has not been resurveyed since that time. The species has not been located at Vila Nova since 1991, despite repeated searches (BLI 2007f, pp. 1–2). The species was reported in 1998 and in 2000 in a reserve called Reserva Particular do Patrimonio Natural de Ponta Velha in Itapoá. This reserve is close to the state border with Paraná; thus it is possible that the species may be found in similar habitat in Paraná; however, surveys have not been conducted (Barnett *et al.* 2000, p. 378).

Population Estimates

There is very little information currently available that specifically addresses the Kaempfer's tody-tyrant's abundance; however, its extant population is estimated to be between 1,000 and 2,499 individuals and is believed to be declining. The largest subpopulation of the species is estimated to be between 250 and 1,000 individuals (BLI 2007f, pp. 1–3).

Conservation Status

IUCN considers the Kaempfer's tody-tyrant to be ''Critically Endangered'' because ''it is estimated to have an extremely small and severely fragmented range, with recent records from only two locations, and ongoing deforestation in the vicinity of these sites'' (BLI 2007f, p. 1).

Summary of Factors Affecting the Kaempfer's Tody-tyrant

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

Based on a number of recent estimates, 92 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of various human activities (Butler 2007, p. 2; Conservation International 2007a, p. 1; Höfling 2007, p. 1; Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854; The Nature Conservancy 2007, p. 1; Saatchi *et al.* 2001, p. 868; World Wildlife Fund 2007, pp. 2–41). In addition to the overall loss and degradation of native habitat within this biome, the remaining tracts of habitat are severely fragmented. The current rate of deforestation of Brazil's Atlantic Forest is unknown.

The region has the two largest cites in Brazil, São Paulo and Rio de Janeiro, and is home to approximately 70 percent of Brazil's 169 million people (CEPF 2002; IBGE 2007). The major human activities that have resulted in the loss, degradation, and fragmentation of native habitats within the Atlantic Forest biome include extensive establishment of agricultural fields (*e.g.*, soy beans, sugarcane, and corn), plantations (*e.g.*, eucalyptus, pine, coffee, cocoa, rubber, and bananas), livestock pastures, centers of human habitation, and industrial developments (*e.g.,* charcoal production, steel plants, and hydropower reservoirs). Forestry practices (*e.g.*, commercial logging), subsistence activities (*e.g.*, fuelwood collection), and changes in fire frequencies also contribute to the degradation of the native habitat (BLI 2003a, p. 4; Júnior *et al.* 1995, p. 147; The Nature Conservancy 2007, p. 2; Nunes and Kraas 2000, p. 44; Peixoto and Silva 2007, p. 5; Saatchi *et al.* 2001, pp. 868–869; Scott and Brooke 1985, p. 118; World Wildlife Fund 2007, pp. 3–51).

The Kaempfer's tody-tyrant is not strictly tied to primary forest habitats and can inhabit secondary-growth forests (Barnett *et al.* 2000, pp. 372–373; BLI 2007f, pp. 1–2; Collar *et al.* 1992, p. 776). However, this does not lessen the threat to the species from the effects of ongoing deforestation and habitat degradation. Atlantic Forest birds, such as the Kaempfer's tody-tyrant, which are tolerant of secondary-growth forests, are also rare or have restricted ranges (*i.e.*, less than 21,000 km^2 (8,100 mi^2)). Thus, habitat degradation can adversely impact such species just as equally as it

impacts primary forest-obligate species (Harris and Pimm 2004, pp. 1612–1613). Currently, the entire known range of the Kaempfer's tody-tyrant is restricted to only 19 km² (7.3 mi²) (BLI 2007f, p. 3).

The susceptibility to extirpation of rare, limited-range species that are tolerant of secondary-growth forests occurs for a variety of reasons such as when a species' remaining population is already too small or its distribution too fragmented such that it may not be demographically or genetically viable (Harris and Pimm 2004, pp. 1612–1613). In addition, while the Kaempfer's tody-tyrant may be tolerant of secondary-growth forests or other disturbed sites, these areas may not represent optimal conditions for the species. For example, management of plantations often involves intensive control of the site's understory vegetation and long-term use of pesticides, which eventually result in severely diminished understory cover and potential prey species (Rolim and Chiarello 2004, pp. 2687–2691; Saatchi *et al.* 2001, pp. 868–869; Scott and Brooke 1985, p. 118). Such management practices eventually result in the loss of native understory plant species and relatively open understories. Insectivorous birds that feed in the understory, including those in the genus *Hemitriccus*, are especially vulnerable to such habitat modifications (Goerck 1997, p. 117), and the Kaempfer's tody-tyrant does not occupy these types of altered sites (Barnett *et al.* 2000, p. 377).

Even when potentially occupied sites may be formally protected (see Factor D), the remaining fragments of forested habitat will likely undergo further degradation due to their altered dynamics and isolation as defined by decreased gene flow, increase in inbreeding, decrease in species fitness, increase in liana infestation, and dominance of gap-obligate species (Tabanez and Viana 2000, pp. 929–932). Moreover, secondary impacts that are associated with human activities that degrade and remove native habitats within the Atlantic Forest biome include the potential introduction of disease vectors or exotic predators within the species' historic range (see Factor C). As a result of these secondary impacts, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Therefore, even without further habitat loss or degradation, the Kaempfer's tody-tyrant remains at risk from past impacts to its suitable forested habitats.

Summary of Factor A

The Kaempfer's tody-tyrant occurs in one of the most densely populated regions of Brazil, and most of the tropical forest habitats believed to have been used historically by the species have been converted or are severely degraded due to the wide range of human activities identified above (Barnett *et al.* 2000, pp. 377–378; BLI 2003a, p. 4; BLI 2007f, p. 2; Collar *et al.* 1992, p. 776; Collar *et al.* 1994, p. 139; Conservation International 2007a, p. 1; Höfling 2007, p. 1; The Nature Conservancy 2007, p. 1; World Wildlife Fund 2007, pp. 3–51). In addition, the remaining tracts of suitable habitat potentially used by the species, including many secondary-growth forests, are subject to ongoing clearing for agricultural fields, plantations (*e.g.*, banana, palmetto, and rice), logging, livestock pastures, and industrial and residential developments (Barnett *et al.* 2000, pp. 377–378; BLI 2007f, p. 4; Collar *et al.* 1992, p. 776).

Even with the recent passage of national forest policy and in light of many other legal protections in Brazil (see Factor D), the rate of habitat loss throughout the Atlantic Forest biome has increased since the mid-1990s (CEPF 2001, p. 10; Hodge *et al.* 1997, p. 1; Rocha *et al.* 2005, p. 270), and native habitats at many of the remaining sites may be lost over the next several years (Rocha *et al.* 2005, p. 263). In addition, because the extant population of the Kaempfer's tody-tyrant is already small, highly fragmented, and believed to be declining (BLI 2007f, pp. 1–3), any further loss or degradation of its remaining suitable habitat will adversely impact the species. Therefore, we find that destruction and modification of habitat are threats to the continued existence of the Kaempfer's tody-tyrant throughout its range.

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

The extant population of the Kaempfer's tody-tyrant is considered to be small, fragmented, and declining. Therefore, the removal or dispersal of just a few individuals from any of the species' subpopulations or even a slight decline in their fitness due to intentional or inadvertent hunting, specimen collection, or other human disturbances (*e.g.,* scientific research, birding) could represent a significant threat to the species' overall viability (see Factor E). However, while these potential influences remain a concern for future management of the Kaempfer's tody-tyrant, we are not aware of any information currently available that indicates the use of this species for any commercial, recreational, scientific, or educational purpose. As a result, we are not considering overutilization to be a contributing factor to the continued existence of the Kaempfer's tody-tyrant.

C. Disease or Predation

Extensive human activity in previously undisturbed or isolated areas can lead to the introduction and spread of exotic diseases, some of which (*e.g.,* West Nile virus) can negatively impact endemic bird populations (Naugle *et al.* 2004, p. 704; Neotropical News 2003, p. 1). It can also result in altered predator populations and the introduction of various exotic predator species, some of which (*e.g.,* feral cats (*Felis catus*) and rats (*Ratus* sp.)) can be especially harmful to populations of endemic bird species (American Bird Conservancy 2007, p. 1; Courchamp *et al.* 1999, p. 219; Duncan and Blackburn 2007, pp. 149–150; Salo *et al.* 2007, pp. 1241–1242; Small 2005, p. 257). Although large, stable populations of wildlife species have adapted to natural levels of disease and predation within their historic ranges, the extant population of the Kaempfer's tody-tyrant is considered to be small, fragmented, and declining (BLI 2007f, pp. 1–3). In addition, extensive human activity in previously undisturbed or isolated areas can lead to the introduction and spread of exotic diseases, some of which (*e.g.,* West Nile virus) can negatively impact endemic bird populations (Naugle *et al.* 2004, p. 704; Neotropical News 2003, p. 1).

Any additive mortality to the subpopulations of the Kaempfer's tody-tyrant or a decrease in their fitness due to an increase in the incidence of disease or predation could severely impact the species' overall viability (see Factor E). However, while these potential influences remain a concern for future management of the species, we are not aware of any information currently available that indicates the occurrence of disease in the Kaempfer's tody-tyrant, or that documents any predation incurred by the species. As a result, we are not considering disease or predation to be a contributing factor to the continued existence of the Kaempfer's tody-tyrant.

D. The Inadequacy of Existing Regulatory Mechanisms

The Kaempfer's tody-tyrant is formally recognized as ''endangered'' in Brazil (Order No. 1.522) and is directly protected by various laws promulgated by the Brazilian government (Barnett *et al.* 2000, p. 377; BLI 2007f, p. 2; Collar

et al. 1992, p. 776; ECOLEX 2007, pp. 1–2). For example, there are measures that prohibit, or regulate through Federal agency oversight, the following activities with regard to endangered species: export and international trade (*e.g.,* Decree No. 76.623, Order No. 419–P), hunting (*e.g.,* Act No. 5.197), collection and research (Order No. 332), captive propagation (Order No. 5), and general harm (*e.g.,* Decree No. 3.179). In addition, there are a wide range of regulatory mechanisms in Brazil that indirectly protect the Kaempfer's tody-tyrant through measures that protect its remaining suitable habitat (ECOLEX 2007, pp. 2–5). For example, there are measures that: (1) Prohibit exploitation of the remaining primary forests within the Atlantic Forest biome (*e.g.,* Decree No. 750, Resolution No. 10); (2) govern various practices associated with the management of primary and secondary forests, such as logging, charcoal production, reforestation, recreation, and water resources (*e.g.,* Resolution No. 9, Act No. 4.771, Decree No. 1.282, Decree No. 3.420, Order No. 74–N, Act No. 7.803); (3) establish provisions for controlling forest fires (*e.g.,* Decree No. 97.635, Order No. 231–P, Order No. 292–P, Decree No. 2.661); and (4) regulate industrial developments, such as hydroelectric plants and biodiesel production (*e.g.,* Normative Instruction No. 65, Law No. 11.116). Finally, there are various measures (*e.g.,* Law No. 11.516, Act No. 7.735, Decree No. 78, Order No. 1, Act No. 6.938) that direct Federal and state agencies to promote the protection of lands and natural resources under their jurisdictions (ECOLEX 2007, pp. 5–6).

Various regulatory mechanisms in Brazil govern the formal establishment and management of protected areas to promote conservation of the country's natural resources (ECOLEX 2007, pp. 6–7). These mechanisms generally aim to protect endangered wildlife and plant species, genetic resources, overall biodiversity, and native ecosystems on Federal, state, and privately owned lands (*e.g.,* Law No. 9.985, Law No. 11.132, Resolution No. 4, Decree No. 1.922). Brazil's formally established protection areas are categorized based on their overall management objectives (*e.g.,* National Parks versus Biological Reserves) and, based on those categories, they allow varying uses and provide varying levels of protection for specific resources (Costa 2007, pp. 5–19).

Currently, the Kaempfer's tody-tyrant is known to occur within one 15 km² (6 mi²) protected area, the privately owned Volta Velha Natural Heritage Reserve (Barnett *et al.* 2000, pp. 377–378; BLI 2007f, p. 3; Collar *et al.* 1992, p. 776). In addition, the species is known to occur in forested habitat adjacent to another 4 km² (1.5 mi²) protected area, the Bracinho State Ecological Station, which was established as a water-catchment buffer zone for a hydroelectric plant. It has been recommended that both of these sites should be expanded to ensure that the species' currently occupied range and other potentially suitable habitats are encompassed within protected areas (Barnett *et al.* 2000, pp. 377–378; BLI 2007f, p. 3; Collar *et al.* 1992, p. 776). However, for various reasons (*e.g.,* lack of funding, personnel, or local management commitment), some of Brazil's protected areas exist without the current capacity to achieve their stated natural resource objectives (ADEJA 2007, pp. 1–2; Bruner *et al.* 2001, p. 125; Costa 2007, p. 7; IUCN 1999, pp. 23–24; Neotropical News 1996, pp. 9–10; Neotropical News 1999, p. 9). Therefore, even with the expansion or further designation of protected areas, it is unlikely that all of the identified impacts to the Kaempfer's tody-tyrant (*e.g.,* residential and agricultural encroachment, resource extraction, unregulated tourism, and grazing) would be sufficiently addressed at these sites.

In the past, the Brazilian government, through various regulations, policies, incentives, and subsidies, has actively encouraged settlement of previously undeveloped lands in southeastern Brazil (Brannstrom 2000, p. 326; Butler 2007, p. 3; Conservation International 2007c, p. 1; Pivello 2007, p. 2; Ratter *et al.* 1997, pp. 227–228; Saatchi *et al.* 2001, p. 874). More recently, the Brazilian government has given greater recognition to the environmental consequences of such rapid expansion, and has taken steps to better manage some of the natural resources potentially impacted (Butler 2007, p. 7; Costa 2007, p. 7; Neotropical News 1997a, p. 10; Neotropical News 1997b, p. 11; Neotropical News 1998b, p. 9; Neotropical News 2003, p. 13; Nunes and Kraas 2000, p. 45). However, there are still various government-sponsored measures in place, both at the national and state levels, that help facilitate development projects (Barnett *et al.* 2000, pp. 377–378; Butler 2007, p. 3; Collar *et al.* 1992, p. 776; Neotropical News 1998a, p. 10; Ratter *et al.* 1997, pp. 227–228; Saatchi *et al.* 2001, p. 874) some of which, such as continued logging, housing and tourism developments, and expansion of plantations, could impact potentially important sites for the Kaempfer's tody-tyrant (Barnett *et al.* 2000, p. 377–378; Collar *et al.* 1992, p. 776).

Summary of Factor D

Although there are government-sponsored measures that remain in place in Brazil that continue to facilitate development projects, there are also a wide variety of regulatory mechanisms in Brazil that require protection of the Kaempfer's tody-tyrant and its habitat throughout the species' potentially occupied range. However, the existing regulatory mechanisms that apply to the species have proven difficult to enforce (BLI 2003a, p. 4; Conservation International 2007c, p. 1; Costa 2007, p. 7; The Nature Conservancy 2007, p. 2; Neotropical News 1997b, p. 11; Peixoto and Silva 2007, p. 5; Scott and Brooke 1985, pp. 118, 130). As a result, significant threats to the species' remaining habitats are ongoing (see Factor A) due to competing priorities. Therefore, when combined with Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the Kaempfer's tody-tyrant throughout its range.

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

Under this factor we explore whether three risks, represented by demographic, genetic, and environmental stochastic events, are substantive to threaten the continued existence of the Kaempfer's tody-tyrant. In basic terms, demographic stochasticity is defined by chance changes in the population growth rate for the species (Gilpin and Soulé 1986, p. 27). Population growth rates are influenced by individual birth and death rates (Gilpin and Soulé 1986, p. 27), immigration and emigration rates, as well as changes in population sex ratios. Natural variation in survival and reproductive success of individuals and chance disequilibrium of sex ratios may act in concert to contribute to demographic stochasticity (Gilpin and Soulé 1986, p. 27). Genetic stochasticity is caused by changes in gene frequencies due to genetic drift, and diminished genetic diversity, and/or effects due to inbreeding (*i.e.,* inbreeding depression) (Lande 1995, p. 786). Inbreeding can have individual or population-level consequences either by increasing the phenotypic expression (the outward appearance or observable structure, function or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Charlesworth and Charlesworth 1987, p. 231; Shaffer 1981,

p. 131). Environmental stochasticity is defined as the susceptibility of small, isolated populations of wildlife species to natural levels of environmental variability and related ''catastrophic'' events (*e.g.,* severe storms, prolonged drought, extreme cold spells, wildfire) (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412). Each risk will be analyzed specifically for the Kaempfer's tody-tyrant.

Small, isolated populations of wildlife species are susceptible to demographic and genetic problems (Shaffer 1981, pp. 130–134). These threat factors, which may act in concert, include: Natural variation in survival and reproductive success of individuals, chance disequilibrium of sex ratios, changes in gene frequencies due to genetic drift, diminished genetic diversity and associated effects due to inbreeding (*i.e.,* inbreeding depression), dispersal of just a few individuals, a few clutch failures, a skewed sex ratio in recruited offspring over just one or a few years, and chance mortality of just a few reproductive-age individuals.

There is very little information available regarding the historic distribution and abundance of the Kaempfer's tody-tyrant. However, the species' historic population was likely larger and more widely distributed than today, and it must have maintained a minimum level of genetic interchange among its local subpopulations in order for them to have persisted (Middleton and Nisbet 1997, p. 107; Vilà *et al.* 2002, p. 91; Wang 2004, p. 332).

In the absence of more species-specific life history data, a general approximation of a minimum viable population size is referred to as the 50/500 rule (Franklin 1980, p. 147), as described under Factor E for the Brazilian merganser. The extant population of the Kaempfer's tody-tyrant is estimated to be between 1,000 and 2,499 individuals that are fragmented among several potentially occupied sites, with the largest subpopulation estimated to be between 250 and 1,000 individuals (BLI 2007f, p. 3). The other subpopulations are even smaller in size, and there is currently little likelihood for interchange of individuals among them. The largest subpopulation exceeds the minimum number of individuals required to avoid imminent risks from inbreeding (N_e = 50), but may be only half of the upper threshold (N_e = 500) required to maintain genetic diversity and the capacity to adapt to changing conditions over time. Continued loss of suitable habitats (see Factor A) will exacerbate fragmentation of the remaining occupied patches and will act to further isolate the species' subpopulations. As such, we currently consider the species to be at risk due to its lack of long-term genetic viability.

Various past and ongoing human activities and their secondary influences continue to impact all of the remaining suitable habitats that may still harbor the Kaempfer's tody-tyrant (see Factors A and D). We expect that any additional loss or degradation of habitats that are used by the Kaempfer's tody-tyrant will have disproportionately greater impacts on the species due to the population's fragmented state. This is because with each contraction of an existing subpopulation, the likelihood of interchange with other subpopulations within patches decreases, while the likelihood of its complete reproductive isolation increases.

The combined effects of habitat fragmentation (Factor A) and genetic and demographic stochasticity on a species population are referred to as patch dynamics. Patch dynamics can have profound effects on fragmented subpopulations and can potentially reduce a species' respective effective population by orders of magnitude (Gilpin and Soulé 1986, p. 31). For example, an increase in habitat fragmentation can separate subpopulations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics of a population and a reduction in genetic fitness (Gilpin and Soulé 1986, p. 31). Without efforts to maintain buffer areas and reconnect some of the remaining tracts of suitable habitat near the species' currently occupied sites, it is doubtful that the individual tracts are currently large enough to support viable populations of many birds endemic to the Atlantic Forest, like the Kaempfer's tody-tyrant, and the eventual loss of any small, isolated populations appears to be inevitable (Goerck 1997, p. 117; Harris and Pimm 2004, pp. 1609–1610; IUCN 1999, pp. 23–24; Machado and Da Fonseca 2000, pp. 914, 921–922; Saatchi *et al.* 2001, p. 873; Scott and Brooke 1985, p. 118). Furthermore, as a species' status continues to decline, often as a result of deterministic forces such as habitat loss or overutilization, it will become increasingly vulnerable to a broad array of other forces. If this trend continues, its ultimate extinction due to one or more stochastic events becomes more likely.

We expect that the Kaempfer's tody-tyrant's increased vulnerability to demographic stochasticity and inbreeding will be operative even in the absence of any human-induced threats or stochastic environmental events, which only act to further exacerbate the species' vulnerability to local extirpations and eventual extinction. Demographic and genetic stochastic forces typically operate synergistically. Initial effects of one threat factor can later exacerbate the effects of other threat factors, as well as itself (Gilpin and Soulé 1986, pp. 25–26). For example, any further fragmentation of populations will, by definition, result in the further removal or dispersal of individuals, which will exacerbate the other threats. Conversely, lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches.

Small, isolated populations of wildlife species, such as the Kaempfer's tody-tyrant, are also susceptible to natural levels of environmental variability and related ''catastrophic'' events (*e.g.,* severe storms, prolonged drought, extreme cold spells, wildfire), which we will refer to as environmental stochasticity (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412). A single stochastic environmental event can severely reduce existing wildlife populations and, if the affected population is already small or severely fragmented, it is likely that demographic stochasticity or inbreeding will become operative, which would place the population in jeopardy (Gilpin and Soulé 1986, p. 27; Lande 1995, pp. 787–789).

Summary of Factor E

The small and declining numbers that make up the Kaempfer's tody-tyrant's population makes it susceptible to natural environmental variability or chance events. In addition to its declining numbers, the high level of population fragmentation makes the species susceptible to genetic and demographic stochasticity. Therefore, we find that demographic, genetic, and environmental stochastic events are a threat to the continued existence of the Kaempfer's tody-tyrant throughout its range.

Status Determination for the Kaempfer's Tody-tyrant

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the Kaempfer's tody-tyrant. The species is currently at risk throughout all of its range due to ongoing threats of habitat destruction and modification (Factor A), and its lack of long-term genetic

viability due to threats associated with demographic, genetic, and environmental stochasticity (Factor E). Furthermore, we have determined that the existing regulatory mechanisms (Factor D) are not adequate to ameliorate the current threats to the Kaempfer's tody-tyrant.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Based on the threats to the Kaempfer's tody-tyrant throughout its entire range, as described above, we determine that the Kaempfer's tody-tyrant is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are proposing to list the Kaempfer's tody-tyrant as an endangered species throughout all of its range.

VI. Margaretta's Hermit (Phaethornis malaris margarettae)

Species Description

The Margaretta's hermit is a long-billed hummingbird. The average bill length is 37 millimeters (mm) (1.5 in) and the average tail length is 42 mm (1.7 in) (Hinkelmann 1996, pp. 122–123). Hinkelmann (1996, p. 147) describes the species to be morphologically similar to *Phaethornis margarettae bolvianus* with a paler underside.

Taxonomy

The Margaretta's hermit is in the hummingbird family, Trochilidae. Margaretta's hermit was first described as a new species in 1972 by A. Ruschi (Sibley and Monroe 1990). This bird has variously been considered a full species (*Phaethornis margarettae*) and placed as a subspecies with the long-billed hermit (*P. superciliosus*). However, the available information indicates that it is most appropriately considered to be a subspecies of the great-billed hermit (*P. malaris*) (del Hoyo *et al.* 1999, p. 543; Dickinson 2003, p. 256; Hinkelmann 1996, pp. 125–135; Howard and Moore 1980, p. 205; ICBP 1981, p. 2; Sibley and Monroe 1990, p. 143; Sick 1993, p. 341; Stiles 2005, pp. 1–5).

Habitat and Life History

The Margaretta's hermit is endemic to the Atlantic Forest biome and is found in shrubby understories of primary- and secondary-growth tropical, lowland rainforest (del Hoyo *et al.* 1999, p. 543; ICBP 1981, p. 2; Hinkelmann 1996, pp. 133–140; Sibley and Monroe 1990, p. 143). Hummingbirds feed on the nectar of a variety of plant species, especially bromeliads, and often have a symbiotic relationship with specific plants for which they function as pollinators (Buzato *et al.* 2000, p. 824; del Hoyo *et al.* 1999, p. 543; Sick 1993, pp. 324–326). They also feed on a variety of small arthropods, which are an especially important source of protein for raising their young.

Females typically lay two eggs and are solely responsible for tending their young. Hummingbird nests are usually constructed on vegetation of items such as detritus, webs, leaves, and animal hair cemented together with regurgitated nectar and saliva (Sick 1993, pp. 330–331). Little is known of the subspecies' seasonal movements, but its daily movements within a local area are likely associated with the timing of flowering plants that are used for feeding (del Hoyo *et al.* 1999, p. 543; Sick 1993, pp. 324–336).

Range and Distribution

The Margaretta's hermit historically occurred in coastal forested habitats from Penambuco to Espírito Santo, Brazil (del Hoyo *et al.* 1999, p. 543; Hinkelmann 1996, pp. 132–135; Sibley and Monroe 1990, p. 143). The last confirmed occurrence of the Margaretta's hermit is from a relatively old (ca. 1978) sighting of the subspecies on a privately-owned, remnant forest called Klabin Farm, which is located in Espírito Santo which presently includes 40 km^2 (15.46 mi^2) of land (ICBP 1981, p. 2). A portion of this area (ca. 15 km^2 (5.79 mi^2)) was designated as the Córrego Grande Biological Reserve in 1989 (Costa 2007, p. 20; Willis and Oniki 2002, p. 21). Margaretta's hermit likely also occurred at the Sooretama Biological Reserve in Espírito Santo until around 1977 (ICBP 1981, p. 2).

Population Estimates

Unknown, although likely to be small in light of the very limited area the subspecies may occupy (ICBP 1981, p. 2).

Conservation Status

IUCN considers the Margaretta's hermit to be ''Endangered'' because its extant population is believed to have an extremely restricted distribution and it is likely very small, if it survives at all (ICBP 1981, p. 2). The species, as a whole, is listed under Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (UNEP–World Conservation Monitoring Centre (WCMC) 2009b). Appendix II includes species that are not necessarily threatened with extinction, but may become so unless trade is subject to strict regulation to avoid utilization becoming incompatible with the species' survival.

Summary of Factors Affecting the Margaretta's Hermit

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

Based on a number of recent estimates, 92 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of various human activities (Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854; Saatchi *et al.* 2001, p. 868; Conservation International 2007a, p. 1; The Nature Conservancy 2007, p. 1; World Wildlife Fund 2007, pp. 2–41; Höfling 2007, p. 1; Butler 2007, p. 2). In addition to the overall loss and degradation of native habitat within this biome, the remaining tracts of habitat are severely fragmented. The current rate of habitat loss in the Atlantic Forest biome is unknown.

The region has the two largest cites in Brazil, São Paulo and Rio de Janeiro, and is home to approximately 70 percent of Brazil's 169 million people (CEPF 2002; IBGE 2007). The major human activities that have resulted in the loss, degradation, and fragmentation of native habitats within the Atlantic Forest biome include extensive establishment of agricultural fields (*e.g.*, soy beans, sugarcane, and corn), plantations (*e.g.*, eucalyptus, pine, coffee, cocoa, rubber, and bananas), livestock pastures, centers of human habitation, and industrial developments (*e.g.*, charcoal production, steel plants, and hydropower reservoirs). Forestry practices (*e.g.*, commercial logging), subsistence activities (*e.g.*, fuelwood collection), and changes in fire frequencies also contribute to the degradation of native habitat (BLI 2003a, p. 4; Júnior *et al.* 1995, p. 147; The Nature Conservancy 2007, p. 2; Nunes and Kraas 2000, p. 44; Peixoto and Silva 2007, p. 5; Saatchi *et al.* 2001, pp. 868–869; Scott and Brooke 1985, p. 118; World Wildlife Fund 2007, pp. 3–51).

Most of the tropical forest habitats believed to have been used historically by the Margaretta's hermit have been converted or are severely degraded due to the above human activities, and the subspecies can not occupy these extensively altered areas (del Hoyo *et al.* 1999, p. 543; ICBP 1981, p. 2; Scott and

Brooke 1985, p. 118; Sick 1993, p. 338). While the Margaretta's hermit is not strictly tied to primary forest habitats and can make use of secondary-growth forests, this does not lessen the threat to the subspecies from the effects of deforestation and habitat degradation. Atlantic Forest birds, such as Margaretta's hermit, which are tolerant of secondary-growth forests, are also rare or have restricted ranges (*i.e.*, less than 21,000 km² (8,100 mi²)). Thus, habitat degradation can adversely impact such species just as equally as it impacts primary forest obligate species (Harris and Pimm 2004, pp. 1612–1613). The last site known to be occupied by the Margaretta's hermit totaled only about 40 km² (15 mi²) (ICBP 1981, p. 2).

The susceptibility to extirpation of rare, limited-range species that are tolerant of secondary-growth forests occurs for a variety of reasons such as when a species' remaining population is already too small or its distribution too fragmented such that it may not be demographically or genetically viable (Harris and Pimm 2004, pp. 1612–1613). In addition, while the Margaretta's hermit may be tolerant of secondary-growth forests, these areas may not represent optimal conditions for the species. For example, many hummingbird species are susceptible to excessive sun and readily abandon their nests at altered forested sites with too much exposure (Sick 1993, p. 331), as can occur with various human activities that result in partial clearing (*e.g.*, selective logging). In addition, management of plantations often involves intensive control of the site's understory vegetation, which eventually results in severely diminished understory cover (Rolim and Chiarello 2004, pp. 2679–2680; Saatchi *et al.* 2001, pp. 868–869). Even if the forest canopy structure remains largely intact, such management practices eventually result in loss of native understory plant species and severely altered understory structure and dynamics, which can be especially detrimental to pollinator species such as the Margaretta's hermit.

Even when forested lands are formally protected (see Factor D), the remaining fragments of habitat where the subspecies may still occur will likely continue to undergo degradation due to their altered dynamics and isolation (Tabanez and Viana 2000, pp. 929–932). Moreover, secondary impacts that are associated with human activities that degrade the remaining tracts of forested habitat potentially used by the subspecies include the potential introduction of disease vectors or exotic predators within the subspecies' historic range (see Factor C). As a result of these secondary impacts, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Therefore, even without further habitat loss or degradation, the Margaretta's hermit remains at risk from past impacts to its suitable forested habitats.

Summary of Factor A

The Margaretta's hermit occurs in one of the most densely populated regions of Brazil, and human activities and their secondary impacts identified above continue to threaten the last known tracts of habitat within the Atlantic Forest biome that may still harbor the Margaretta's hermit (BLI 2003a, p. 4; Conservation International 2007a, p. 1; del Hoyo *et al.* 1999, p. 543; Höfling 2007, p. 1; ICBP 1981, p. 2; The Nature Conservancy 2007, p. 1; Sick 1993, p. 338; World Wildlife Fund 2007, pp. 3–51). Even with the recent passage of national forest policy and in light of many other legal protections in Brazil (see Factor D), the rate of habitat loss throughout the Atlantic Forest biome has increased since the mid-1990s (CEPF 2001, p. 10; Hodge *et al.* 1997, p. 1; Rocha *et al.* 2005, p. 270), and native habitats at many of the remaining sites may be lost over the next several years (Rocha *et al.* 2005, p. 263). The Margaretta's hermit has already been reduced to such an extent that it is now only known from a relatively old (ca. 1978) sighting (ICBP 1981, p. 2; Willis and Oniki 2002, p. 21) and any further loss or degradation of its remaining suitable habitat could cause the extinction of this subspecies. Therefore, we find that destruction and modification of habitat are threats to the continued existence of the Margaretta's hermit throughout its range.

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

In the past, many species of hummingbirds that occur in southeastern Brazil were collected for use in the fashion industry due to their colorful plumage, and populations of some species have been extirpated or remain severely diminished as a result (Sick 1993, pp. 337–338). Due to concerns about hummingbirds in international trade, in 1987, the entire family, Trochilidae, was listed in Appendix II of CITES (UNEP–WCMC 2009b), a treaty that regulates international trade in certain protected animal and plant species.

Appendix II of CITES includes species that, although not necessarily threatened presently with extinction, may become so unless the trade in specimens is strictly controlled. International trade in specimens of Appendix-II species is authorized through permits or certificates, once the granting authorities have ascertained certain factors, including that trade will not be detrimental to the survival of the species in the wild and that the specimen was legally acquired (UNEP–WCMC 2009b).

Since the listing of the family under CITES in 1987, there have been eight CITES-permitted international transactions in specimens of the species *Phaethornis malaris;* however, no trade has been reported at the subspecies level, *Phaethornis malaris margarettae* (John Caldwell, UNEP–WCMC, pers. comm., May 13, 2008). According to WCMC, the eight transactions involved a total of 30 specimens of *Phaethornis malaris*, which were imported into the United States from the United Kingdom, Peru and Suriname; the two latter countries are within the species' range (John Caldwell, UNEP–WCMC, pers. comm., May 12, 2008). Due to the suspected small population size and restricted range of the Margaretta's hermit, we believe that the 30 specimens reported in trade were of the species and not the subspecies. Furthermore, we are unaware of any unreported CITES trade or illegal international trade in specimens of Margaretta's hermit. Therefore, we believe that international trade is not a factor influencing the subspecies' status in the wild.

Local hummingbird populations may also be impacted by collection for various uses, including scientific research, preparation of ''novelty'' exhibits, consumption in local dishes, and for the zoo or pet trade (Rolim and Chiarello 2004, pp. 2679–2680; Scott and Brooke 1985, p. 118; Sick 1993, pp. 337–338).

If it exists at all, the extant population of the Margaretta's hermit is likely extremely small and occurs within a severely restricted range. Due to its rarity, the removal or dispersal of any individuals of this subspecies or even a slight decline in the population's fitness due to any intentional or inadvertent hunting and specimen collection would adversely impact the subspecies' overall viability (see Factor E). However, while these potential influences remain a concern for future management of the Margaretta's hermit, we are not aware of any information currently available that specifically indicates the use of this subspecies for any commercial, recreational, scientific, or educational purpose. As a result, we are not

considering overutilization to be a contributing factor to the continued existence of the Margaretta's hermit.

C. Disease or Predation

Young hummingbirds are sometimes severely affected by botflies (*Philornis* sp.) (Sick 1993, pp. 336–337). In addition, extensive human activity in previously undisturbed or isolated areas can lead to the introduction and spread of exotic diseases, some of which (*e.g.*, West Nile virus) can negatively impact endemic bird populations (Naugle *et al.* 2004, p. 704; Neotropical News 2003, p. 1). With regard to predation, a variety of reptiles (*e.g.*, snakes, lizards) and predatory birds (*e.g.*, owls, hawks) are known to prey on hummingbirds (Sick 1993, pp. 336–337). Furthermore, nestling hummingbirds can be killed by raiding army ants (*Eciton* sp.), while some hornets and bees are potential competitors for flower nectar and have been known to lethally sting adult hummingbirds. In addition, extensive human activity in previously undisturbed or isolated areas can result in altered predator populations and the introduction of various exotic predator species, some of which (*e.g.*, feral cats (*Felis catus*) and rats (*Ratus* sp.)) can be especially harmful to populations of endemic bird species (American Bird Conservancy 2007, p. 1; Courchamp *et al.* 1999, p. 219; Duncan and Blackburn 2007, pp. 149–150; Salo *et al.* 2007, pp. 1241–1242; Small 2005, p. 257).

Large, stable populations of wildlife species have adapted to natural levels of disease and predation within their historic ranges. However, the extant population of the Margaretta's hermit is considered to be extremely small and occurs within a severely restricted range, if it currently exists at all, and there is a greatly expanded human population within the subspecies' historic distribution. Any additive mortality to the Margaretta's hermit population or a decrease in its fitness due to an increase in the incidence of disease or predation would severely impact the subspecies' overall viability (see Factor E). Nevertheless, while these potential influences remain a concern for future management of the subspecies, we are not aware of any information currently available that indicates the occurrence of disease in the Margaretta's hermit, or that documents any predation incurred by this subspecies. As a result, we are not considering disease or predation to be a contributing factor to the continued existence of the Margaretta's hermit.

D. The Inadequacy of Existing Regulatory Mechanisms

The Margaretta's hermit is formally recognized as ''endangered'' in Brazil (Order No. 1.522) and is directly protected by various laws promulgated by the Brazilian government (ECOLEX 2007, pp. 1–2; ICBP 1981, p. 2). For example, there are measures that prohibit, or regulate through Federal agency oversight, the following activities with regard to endangered species: export and international trade (*e.g.*, Decree No. 76.623, Order No. 419–P), hunting (*e.g.*, Act No. 5.197), collection and research (Order No. 332), captive propagation (Order No. 5), and general harm (*e.g.*, Decree No. 3.179).

The Margaretta's hermit is listed in Appendix II of CITES (UNEP–WCMC 2009b). CITES is an international treaty among 173 nations, including Brazil and the United States, that entered into force in 1975 (UNEP–WCMC 2009a). In the United States, CITES is implemented through the U.S. Endangered Species Act (Act). The Act designates the Secretary of the Interior as the Scientific and Management Authorities to implement the treaty with all functions carried out by the Service. Under this treaty, countries work together to ensure that international trade in animal and plant species is not detrimental to the survival of wild populations by regulating the import, export, re-export, and introduction from the sea of CITES-listed animal and plant species (USFWS 2009). As discussed under Factor B, we do not consider international trade to be a threat to the Margaretta's hermit. Therefore, this international treaty does not reduce any current threats to the subspecies. Any international trade that occurs in the future would be effectively regulated under CITES.

There are also a wide range of regulatory mechanisms in Brazil that indirectly protect the Margaretta's hermit through measures that protect its remaining suitable habitat (ECOLEX 2007, pp. 2–5). For example, there are measures that: (1) Prohibit exploitation of the remaining primary forests within the Atlantic Forest biome (*e.g.*, Decree No. 750, Resolution No. 10); (2) govern various practices associated with the management of primary and secondary forests, such as logging, charcoal production, reforestation, recreation, and water resources (*e.g.*, Resolution No. 9, Act No. 4.771, Decree No. 1.282, Decree No. 3.420, Order No. 74–N, Act No. 7.803); (3) establish provisions for controlling forest fires (*e.g.*, Decree No. 97.635, Order No. 231–P, Order No. 292–P, Decree No. 2.661); and (4) regulate industrial developments, such as hydroelectric plants and biodiesel production (*e.g.*, Normative Instruction No. 65, Law No. 11.116). Finally, there are various measures (*e.g.*, Law No. 11.516, Act No. 7.735, Decree No. 78, Order No. 1, Act No. 6.938) that direct Federal and state agencies to promote the protection of lands and natural resources under their jurisdictions (ECOLEX 2007, pp. 5–6).

Various regulatory mechanisms exist in Brazil that govern the formal establishment and management of protected areas to promote conservation of the country's natural resources (ECOLEX 2007, pp. 6–7). These mechanisms generally aim to protect endangered wildlife and plant species, genetic resources, overall biodiversity, and native ecosystems on Federal, state, and privately owned lands (*e.g.*, Law No. 9.985, Law No. 11.132, Resolution No. 4, Decree No. 1.922). Brazil's formally established protection areas are categorized based on their overall management objectives (*e.g.*, National Parks versus Biological Reserves), and based on those categories they allow varying uses and provide varying levels of protection for specific resources (Costa 2007, pp. 5–19).

Successful efforts to protect the last site known to harbor the Margaretta's hermit from further development occurred in the mid-1980s (Pereira 2007, p. 2), and a portion of this area was designated as the Córrego Grande Biological Reserve in 1989 (Costa 2007, p. 20). However, nearly the entire site burned in 1986, and the subspecies has not been recorded there since that time (Willis and Oniki 2002, p. 21). The Margaretta's hermit likely also occurred at the Sooretama Biological Reserve in Espírito Santo in 1977 (ICBP 1981, p. 2).

For various reasons (*e.g.*, lack of funding, personnel, or local management commitment), some of Brazil's protected areas exist without the current capacity to achieve their stated natural resource objectives (Bruner *et al.* 2001, p. 125; Costa 2007, p. 7; IUCN 1999, pp. 23–24; Neotropical News 1996, pp. 9–10; Neotropical News 1999, p. 9; Peixoto and Silva 2007, p. 5; World Wildlife Fund 2007, pp. 3–51). For example, according to a World Wide Fund for Nature report, 47 of 86 management plans for protected areas that have been assessed are considered to remain below their minimum level of implementation of Federal requirements, with only 7 considered to be fully implemented (Neotropical News 1999, p. 9). Therefore, even with formal designation of protected areas, it is unlikely that all of the identified threats to the Margaretta's hermit (*e.g.*, residential and agricultural

encroachment, resource extraction, unregulated tourism, grazing, and fire) are sufficiently addressed at these sites.

In the past, the Brazilian government, through various regulations, policies, incentives, and subsidies, has actively encouraged settlement of previously undeveloped lands in southeastern Brazil, which helped facilitate the large-scale habitat conversions that have occurred throughout the Atlantic Forest biome (Brannstrom 2000, p. 326; Butler 2007, p. 3; Conservation International 2007c, p. 1; Pivello 2007, p. 2; Ratter *et al.* 1997, pp. 227–228; Saatchi *et al.* 2001, p. 874). More recently, the Brazilian government has given greater recognition to the environmental consequences of such rapid expansion, and has taken steps to better manage some of the natural resources potentially impacted (Butler 2007, p. 7; Costa 2007, p. 7; Neotropical News 1997a, p. 10; Neotropical News 1997b, p. 11; Neotropical News 1998b, p. 9; Neotropical News 2003, p. 13; Nunes and Kraas 2000, p. 45). However, due to competing priorities, these regulatory mechanisms have proven difficult to enforce.

Summary of Factor D

Although there are government-sponsored measures that remain in place in Brazil that continue to facilitate potentially harmful development projects, there are also a wide variety of regulatory mechanisms in Brazil that require protection of the Margaretta's hermit and its habitat throughout the subspecies' potentially occupied range. The existing regulatory mechanisms that apply to the Margaretta's hermit have been difficult to enforce (BLI 2003a, p. 4; Conservation International 2007c, p. 1; Costa 2007, p. 7; The Nature Conservancy 2007, p. 2; Neotropical News 1997b, p. 11; Peixoto and Silva 2007, p. 5; Scott and Brooke 1985, pp. 118, 130). As a result, significant threats to the subspecies' remaining habitats are ongoing (see Factor A). Therefore, when combined with Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the Margaretta's hermit throughout its range.

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

Under this factor we explore whether three risks, represented by demographic, genetic, and environmental stochastic events, are substantive to threaten the continued existence of the Margaretta's hermit. In basic terms, demographic stochasticity is defined by chance changes in the population growth rate for the species (Gilpin and Soulé 1986, p. 27). Population growth rates are influenced by individual birth and death rates (Gilpin and Soulé 1986, p. 27), immigration and emigration rates, as well as changes in population sex ratios. Natural variation in survival and reproductive success of individuals and chance disequilibrium of sex ratios may act in concert to contribute to demographic stochasticity (Gilpin and Soulé 1986, p. 27). Genetic stochasticity is caused by changes in gene frequencies due to genetic drift, and diminished genetic diversity, and/or effects due to inbreeding (*i.e.*, inbreeding depression) (Lande 1995, p. 786). Inbreeding can have individual or population-level consequences either by increasing the phenotypic expression (the outward appearance or observable structure, function or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Charlesworth and Charlesworth 1987, p. 231; Shaffer 1981, p. 131). Environmental stochasticity is defined as the susceptibility of small, isolated populations of wildlife species to natural levels of environmental variability and related ''catastrophic'' events (*e.g.*, severe storms, prolonged drought, extreme cold spells, wildfire) (Young 1994, pp. 410–412; Mangel and Tier 1994, p. 612; Dunham *et al.* 1999, p. 9). Each risk will be analyzed specifically for the Margaretta's hermit.

Small, isolated populations of wildlife species are susceptible to demographic and genetic problems (Shaffer 1981, pp. 130–134). These threat factors, which may act in concert, include: natural variation in survival and reproductive success of individuals, chance disequilibrium of sex ratios, changes in gene frequencies due to genetic drift, diminished genetic diversity and associated effects due to inbreeding (*i.e.*, inbreeding depression), dispersal of just a few individuals, a few clutch failures, a skewed sex ratio in recruited offspring over just one or a few years, and chance mortality of just a few reproductive-age individuals.

Historically, the Margaretta's hermit population was more abundant and widespread throughout its range (ICBP 1981, p. 2), and the subspecies must have maintained a minimum level of genetic interchange among its local subpopulations in order for them to have persisted (Middleton and Nisbet 1997, p. 107; Vilà *et al.* 2002, p. 91; Wang 2004, p. 332). In the absence of more species-specific life history data, the 50/500 rule (as explained under Factor E for the Brazilian merganser) may be used to approximate minimum viable population size (Franklin 1980, p. 147). There are no specific past or present abundance estimates for the Margaretta's hermit. However, the available information indicates that its extant population, if it still exists, is likely well below both of the thresholds ($N_e = 50$ and $N_e = 500$) for an effective population size because of the very limited area that it is known to occupy (see Factor A) (ICBP 1981, p. 2). This means that the subspecies' population likely does not have enough individuals to avoid risks from inbreeding or the ability to maintain genetic diversity and adapt to changing conditions over time. Furthermore, if the subspecies does still exist, continued loss of suitable habitats (see Factor A) is likely to further exacerbate fragmentation of any remaining occupied patches. As such, we currently consider the subspecies to be at risk due to its lack of near- and long-term genetic viability.

Various past and ongoing human activities and their secondary influences continue to impact all of the remaining suitable habitats that may still harbor the Margaretta's hermit (see Factors A and D). We expect that any additional loss or degradation of habitats that are used by the Margaretta's hermit will have disproportionately greater impacts on the subspecies due to the population's fragmented state. This is because with each contraction of an existing subpopulation, the likelihood of interchange with other subpopulations within patches decreases, while the likelihood of its complete reproductive isolation increases.

The combined effects of habitat fragmentation (Factor A) and genetic and demographic stochasticity on a species population are referred to as patch dynamics. Patch dynamics can have profound effects on fragmented subpopulations and can potentially reduce a species' respective effective population by orders of magnitude (Gilpin and Soulé 1986, p. 31). For example, an increase in habitat fragmentation can separate subpopulations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics of a population and a reduction in genetic fitness (Gilpin and Soulé 1986, p. 31). Without efforts to maintain buffer areas and reconnect some of the remaining tracts of suitable habitat near the subspecies' currently occupied sites, it is doubtful that the individual tracts are currently large enough to support viable populations of many birds endemic to the Atlantic Forest, like the Margaretta's hermit, and the eventual

loss of any small, isolated populations appears to be inevitable (Goerck 1997, p. 117; Harris and Pimm 2004, pp. 1609–1610; IUCN 1999, pp. 23–24; Machado and Da Fonseca 2000, pp. 914, 921–922; Saatchi *et al.* 2001, p. 873; Scott and Brooke 1985, p. 118). Furthermore, as a species' status continues to decline, often as a result of deterministic forces such as habitat loss or overutilization, it will become increasingly vulnerable to a broad array of other forces. If this trend continues, its ultimate extinction due to one or more stochastic events becomes more likely.

We expect that the Margaretta's hermit's increased vulnerability to demographic stochasticity and inbreeding will be operative even in the absence of any human-induced threats or stochastic environmental events, which only act to further exacerbate the subspecies' vulnerability to local extirpations and eventual extinction. Demographic and genetic stochastic forces typically operate synergistically. Initial effects of one threat factor can later exacerbate the effects of other threat factors, as well as itself (Gilpin and Soulé 1986, pp. 25–26). For example, any further fragmentation of populations will, by definition, result in the further removal or dispersal of individuals, which will exacerbate the other threats. Conversely, lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches.

Small, isolated populations of wildlife species, such as the Margaretta's hermit, are also susceptible to natural levels of environmental variability and related ''catastrophic'' events (*e.g.*, severe storms, prolonged drought, extreme cold spells, wildfire), which we will refer to as environmental stochasticity (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412). A single stochastic environmental event can severely reduce existing wildlife populations and, if the affected population is already small or severely fragmented, it is likely that demographic stochasticity or inbreeding will become operative, which would place the population in jeopardy (Gilpin and Soulé 1986, p. 27; Lande 1995, pp. 787–789).

Summary of Factor E

The small and declining numbers that make up the Margaretta's hermit's population make it susceptible to natural environmental variability or chance events. In addition to its declining numbers, the high level of population fragmentation makes the subspecies susceptible to genetic and demographic stochasticity. Therefore, we find that demographic, genetic, and environmental stochastic events are a threat to the continued existence of the Margaretta's hermit throughout its range.

Status Determination for the Margaretta's Hermit

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the Margaretta's hermit. The subspecies is currently at risk throughout all of its range due to ongoing threats of habitat destruction and modification (Factor A), and its lack of near- and long-term genetic viability due to threats associated with demographic, genetic, and environmental stochasticity (Factor E). Furthermore, we have determined that the existing regulatory mechanisms (Factor D) are not adequate to ameliorate the current threats to the Margaretta's hermit.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Based on the threats to the Margaretta's hermit throughout its entire range, as described above, we determine that the Margaretta's hermit is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are proposing to list the Margaretta's hermit as an endangered species throughout all of its range.

VII. Southeastern Rufous-vented Ground-cuckoo (Neomorphus geoffroyi dulcis)

Species Description

The southeastern rufous-vented ground-cuckoo is a large-sized terrestrial bird. The cuckoo has a distinctive flat frontal crest, a long tail and long legs, and a yellow-green curved bill (Payne 2005, p. 206; Roth 1981, p. 388). The species is blackish-brown or reddish black in color, and has brown scale-like coloring on the breast with a black breast band and a reddish belly. It has a bare face with gray to blue coloring (Payne 2005, p. 206).

Taxonomy

The southeastern rufous-vented ground-cuckoo is one of seven subspecies of the rufous-vented ground-cuckoo (*Neomorphus geoffroyi*) that occur at several disjunct localities from Nicaragua to central South America (del Hoyo *et al.* 1997, pp. 606–607; Howard and Moore 1980, p. 178; Payne 2005, pp. 204–207; Sibley and Monroe 1990, p. 107).

Habitat and Life History

The southeastern rufous-vented ground-cuckoo is an extremely shy, ground-foraging bird that requires large blocks of mature, undisturbed, tropical lowland forest within the Atlantic Forest biome (del Hoyo *et al.* 1997, pp. 606–607; ICBP 1981, p. 1; Sick 1993, p. 286; Payne 2005, pp. 204–207). This species is unable to sustain flight for long distances, and major rivers and other extensive areas of non-habitat are thought to impede their movements.

Southeastern rufous-vented ground-cuckoos feed on large insects, scorpions, centipedes, spiders, small frogs, lizards, and occasionally on seeds and fruit. The species is agile when on the ground and highly adept at running and jumping through branches in pursuit of prey (Sick 1993, p. 278). The species is often associated with army ant (*Eciton* sp.) and red ant (*Solenopsis* sp.) colonies, whose foraying columns they use as ''beaters'' to flush their prey (Sick 1993, p. 286). They are also known to forage for flushed prey behind other species, such as the white-lipped peccary (*Tayassu pecari*) (Sick 1993, p. 286).

Unlike some other species of cuckoos, southeastern rufous-vented ground-cuckoos are not believed to be parasitic nesters and build their own nests approximately 2.5 m (8 ft) up in the branches of swampy vegetation (Roth 1981, p. 388; Sick 1993, p. 286). The species' nest resembles a shallow bowl, roughly 25 cm (10 in) across, made of sticks and lined with leaves. Once the young are fledged, the adults care for them away from the nest site (del Hoyo *et al.* 1997, pp. 606–607).

Range and Distribution

Although the southeastern rufous-vented ground-cuckoo had a widespread distribution historically, it has likely always been locally rare (ICBP 1981, p. 1). Historic distributions included the Brazilian cities of Bahia, Minas Gerais, Espírito Santo, and, possibly, Rio de Janeiro (ICBP 1981, p. 1; Payne 2005, p. 207). The last confirmed sighting of this subspecies was from Sooretama Biological Reserve north of the Doce River in Espírito Santo in 1977, and it may now be extinct (Payne 2005, p. 207; Roth 1981, p. 388; Scott and Brooke 1985, pp. 125–126). However, a recent photographic record (ca. 2004) indicates

that the subspecies may still occur at Doce River State Park in Minas Gerais (Scoss *et al.* 2006, p. 1).

Population Estimates

Unknown, although certainly very low if it still exists (ICBP 1981, p. 1).

Conservation Status

IUCN considers the southeastern rufous-vented ground-cuckoo to be ''Endangered'' because although the subspecies was ''never numerous, this extremely shy species is among the first to disappear if its primary forest habitat is disturbed and in south-eastern Brazil where it occurs, most of such forest has been destroyed'' (ICBP 1981, p. 1).

Summary of Factors Affecting the Southeastern Rufous-vented Ground-cuckoo

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

Based on a number of recent estimates, 92 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of various human activities (Butler 2007, p. 2; Conservation International 2007a, p. 1; Höfling 2007, p. 1; Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854; The Nature Conservancy 2007, p. 1; Saatchi *et al.* 2001, p. 868; World Wildlife Fund 2007, pp. 2–41). In addition to the overall loss and degradation of native habitat within this biome, the remaining tracts of habitat are severely fragmented. The current rate of habitat decline within the Atlantic Forest is unknown.

The region has the two largest cites in Brazil, São Paulo and Rio de Janeiro, and is home to approximately 70 percent of Brazil's 169 million people (CEPF 2002; IBGE 2007). The major human activities that have resulted in the loss, degradation, and fragmentation of native habitats within the Atlantic Forest biome include extensive establishment of agricultural fields (*e.g.,* soy beans, sugarcane, and corn), plantations (*e.g.,* eucalyptus, pine, coffee, cocoa, rubber, and bananas), livestock pastures, centers of human habitation, and industrial developments (*e.g.,* charcoal production, steel plants, and hydropower reservoirs). Forestry practices (*e.g.,* commercial logging), subsistence activities (*e.g.,* fuelwood collection), and changes in fire frequencies also contribute to the destruction of native habitats (BLI 2003a, p. 4; Júnior *et al.* 1995, p. 147; The Nature Conservancy 2007, p. 2; Nunes and Kraas 2000, p. 44; Peixoto and Silva 2007, p. 5; Saatchi *et al.* 2001, pp. 868–869; Scott and Brooke 1985, p. 118; World Wildlife Fund 2007, pp. 3–51).

Most of the tropical forest habitats believed to have been used historically by the southeastern rufous-vented ground-cuckoo have been converted or severely degraded by the above human activities (del Hoyo *et al.* 1997, pp. 606–607; ICBP 1981, p. 1; Payne 2005, p. 207; Scott and Brooke 1985, p. 118; Sick 1993, p. 286). Terrestrial insectivorous birds that are primary forest-obligate species, such as the southeastern rufous-vented ground-cuckoo, are especially vulnerable to habitat modifications (Goerck 1997, p. 116), and can not occupy these extensively altered habitats.

Even when they are formally protected (see Factor D), the remaining fragments of primary forest habitat where the subspecies may still occur will likely undergo further degradation due to their altered dynamics and isolation (Tabanez and Viana 2000, pp. 929–932).

In addition, secondary impacts that are associated with human activities that cause severe fragmentation of the remaining tracts of primary forest habitat potentially used by the subspecies include the potential introduction of disease vectors or exotic predators within the subspecies' historic range (see Factor C). As a result of the above influences, there is often a time lag between the initial conversion or degradation of suitable habitats and the extinction of endemic bird populations (Brooks *et al.* 1999a, p. 1; Brooks *et al.* 1999b, p. 1140). Therefore, even without further habitat loss or degradation, the southeastern rufous-vented ground-cuckoo remains at risk from past impacts to its primary forest habitats.

Summary of Factor A

The above human activities and their secondary impacts continue to threaten the remaining tracts of habitat within the Atlantic Forest biome that may still harbor the southeastern rufous-vented ground-cuckoo (BLI 2003a, p. 4; Conservation International 2007a, p. 1; del Hoyo *et al.* 1997, pp. 606–607; Höfling 2007, p. 1; The Nature Conservancy 2007, p. 1; Payne 2005, p. 207; World Wildlife Fund 2007, pp. 3–51). Even with the recent passage of national forest policy, and in light of many other legal protections in Brazil (see Factor D), the rate of habitat loss throughout southeastern Brazil has increased since the mid-1990s (CEPF 2001, p. 10; Hodge *et al.* 1997, p. 1; Rocha *et al.* 2005, p. 270). The subspecies' population has already been reduced to such an extent that it is now only known from one possible recent (ca. 2004) sighting of a single bird (Scoss *et al.* 2006, p. 1), and any further loss or degradation of remaining suitable habitat could cause the extinction of this subspecies. Therefore, we find that destruction and modification of habitat are threats to the continued existence of the southeastern rufous-vented ground-cuckoo throughout its range.

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

The extant population of the southeastern rufous-vented ground-cuckoo is considered to be extremely small, if it currently exists at all. Therefore, the removal or dispersal of any individuals of this subspecies or even a slight decline in the population's fitness due to any intentional or inadvertent hunting, specimen collection, or other human disturbances (*e.g.,* birding, hunting, specimen collection, scientific research) would adversely impact the southeastern rufous-vented ground-cuckoo's overall viability (see Factor E). However, while these potential influences remain a concern for future management of the subspecies, we are not aware of any information currently available that indicates the use of this subspecies for any commercial, recreational, scientific, or educational purpose. As a result, we are not considering overutilization to be a contributing factor to the continued existence of the southeastern rufous-vented ground-cuckoo.

C. Disease or Predation

Extensive human activity in previously undisturbed or isolated areas can also result in altered predator populations and the introduction of various exotic predator species, some of which (*e.g.,* feral cats (*Felis catus*) and rats (*Ratus* sp.)) can be especially harmful to populations of endemic bird species (American Bird Conservancy 2007, p. 1; Courchamp *et al.* 1999, p. 219; Duncan and Blackburn 2007, pp. 149–150; Salo *et al.* 2007, pp. 1241–1242; Small 2005, p. 257). Although large, stable populations of wildlife species have adapted to natural levels of disease and predation within their historic ranges, the extant population of the southeastern rufous-vented ground-cuckoo is considered to be extremely small, if it currently exists at all. In addition, extensive human activity in previously undisturbed or isolated areas can lead to the introduction and spread of exotic diseases, some of which (*e.g.,* West Nile virus) can negatively impact endemic bird populations (Neotropical

News 2003, p. 1; Naugle *et al.* 2004, p. 704).

Any additive mortality to the southeastern rufous-vented ground-cuckoo population or a decrease in its fitness due to an increase in the incidence of disease or predation would adversely impact the subspecies' overall viability (see Factor E). However, while these potential influences remain a concern for future management of the subspecies, we are not aware of any information currently available that indicates the occurrence of disease in the southeastern rufous-vented ground-cuckoo, or that documents any predation incurred by the subspecies. As a result, we are not considering disease or predation to be a contributing factor to the continued existence of the southeastern rufous-vented ground-cuckoo.

D. The Inadequacy of Existing Regulatory Mechanisms

The southeastern rufous-vented ground-cuckoo is formally recognized as ''endangered'' in Brazil (Order No. 1.522) and is directly protected by various laws promulgated by the Brazilian government (ICBP 1981, p. 1; ECOLEX 2007, pp. 1–2). For example, there are measures that prohibit, or regulate through Federal agency oversight, the following activities with regard to endangered species: export and international trade (*e.g.,* Decree No. 76.623, Order No. 419–P), hunting (*e.g.,* Act No. 5.197), collection and research (Order No. 332), captive propagation (Order No. 5), and general harm (*e.g.,* Decree No. 3.179). In addition, there are a wide range of regulatory mechanisms in Brazil that indirectly protect the southeastern rufous-vented ground-cuckoo through measures that protect its remaining suitable habitat (ECOLEX 2007, pp. 2–5). For example, there are measures that: (1) Prohibit exploitation of the remaining primary forests within the Atlantic Forest biome (*e.g.,* Decree No. 750, Resolution No. 10); (2) govern various practices associated with the management of primary and secondary forests, such as logging, charcoal production, reforestation, recreation, and water resources (*e.g.,* Resolution No. 9, Act No. 4.771, Decree No. 1.282, Decree No. 3.420, Order No. 74–N, Act No. 7.803); (3) establish provisions for controlling forest fires (*e.g.,* Decree No. 97.635, Order No. 231–P, Order No. 292–P, Decree No. 2.661); and (4) regulate industrial developments, such as hydroelectric plants and biodiesel production (*e.g.,* Normative Instruction No. 65, Law No. 11.116). Finally, there are various measures (*e.g.,* Law No. 11.516, Act No. 7.735, Decree No. 78, Order No. 1, Act No. 6.938) that direct Federal and state agencies to promote the protection of lands and natural resources under their jurisdictions (ECOLEX 2007, pp. 5–6).

Various regulatory mechanisms in Brazil govern the formal establishment and management of protected areas to promote conservation of the country's natural resources (ECOLEX 2007, pp. 6–7). These mechanisms generally aim to protect endangered wildlife and plant species, genetic resources, overall biodiversity, and native ecosystems on Federal, state, and privately owned lands (*e.g.,* Law No. 9.985, Law No. 11.132, Resolution No. 4, Decree No. 1.922). Brazil's formally established protection areas are categorized based on their overall management objectives (*e.g.,* National Parks versus Biological Reserves), and based on those categories they allow varying uses and provide varying levels of protection for specific resources (Costa 2007, pp. 5–19).

Two of these protected areas, Sooretama Biological Reserve and Doce River State Park, represent the major sites where the southeastern rufous-vented ground-cuckoo may still occur (Payne 2005, p. 207; Scott and Brooke 1985, pp. 125–126), and the protective measures potentially implemented at these two areas are considered critical for protecting any remaining populations of the subspecies. However, not all of the identified threats for the subspecies (*e.g.,* unregulated tourism, residential encroachment, resource extraction, grazing, and intentional burning) are sufficiently addressed at the two protected areas that may still harbor the southeastern rufous-vented ground-cuckoo (AMDA 2006, p. 2; Barbosa 2007, p. 1; Bruner *et al.* 2001, pp. 125–128; Nunes and Kraas 2000, p. 44). Due to various reasons (*e.g.,* lack of funding, personnel, or local management commitment), some of Brazil's protected areas exist without the current capacity to achieve their stated natural resource objectives (Costa 2007, p. 7; IUCN 1999, p. 23–24; Neotropical News 1996, pp. 9–10; Neotropical News 1999, p. 9). For example, the Worldwide Fund for Nature found that 47 of 86 protected areas are considered to remain below their minimum level of implementation of Federal requirements, with only 7 considered to be fully implemented (Neotropical News 1999, p. 9).

In the past, the Brazilian government, through various regulations, policies, incentives, and subsidies, has actively encouraged settlement of previously undeveloped lands in southeastern Brazil which helped facilitate the large-scale conversions that have occurred in the Atlantic Forest biome (Brannstrom 2000, p. 326; Butler 2007, p. 3; Conservation International 2007c, p. 1; Pivello 2007, p. 2; Ratter *et al.* 1997, pp. 227–228; Saatchi *et al.* 2001, p. 874). More recently, the Brazilian government has given greater recognition to the environmental consequences of such rapid expansion, and has taken steps to better manage some of the natural resources potentially impacted (Butler 2007, p. 7; Costa 2007, p. 7; Neotropical News 1997a, p. 10; Neotropical News 1997b, p. 11; Neotropical News 1998b, p. 9; Neotropical News 2003, p. 13; Nunes and Kraas 2000, p. 45). These competing priorities make it difficult to enforce regulations that protect the habitat of the southeastern rufous-vented ground-cuckoo.

Summary of Factor D

Although there are various government-sponsored measures that remain in place in Brazil that continue to facilitate development projects that could harm the species, there are also a wide variety of regulatory mechanisms in Brazil that require protection of the southeastern rufous-vented ground-cuckoo and its habitat throughout the subspecies' potentially occupied range. The existing regulatory mechanisms, as currently enforced, do not reduce the threats to the species (BLI 2003a, p. 4; Conservation International 2007c, p. 1; Costa 2007, p. 7; The Nature Conservancy 2007, p. 2; Neotropical News 1997b, p. 11; Peixoto and Silva 2007, p. 5; Scott and Brooke 1985, p. 118, 130; Venturini *et al.* 2005, p. 68). Therefore, when combined with Factors A and E, we find that the existing regulatory mechanisms are inadequate to ameliorate the current threats to the southeastern rufous-vented ground-cuckoo throughout its range.

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

Under this factor we explore whether three risks, represented by demographic, genetic, and environmental stochastic events, are substantive to threaten the continued existence of the southeastern rufous-vented ground-cuckoo. In basic terms, demographic stochasticity is defined by chance changes in the population growth rate for the species (Gilpin and Soulé 1986, p. 27). Population growth rates are influenced by individual birth and death rates (Gilpin and Soulé 1986, p. 27), immigration and emigration rates, as well as changes in population sex ratios. Natural variation in survival and reproductive success of individuals and chance disequilibrium of sex ratios may

act in concert to contribute to demographic stochasticity (Gilpin and Soulé 1986, p. 27). Genetic stochasticity is caused by changes in gene frequencies due to genetic drift, and diminished genetic diversity, and/or effects due to inbreeding (*i.e.,* inbreeding depression) (Lande 1995, p. 786). Inbreeding can have individual or population-level consequences either by increasing the phenotypic expression (the outward appearance or observable structure, function or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Charlesworth and Charlesworth 1987, p. 231; Shaffer 1981, p. 131). Environmental stochasticity is defined as the susceptibility of small, isolated populations of wildlife species to natural levels of environmental variability and related ''catastrophic'' events (*e.g.,* severe storms, prolonged drought, extreme cold spells, wildfire) (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410–412). Each risk will be analyzed specifically for the southeastern rufous-vented ground-cuckoo.

Small, isolated populations of wildlife species are susceptible to demographic and genetic problems (Shaffer 1981, pp. 130–134). These threat factors, which may act in concert, include: natural variation in survival and reproductive success of individuals, chance disequilibrium of sex ratios, changes in gene frequencies due to genetic drift, diminished genetic diversity and associated effects due to inbreeding (*i.e.,* inbreeding depression), dispersal of just a few individuals, a few clutch failures, a skewed sex ratio in recruited offspring over just one or a few years, and chance mortality of just a few reproductive-age individuals.

The southeastern rufous-vented ground-cuckoo requires large blocks of undisturbed tropical forest (del Hoyo *et al.* 1997, pp. 606–607; Payne 2005, pp. 204–207; Sick 1993, p. 286). In addition, while the subspecies has likely always been rare throughout its historic range (ICBP 1981, p. 1), it must have maintained a minimum level of genetic interchange among its local subpopulations in order for them to have persisted (Middleton and Nisbet 1997, p. 107; Vilà *et al.* 2002, p. 91; Wang 2004, p. 332). However, the tropical forest habitats throughout the Doce River valley, where the southeastern rufous-vented ground-cuckoo was last documented, have been severely fragmented (see Factor A) and the subspecies' extant population is extremely small and isolated, if it currently exists at all.

In the absence of more species-specific life history data, a general approximation of a minimum viable population size is referred to as the 50/500 rule (Franklin 1980, p. 147), as described under Factor E for the Brazilian merganser. There are no specific past or present abundance estimates for the southeastern rufous-vented ground cuckoo; however, the subspecies is only known from one possible recent (ca. 2004) sighting of a single bird (Scoss *et al.* 2006, p. 1), and the extant population is almost certainly well below both of the thresholds (N_e = 50 and N_e = 500) for an effective population size. This means that the subspecies' population likely does not have enough individuals to avoid risks from inbreeding or the ability to maintain genetic diversity and adapt to changing conditions over time. Furthermore, if the subspecies does still exist, continued loss of suitable habitats (see Factor A) is likely to further exacerbate fragmentation of any remaining occupied patches. As such, we currently consider the subspecies to be at risk due to its lack of near- and long-term genetic viability.

Various past and ongoing human activities and their secondary influences continue to impact all of the remaining suitable habitats that may still harbor the southeastern rufous-vented ground cuckoo (see Factors A and D). We expect that any additional loss or degradation of habitats that are used by the southeastern rufous-vented ground cuckoo will have disproportionately greater impacts on the subspecies due to the population's fragmented state. This is because with each contraction of an existing subpopulation, the likelihood of interchange with other subpopulations within patches decreases, while the likelihood of its complete reproductive isolation increases.

The combined effects of habitat fragmentation (Factor A) and genetic and demographic stochasticity on a species population are referred to as patch dynamics. Patch dynamics can have profound effects on fragmented subpopulations and can potentially reduce a species' respective effective population by orders of magnitude (Gilpin and Soulé 1986, p. 31). For example, an increase in habitat fragmentation can separate subpopulations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics of a population and a reduction in genetic fitness (Gilpin and Soulé 1986, p. 31). Without efforts to maintain buffer areas and reconnect some of the remaining tracts of suitable habitat near the subspecies' currently occupied sites, it is doubtful that the individual tracts are currently large enough to support viable populations of many birds endemic to the Atlantic Forest, like the southeastern rufous-vented ground cuckoo, and the eventual loss of any small, isolated populations appears to be inevitable (Goerck 1997, p. 117; Harris and Pimm 2004, pp. 1609–1610; IUCN 1999, pp. 23–24; Machado and Da Fonseca 2000, pp. 914, 921–922; Saatchi *et al.* 2001, p. 873; Scott and Brooke 1985, p. 118). Del Hoyo *et al.* (1997, p. 207) suggests that the rufous-vented ground-cuckoo would be one of the first species to be extirpated from an area when their primary forest habitat is isolated, as has occurred to another *Neomorphus* geoffroyi subspecies at Barro Colorado in response to operations of the Panama Canal (del Hoyo *et al.* 1997, pp. 606–607; Payne 2005, p. 207). Furthermore, as a species' status continues to decline, often as a result of deterministic forces such as habitat loss or overutilization, it will become increasingly vulnerable to a broad array of other forces. If this trend continues, its ultimate extinction due to one or more stochastic events becomes more likely.

We expect that the southeastern rufous-vented ground cuckoo's increased vulnerability to demographic stochasticity and inbreeding will be operative even in the absence of any human-induced threats or stochastic environmental events, which only act to further exacerbate the species' vulnerability to local extirpations and eventual extinction. Demographic and genetic stochastic forces typically operate synergistically. Initial effects of one threat factor can later exacerbate the effects of other threat factors, as well as itself (Gilpin and Soulé 1986, pp. 25–26). For example, any further fragmentation of populations will, by definition, result in the further removal or dispersal of individuals, which will exacerbate the other threats. Conversely, lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches.

Small, isolated populations of wildlife species, such as the southeastern rufous-vented ground cuckoo, are also susceptible to natural levels of environmental variability and related ''catastrophic'' events (*e.g.*, severe storms, prolonged drought, extreme cold spells, wildfire), which we will refer to as environmental stochasticity (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994,

p. 612; Young 1994, pp. 410–412). A single stochastic environmental event can severely reduce existing wildlife populations and, if the affected population is already small or severely fragmented, it is likely that demographic stochasticity or inbreeding will become operative, which would place the population in jeopardy (Gilpin and Soulé 1986, p. 27; Lande 1995, pp. 787–789).

Summary of Factor E

The small and declining numbers that make up the southeastern rufous-vented ground cuckoo's population makes it susceptible to natural environmental variability or chance events. In addition to its declining numbers, the high level of population fragmentation makes the subspecies susceptible to genetic and demographic stochasticity. Therefore, we find that demographic, genetic, and environmental stochastic events are a threat to the continued existence of the southeastern rufous-vented ground cuckoo throughout its range.

Status Determination for the Southeastern Rufous-vented Ground-cuckoo

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the southeastern rufous-vented ground-cuckoo. The subspecies is currently at risk throughout all of its range due to ongoing threats of habitat destruction and modification (Factor A), and its lack of near- and long-term genetic and viability due to threats associated with demographic, genetic, and environmental stochasticity (Factor E). Furthermore, we have determined that the existing regulatory mechanisms (Factor D) are not adequate to ameliorate the current threats to the southeastern rufous-vented ground-cuckoo.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Based on the threats to the southeastern rufous-vented ground-cuckoo throughout its entire range, as described above, we determine that the southeastern rufous-vented ground-cuckoo is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are proposing to list the southeastern rufous-vented ground-cuckoo as an endangered species throughout all of its range.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any has been proposed or designated. However, given that the black-hooded antwren, Brazilian merganser, cherry-throated tanager, fringe-backed fire-eye, Kaempfer's tody-tyrant, Margaretta's hermit, and southeastern rufous-vented ground-cuckoo are not native to the United States, we are not designating critical habitat in this rule.

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

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. As such, these prohibitions would be applicable to the black-hooded antwren, Brazilian merganser, cherry-throated tanager, fringe-backed fire-eye, Kaempfer's tody-tyrant, Margaretta's hermit, and southeastern rufous-vented ground-cuckoo. These prohibitions, under 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) any endangered wildlife species within the United States or upon the high seas; or to import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or to sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and 17.32 for threatened species. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Peer Review

In accordance with our joint policy with National Marine Fisheries Service, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our final determination is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on our specific assumptions and conclusions regarding the proposal to list the black-hooded antwren, Brazilian merganser, cherry-throated tanager, fringed-backed fire-eye, Kaempfer's tody-tyrant, Margaretta's hermit, and the southeastern rufous-vented ground-cuckoo.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication (see **DATES**). Such requests must be made in writing and be addressed to the Chief of the Branch of Listing at the address

shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the first hearing.

Required Determinations

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

References Cited

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

Author(s)

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

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding new entries for ''Antwren, Black-hooded,'' ''Cuckoo, Southeastern Rufous-vented Ground,'' ''Fire-eye, Fringe-backed,'' ''Hermit, Margaretta's,'' ''Merganser, Brazilian,'' ''Tanager, Cherry-throated,'' and ''Tody-tyrant, Kaempfer's'' in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Antwren, black-hooded.	*Formicivora erythronotos.*	Brazil	Entire	E		NA	NA
*	*	*	*	*	*	*	
Cuckoo, southeastern rufous-vented ground.	*Neomorphus geoffroyi dulcis.*	Brazil	Entire	E		NA	NA
*	*	*	*	*	*	*	
Fire-eye, fringed-backed.	*Pyriglena atra*	Brazil	Entire	E		NA	NA
*	*	*	*	*	*	*	
Hermit, Margaretta's	*Phaethornis malaris margarettae.*	Brazil	Entire	E		NA	NA
*	*	*	*	*	*	*	
Merganser, Brazilian	*Mergus octosetaceus.*	Brazil, Argentina, Paraguay.	Entire	E		NA	NA
*	*	*	*	*	*	*	
Tanager, cherry-throated.	*Nemosia rourei*	Brazil	Entire	E		NA	NA
*	*	*	*	*	*	*	
Tody-tyrant, Kaempfer's.	*Hemitriccus kaempferi.*	Brazil	Entire	E		NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*

Dated: July 15, 2009.

James J. Slack,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–18691 Filed 8–11–09; 8:45 am]

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Federal Register

Wednesday,
August 12, 2009

Part III

Federal Trade Commission

16 CFR Part 317

Prohibitions on Market Manipulation; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 317

[Project No. P082900]

RIN 3084–AB12

Prohibitions on Market Manipulation

AGENCY: Federal Trade Commission.

ACTION: Final Rule.

SUMMARY: In this document, the Federal Trade Commission (''Commission'' or ''FTC'') issues its Statement of Basis and Purpose (''SBP'') and final Rule, pursuant to Section 811 of Subtitle B of Title VIII of The Energy Independence and Security Act of 2007 (''EISA'').[1] The final Rule prohibits any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, from knowingly engaging in any act, practice, or course of business – including the making of any untrue statement of material fact – that operates or would operate as a fraud or deceit upon any person, or intentionally failing to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or is likely to distort market conditions for any such product.

EFFECTIVE DATE: November 4, 2009.

ADDRESSES: Requests for copies of the final Rule and the SBP should be sent to: Public Records Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including the final Rule and the SBP, are available at (*www.ftc.gov*).

FOR FURTHER INFORMATION CONTACT: Patricia V. Galvan, Deputy Assistant Director, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, (202) 326-3772.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

EISA became law on December 19, 2007.[2] Subtitle B of Title VIII of EISA targets market manipulation in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, and the reporting of false or misleading information related to the wholesale price of those products. Specifically, Section 811 prohibits ''any person'' from ''directly or indirectly'': (1) using or employing ''any manipulative or deceptive device or contrivance,'' (2) ''in connection with the purchase or sale of crude oil gasoline or petroleum distillates at wholesale,'' (3) that violates a rule or regulation that the FTC ''may prescribe as necessary or appropriate in the public interest or for the protection of United States citizens.''[3]

Section 812 prohibits ''any person'' from reporting information that is ''required by law to be reported'' – and that is ''related to the wholesale price of crude oil gasoline or petroleum distillates'' – to a federal department or agency if the person: (1) ''knew, or reasonably should have known, [that] the information [was] false or misleading;'' and (2) intended such false or misleading information ''to affect data compiled by the department or agency for statistical or analytical purposes with respect to the market for crude oil, gasoline, or petroleum distillates.''[4]

Subtitle B also contains three additional sections that address, respectively, enforcement of the Subtitle (Section 813),[5] penalties for violations of Section 812 or any FTC rule promulgated pursuant to Section 811 (Section 814),[6] and the interplay between Subtitle B and existing laws (Section 815).[7]

After considering the rulemaking record in this proceeding, the Commission adopts the final Rule pursuant to its authority under Section 811. The final Rule prohibits any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, from (a) knowingly engaging in any act, practice, or course of business – including the making of any untrue statement of material fact – that operates or would operate as a fraud or deceit upon any person, or (b) intentionally failing to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or is likely to distort market conditions for any such product.[8]

II. The Rulemaking Proceeding

The rulemaking proceeding[9] began with the publication of an Advance Notice of Proposed Rulemaking (''ANPR'') on May 7, 2008.[10] In the ANPR, the Commission solicited comments on whether it should promulgate a rule under Section 811, and, if so, the appropriate scope and content of such a rule.[11] In response to the ANPR, the Commission received 155 comments from interested parties.[12]

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[1] Section 811 is part of Subtitle B of Title VIII of EISA, which has been codified at 42 U.S.C. 17301-17305.

[2] 42 U.S.C. 17001-17386.

[3] 42 U.S.C. 17301.

[4] 42 U.S.C. 17302.

[5] Section 813(a) provides that Subtitle B shall be enforced by the FTC ''in the same manner, by the same means, and with the same jurisdiction as though all applicable terms of the Federal Trade Commission Act [(''FTC Act'')] (15 U.S.C. 41 *et seq.*) were incorporated into and made a part of [Subtitle B].'' Section 813(b) provides that a violation of any provision of Subtitle B ''shall be treated as an unfair or deceptive act or practice proscribed under a rule issued under [S]ection 18(a)(1)(B) of the [FTC Act] (15 U.S.C. 57a(a)(1)(B)).'' 42 U.S.C. 17303.

[6] Section 814(a) of Subtitle B provides that – ''[i]n addition to any penalty applicable under the [FTC Act]'' – ''any supplier that violates [S]ection 811 or 812 shall be punishable by a civil penalty of not more than $1,000,000.'' Further, Section 814(c) provides that ''each day of a continuing violation shall be considered a separate violation.'' 42 U.S.C. 17304.

[7] Section 815(a) provides that nothing in Subtitle B ''limits or affects'' Commission authority ''to bring an enforcement action or take any other measure'' under the FTC Act or ''any other provision of law.'' Section 815(b) provides that ''[n]othing in [Subtitle B] shall be construed to modify, impair, or supersede the operation'' of: (1) any of the antitrust laws (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. 12(a)), or (2) Section 5 of the FTC Act ''to the extent that . . . [S]ection 5 applies to unfair methods of competition.'' Section 815(c) provides that nothing in Subtitle B ''preempts any State law.'' 42 U.S.C. 17305.

[8] As the Commission stated in each of the prior Notices issued in this proceeding, the phrase ''crude oil gasoline or petroleum distillates'' is used without commas in Section 811 (as well as in the first clause of Section 812), while the phrase is used with commas in Section 812(3): ''crude oil, gasoline, or petroleum distillates.'' The absence of commas is obviously a non-substantive, typographical error; therefore, the Commission reads all parts of both sections to cover all three types of products: crude oil, gasoline, and petroleum distillates. *See* FTC, *Prohibitions On Market Manipulation and False Information in Subtitle B of The Energy Independence and Security Act of 2007*, 73 FR 25614, 25621 n.59 (May 7, 2008); FTC, *Prohibitions On Market Manipulation and False Information in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007*, 73 FR 48317, 48320 n.40 (Aug. 19, 2008); FTC, *Prohibitions On Market Manipulation in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007*, 74 FR 18304, 18305 n.11 (Apr. 22, 2009).

[9] Rulemaking documents are available at: (*http://www.ftc.gov/ftc/oilgas/rules.htm*).

[10] 73 FR 25614.

[11] 73 FR at 25620-24. The comment period for the ANPR closed on June 23, 2008, after the Commission granted an extension requested by a major industry trade association. Letter from the American Petroleum Institute to FTC Secretary Donald S. Clark, (May 19, 2008), *available at* (*http://www.ftc.gov/os/comments/marketmanipulation/080519ampetrolinstreqeot.pdf*); FTC, *Prohibitions On Market Manipulation and False Information in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007*, 73 FR 32259 (June 6, 2008).

[12] Attachment D contains a list of commenters who submitted comments on the ANPR. Electronic

Commenters expressed differing views regarding the desirability of and the appropriate legal basis for any such rule.[13] They also proposed a variety of models upon which to base a market manipulation rule, including those used by other federal agencies pursuant to each agency's respective market manipulation authority,[14] such as the Securities and Exchange Commission (''SEC''),[15] the Federal Energy Regulatory Commission (''FERC''),[16] and the Commodity Futures Trading Commission (''CFTC'').[17]

After reviewing the ANPR comments, on August 19, 2008, the Commission published a Notice of Proposed Rulemaking (''NPRM'')[18] setting forth the text of a proposed Rule modeled on SEC Rule 10b-5 and inviting written comments on issues raised by the proposed Rule.[19] The NPRM described the basis for and scope of the proposed Rule; definitions of terms in the Rule; conduct prohibited by the Rule; and the elements of a cause of action under the Rule. In response to the NPRM, the Commission received 34 comments from interested parties.[20] On November 6, 2008, Commission staff held a one-day public workshop on the proposed Rule.[21] Commenters and workshop participants presented views concerning several key issues relating to the proposed Rule, particularly regarding the application of a SEC Rule 10b-5 model to wholesale petroleum markets and the relevance of securities law to the petroleum industry.[22]

The Commission published a Revised Notice of Proposed Rulemaking (''RNPRM'') setting forth a revised proposed Rule on April 22, 2009,[23] and describing certain modifications to the initially proposed Rule and the basis for the modifications. As with the initially proposed Rule, the Commission based the revised proposed Rule on the anti-fraud model of SEC Rule 10b-5, but modified the revised proposed Rule to accommodate differences between securities markets and wholesale petroleum markets. The RNPRM also set forth questions and alternative rule language designed to elicit further views from interested parties. In response to the RNPRM, the Commission received 17 comments from interested parties, including a consumer advocacy group, a United States Senator, an academic, a federal agency, industry members, energy news and price reporting organizations, and trade and bar associations.[24]

The Commission has reviewed the entire record in this proceeding, including comments submitted in response to the RNPRM. Based on this review, as well as its extensive petroleum industry law enforcement experience, the Commission hereby adopts a final Rule that is virtually identical to the revised proposed Rule. The Commission's analysis of certain commenter proposals and its basis for adopting each of the final Rule's provisions are detailed below.

III. Legal Basis for the Rule

Section 811 of EISA provides the legal basis for the final Rule. Section 811 prohibits ''any person'' from ''directly or indirectly'' using or employing ''any manipulative or deceptive device or contrivance'' – in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale – that violates a rule or regulation that the Commission ''may prescribe as necessary or appropriate in the public interest or for the protection of United States citizens.''[25] In enacting Section 811, Congress specifically authorized the Commission to determine whether a rule prohibiting manipulative conduct in wholesale petroleum markets would be appropriate and in the public interest. As the Commission explained in the NPRM in this proceeding:

> [T]he initial inquiry in determining whether it should promulgate a rule requires understanding the phrase ''necessary or appropriate in the public interest or for the protection of United States citizens.'' The use of the disjunctive ''or'' in the first clause of this phrase indicates that the Commission would be within its [authority] to promulgate a rule that is either: (1) ''necessary . . . in the public interest or for the protection of United States citizens,'' *or* (2) ''appropriate in the public interest or for the protection of United States citizens.'' Similarly, the Commission need only show that a rule would be either ''in the public interest'' or ''for the protection of United States citizens.'' Thus, the Commission could proceed in its rulemaking if, at a minimum, the endeavor is ''appropriate . . . in the public interest.''[26]

The Commission has determined that the final Rule – which defines for market participants the Section 811 statutory prohibition against using or employing ''any manipulative or deceptive device or contrivance'' – is appropriate and in the public interest. The prices of petroleum products significantly affect the daily lives of American consumers and the daily operations of American businesses.[27]

versions of the comments are available at: (*http://www.ftc.gov/os/comments/marketmanipulation/index.shtm*). In calculating the number of comments submitted in response to a Notice issued in this proceeding, the Commission treated multiple filings by the same commenter, or a comment filed jointly by a group of commenters, as a single comment.

[13] Section II.A. of the Notice of Proposed Rulemaking (''NPRM'') discusses commenters' views and the Commission's response to commenters on the propriety of a Section 811 rule. *See* 73 FR at 48320-23.

[14] Section III. of the ANPR provides an overview of the antecedents of Section 811 and relevant legal precedent. *See* 73 FR at 25616-19. Section I.B. of the NPRM describes ANPR commenters' views on the appropriate model for a Section 811 rule. *See* 73 FR at 48319 & nn.31-32.

[15] *See* Securities Exchange Act of 1934 (''SEA'') 10(b), 15 U.S.C. 78j(b); 17 CFR 240.10b-5 (''Rule 10b-5'').

[16] *See* Natural Gas Act 4A, 15 U.S.C. 717c-1; Federal Power Act 222, 16 U.S.C. 791a; Prohibition of Natural Gas Market Manipulation, 18 CFR 1c.1; Prohibition of Electric Energy Market Manipulation, 18 CFR 1c.2.

[17] *See* Commodity Exchange Act (''CEA'') 9(a)(2), 7 U.S.C. 13(a)(2).

[18] 73 FR 48317.

[19] 73 FR at 48332-34. In response to a petition from a major trade association, the Commission extended the deadline for submission of comments on the NPRM from September 18, 2008, to October 17, 2008. Letter from the American Petroleum Institute to FTC Secretary Donald S. Clark, (Sept. 5, 2008), *available at* (*http://www.ftc.gov/os/comments/marketmanipulation2/538416-00006.pdf*); FTC, *Prohibitions on Market Manipulation and False Information in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007*, 73 FR 53393 (Sept. 16, 2008).

[20] Attachment B contains a list of commenters who responded to the NPRM.

[21] Attachment C contains a list of participants in the workshop. The discussion topics for the workshop included the use of SEC Rule 10b-5 as a model for an FTC market manipulation rule; the proper scienter standard for a rule; the appropriate reach of a rule; the type of conduct that would violate a rule; and the desirability of including market or price effects as an element of a rule violation. Information relating to the workshop, including a program, transcript, and archived webcast, is available at: (*http://www.ftc.gov/bcp/workshops/marketmanipulation/index.shtml*).

[22] Section IV.A. of the Revised Notice of Proposed Rulemaking (''RNPRM'') provides an overview of NPRM commenters' and workshop participants' views regarding the proposed Rule. *See* 74 FR at 18308-10.

[23] 74 FR 18304.

[24] Attachment A contains a list of commenters who submitted comments on the RNPRM, together with the abbreviations used to identify each commenter referenced in this SBP. All commenter references are to those comments submitted in response to the RNPRM, unless otherwise noted.

[25] 42 U.S.C. 17301. Section 811 states:

> It is unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of crude oil[,] gasoline[,] or petroleum distillates at wholesale, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Federal Trade Commission may prescribe as necessary or appropriate in the public interest or for the protection of United States citizens.

[26] 73 FR at 48320-21.

[27] ''Perhaps no other industry's performance is so visibly and deeply felt.'' FTC Bureau of Economics, The Petroleum Industry: Mergers, Structural

Continued

Because fraudulent or deceptive conduct within wholesale petroleum markets injects false information into the market process, it distorts market data and thus undermines the ability of consumers and businesses to make purchase and sales decisions congruent with their economic objectives.[28] As a consequence, decision-making risks and attendant costs increase, and economic efficiency declines in the overall economy. Fraudulent or deceptive conduct within wholesale petroleum markets thus can have wide ranging ramifications throughout the United States economy.[29] For these reasons, the Commission has determined to issue the final Rule.[30]

Well-established statutory, judicial, and regulatory constructs and principles – and the language of Section 811 itself – strongly support the final Rule. As the Commission noted in the ANPR, the Section 811 prohibition of the use or employment of any ''manipulative or deceptive device or contrivance'' is virtually identical to the prohibition in Section 10(b) of the Securities Exchange Act of 1934 (''SEA'').[31] Specifically, SEA Section 10(b) prohibits the use or employment of:

> any *manipulative or deceptive device or contrivance* in contravention of such rules as the [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors.[32]

Relying upon SEA Section 10(b),[33] the SEC promulgated its anti-fraud rule, Rule 10b-5, making it unlawful for any person:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading . . .; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. . . .

in connection with the purchase or sale of any security.[34]

In examining SEA Section 10(b) and SEC Rule 10b-5, the Supreme Court has stated that the statute, as enforced through the rule, prohibits ''intentional or willful conduct *designed to deceive or defraud* investors by controlling or artificially affecting the price of securities.''[35]

The FERC relied upon a statutory framework similar to the securities laws to promulgate largely identical rules prohibiting natural gas market manipulation and electric energy market manipulation.[36] The Energy Policy Act of 2005 amended the Natural Gas Act and the Federal Power Act to prohibit precisely the same type of conduct as SEA Section 10(b); that is, the use or employment of ''any manipulative or deceptive device or contrivance (as those terms are used in [SEA Section 10(b)] . . .)'' in natural gas and electricity markets.[37]

Similar statutory and regulatory frameworks prohibit the use of manipulative practices in other parts of the economy. The Commodity Exchange Act (''CEA'') is intended, among other things, ''to deter and prevent price manipulation or any other disruptions to market integrity . . . .''[38] The CEA provides that the CFTC possesses jurisdiction for ''transactions involving contracts of sale of a commodity for future delivery, traded or executed on a contract market . . . or derivatives transaction execution facility . . . or any other board of trade, exchange, or market . . . .''[39] It further provides for CFTC anti-manipulation authority over cash and physical transactions, as well as certain derivatives transactions relating to securities.[40]

The SEC, the FERC, and the CFTC all have taken action against market manipulation pursuant to the authorities described above. For example, the CFTC has initiated law enforcement actions against defendants for submitting false statements to private reporting services, government agencies, and the news media, and for engaging in trading practices that give the false appearance of trading activity.[41] The FERC similarly has found

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Change, and Antitrust Enforcement, at 1 (Aug. 2004), *available at* (*http://www.ftc.gov/os/2004/08/040813mergersinpetrolberpt.pdf*).

[28] Markets absorb all available information – good or bad – and continually adjust price signals and other market data to any new information. When economic actors can presume that market data have not been artificially manipulated, they can rely on that data to make decisions that they believe will advance their individual economic objectives. Fraudulent or deceptive conduct taints the integrity of the market process.

[29] Commenters recognized the negative effects of fraud and deceit in wholesale petroleum markets. *See, e.g.*, CAPP, ANPR, at 1 (''CAPP recognizes that fraud and manipulation pose a potential threat to the successful and efficient functioning of petroleum markets in North America.''); MFA, ANPR, at 1 (''Price manipulation has a corrosive effect on the proper functioning of any market.''); API, ANPR, at 50 (''We agree that the provision of false or misleading pricing information to private reporting entities could be problematic.''); Sutherland, ANPR, at 3 (''[O]il marketers and traders are the first victims of unfair business practices. They, therefore, support efforts by Congress to deter manipulation and the use of deceptive devices.''); *see also* MS AG, NPRM, at 2 (''The proposed Rule will benefit consumers significantly because market manipulation can artificially inflate prices of petroleum products and cause consumers to pay more for essential goods, such as gasoline.'').

[30] *See* 73 FR at 48321 (noting that ''a rule that allows the Commission to guard against conduct that undermines the integrity of the petroleum market would be in the public interest'').

[31] 15 U.S.C. 78j(b).

[32] *Id.* (emphasis added). *See generally Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 197 (1976).

[33] The language from the Securities Act of 1933 also supported issuance of SEC Rule 10b-5. Section 17(a) of the Securities Act of 1933 originally prohibited:

> any person in the sale of securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly –
>
> (1) to employ any device, scheme or artifice to defraud, or
>
> (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Through the promulgation of Rule 10b-5, the SEC intended, *inter alia*, to apply the same prohibitions contained in Section 17(a) of the 1933 Act to purchasers as well as to sellers. *Birnbaum v. Newport Steel Corp.*, 193 F.2d 461, 463 (2d Cir. 1952). Amended several times over the intervening years, the current text of Section 17(a) is codified at 15 U.S.C. 77q(a).

[34] 17 CFR 240.10b-5. In addition, the SEC's rules under SEA Section 10(b) prohibit a number of specific practices in specific circumstances. *See* 17 CFR 240.10b-1 through 240.10b-18.

[35] *Schreiber v. Burlington Northern, Inc.*, 472 U.S. 1, 6 (1985) (quoting *Ernst & Ernst*, 425 U.S. at 199)) (emphasis in original). The Supreme Court has defined ''the term [manipulation to refer] generally to practices, such as wash sales, matched orders, or rigged prices, that are intended to mislead investors by artificially affecting market activity.'' *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 476 (1977). ''A matched order is the entering of a sell (or buy) order knowing that a corresponding buy (or sell) order of substantially the same size, at substantially the same time and at substantially the same price either has been or will be entered. A wash trade [or wash sale] is a securities transaction which involves no change in the beneficial ownership of the security. Parking [another form of manipulation] is the sale of securities subject to an agreement or understanding that the securities will be repurchased by the seller at a later time and at a price which leaves the economic risk on the seller.'' *SEC v. Farni*, Exchange Act Release No. 39133 (Sept. 25, 1997), *available at* (*http://www.sec.gov/litigation/admin/3439133.txt*).

[36] *See* FERC, *Prohibition of Energy Market Manipulation*, 71 FR 4244, 4246 (Jan. 26, 2006) (final anti-manipulation Rule).

[37] Section 4A of the Natural Gas Act, 15 U.S.C. 717c-1; Section 222 of the Federal Power Act, 16 U.S.C. 824v.

[38] 7 U.S.C. 5(b); *accord Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 372 n.50 (1982).

[39] 7 U.S.C. 2(a)(1)(A).

[40] 7 U.S.C. 2(a)(1)(A), (C)-(D).

[41] *See, e.g., In the Matter of CMS Mktg. Servs. & Trading Co.*, Comm. Fut. L. Rep. (CCH) ¶29,634 (C.F.T.C. Nov. 25, 2003) (finding liability for the submission of false information to private reporting services); *see also Wilson v. CFTC*, 322 F.3d 555, 560-61 (8th Cir. 2003) (affirming the CFTC's order

evidence of practices such as false reporting to price index publishers.[42] In addition, the SEC has pursued law enforcement actions against actors that have disseminated false information to the market, and against actors that have engaged in conduct creating the false appearance of trading activity.[43]

When Congress authorized the FTC to prohibit the use or employment of manipulative or deceptive devices or contrivances, it empowered the Commission to rely upon the foregoing statutory, judicial, and regulatory principles to promulgate its Rule.[44] The final Rule, based at least in part on SEC Rule 10b-5, will prohibit practices that inject false information into transactions. The final Rule thereby helps to protect the integrity of the price discovery process in wholesale petroleum markets. Moreover, the final Rule will prevent the same types of fraudulent or deceptive practices that the SEC, the CFTC, and the FERC have pursued in the markets they respectively regulate and will strike at the core of what EISA explicitly proscribes – market manipulation.[45]

This conclusion finds support in the rulemaking record. Throughout the proceeding, most commenters supported the FTC's proposal to promulgate a market manipulation rule,[46] and most RNPRM commenters that addressed the issue opined that the revised proposed Rule would be appropriate and in the public interest.[47] The Commission has determined, therefore, that the final Rule – which at its most fundamental level prohibits fraudulent or deceptive conduct – is appropriate and in the public interest.

IV. Discussion of the Final Rule

A. Overview

After reviewing the full rulemaking record developed in this proceeding, the Commission has concluded that promulgating a final Rule that is virtually identical to the revised proposed Rule best reflects congressional intent while accommodating the specific characteristics of wholesale petroleum markets. The final Rule therefore differs from the revised proposed Rule only as a consequence of two clarifying changes.[48] In the RNPRM, the Commission tentatively determined to modify the proscriptions of the initially proposed Rule – which were nearly identical to SEC Rule 10b-5 – in order to account for differences between wholesale petroleum markets and securities markets.[49] The Commission has now concluded that the revised proposed Rule, promulgated as the final Rule, would prevent manipulative conduct in wholesale petroleum markets while limiting attendant costs, a primary concern for many industry commenters.

In tailoring the final Rule, the Commission has accounted for Section 811's direction that the final Rule be an anti-fraud rule guided by the principles of SEC Rule 10b-5 and relevant precedent. These principles focus on the protection of market integrity.[50] The rulemaking record reflects support for an anti-fraud standard.[51] Although the conduct prohibition in Section 811 is identical to language found in SEA Section 10(b),[52] the inclusion of the

finding defendant engaged in wash sales and imposing sanctions); *United States v. Reliant Energy Servs., Inc.*, 420 F. Supp. 2d 1043, 1059-60 (N.D. Cal. 2006) (finding allegations that defendant withheld supply from the market while intentionally disseminating false and misleading rumors and information to the California Independent System Operator, brokers, and other traders regarding defendant's power generation plants were sufficient to withstand a motion to dismiss for failure to state a claim of manipulation).

[42] *See, e.g.*, FERC, Final Report on Price Manipulation in Western Markets, Dkt. No. PA02-2-000 (Mar. 2003), *available at* (*http://www.ferc.gov/industries/electric/indus-act/wec.asp*). The FERC issued a Policy Statement and promulgated regulations to address price formation concerns that resulted from the reporting of false information to price index publishers. *See* FERC, *Transparency Provisions of Section 23 of the Natural Gas Act*, 73 FR 1014 (Jan. 4, 2008); FERC, Report on Natural Gas and Electricity Price Indices, Dkt. No. PL03-3-004, AD03-7-004 (May 5, 2004), *available at* (*http://www.ferc.gov/EventCalendar/Files/20040505135203-Report-Price-Indices.pdf*); FERC, *Policy Statement on Natural Gas and Electric Price Indices*, 104 F.E.R.C. ? 61,121 (July 24, 2003).

[43] *See, e.g.*, *SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1361, 1364 (9th Cir. 1993) (finding that the defendant's press release contained materially false and misleading statements); *SEC v. Softpoint, Inc.*, 958 F. Supp. 846 (S.D.N.Y. 1997) (finding defendant liable under SEC Rule 10b-5 when defendant disseminated false information to the market through press releases and SEC filings).

[44] The Commission believes that the language of Section 811 reflects congressional intent that the Commission look to SEC Rule 10b-5 in crafting a market manipulation rule. *See Evans v. United States*, 504 U.S. 255, 260 n.3 (1992) (''[I]f a word is obviously transplanted from another legal source, whether the common law or legislation, it brings the old soil with it.'' (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947))); *Morissette v. United States*, 342 U.S. 246, 263 (1952) (noting where Congress borrows terms of art it ''presumably knows and adopts the cluster of ideas that were attached to each borrowed word''); *see also Nat'l Treasury Employees Union v. Chertoff*, 452 F.3d 839, 857 (D.C. Cir. 2006) (stating that ''[t]here is a presumption that Congress uses the same term consistently in different statutes.'').

[45] 73 FR at 48322.

[46] Most NPRM commenters who addressed the initially proposed Rule opined that it would be appropriate. *See, e.g.*, ATA, NPRM, at 2 (supporting the proposed Rule ''as an additional tool to help preserve the integrity of vital energy markets''); IPMA, NPRM, at 4 (''The proposed Rule does meet the rulemaking standard that it is 'necessary or appropriate in the public interest or for the protection of United States[] citizens.'''); *see also* MFA, ANPR, at 4-5 (''We believe the Commission should adopt appropriate rules prohibiting manipulation in the purchase and sale of crude oil, gasoline and petroleum distillates at wholesale . . . .'').

[47] As with prior comments submitted in this proceeding, most RNPRM commenters directed their statements to the application of a Section 811 rule, rather than to whether the revised proposed Rule met Section 811's rulemaking standard. *See also* 74 FR at 18308 n.40 (noting that most NPRM commenters focused their comments on the application of the proposed Rule). *See, e.g.*, CAPP at 1-2 (opining that the modifications to the revised proposed Rule – including, in particular, the adoption of an express scienter standard and the inclusion of market conditions language in the omissions section – ensured that the Rule ''would serve the public interest''); CFA at 4 (stating that the revised proposed Rule ''promotes the public interest and is perfectly consistent with the legislative language''); PMAA at 3 (noting that the revisions to the revised proposed Rule are ''appropriate''); *see also* ATAA at 2-3 (''applaud[ing] the Commission's decision to exercise its rulemaking authority,'' arguing that ''[m]arket manipulation, fraud, and deceptive practices distort the market, inflate prices, and inure to the detriment of the entire economy''). *But see* API at 2, 4-5 (disagreeing that a Section 811 rule would be appropriate because, in its view, a weighing of ''likely benefits and costs supports a decision not to promulgate any rule at this time'').

[48] In final Rule Section 317.3(b), the Commission has substituted the phrase ''is likely'' for the word ''tends'' in revised proposed Rule Section 317.3(b). *See* Section IV.D.3.b. below for further discussion. The Commission also has modified the definition of ''knowingly.'' *See* Section IV.C.3. below for further discussion.

[49] *See* 74 FR at 18310.

[50] *See United States v. Russo*, 74 F.3d 1383, 1391 (2d Cir. 1996) (''[F]rauds which 'mislead[] the general public as to the market value of securities' and 'affect the integrity of the securities markets' . . . fall well within [Rule 10b-5].'' (quoting *In re Ames Dep't Stores, Inc. Stock Litig.*, 991 F.2d 953, 966 (2d Cir. 1993))) (citation omitted); *see also Superintendent of Ins. of N.Y. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12 (1971) (stating that '''preserving the integrity of securities markets''' is one of the purposes of Section 10(b) (quoting *Superintendent of Ins. of N.Y. v. Bankers Life & Cas. Co.*, 430 F.2d 355, 261 (2d Cir. 1970))).

[51] *See, e.g.*, API at 29 (''The proper objective of any rule issued under Section 811 is to cover deceptive conduct . . . .''); CAPP at 2 (''Manipulative conduct that makes use of false information in market transactions does not constitute routine or acceptable commercial behavior, and is reasonably within the scope of prohibited conduct.''); CFDR (Mills), Tr. at 38-39 (''From my point of view, fraud is a good demarcation for any antimanipulation rule, because it provides a basis by which people can govern themselves and know with some understanding of what kind of conduct is going to violate a rule or not.''); PMAA (Bassman), Tr. at 47 (''[U]sing fraud . . . is very clear, because none of the people operating in this market operate without the benefit of legal counsel. Any legal counsel understands the concept of fraud, and fraud does belong here.''); NPRA, NPRM, at 2 (''NPRA endorses the FTC's determination that implementation of the EISA should be accomplished through a rule against fraud and deception that harms the competitive functioning of wholesale petroleum markets and, ultimately, consumers.'').

[52] *See* 15 U.S.C. 78j(b). As noted above, the anti-manipulation authority granted to the FERC also contains the identical conduct prohibition, and the statute granting that authority explicitly directed

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language ''as necessary or appropriate'' in Section 811 provides the Commission with flexibility – within the framework of an anti-fraud model – to use its expertise to tailor the Rule to the characteristics of wholesale petroleum markets.

The Commission therefore has promulgated an anti-fraud Rule that, although modeled on SEC Rule 10b-5, is tailored to account for significant differences between wholesale petroleum markets and securities markets.[53] In this regard, the Commission has determined that the level of needed protection against fraud or deceit in wholesale petroleum market transactions should take into account that market participants typically are sophisticated and experienced commercial actors who are able to engage in a substantial amount of self protection, including filling in relevant information gaps. By contrast, small individual retail securities investors often possess less complete information than counter-parties such as securities brokers – and may also be significantly less sophisticated in discerning relevant information gaps. Additionally, the regulatory system overlaying securities markets, of which SEC Rule 10b-5 is a part, prescribes more comprehensive requirements – including in particular more comprehensive disclosure requirements – than the regulatory system applicable to wholesale petroleum markets.[54] Accounting for these contextual differences in crafting the final Rule, the Commission has sought to achieve the appropriate balance between the flexibility needed to prohibit fraud-based market manipulation without burdening legitimate business activity. To achieve this result, the final Rule differs from the initially proposed Rule in three significant ways.

First, the final Rule, like the revised proposed Rule, comprises a two-part conduct prohibition in contrast to the three-part conduct prohibition in the initially proposed Rule. The consolidation of parts ''more clearly and precisely denote[s] the unlawful conduct [that the Rule] prohibits.''[55] Second, each paragraph of the conduct prohibition in the final Rule contains an explicit and tailored scienter standard.[56] The Commission has adopted differing scienter standards in order to address commenters' concerns that the initially proposed Rule – which used only a single, ''knowingly'' scienter standard – would have chilled some legitimate business conduct, especially with respect to the prohibition on misleading omissions of material facts from affirmative statements. Third, the final Rule prohibits only those omissions of material facts that distort or are likely to distort market conditions for a covered product. This limitation too addresses concerns about unintended interference with legitimate business activity.

B. Section 317.1: Scope

Section 813 provides the Commission with the same jurisdiction and power under Subtitle B of EISA as does the FTC Act, 15 U.S.C. 41 *et seq.*[57] With certain exceptions, the FTC Act provides the agency with jurisdiction over nearly every economic sector. Because EISA does not expand or contract coverage under the FTC Act, any ''person'' engaged in any activity subject to Commission jurisdiction under the FTC Act is covered by the final Rule. Conversely, any ''person'' engaged in any activity not subject to Commission jurisdiction under the FTC Act is not subject to Commission jurisdiction under the final Rule.

The only comments received in response to the RNPRM with respect to the scope of a final rule concerned pipelines and futures markets, and contained essentially the same arguments the commenters had made in previous comments.[58] The Commission rejects the latest arguments, and reiterates that the scope of the final Rule is coextensive with the reach of the FTC Act.

With respect to pipelines, as the Commission stated in the RNPRM, not all pipelines necessarily fall outside the coverage of the FTC Act. Certain pipeline companies or their activities may fall outside the coverage of the FTC Act to the extent that they are acting as common carriers. However, pipeline companies and their owners or affiliates often are involved in multiple aspects of the petroleum industry – including the purchase or sale of petroleum products, and the provision of transportation services – and they may engage in conduct in connection with wholesale petroleum markets covered by EISA. The Commission has therefore determined that it must assess on a case-by-case basis whether any particular person – or any conduct at issue – falls outside the scope of the final Rule, and/

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the FERC to rely upon SEA Section 10(b) in defining the terms ''manipulative or deceptive device or contrivance.'' *See* 15 U.S.C. 717c-1; 16 U.S.C. 824v.

[53] Some commenters argued that the final Rule should extend to conduct such as speculative activity or the unilateral exercise of market power, because in their view such conduct is inherently manipulative. *See, e.g.*, CFA at 8 (arguing that the Commission ''could have considered the exercise of market power and excessive speculation as manipulation'' because they ''have no economic justification''); Greenberger at 1 (opining that the proposed Rule could offer a tough enforcement mechanism against speculative activity); Senator Cantwell at 2-3 (asserting that Congress intended for the FTC's rule to reach a broad range of conduct, including the withholding of supply); Pirrong, NPRM, at 2 (arguing that the proposed Rule should not focus on fraud or deceit, but rather on the exercise of market power). However, the rulemaking record does not support extending the final Rule to cover such conduct, except to the extent that the practices used are part of a course of conduct that otherwise violates the final Rule.

[54] Many commenters, in this regard, urged the Commission to be cognizant of the realities of normal business practice within wholesale petroleum markets so as to avoid crafting a rule that unduly chills legitimate business conduct. *See* ISDA at 5-6; API at 32; Sutherland at 3. For example, commenters asserted that discerning an unlawful material omission in the context of complex wholesale petroleum market transactions would be far more difficult than in securities markets. *See* CFDR at 4; API at 15.

[55] 74 FR at 18316.

[56] *See* 74 FR at 18316.

[57] Section 813(a) of EISA provides that Subtitle B shall be enforced by the FTC ''in the same manner, by the same means, and with *the same jurisdiction* as though all applicable terms of the [FTC] Act (15 U.S.C. 41 *et seq.*) were incorporated into and made a part of [Subtitle B].'' 42 U.S.C. 17303 (emphasis added).

[58] In response to the RNPRM, AOPL continued to urge the Commission to ''state explicitly that oil pipelines regulated by FERC under the [Interstate Commerce Act] are outside the coverage'' of any FTC rule. AOPL at 1-2. ATAA, on the other hand, continued to oppose any safe harbors or exemptions for pipelines in order to give full effect to the purpose of EISA. ATAA at 3-4 (''[N]othing in either Section 811 or Subtitle B suggests the FTC should consider limiting or competing concerns in its implementing regulations.''); *see also* PMAA at 2 (agreeing with the Commission's decision not to adopt a safe harbor for pipelines); *cf.* Greenberger at 3 (contending that the Commission should ''not offer[] an overly broad safe harbor from the FTC's statutorily mandated jurisdiction'').

Other commenters renewed their request for the Commission to recognize what they believed to be the CFTC's ''exclusive jurisdiction'' over futures markets by making clear that its rule would not extend to futures trading activity. *See* CFTC at 2 (''There is no language in EISA that supersedes or limits the CFTC's exercise of [the CEA's] exclusive jurisdiction over futures trading.''); MFA at 2 (asking ''the Commission to adopt a safe harbor from its proposed Part 317 rules for futures markets activities'' and that ''the safe harbor . . . apply even if the market participant's futures trading allegedly had an impact on cash or other non-futures market oil or gasoline prices''); *see also* Sutherland at 4 (stating that ''to prosecute conduct already regulated by the CFTC . . . will waste sparse resources and increase the costs to all market participants''). *But see, e.g.*, Senator Cantwell at 2 (''Congress, however, specifically intended for the Commission to exercise this new authority by working cooperatively and in tandem with the CFTC to prevent and deter any manipulative activity, including in the futures markets, which would affect wholesale petroleum markets.''); Greenberger at 2 (''Congress clearly intended the FTC to have power in this area that would not be blocked by the CFTC . . . .''); CFA at 8 (stating that Congress did not preclude the Commission from extending its rule to futures markets). *See generally* Section IV.B. of the RNPRM for a discussion of the arguments previously raised by commenters regarding the jurisdictional scope of any Section 811 rule with respect to pipelines and futures markets. 74 FR at 18310-11.

or whether the conduct at issue falls under the ''in connection with'' language in the final Rule, which is discussed below in Section IV.D.1.b.

For similar reasons, although the Commission recognizes the CFTC's jurisdiction ''with respect to accounts, agreements . . . and transactions involving contracts of sale of a commodity for future delivery,''[59] the Commission declines to adopt a blanket safe harbor for futures markets activities. Nonetheless, consistent with its longstanding practice of coordinating its enforcement efforts with other federal or state law enforcement agencies where it has overlapping or complementary jurisdiction – as stated in the NPRM and the RNPRM – the Commission intends to work cooperatively with the CFTC to execute the Commission's objective to prevent fraud or deceit in wholesale petroleum markets.[60]

C. Section 317.2: Definitions

The final Rule defines six terms: ''crude oil,'' ''gasoline,'' ''knowingly,'' ''person,'' ''petroleum distillates,'' and ''wholesale.'' The only change to the definitions set forth in the revised proposed Rule is a non-substantive change to the definition of ''knowingly.'' These definitions establish the scope of the final Rule's coverage and provide guidance as to how the Commission intends to enforce the Rule. Only a few commenters addressed the definitions proposed in the RNPRM, and most of them focused on the definition of ''knowingly.'' These comments, together with the Commission's analysis of the definitions included in the final Rule, are discussed below.

1. Section 317.2(a): ''Crude Oil''

Section 317.2(a) of the revised proposed Rule defined ''crude oil'' as ''the mixture of hydrocarbons that exists: (1) in liquid phase in natural underground reservoirs and that remains liquid at atmospheric pressure after passing through separating facilities, or (2) as shale oil or tar sands requiring further processing for sale as a refinery feedstock.''[61] No commenters addressed this definition in response to the RNPRM.

Thus, Section 317.2(a) of the final Rule retains, without modification, the definition of ''crude oil'' in the revised proposed Rule. Consistent with its position in the NPRM and RNPRM, the Commission intends for the definition to include liquid crude oil and any hydrocarbon form that can be processed into a refinery feedstock, but to exclude natural gas, natural gas liquids, or non-crude refinery feedstocks.[62]

2. Section 317.2(b): ''Gasoline''

Section 317.2(b) of the revised proposed Rule defined ''gasoline'' to mean: ''(1) finished gasoline, including, but not limited to, conventional, reformulated, and oxygenated blends, and (2) conventional and reformulated gasoline blendstock for oxygenate blending.''[63] Only one commenter, IPMA, addressed this definition, arguing for the inclusion of renewable fuels such as ethanol and other oxygenates.[64]

Section 317.2(b) of the final Rule retains, without modification, the definition of ''gasoline'' in the revised proposed Rule. As the Commission stated in the RNPRM, it ''intends to capture those commodities regularly traded as finished gasoline products or as gasoline products requiring only oxygenate blending to be finished, under this definition.''[65] The Commission declines to extend the definition of ''gasoline'' to include products that are not listed in Section 811 – such as renewable fuels (*e.g.*, ethanol) and blending components (*e.g.*, alkylate and reformate). Nonetheless, the Commission concludes that it may apply the final Rule to conduct implicating those non-covered products if appropriate under the ''in connection with'' language of the final Rule, as discussed below in Section IV.D.1.b. As the Commission noted in the RNPRM, using the ''in connection with'' language provides the Commission ''with sufficient flexibility to protect wholesale petroleum markets from manipulation without expanding the reach of a Section 811 rule to cover products not identified in the statute.''[66]

3. Section 317.2(c): ''Knowingly''

Section 317.2(c) of the revised proposed Rule defined ''knowingly'' to mean ''with actual or constructive knowledge such that the person knew or must have known that his or her conduct was fraudulent or deceptive.''[67] The revised proposed Rule thus expressly provided that a person must engage in the proscribed conduct ''knowingly'' in order to violate Section 317.3(a); that is, that a person must ''knowingly'' engage in fraudulent or deceptive conduct.[68]

Although one commenter noted that the proposed definition clarified that ''inadvertent mistakes – caused perhaps by the disorderly nature of markets – would not be actionable as manipulation,''[69] other commenters addressed a different point. These commenters urged the Commission to delete the phrase ''with actual or constructive knowledge'' from the definition, in order to avoid confusion about its interpretation.[70]

The Commission has determined to adopt this recommendation. Thus, final Rule Section 317.2(c) defines ''knowingly'' to mean ''that the person knew or must have known that his or her conduct was fraudulent or deceptive.'' The Commission emphasizes, however, that this modification in the definition of ''knowingly'' does not change its meaning.

For purposes of enforcement of final Rule Section 317.3(a), the Commission has determined that a showing of extreme recklessness is, at a minimum, necessary to prove the scienter element. In this regard, the Commission adopts, in part, the ''extreme recklessness'' standard established by the United States Court of Appeals for the Seventh Circuit.[71] Though the Circuits may differ on the application of extreme recklessness,[72] almost all of them have

[59] 7 U.S.C. 2(a)(1)(A).

[60] 74 FR at 18310-12; 73 FR at 48323-25. Several commenters supported the Commission's intention to work cooperatively with other agencies in exercising its Section 811 authority. CFTC at 2; MFA at 4; ISDA at 3; *see also* 74 FR at 18311 n.82.

[61] 74 FR at 18312.

[62] 74 FR at 18312; 73 FR at 48325.

[63] 74 FR at 18312 (adopting the initially proposed Rule's definition of ''gasoline'').

[64] *See* IPMA at 4 (arguing that the final Rule should include non-petroleum based commodities, such as ethanol and other oxygenates, in its definition of ''gasoline'').

[65] 74 FR at 18312.

[66] 74 FR at 18312.

[67] 74 FR at 18312.

[68] *See* 74 FR at 18305, 18312.

[69] Argus at 2.

[70] ISDA contended that ''[t]he commonly understood meaning of 'knew or must have known' is to have actual or constructive knowledge,'' and that ''[i]ncluding duplicative language in the definition could have unintended effects.'' ISDA at 11. CFDR also supported deleting the phrase, but for a different reason; CFDR argued that the legal concept of ''constructive knowledge'' is inconsistent with a '''knew or must have known' scienter standard'' because '''[c]onstructive knowledge' . . . often is applied to hold a person accountable for information that he or she 'should have known,' even if he or she did not.'' CFDR at 3.

[71] In an opinion by Judge Posner, the Court of Appeals for the Seventh Circuit recently reaffirmed the *Sundstrand* extreme recklessness standard. *SEC v. Lyttle*, 538 F.3d 601, 603 (7th Cir. 2008).

[72] *See* 73 FR at 48329; 74 FR at 18318. As the Supreme Court has noted, ''[e]very Court of Appeals that has considered the issue [of civil liability under SEA Section 10(b) and Rule 10b-5] has held that a plaintiff may meet the scienter requirement by showing that the defendant acted intentionally or recklessly, though the Circuits differ on the precise formulation of recklessness.'' *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 n.3 (2007) (citing *Ernst & Ernst*, 425 U.S. at 194 n.12); *Ottmann v. Hunger Orthopedic Group, Inc.*, 353 F.3d 338, 343 (4th Cir. 2003) (collecting Court of

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now adopted this standard.[73] Similarly, the Commission has concluded that the standard should apply to the final Rule, and the Commission believes that it is appropriate because it provides for both effective rule enforcement and clarity to market participants.

The ''extreme recklessness'' standard articulated by the Seventh Circuit requires a showing that an actor knew or must have known that his conduct created a danger of misleading buyers or sellers.[74] The Seventh Circuit has stated that this showing can be made with respect to securities fraud by establishing that the actor's conduct constitutes ''an extreme departure from the standards of ordinary care . . . to the extent that the danger [of misleading buyers or sellers] was either known to the defendant or so obvious that the defendant must have been aware of it.''[75] However, whereas standards of ordinary care are well developed in the context of securities markets, they are less well defined in the context of wholesale petroleum markets. For this reason, the Commission has concluded that a showing of a departure from ''ordinary care'' is not required to establish scienter under final Rule Section 317.3(a). The Commission therefore has determined that, for purposes of final Rule Section 317.3(a), proving scienter will require showing only that a person either knew or must have known that his or her conduct created a danger of misleading buyers or sellers.

This definition of ''knowingly'' gives petroleum industry participants the appropriate guidance as to the level of scienter required to establish a final Rule Section 317.3(a) violation. The Commission further discusses the application of the ''knowingly'' standard in Section IV.D.2.a. below.

4. Section 317.2(d): ''Person''

Section 317.2(d) of the revised proposed Rule defined the term ''person'' to mean: ''any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.''[76] No commenters addressed this definition in response to the RNPRM. As stated in the RNPRM, the Commission believes that ''this definition is consistent with the jurisdictional reach of the FTC Act, as well as with prior usage in other FTC rules.''[77] Therefore, Section 317.2(d) of the final Rule retains the revised proposed definition of ''person'' without modification.

5. Section 317.2(e): ''Petroleum Distillates''

Section 317.2(e) of the revised proposed Rule defined ''petroleum distillates'' to mean ''(1) jet fuels, including, but not limited to, all commercial and military specification jet fuels, and (2) diesel fuels and fuel oils, including, but not limited to, No. 1, No. 2, and No. 4 diesel fuel, and No. 1, No. 2, and No. 4 fuel oil.''[78] No commenters addressed this definition in response to the RNPRM.

The Commission has determined to include in final Rule Section 317.2(e), without modification, the definition of ''petroleum distillates'' in revised proposed Rule Section 317.2(e). As stated in the NPRM and the RNPRM, this definition includes ''finished fuel products, other than 'gasoline,' produced at a refinery or blended in tank at a terminal.''[79] As the Commission explained in the RNPRM, the definition of ''petroleum distillates'' also includes middle distillate refinery fuel streams, and thus encompasses all product streams above heavy fuel oils – up to and including lighter products such as on-road diesel, heating oil, and kerosene-based jet fuels – but does not extend to heavy fuel oils.[80] Consistent with the RNPRM, the Commission has also determined that the definition of ''petroleum distillates'' does not extend to renewable fuels such as biodiesel.[81] The Commission addresses the intended application of the final Rule to conduct implicating non-covered products, such as renewable fuels, in its discussion of the ''in connection with'' language in Section IV.D.1.b. below.

6. Section 317.2(f): ''Wholesale''

Section 317.2(f) of the revised proposed Rule defined the term ''wholesale'' to mean: ''(1) all purchases or sales of crude oil or jet fuel; and (2) all purchases or sales of gasoline or petroleum distillates (other than jet fuel) at the terminal rack level or upstream of the terminal rack level.''[82] As stated in the RNPRM, the Commission intended the definition of ''wholesale'' to include all bulk sales of crude oil and jet fuel (even when not for resale) and all terminal rack sales,[83] but not to extend to retail sales of gasoline, diesel fuels, or fuel oils to consumers.[84]

Two commenters, PMAA and Greenberger, supported the inclusion of sales at the terminal rack level in the definition.[85] SIGMA, by contrast, renewed its opposition to including such transactions, arguing in part that rack prices are ''unlikely to alter overall price levels in the markets served out of a terminal or terminal cluster'' and that ''there are no reported instances of price manipulation practices at the rack terminal level.''[86]

The Commission is not persuaded that there is little or no potential for market manipulation at or below the terminal rack level. As the Commission stated in the RNPRM, ''prohibited conduct may in fact occur at the terminal rack level'' and ''[s]uch a determination requires analysis on a case-by-case basis.''[87] Moreover, terminal rack sales are ''wholesale'' transactions as that term is commonly defined, and excluding them from the definition of ''wholesale'' would therefore place the final Rule at odds with the express language of EISA, which addresses manipulative conduct in wholesale markets. The Commission has consequently determined to retain in final Rule Section 317.2(f), without modification, the definition of

Appeals cases). The Supreme Court, however, has reserved the question whether extreme reckless behavior is, in fact, sufficient to establish civil liability under SEA Section 10(b) and Rule 10b-5. *See Tellabs, Inc.*, 551 U.S. at 319 n.3.

[73] *Phillips v. LCI Int'l, Inc.*, 190 F.3d 609, 621 (4th Cir. 1999); *SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992); *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1569 (9th Cir. 1990) (en banc); *Hackbert v. Holmes*, 675 F.2d 1114, 1118 (10th Cir. 1982); *Broad v. Rockwell*, 642 F.2d 929, 961 (5th Cir. 1981) (en banc); *McLean v. Alexander*, 599 F.2d 1190, 1197 (3d. Cir. 1979); *Mansbach v. Prescott, Ball, & Turben*, 598 F.2d 1017, 1025 (6th Cir. 1979); *see also Greebel v. FTP Software*, 194 F.3d 185, 198 (1st Cir. 1999); *Camp v. Dema*, 948 F.2d 455, 461 (8th Cir. 1991).

[74] *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir.), *cert. denied*, 434 U.S. 875 (1977) (quoting *Franke v. Midwestern Okla. Dev. Auth.*, 428 F. Supp. 719, 725 (W.D. Okla. 1976)). The Court of Appeals for the District of Columbia Circuit relied upon *Sundstrand* to establish the ''extreme recklessness'' scienter standard applicable to SEC Rule 10b-5. *See SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (adopting *Sundstrand's* extreme recklessness standard).

[75] *SEC v. Lyttle*, 538 F.3d at 603-04, *quoting Makor Issues & Rights, Ltd. v. Tellabs Inc.*, 513 F.3d 702, 704 (7th Cir. 2008).

[76] 74 FR at 18313 (adopting the initially proposed Rule's definition of ''person'').

[77] 74 FR at 18313; *see, e.g.*, Telemarketing Sales Rule, 16 CFR 310.2(v); Disclosure Requirements and Prohibitions Concerning Franchising, 16 CFR 436.1(n).

[78] 74 FR at 18313 (adopting the initially proposed Rule's definition of ''petroleum distillates'').

[79] 74 FR at 18313; 73 FR at 48325.

[80] 74 FR at 18313.

[81] *See* 74 FR at 18313.

[82] 74 FR at 18314.

[83] 74 FR at 18314.

[84] 74 FR at 18314; *see also* 73 FR at 48326.

[85] PMAA at 2 (agreeing with the Commission's position on rack sales); Greenberger at 3 (supporting the RNPRM's definition of ''wholesale'' that includes rack transactions).

[86] SIGMA at 2 (''[Rack] prices are set by the supplier's view of the market and are not normally fixed by reference to other suppliers' prices.'').

[87] 74 FR at 18313-14.

''wholesale'' in revised proposed Rule Section 317.2(f).

D. Section 317.3: Prohibited Practices

Section 317.3 sets forth the conduct prohibited by the final Rule. Specifically, this provision states:

It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, to:

(a) Knowingly engage in any act, practice, or course of business – including the making of any untrue statement of material fact – that operates or would operate as a fraud or deceit upon any person; or

(b) Intentionally mislead by failing to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or is likely to distort market conditions for any such product.

The final Rule thus prohibits fraudulent or deceptive conduct, including statements made misleading as a result of an omission of material fact, within or in connection with wholesale petroleum markets.

Final Rule Section 317.3 is virtually identical to Section 317.3 in the revised proposed rule.[88] As the Commission detailed in the RNPRM in discussing the proposed scope and application of the two paragraphs of Section 317.3, the final Rule therefore broadly prohibits fraudulent or deceptive conduct, which may take various forms, including statements that are misleading as the result of an omission of material information. As articulated in the RNPRM, the Commission has altered the initially proposed Rule and its conduct prohibitions to clarify the type of conduct covered by the final Rule.[89] First, the Commission has consolidated the conduct prohibition in Section 317.3 of the initially proposed Rule from three paragraphs into two paragraphs. The first paragraph applies to overt conduct that is fraudulent or deceptive; the second paragraph applies only to material omissions. The Commission has determined that this consolidation defines the unlawful conduct that the Rule prohibits more precisely than the three paragraphs in the initially proposed Rule did. Second, the Commission has adopted separate scienter standards for each of the two paragraphs to address concerns that the initially proposed Rule would chill legitimate business activity, and, in so doing, has established a higher scienter standard for the second paragraph than for the first.[90] Third, the Commission has addressed concerns that specifically prohibiting material omissions would create an undue risk of deterring voluntary disclosures of information. It has addressed this concern by requiring a showing that the omission at issue distorts or is likely to distort market conditions for a covered product.[91] By tailoring the final Rule in this fashion, the Commission believes it achieves an appropriate balance between the needs of effective enforcement and unduly burdening legitimate business practices.

Accordingly, final Rule Section 317.3(a) prohibits any conduct that operates or would operate as a fraud or a deceit, provided that the alleged violator engaged in the prohibited conduct knowingly; that is – as defined in the final Rule – with extreme recklessness. Final Rule Section 317.3(b) separately prohibits statements that are misleading because a material fact is omitted intentionally and the omission distorts or is likely to distort conditions in a wholesale petroleum market. The intent requirement – and the proviso that an omission must distort or be likely to distort market conditions for a covered product in order to violate Section 317.3(b) – address many commenters' concerns that the omissions provision in initially proposed Rule Section 317.3(b) would have chilled legitimate business activity. The Commission believes that these features of final Rule Section 317.3(b) focus it on fraudulent or deceptive conduct likely to threaten the integrity of wholesale petroleum markets.

The Commission has concluded that the final Rule does not cover inadvertent mistakes, unintended conduct, or legitimate conduct undertaken in the ordinary course of business.[92] This limitation further helps to avoid impeding beneficial business behavior. The final Rule also does not impose any recordkeeping requirements.[93]

Nearly all the commenters who discussed the conduct prohibition in the revised proposed Rule supported the modifications that the Commission made to the initially proposed Rule.[94]

[88] In addition to the revised proposed rule, the RNPRM invited commenters to consider a single, unified conduct provision prohibiting all fraudulent or deceptive conduct, including material omissions (and deleting the separate prohibition of such omissions). In particular, the alternative provision would have made it unlawful for ''any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, to engage in any act (including the making of any untrue statement), practice, or course of conduct with the intent* to defraud or deceive, provided that such act, practice, or course of conduct distorts or tends to distort market conditions for any such product.'' 74 FR at 18327. The phrase ''with the intent'' would have been defined to mean that the alleged violator intended to mislead – regardless of whether he or she specifically intended to affect market prices (that is, possessed specific intent), or knew or must have known of the probable consequences of such conduct – and regardless of whether the conduct was likely to defraud or deceive the target successfully. *Id.*

[89] The initially proposed Rule stated:

It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale,

(a) To use or employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

73 FR at 48334. This wording and format were virtually identical to SEC Rule 10b-5.

[90] As the Commission noted in the ANPR, the NPRM, and the RNPRM, nothing in connection with this Section 811 [r]ulemaking, any subsequently enacted rules, or related efforts should be construed to alter the standards associated with establishing a deceptive or an unfair practice in a case brought by the Commission. 73 FR at 48322 n.61; 73 FR at 25619 n.55; 74 FR at 18316 n.144. Specifically, no showing of any degree of scienter is required to establish that a particular act or practice is deceptive or unfair, and therefore violates Section 5 of the FTC Act. *See, e.g., FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. Freecom Commc'ns., Inc.*, 401 F.3d 1192, 1202 (10th Cir. 2005); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573-74 (7th Cir. 1989).

[91] Revised proposed Rule Section 317.3(b) contained a market conditions proviso that did not exist in the initially proposed Rule; that is, that the material omission ''distorts or tends to distort market conditions'' for a covered product. As noted above, the Commission has determined to substitute the phrase ''is likely'' for the word ''tends'' in final Rule Section 317.3(b). *See* Section IV.D.3.b. below for further discussion.

[92] Consistent with its position in the NPRM and the RNPRM, the Commission currently does not expect to impose specific conduct or duty requirements such as a duty to supply product, a duty to provide access to pipelines or terminals, a duty to disclose, or a duty to update or correct information. In particular, the final Rule would not require covered entities to disclose price, volume, and other data to individual market participants, or to the market at large, beyond any obligation that may already exist. *See* 73 FR at 48326-27; 74 FR at 18325.

[93] *See* 73 FR at 48332.

[94] *See, e.g.*, ISDA at 2 (contending that the revised proposed Rule ''includes several significant improvements''); SIGMA at 1 (stating that the revised proposed Rule ''dramatically improv[ed]'' upon the NPRM and ANPR); API at 25, 34 (noting the improvements in the revised proposed Rule); CFA at 2 (''[T]he Commission has done a good job in its revisions.''); Sutherland at 2 (commending the revised proposed Rule for ''striking a balance between protecting consumers from manipulation and avoiding unnecessary costs to market participants''); Argus at 2 (stating that the revised proposed Rule provided greater clarity to the petroleum industry); CAPP at 1-2 (supporting the

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Many commenters urged, however, additional modifications to Section 317.3. For example, a few commenters recommended that the Commission broaden the scope of the revised proposed Rule by applying the extreme recklessness standard to Section 317.3(b) – as well as to Section 317.3(a)[95] – and by eliminating the market conditions proviso in Section 317.3(b).[96] Other commenters, by contrast, recommended that the Commission narrow the revised proposed Rule by: (1) adopting a single specific intent standard and applying it to both parts of Section 317.3;[97] (2) applying either a specific market effect requirement or a market conditions proviso to both parts of Section 317.3;[98] and (3) eliminating the prohibition on material omissions.[99] Some of these commenters believed that the alternative rule language would better address their concerns.[100]

The Commission has considered commenters' concerns carefully, and has determined not to effect further changes to the scope of the revised proposed Rule. The Commission has concluded that narrowing the Rule, as suggested by some commenters, would unnecessarily encumber its ability to reach conduct that likely constitutes market manipulation, contrary to the objectives of Section 811, and that the modifications to the initially proposed Rule (which was nearly identical to SEC Rule 10b-5) appropriately tailor the final Rule to reflect the characteristics of wholesale market transactions. Additionally, the Commission has concluded that broadening the rule to reach other types of conduct, as suggested by some commenters, would be inconsistent with the statutory language authorizing the Commission to prohibit market manipulation pursuant to the framework of SEC Rule 10b-5, an anti-fraud rule.

The broad prohibition in final Rule Section 317.3(a) permits the Commission to reach all types of fraudulent or deceptive conduct likely to harm wholesale petroleum markets. The extreme recklessness standard in Section 317.3(a) appropriately focuses that paragraph on conduct that presents an obvious risk of misleading buyers or sellers, and ensures that this provision does not reach inadvertent mistakes, which could have had the unintended effect of curtailing beneficial market activity. The Commission believes that the design of the separate and more limited prohibition of Section 317.3(b) – a prohibition on statements that are misleading as a result of an omission of a material fact – addresses commenters' concerns about the difficulty of distinguishing between benign and harmful omissions. The Commission believes that this objective is achieved by the greater evidentiary burden imposed by Section 317.3(b) of the final Rule – a higher scienter requirement and a market conditions proviso.

The Commission therefore issues final Rule Section 317.3 in a form virtually identical to Section 317.3 in the revised proposed Rule. In so doing, the Commission has specifically tailored each paragraph of final Rule Section 317.3 to bring about an appropriate balance between effective prohibition of undesirable conduct and avoidance of unintended chilling of desirable economic activity.[101] A more detailed discussion of the final Rule's conduct provisions and the Commission's response to commenters is set forth below.

1. Preamble Language

a. ''Directly or Indirectly''

The phrase ''directly or indirectly'' – which originates in Section 811 of EISA[102] and is also included in the preamble to final Rule Section 317.3 – delineates the level of involvement necessary to establish liability under the final Rule. In particular, it means that the final Rule imposes liability not only upon any person who directly engages in manipulation but also upon any person who does so indirectly.

One commenter, CFA, opined that Congress included the phrase ''directly or indirectly'' in part to support a recklessness standard for a Section 811 rule.[103] The Commission disagrees with this reading of the statute. Rather, the Commission has determined that ''directly or indirectly'' describes the level of involvement necessary to establish liability under the final Rule, not any particular scienter standard. Thus, consistent with its position in the RNPRM, the Commission has determined that the phrase ''directly or indirectly'' in the final Rule should ''be interpreted and applied to prevent a person from engaging in the prohibited conduct, either alone or through others.''[104]

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inclusion of an explicit scienter requirement and market conditions proviso to Section 317.3(b)); CFDR at 2 (stating that the revised proposed Rule was a ''substantial improvement[]''); Platts at 2 (contending that the revised proposed Rule improved upon the proposed Rule); PMAA at 2-3 (noting that the revised proposed Rule was an improvement). Greenberger and ATAA, however, recommended that the Commission adopt the initially proposed Rule, arguing that it best fulfilled the broad mandate of EISA. Greenberger at 2; ATAA at 1. Some commenters took no position on the revised proposed Rule except to advance specific concerns regarding the scope of a rule. *See generally* CFTC; MFA; IPMA; AOPL.

[95] *See, e.g.*, Senator Cantwell at 3 (''[T]he Commission's Final Rule should reflect Congress' intent that a finding of recklessness should be sufficient to satisfy the scienter element for manipulative conduct . . . .''); CFA at 9 (suggesting that the Commission apply the recklessness standard to both prongs of the final Rule); *see also* Greenberger at 3 (agreeing that recklessness is the appropriate scienter standard under a Section 811 rule).

[96] *See, e.g.*, Senator Cantwell at 4 (arguing that the market conditions proviso unnecessarily limited the scope of the Commission's authority); Greenberger at 3 (advocating against the market conditions proviso in Section 317.3(b)); CFA at 8 (stating that the modifications to the Rule ''unnecessarily narrow[ed] the scope of protection afforded to the public'').

[97] *See, e.g.*, Sutherland at 3 (stating that a single specific intent standard would allow the Commission to ''target essentially the same conduct as is targeted by the Revised NPRM but with less risk of chilling desirable market behavior''); Argus at 2 (advocating for a specific intent requirement if individual companies and trade associations do not believe the revised proposed Rule provides the necessary clarity); API at 26 (contending that a single specific intent standard would make rule enforcement more effective). *But see* CFDR at 2 (noting that the scienter requirement in the revised proposed Rule is ''relatively clear'').

[98] *See, e.g.*, ISDA at 3, 14 (suggesting that the Commission apply a market conditions proviso to both prongs of Section 317.3); API at 37-38 (arguing that a showing of market effects should be required, but that if instead the market conditions proviso were retained, it should apply to all conduct covered by the Rule); Sutherland at 4 (encouraging the Commission to ''require prohibited behavior to impact the market''); CFDR at 4-5 (asking the Commission to ''make intent to corrupt market pricing an element of the offense'').

[99] *See, e.g.*, API at 12 (recommending that the Commission eliminate the prohibition on omissions); Sutherland at 3 (arguing that market participants are sophisticated parties who ''generally do not require special remediation'' for omissions in the context of negotiations); CFDR at 4 (advocating against adopting an explicit omissions liability provision).

[100] *See, e.g.*, Sutherland at 2-3 (arguing that the alternative rule language provided ''greater clarity than the Revised NPRM''); ISDA at 4-5 (contending that the alternative rule language was ''better suited'' to wholesale petroleum markets because it better defined the scope of impermissible conduct); API at 20 (arguing for adoption of the alternative rule language with clarifications); Platts at 2 (urging the Commission to consider adopting the alternative rule language); CFDR at 4 n.3 (preferring the approach of the alternative rule language to omissions). Many of these commenters suggested further modifications to the alternative rule language. *See, e.g.*, API at 2-4; Platts at 2; Sutherland at 2-3.

[101] *See* 74 FR at 18308.

[102] 42 U.S.C. 17301 (''It is unlawful for any person, *directly or indirectly*, to use or employ . . . .'' (emphasis added)).

[103] CFA at 4-5 (''By including the phrase directly or indirectly, making no mention of intentionality or effect, and citing only the public interest, the Congress clearly invited the [FTC] to. . . reject the inclusion of a finding of intent in order to find unlawful conduct.''). *See* Sections IV.D.2.a. and IV.D.3.a. for a discussion of the scienter requirements in the final Rule.

[104] 74 FR at 18317.

b. ''In Connection With''

Section 811 authorizes the Commission to prohibit manipulative conduct undertaken ''in connection with'' the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale.[105] Thus, the final Rule reaches market manipulation that occurs in the wholesale purchase or sale of products covered by Section 811 (and defined in the final Rule) – and ''in connection with'' such purchases or sales – provided that there is a sufficient nexus between the prohibited conduct and the markets for these products.[106]

In response to the RNPRM, two commenters discussed the ''in connection with'' language. Senator Cantwell urged the Commission to interpret the phrase ''broadly . . . to prevent and deter any manipulative conduct,'' including supply and operational decisions, ''that could impact wholesale petroleum markets.''[107] IPMA supported the Commission's tentative determination to reach ethanol and other blending products through the ''in connection with'' language.[108]

As it stated in the RNPRM, the Commission believes that Congress intended that it construe the phrase ''in connection with'' broadly.[109] Such an interpretation is consistent with precedent from securities law interpreting the same phrase in SEC Rule 10b-5,[110] and will enable the Commission to give full effect to the statutory language of Section 811, which is identical to SEA Section 10(b). In this respect, the Commission disagrees with commenters that the ''in connection with'' language should never reach supply or operational decisions. Instead, the language can reach those decisions whenever there is a sufficient nexus between the conduct at issue and the purchase or sale of crude oil, gasoline, or petroleum distillates.[111]

With respect to product coverage, as detailed in the RNPRM, the Commission intends to reach products – such as renewable fuels (*e.g.*, ethanol or biodiesel) or blending components (*e.g.*, alkylate or reformate) – that are not specifically identified in Section 811 only if there is a sufficient nexus between conduct involving those products and wholesale petroleum markets for covered products.[112] Renewable fuels and blending components are integral to the overall supply of finished motor fuels. Thus, manipulating purchases or sales of these products can have the requisite nexus with wholesale petroleum markets.

By contrast, the Commission does not intend to apply the final Rule to commodities whose predominant use is in non-petroleum products, or to commodities that are inputs for ethanol, such as corn and sugar. The connection between these commodities and wholesale petroleum markets would likely be too attenuated to satisfy the ''in connection with'' requirement of Section 811. Thus, the Commission will determine on a case-by-case basis whether supply or operational decisions – or conduct in renewable fuels markets (or markets for other non-covered products) – are ''in connection with'' wholesale petroleum transactions.[113]

2. Section 317.3(a): General Anti-Fraud Provision

Final Rule Section 317.3(a) is the same as revised proposed Section 317.3(a). Specifically, final Rule Section 317.3(a) is a general anti-fraud provision that prohibits any person from knowingly engaging in conduct – including the making of false statements of material fact – that operates or would operate as a fraud or deceit on any person. Final Rule Section 317.3(a) thus prohibits fraudulent or deceptive conduct that not only serves no legitimate purpose, but can be expected to impair the efficient functioning of wholesale petroleum markets.[114] Specific examples of conduct that would violate Section 317.3(a) include false public announcements of planned pricing or output decisions; false statistical or data reporting; false statements made in the context of bilateral or multilateral communications that result in the dissemination of the false information to the broader market;[115] and fraudulent or deceptive conduct such as wash sales.

The overall record in this proceeding reflects widespread support for a market manipulation rule that prohibits overt fraud or deceit.[116] Comments submitted in response to the RNPRM add to this support.[117] Several commenters, however, raised concerns regarding the scope of revised proposed Section 317.3(a). For example, some commenters recommended that the Commission modify the paragraph to require the specific intent to commit fraud or deceit – or a specific intent to manipulate a market – as an element of proof.[118] These commenters also urged the Commission to add a market conditions proviso to Section 317.3(a), because in their view, such a proviso was needed to ensure that the provision prohibited market manipulation.[119]

[105] AOPL argued that the phrase ''in connection with'' cannot give the Commission jurisdiction over oil pipelines regulated by the FERC under the ICA. AOPL at 7-8. The Commission addresses the final Rule's application to pipelines in Section IV.B.

[106] *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 85 (2006) (holding that the ''in connection with'' language requires a nexus between fraudulent conduct and a securities transaction).

[107] Senator Cantwell at 2-3.

[108] IPMA at 4.

[109] *See* 74 FR at 18317-18.

[110] *See Dabit*, 547 U.S. at 85 (affirming a broad interpretation of the ''in connection with'' requirement).

[111] The Commission emphasizes that it does not intend to regulate or otherwise second-guess market participants' legitimate supply and operational decision-making, contrary to the assertion of some commenters. *See* API, NPRM, at 30-32 (urging the Commission not to interpret the ''in connection with'' language as reaching upstream conduct and statements, including operational and supply decisions); NPRA, NPRM, at 33 (arguing that ''any possibility of liability under an FTC rule for [supply or operational] decisions could seriously distort refiners' decision making and disrupt competitive activity in petroleum markets'').

[112] *See* 74 FR at 18317-18.

[113] A further safeguard against regulatory overreach respecting supply or operational decisions is that a violation of the final Rule also requires that the requisite scienter standard be demonstrated. The requirement that this element be proved clarifies that the final Rule does not reach conduct arising out of an error or miscalculation, either because the actor did not knowingly engage in fraudulent or deceptive conduct, or because the actor did not intentionally mislead by omitting material facts from statements.

[114] 74 FR at 18318.

[115] The Commission generally does not intend to reach bilateral negotiations as a matter of course. Fraud or deception arising out of such negotiations may be more appropriately treated under state law. This position is consistent with that of the FERC in interpreting similar market manipulation authority. *See* 71 FR at 4251-52 (stating that ''absent a tariff requirement or [FERC] directive,'' the FERC ''generally will not apply [its] final [anti-manipulation] rule to bilateral contract negotiations'').

[116] *See* prior Notices for further discussion of commenters who support an anti-fraud rule. 74 FR at 18308 & n.47; 73 FR at 48319 & n.28.

[117] *See, e.g.*, Sutherland at 3 (supporting ''a prohibition against intentional false statements or a prohibition against intentional fraudulent conduct''); API at 29 (''The proper objective of any rule issued under Section 811 is to cover deceptive conduct . . . .''); ATAA at 3 (''ATA[A] hopes that if the FTC adopts the revised proposed rule, it will apply and enforce that rule consistent with the broad anti-fraud mandate of the EISA.''); CAPP at 2 (''Manipulative conduct that makes use of false information in market transactions does not constitute routine or acceptable commercial behavior, and is reasonably within the scope of prohibited conduct.'').

[118] *See, e.g.*, ISDA at 6 (''Any rule that the Commission enacts should require proof that a market participant specifically intended to engage in a fraudulent or deceptive practice . . . .''); CFDR at 2 (arguing that a Section 811 rule ''must require that a person act with an intent to corrupt market pricing''); Sutherland, NPRM, at 5 (urging the Commission to require a showing ''that the defendant specifically intended to manipulate the market'').

[119] *See, e.g.*, API at 34 (arguing that including such a proviso would ''focus[] the rule on the sort of conduct Congress sought to address: acts and practices that manipulate a market''); ISDA at 3

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The Commission has considered these issues and concerns, but has determined that final Rule Section 317.3(a) should be identical to revised proposed Rule Section 317.3(a) so that it broadly prohibits all types of fraudulent or deceptive conduct likely to harm wholesale petroleum markets. The Commission has thus retained the ''knowingly'' scienter standard in final Rule Section 317.3(a) and has chosen not to require a showing that prohibited conduct adversely affect market conditions. This determination comports with the Commission conclusion that there is no economic justification for overt fraud or deception, a view about which there is no dispute in the rulemaking record. The Commission has determined that these choices also provide sufficient protection against capturing legitimate business conduct – and against reaching mistakes – because affirmative misstatements are not easily confused with benign conduct.

The Commission also has determined that final Rule Section 317.3(a) should not reach material omissions because they are covered by Section 317.3(b). Although the Commission opined in the RNPRM that ''any omission that is part of a fraudulent or deceptive act, practice, or course of business would violate Section 317.3(a),''[120] the Commission now has concluded that the better course is to subject unlawful omissions only to enforcement under final Rule Section 317.3(b). To do otherwise would introduce unnecessary confusion, and could potentially limit voluntary disclosures beneficial to market transparency. Thus, conduct covered by Section 317.3(a) does not include misleading statements resulting from material omissions covered by final Rule Section 317.3(b).

a. A Person Must Knowingly Engage in Conduct That Operates or Would Operate as a Fraud or Deceit

Section 317.3(a) of the revised proposed Rule provided that a person must engage in the proscribed conduct ''knowingly'' in order to violate the provision. In the RNPRM, the Commission tentatively defined the term ''knowingly'' to be coextensive with the extreme recklessness standard.[121] Thus, the Commission stated in the RNPRM that extreme recklessness would satisfy the intent requirement in revised proposed Section 317.3(a).[122]

Several commenters urged the Commission to adopt a single, higher ''specific intent'' standard for the final Rule.[123] Other commenters, by contrast, contended that an extreme recklessness standard would be appropriate and consistent with congressional intent.[124] For example, CFA argued that the proposed extreme recklessness standard would be ''more appropriate to protect the public'' because it ''require[d] the [market] participants to exercise some self-control and to self-regulate their behavior.''[125]

After considering these views, the Commission believes that, because final Rule Section 317.3(a) prohibits overt fraudulent or deceptive acts – which can have no beneficial effect in any setting – the extreme recklessness standard embodied in the term ''knowingly'' is appropriate.[126] A higher ''specific intent to manipulate the market'' standard could, in principle, permit harmful conduct to escape coverage under the final Rule, simply because the actor did not intend to manipulate the market. The Commission has concluded that such a regulatory gap is unacceptable. The Commission also has concluded that requiring a showing of extreme recklessness, rather than ordinary recklessness or negligence, provides sufficient assurance that final Rule Section 317.3(a) does not capture inadvertent conduct or mere mistakes.[127]

Thus, to violate final Rule Section 317.3(a), a person must engage in the proscribed conduct ''knowing'' that it is fraudulent or deceptive. For example, a trader's state of mind must encompass more than just carrying out the ministerial function of transmitting false information to a price reporting service. Rather, there must be evidence that the trader knew or must have known that the information transmitted was false.[128]

As discussed above in Section IV.C.3., the Commission has adopted, in part, the ''extreme recklessness'' standard set out by the United States Court of Appeals for the Seventh Circuit.[129] The Commission has determined that establishing a violation of final Rule Section 317.3(a) requires, at a minimum, evidence that the defendant's conduct presents a danger of misleading buyers or sellers that is either known to the

(encouraging the Commission to modify the Rule to apply the market conditions proviso to both prongs); *see also* Sutherland at 4 (urging the Commission ''to require [a showing that] prohibited behavior . . . impact the market'').

120 74 FR at 18320 n.188. API expressed concern that if Section 317.3(a) reaches omissions also covered by Section 317.3(b), it would render paragraph (b) superfluous. *See* API at 22-23; *see also* Argus at 2 (stating that some companies need clarification that omissions will only be covered by Section 317.3(b)).

121 74 FR at 18318. The extreme recklessness standard was also the scienter standard contemplated for the initially proposed Rule. *See* 73 FR at 48329.

122 74 FR at 18318.

123 *See, e.g.*, API at 32, 34 n.38 (arguing that a final rule should require a ''specific intent to manipulate the market as a prerequisite for liability'' because such a standard ''would considerably reduce the element of subjectivity and uncertainty that currently exists in [Section 317.3(a)]''); ISDA at 6 (positing that, because wholesale petroleum market participants trade and make decisions in real time, often without perfect information, the Commission should only ''prosecute intentionally fraudulent conduct''); CFDR at 2 (urging the Commission to ''require that a person act with an intent to corrupt market pricing or otherwise to cause market prices to be false, fictitious and artificial''); *see also* MFA at 3 (stating that if the Commission captures futures markets under its final Rule, it should adopt specific intent, which is consistent with Section 4b of the CEA).

124 *See, e.g.*, Senator Cantwell at 3 (''[T]he Commission's Final Rule should reflect Congress' intent that a finding of recklessness should be sufficient to satisfy the scienter element for manipulative conduct, including for false statements and omissions of material fact.''); CFA at 4 (agreeing with the Commission that the recklessness standard would be ''appropriate to protect the public and [would be] entirely consistent with the act''); CAPP at 1 (supporting the revised proposed Rule's scienter requirement); *see also* Greenberger at 3 (arguing against the addition of explicit scienter requirements, which, in his view, ''unnecessarily inhibit[ed] the FTC from exercising its authority to protect the public from market manipulation by making the evidentiary requirements more onerous under the revised rule'').

125 CFA at 4 (stating that a specific intent standard ''would lower the standard to allow market participants to engage in careless conduct'').

126 The Commission has clarified the definition of ''knowingly'' from that set forth in the RNPRM. In particular, establishing liability under Section 317.3(a) will require establishing only that an alleged violator ''knew or must have known that his or her conduct was fraudulent or deceptive.'' The words ''with actual or constructive knowledge such that a person'' have been deleted. Significantly, this modification is not intended to change the meaning of ''knowingly'' or limit the types of evidence that the Commission may rely upon in establishing the requisite scienter, including both direct and circumstantial evidence of a defendant's state of mind. *See* Section IV.C.3. in ''Definitions'' for further discussion.

127 As the Commission observed in the NPRM and the RNPRM, the FERC adopted a similar approach in its interpretation of its anti-manipulation rule, noting that ''[t]he final rule is not intended to regulate negligent practices or corporate mismanagement, but rather to deter or punish fraud in wholesale energy markets.'' 71 FR at 4246; *see* 73 FR at 48328 n.123; 74 FR at 18318 n.168.

128 The scienter element would also be satisfied if the trader is acting at the behest of another person within the same organization who ''knew or must have known'' that the conduct would operate as a fraud or deceit. The Commission does not intend, however, that the requisite state of mind be imputed across persons within an organization. *See also* Section IV.D.1.a. above for a discussion of the level of involvement necessary to establish liability under the final Rule.

129 *See Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir.), *cert. denied*, 434 U.S. 875 (1977) (quoting *Franke v. Midwestern Okla. Dev. Auth.*, 428 F. Supp. 719, 725 (W.D. Okla. 1976)).

defendant or is so obvious that the actor must have been aware of it.[130]

b. Materiality Standard

Section 317.3(a) of the final Rule prohibits conduct that operates or would operate as a fraud or deceit, ''including the making of any untrue statement of material fact.'' In the RNPRM, the Commission proposed a materiality standard that treated a fact as material if there was a substantial likelihood that a reasonable market participant would consider it important in making a decision to transact because the material fact significantly altered the total mix of information available.[131] No commenter addressed the materiality standard in the RNPRM. Consequently, the Commission adopts that same standard for the final Rule.

The Commission notes that the element of materiality limits the coverage of the final Rule. Consistent with securities law, the Commission intends that it not be sufficient simply to show that any particular person would have found any particular piece of information of interest,[132] or to show that any particular person would have acted differently but for the particular piece of information at issue.[133] Rather, the assessment requires a factual inquiry into whether the statement, omission, or datum at issue is of a character that would significantly affect the decision-making process of a reasonable market participant because it alters the mix of available information. This assessment, in turn, depends upon the specific circumstances surrounding the particular statement or omission.

Guided by securities law precedent, the Commission intends to determine on a case-by-case basis whether a statement (or omission) is material. In this regard, the Commission views false or deceptive statements as material whenever they are of a character likely to be significant to participants in the broader market. Examples might include false representations to the government about a company's current inventory or refinery operating status, or false representations about the price or volumes of past transactions to a private price reporting service.

c. Other Language in Section 317.3(a)

Final Rule Section 317.3(a) – like the initially proposed Rule and the revised proposed Rule – prohibits misrepresentations of fact because such misrepresentations clearly constitute fraudulent or deceptive conduct.[134] As detailed in the RNPRM, many commenters and workshop participants agreed that such conduct harms the marketplace and should be prohibited.[135] Prohibiting misrepresentations of material fact is further supported by the enforcement approach of other agencies. Final Rule Section 317.3(a) thus continues to include the phrase ''the making of any untrue statement of material fact'' in order to make this prohibition clear.

A few commenters mistakenly believed that the phrase ''operates or would operate as a fraud or deceit'' found in Section 317.3(a) would obviate the scienter requirement for that provision.[136] The Commission disagrees with this interpretation. The Commission notes, for example, that SEC Rule 10b-5 contains an identical phrase, and the Supreme Court has interpreted Rule 10b-5 as requiring proof of scienter.[137] Thus, the Commission has determined not to alter the phrase ''operates or would operate as a fraud'' for purposes of final Rule Section 317.3(a). In keeping the phrase, moreover, the Commission intends that Section 317.3(a) reach conduct that defrauds or deceives another person or that could have the capacity to do so.

3. Section 317.3(b): Omission of Material Information Provision

Final Rule Section 317.3(b), like revised proposed Rule Section 317.3(b), prohibits fraudulent or deceptive statements that are misleading as a result of the intentional omission of material facts, where that omission distorts or is likely to distort market conditions for a covered product.[138] Thus, material omissions from a statement that is otherwise literally true may, under the circumstances present at the time the statement is made, render that statement misleading.[139] The Commission therefore has determined that prohibiting intentional omissions of material facts that distort or are likely to distort market conditions is consistent with both the objectives of EISA and the Commission's larger mandate to protect consumers.[140]

The record contains comments from both those who supported and those who objected to a specific omissions provision.[141] Those objecting argued

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[130] As also discussed above in Section IV.C.3, proof of scienter under final Rule Section 317.3(a) shall not require evidence of a departure from ordinary standards of care.

[131] 74 FR at 18320; *see also* 73 FR at 48326. *See Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (''[A]n omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.'' (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976))); *see, e.g., Greenhouse v. MCG Capital Corp.*, 392 F.3d 650, 658-659 (4th Cir. 2004) (holding a false statement regarding the educational background of the defendant company's Chairman of the Board to be immaterial).

[132] *See Basic Inc.*, 485 U.S. at 234 (''The role of the materiality requirement is . . . to filter out essentially useless information that a reasonable investor would not consider significant, even as part of a larger 'mix' of factors to consider in making his investment decision.'' (citing *TSC Indus.*, 426 U.S. at 448-49)); *see also* 3 Thomas Lee Hazen, Treatise on Securities Regulation 12.9[3], at 284 (5th ed. 2005). In addition, it should be noted that a purchaser or seller is not necessarily entitled to all information relating to each of the circumstances surrounding a particular transaction. *See, e.g., In re Apple Computer Sec. Litig.*, 886 F.2d 1109, 1115 (9th Cir. 1989) (concluding that ''the defendant's failure to disclose material information may be excused where that information has been made credibly available to the market by other sources''); *see also In re Northern Telecom Ltd. Sec. Litig.*, 116 F. Supp. 2d 446, 459 (S.D.N.Y. 2000) (''A company is generally not obligated to disclose internal problems because '[t]he securities laws do not require management to bury the shareholders' in internal details . . . .'') (internal quotations omitted).

[133] *See, e.g., Folger Adam Co. v. PMI Indus., Inc.*, 938 F.2d 1529, 1533 (2d Cir. 1991) (''No matter how stated, however, it is well-established that a material fact need not be outcome-determinative; that is, it need not be important enough that it 'would have caused the reasonable investor to change his vote.'' (quoting *TSC Indus.*, 426 U.S. at 449)).

[134] As the NPRM noted, Section 317.3(a) of the proposed Rule was intended to provide a clear ban on ''the reporting of false or misleading information to government agencies, to third-party reporting services, and to the public through corporate announcements.'' 73 FR at 48326. Congress gave the Commission authority under Section 812, a separate provision from Section 811, to prohibit any person from reporting false or misleading information related to the wholesale price of petroleum products only if it is required by law to be reported to a federal department or agency. The prohibitions embodied in Section 812 became effective with the enactment of EISA on December 19, 2007. *See* 42 U.S.C. 17302.

[135] 74 FR at 18320.

[136] CFDR contended that the revised proposed Rule's language ''operates or would operate as a fraud'' was at odds with the Rule's ''knowingly'' standard because federal securities case law interprets that phrase as establishing a non-scienter standard. CFDR at 4. ISDA also suggested that the language ''operates as a fraud'' confuses the scienter standard because the standard merely ''require[s] intent to engage in any volitional act that happens to 'operate as a fraud.'' ISDA at 8.

[137] *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976).

[138] As noted above, final Rule Section 317.3(b) substitutes the phrase ''is likely'' for the word ''tends'' in revised proposed Rule Section 317.3(b). *See* discussion in Section IV.D.3.b. below.

[139] *See McMahan & Co. v. Wherehouse Ent., Inc.*, 900 F.2d 576, 579 (2d Cir. 1990) (''Some statements, although literally accurate, can become, through their context and manner of presentation, devices which mislead investors.'').

[140] A violation of final Rule Section 317.3(b) requires that the person make an affirmative statement that is rendered misleading by reason of a material omission. The Commission generally does not intend that Section 317.3(b) reach silence where no statement has been made.

[141] *Compare* Greenberger at 3 (contending that the omissions provision provided ''adequate protection to industry participants''), *with* API at 12 (recommending that ''the Commission eliminate liability for omissions''). Some commenters favored the alternative rule language because it did not explicitly prohibit material omissions. *See* API at 19

Continued

that the Section 317.3(b) prohibition on omissions would lead firms to adopt compliance programs that curtail voluntary disclosures, thereby ''denying markets the benefits of the information that is readily disclosed today.''[142] Some commenters also questioned whether a specific omissions prohibition would be ''efficacious'' given the absence of any existing disclosure obligations in wholesale petroleum markets.[143] Still other commenters stated that revised proposed Section 317.3(b) was superior to the initially proposed Rule because the revisions enhanced the Rule's clarity regarding the coverage of material omissions.[144]

After reviewing the record, the Commission has decided to retain a separate prohibition on material omissions because this conduct may serve as a vehicle to manipulate wholesale petroleum markets even in the absence of affirmative disclosure requirements. In promulgating final Rule Section 317.3(b), the Commission has accommodated both Section 811's injunction against market manipulation and commenters' concerns that a separate omissions provision might discourage voluntary disclosures that increase beneficial market transparency. The Commission has achieved this accommodation by crafting the Section 317.3(b) prohibition of material omissions so that it differs from the Section 317.3(a) prohibition on overt fraud or deceit in two significant ways.

First, Section 317.3(b) contains a stricter scienter standard than does Section 317.3(a). Specifically, establishing a final Rule Section 317.3(b) violation requires showing that the alleged violator ''intentionally fail[ed] to state a material fact that under the circumstances render[ed] a statement made by such person misleading.'' This scienter standard requires that the alleged violator intend to mislead by means of a material omission rather than simply being aware of the potential risk posed by his or her conduct; that is, the actor must have intentionally omitted information from a statement with the further intent to make the statement misleading.

Second, final Rule Section 317.3(b) contains a limiting proviso not found in final Rule Section 317.3(a). The proviso requires that the wrongful conduct at issue distort or be likely to distort market conditions. The limiting proviso provides businesses with the assurance that omissions occurring in the context of routine business activity are not actionable unless they otherwise undermine market participants' ability to rely on the integrity of market data.

Final Rule Section 317.3(b) – like final Rule Section 317.3(a) – also does not impose an affirmative duty to disclose information or a duty to correct or update information.[145] Rather, Section 317.3(b) applies only if a covered entity voluntarily provides information – or is compelled to provide information by statute, order, or regulation – but then intentionally fails to disclose a material fact that makes the information misleading. Section 317.3(b) therefore does not require businesses to provide commercially sensitive information to any other person absent a pre-existing legal obligation to do so.[146] Similarly, it is not a violation of final Rule Section 317.3(b) to withhold market intelligence that a company gathered about market conditions.[147] The failure to provide such information would not establish a violation of this provision, even if the counter-party in a commercial negotiation would have acted differently if such information had been revealed. In addition, the Commission does not generally intend that Section 317.3(b) reach routine bilateral commercial negotiations, which are unlikely to inject false information into the market process.[148]

a. Scienter Standard: A Person Must Intentionally Make a Misleading Statement By Intentionally Omitting Material Information

As noted, Section 317.3(b)'s scienter standard requires that a person must have intentionally omitted information from a statement with the further intent to make the statement misleading. Significantly, this standard does not require a showing that the actor intended to manipulate a wholesale petroleum market or otherwise intended to have an impact on the larger market. It requires only that the actor intended to make a statement misleading by means of an intentional omission of material fact. The Commission has determined to apply the scienter requirement both to the omission of a material fact and to the making of a misleading statement.[149]

Several commenters expressed general support for the Commission's decision to adopt an ''intentional'' standard for Section 317.3(b).[150] Some

(urging ''the Commission to adopt the proposed alternative rule language and clarify that it would cover affirmative statements but not omissions''); CFDR at 4 n.3.

142 API at 17; *see, e.g.*, Argus at 5 (''[C]ompanies may prefer to disclose no information, instead of risking violating the rule's prohibition on omissions . . . .'').

143 CFDR at 2, 4 (contending that an express prohibition on material omissions created ''the premise of a disclosure duty [to be] formally implicated by a rule''); *see also* Sutherland at 3 (''[W]holesale market participants are sophisticated parties who generally [would] not require special remediation for . . . omissions . . . .'').

144 *See, e.g.*, ISDA at 2 (stating that the Commission's modifications to the omissions provision ''made an important enhancement to the ability of firm[s] to ensure compliance with the rule''); Platts at 5 (noting that the revised proposed Rule's omissions provision was ''a step forward'' with regard to clarity and simplicity); CAPP at 2 (''With [the modifications to the omissions provisions], CAPP concur[red] that the revised proposed Rule would serve the public interest.'').

145 74 FR at 18321 (noting that the revised proposed Rule ''would not . . . impose an affirmative duty to disclose information). This determination comports with the suggestions of several commenters. *See, e.g.*, Sutherland at 3 (arguing against imposing mandatory disclosure obligations on wholesale petroleum market participants); CAPP at 2 (''CAPP remains concerned that mandatory disclosure is a problematic approach in the absence of specific, empirical evidence of damaging practices or incidences of specific harm.''); Argus at 5 (stating that imposing mandatory disclosure obligations would lead to confusion and would place a severe burden on market participants); ISDA at 12-13 (stating that ''[s]uch a requirement would create a level of regulatory risk that would deter market participants from communicating in any substantive way with market participants''); API at 23 (arguing that a final rule should not impose a duty to correct or update information).

146 SEC Rule 10b-5 similarly does not create an affirmative duty of disclosure. *See, e.g., In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259, 267 (2d Cir. 1993) (''[A] corporation is not required to disclose a fact merely because a reasonable investor would very much like to know that fact.'' (citing *Basic Inc. v. Levinson*, 485 U.S. 224, 239 n. 17 (1988))).

147 API asked the Commission to preserve market participants' incentive to gather and evaluate market intelligence by promulgating a rule that does not require disclosure of such information. API at 32-33 & n.37. API argued that collecting and evaluating market intelligence is costly, and market participants are unlikely to incur these costs if they are required to disclose such information. API at 32. The Commission agrees that a party should not be required to reveal such market intelligence in order to comply with the final Rule. For example, a party would not be required to reveal estimates of its future inventory levels to a counter-party during a business negotiation.

148 In these instances, parties may seek redress under state laws for contract or tort claims. These laws are more appropriate in such cases. For example, state law better addresses issues such as whether a counter-party in a commercial transaction had an independent ability to verify representations made by a party or was otherwise entitled to rely on such representations in reaching an agreement; whether a contract was entered into under false pretenses; or whether a party had a pre-existing legal duty to provide information to a counter-party.

149 *See also* ISDA at 8 (asking the Commission to clarify that the Rule's scienter standard applies to a fraudulent act rather than to any volitional act).

150 *See, e.g.*, API at 3 (stating the Commission ''correctly recognize[d] the shortcomings of a knowledge / extreme recklessness standard as applied to omissions''); CAPP at 1 (approving of the revised scienter requirement); Argus at 2 (supporting the addition of ''intentionally'' as ''a significant effort to reduce [a] chilling effect and . . . draw[s] the rule closer to the existing [CEA] language''); *see also* Platts at 5 (praising revisions to the omissions provision, which it believed enhanced the clarity and simplicity of the Rule).

commenters further urged the Commission to elevate the standard to a ''specific intent to manipulate the market'' because, in their view, it would better delineate limits on the conduct reached by the Rule.[151] The Commission has determined not to do so because intentional misleading statements can be of a character that undermines market participants' overall trust in the integrity of market data, regardless of whether an actor had a specific intent to have that effect or to benefit from it. The Commission believes, furthermore, that the ''intentional'' standard provides market participants and their counsel with as much clarity as practicable regarding the evidentiary burden necessary to establish this element of a Section 317.3(b) violation. Because a violation of Section 317.3(b) requires proof of intentional conduct, it does not reach inadvertent conduct or mere mistakes.

b. The Omission of Material Information Must Distort or Be Likely to Distort Market Conditions within a Wholesale Market for a Covered Product

Under the revised proposed Rule, a statement made intentionally misleading by reason of the intentional omission of a material fact would violate the Rule only if its dissemination ''distorts or tends to distort market conditions'' respecting any covered product. Final Rule Section 317.3(b) retains this limiting market conditions language, except that the Commission has determined to replace the phrase ''tends to distort'' with the phrase ''is likely to distort.'' The Commission has effected this modification in order to eliminate the possibility of confusion, by clarifying that final Rule Section 317.3(b) focuses upon those material omissions that are likely to distort market conditions. Thus, establishing a violation of final Rule Section 317.3(b) expressly requires proof that a material omission ''distorts or is likely to distort market conditions'' for a covered product.[152]

Commenters presented various views on the desirability of a market conditions proviso.[153] ISDA opined that ''the distorts or tends to distort requirement . . . will benefit markets . . . because it should remove from the ambit of the rule, private and other conversations and conduct that do not distort or tend to distort markets and with which the Commission should not be concerned.''[154] Other commenters, however, including ISDA, continued to argue that establishing a rule violation should require proof of an actual price effect.[155] CFDR argued that the proposed market conditions proviso was an ''imprecise and poor substitute for effects on market pricing,'' and that a market manipulation rule should reach conduct that ''corrupt[s] the integrity of market pricing.''[156] Senator Cantwell opposed the proviso, arguing that such language would unnecessarily limit the Commission's ability to ''hold[] accountable those who employ any manipulative 'device or contrivance' in wholesale oil and petroleum markets.''[157]

The Commission has concluded that the limiting proviso advances the effective implementation of Section 811 in an important way. It ensures that Section 317.3(b) prohibits only those material omissions that can be expected to manipulate a wholesale petroleum market. In so doing, it gives market participants the certainty that statements containing material omissions will not be challenged if they do not adversely threaten the reliability of data in a broader wholesale petroleum market.

Significantly, however, by the proviso's own terms, establishing a final Rule Section 317.3(b) violation does not require proof of a specific price effect. Rather, the phrase ''distorts or is likely to distort market conditions'' speaks only to the ability of market participants to rely on the integrity of market data in making purchase and sales decisions. Misleading statements of the kind that distort or are likely to distort market data taint the integrity of the market process.[158]

In this regard, the core principle embodied in the proviso centers around the character and the likely market reach of the false or misleading information that is injected into the market by means of misleading statements. Specifically, establishing a violation of final Rule Section 317.3(b) requires showing that the character and likely market reach of such false or misleading information is likely to make market data less reliable. This evidentiary burden is lower than proving a specific price effect or any other specific effect on a market metric.

Focusing Section 317.3(b) enforcement on conduct that inherently threatens market integrity because it is conduct that distorts or is likely to distort market conditions, thus, achieves the objectives of Section 811 while limiting interference with legitimate business activity. For example, proof that a person intentionally reported price information to a private data reporting company that is in the business of providing price reports to the marketplace – and that the person intentionally omitted material facts that the reporting company required to be reported – would satisfy the market conditions proviso. Similarly, intentionally omitting material information in statements in order to mislead government officials during a national emergency would violate Section 317.3(b) because such conduct can be expected to threaten the integrity of the data within the market at large and on which market participants rely.

But see, e.g., Greenberger at 3 (stating that the addition of ''intentionally'' to Section 317.3(b) ''unnecessarily inhibit[ed] the FTC from exercising its authority to protect the public from market manipulation . . . .'').

[151] *See, e.g.*, CFDR at 4-5 (''[P]roof of intent to corrupt the integrity of market pricing processes or an intent otherwise to cause false, fictitious and artificial market prices must be a necessary element of any anti-manipulation rule.''); API at 3 (arguing that specific intent ''is necessary to limit the rule to the market-distorting conduct that Congress intended to address in Section 811'').

[152] The edit is consistent with the views of one commenter. *See* API at 38 (arguing that the concept of ''tendency'' may lead to unintended interpretations).

[153] One commenter, ATAA, expressed general support for the market conditions proviso, but ultimately preferred the proposed Rule as articulated in the NPRM, which does not contain a market conditions proviso or similar limiting language. ATAA at 1, 5.

[154] ISDA at 13-14.

[155] *See, e.g.*, API at 34 (preferring a required showing of market effects); ISDA at 9 (''The Commission should require proof of market effect to find a violation of the rule because public policy only should be concerned with fraudulent activity that actually affects market prices and, therefore, presumably harms wholesale petroleum products markets.''); *see also* Sutherland at 4 (encouraging the Commission to require that prohibited behavior impact the market).

[156] CFDR at 5; *see also* API at 38 (''Tends to distort' is an imprecise term, subject to expansive interpretations imposing liability even on omissions that, in the circumstances, had no real chance of affecting a covered market or consumers.'').

[157] Senator Cantwell at 4. Commenters also expressed support for the Commission decision to reject market or price effects requirements. *See* Senator Cantwell at 3-4; CFA at 6; Greenberger at 3.

[158] As discussed earlier in Section III., markets absorb all available information – good or bad – and continually adjust price signals and other market data to any new information. When economic actors can presume that the data of the market have not been artificially manipulated, they are able to rely on the data to make decisions that they believe will advance their individual economic objectives. Participants can no longer trust that the data of the market reflect underlying market fundamentals. The proviso contained in final Rule Section 317.3(b) thus focuses enforcement of that provision on conduct that inherently threatens confidence in the market's integrity. When material omissions are of the character that can be expected to distort observable market data, those decisions are perforce riskier and the efficiency of the market process is reduced. Market participants and the public are less able to trust the underlying integrity of the market process.

c. Materiality

Section 317.3(b) of the final Rule prohibits the omission of a ''material fact.'' The standard for materiality for Section 317.3(b) is the same as that for Section 317.3(a), which is discussed above in Section IV.D.2.b. Thus, a fact is material if there is a substantial likelihood that a reasonable market participant would consider it important in making a decision to transact, because the material fact significantly alters the total mix of information available.[159] The Commission has concluded that limiting the reach of final Rule Section 317.3(b) to an omission of a ''material fact'' provides market participants with clarity as to the type of omission that is covered by Section 317.3(b).

E. Section 317.4: Preemption

Section 815(c) of EISA states that ''[n]othing in this subtitle preempts any State law.''[160] Consequently, Section 317.4 of the final Rule contains a standard preemption provision used in other FTC rules, making it clear that the Commission does not intend to preempt the laws of any state or local government, except to the extent of any conflict.[161] This approach is consistent with the position stated in the RNPRM, where the Commission explained that there is no conflict, and therefore no preemption, if state or local law affords equal or greater protection from the manipulative conduct prohibited by the revised proposed Rule.[162]

No commenters addressed preemption of state law. Accordingly, the final Rule adopts the preemption provision proposed in the RNPRM.[163]

F. Section 317.5: Severability

Section 317.5 of the final Rule contains a standard severability provision used in other FTC rules.[164] This provision makes clear that if any part of the Rule is held invalid by a court, the rest of the Rule will remain in effect. The Commission received no comments on this issue. Accordingly, the Commission adopts without alteration the severability provision proposed in the RNPRM.[165]

G. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (''RFA'')[166] generally requires a description and analysis of proposed and final rules that will have a significant economic impact on a substantial number of small entities. Specifically, the RFA requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'')[167] with a proposed Rule and a Final Regulatory Flexibility Analysis (''FRFA'')[168] with a final rule, if any. The Commission is not required to do such analyses if a rule would not have such an economic effect.[169]

Although the scope of the final Rule may reach a substantial number of small entities as defined in the RFA, the Commission does not believe that the Rule will have a significant economic impact on those businesses.[170] The Commission specifically requested comments on the economic impact of the revised proposed Rule and received none.[171] Given that there are no reporting requirements, document or data retention provisions, or any other affirmative duties imposed, it is unlikely that the final Rule imposes costs to comply beyond standard costs associated with ensuring that behavior and statements are not fraudulent or deceptive. Therefore, the Commission believes that the final Rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding this belief, the Commission has prepared a FRFA, as set forth below.

1. Need for and Objectives of the Final Rule

Section 811 grants the Commission the authority to promulgate a rule that is ''necessaryor appropriate in the public interest or for the protection of United States citizens.''[172] As discussed above, the Commission believes that promulgating the final Rule is appropriate to prevent manipulative practices affecting wholesale markets for petroleum products, and the Commission has tailored the Rule specifically to reach manipulative behavior that likely impacts those commodities described in Section 811. The final Rule supplements the Commission's existing antitrust and consumer protection law enforcement tools.

2. Significant Issues Raised by the Public Comment, Summary of the Agency's Assessment of these Issues, and Changes, if any, Made in Response to Such Comments

The Commission received 155 comments in response to its ANPR, 34 comments in response to its NPRM, and 17 comments in response to its RNPRM. Further, the Commission staff sought additional comment by holding a one-day public workshop to discuss the issues arising from the comments. The comments and the workshop transcript are part of the rulemaking record and are available at the Commission's website.[173]

Based on the record in this proceeding, the Commission has concluded that the final Rule should be a broad, anti-fraud rule guided by the principles of SEC Rule 10b-5. Like the initially proposed Rule and the revised proposed Rule, the final Rule broadly prohibits fraudulent or deceptive conduct. However, in response to commenters' concerns, the Commission has modified the final Rule in three ways to clarify the type of conduct that would violate the Rule and to mitigate chilling of legitimate conduct.

First, the final Rule, like the revised proposed Rule, consolidates the initially proposed Rule's three-part conduct prohibition into a two-part conduct prohibition that ''more clearly and precisely denote[s] the unlawful conduct [the Rule] prohibits.''[174] Second, each paragraph of the conduct prohibition in the final Rule contains an explicit and tailored scienter standard. The different scienter standards address concerns raised by commenters that the initially proposed Rule, which had only

[159] This standard conforms to the approach the Commission followed in the RNPRM and NPRM with respect to materiality. 74 FR at 18323 n.214; 73 FR at 48326.

[160] 42 U.S.C. 17305.

[161] *See, e.g.*, Disclosure Requirements and Prohibitions Concerning Franchising, 16 CFR 436.10(b).

[162] 74 FR at 18323.

[163] *See* 74 FR at 18323.

[164] *See, e.g.*, Telemarketing Sales Rule, 16 CFR 310.9; Used Motor Vehicle Trade Regulation Rule, 16 CFR 455.7.

[165] 74 FR at 18323.

[166] 5 U.S.C. 601-612.

[167] 5 U.S.C. 603.

[168] 5 U.S.C. 604.

[169] *See* 5 U.S.C. 605(b).

[170] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small-business concern'' as a business that is ''independently owned and operated and which is not dominant in its field of operation.'' 15 U.S.C. 632(a)(1). As noted above, Section 317.2(d) of the final Rule defines a ''person'' as ''any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.''

[171] Although no commenters addressed whether the revised proposed Rule would have an economic impact on small entities, some commenters contended that the revised proposed Rule would be costly and burdensome to the industry. None of these commenters submitted data for the Commission to analyze any such economic impact of the Rule. *See, e.g.*, API at 8 (adhering to the revised proposed Rule will force participants to enact burdensome compliance procedures raising industry costs and restricting efficient and procompetitive conduct); SIGMA at 2 (including rack sales in the definition of ''wholesale'' will impose significant compliance requirements on the gasoline marketing industry).

[172] 42 U.S.C. 17301.

[173] *See* (*http://www.ftc.gov./ftc/oilgas/rules.htm*).

[174] 74 FR at 18316.

a single, scienter standard, would have unacceptably chilled legitimate conduct.[175] Third, one paragraph of the final Rule, the omissions paragraph, contains a market conditions proviso that will limit the paragraph to only those omissions that can be expected to result in manipulative conduct harmful to consumers without interfering with legitimate business conduct.

3. Description and Estimate of Number of Small Entities Subject to the Final Rule Or Explanation Why no Estimate is Available

The final Rule applies to entities engaging in the purchase or sale of crude oil, gasoline, or petroleum distillates. These potentially include petroleum refiners, blenders, wholesalers, and dealers (including terminal operators that sell covered commodities). Although many of these entities are large international and domestic corporations, the Commission believes that a number of these covered entities may be small entities.[176] According to the SBA size standards, and utilizing SBA source data, the Commission estimates that between approximately 1,700 and 5,200 covered entities would be classified as small entities.[177]

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Rule and the Type of Professional Skills that Will Be Necessary to Comply

The final Rule does not contain any requirement that covered entities create, retain, submit, or disclose any information. Accordingly, the Rule will impose no recordkeeping or related data retention and maintenance or disclosure requirements on any covered entity, including small entities.[178] Given that there are no reporting requirements, document or data retention provisions, or any other affirmative duties imposed, it is unlikely that the final Rule imposes costs to comply beyond standard costs (or skills) associated with ensuring that behavior and statements are not fraudulent or deceptive.

5. Steps the Agency Has Taken to Minimize Any Significant Economic Impact on Small Entities, Consistent With the Stated Objectives of the Applicable Statutes, Including the Factual, Policy, and Legal Reasons for Selecting the Alternative(s) Finally Adopted, and Why Each of the Significant Alternatives, if Any, Was Rejected

The final Rule is narrowly tailored to reduce compliance burdens on covered entities, regardless of size. In formulating the Rule, the Commission has taken several significant steps to minimize potential burdens. As an initial matter, the Rule contains no recordkeeping or disclosure obligations. The Rule focuses on preventing manipulation and deception in wholesale petroleum markets. The Commission has declined to include specific conduct or duty requirements, such as a duty to supply product or a duty to provide access to pipelines and terminals. The Rule also clarifies that covered entities need not disclose price, volume, or other data to the market.

H. Paperwork Reduction Act

The final Rule does not impose any new information collection requirements under the provisions of the Paperwork Reduction Act of 1995 (''PRA'').[179]

List of Subjects in 16 CFR Part 317

■ Accordingly, for the reasons set forth in the preamble, the Commission amends Title 16, Chapter I, Subchapter C of the Code of Federal Regulations by adding part 317 to read as follows:

PART 317 – PROHIBITION OF ENERGY MARKET MANIPULATION RULE

Sec.
317.1 Scope.
317.2 Definitions.
317.3 Prohibited practices.
317.4 Preemption.
317.5 Severability.

Authority: 42 U.S.C. 17301-17305; 15 U.S.C. 41-58.

§ 317.1 Scope.

This part implements Subtitle B of Title VIII of The Energy Independence and Security Act of 2007 (''EISA''), Pub. L. 110-140, 121 Stat. 1723 (December 19, 2007), *codified at* 42 U.S.C. 17301-17305. This Rule applies to any person over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

§ 317.2 Definitions.

The following definitions shall apply throughout this Rule:

(a) *Crude oil* means any mixture of hydrocarbons that exists:

(1) In liquid phase in natural underground reservoirs and that remains liquid at atmospheric pressure after passing through separating facilities; or

(2) As shale oil or tar sands requiring further processing for sale as a refinery feedstock.

(b) *Gasoline* means:

(1) Finished gasoline, including, but not limited to, conventional, reformulated, and oxygenated blends; and

(2) Conventional and reformulated gasoline blendstock for oxygenate blending.

(c) *Knowingly* means that the person knew or must have known that his or her conduct was fraudulent or deceptive.

(d) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

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[175] *See id.*

[176] Directly covered Directly covered entities under the final Rule are classified as small businesses under the Small Business Size Standards component of the North American Industry Classification System (''NAICS'') as follows: petroleum refineries (NAICS code 324110) with no more than 1,500 employees nor greater than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity; petroleum bulk stations and terminals (NAICS code 424710) with no more than 100 employees; and petroleum and petroleum products merchant wholesalers (except bulk stations and terminals) (NAICS code 424720) with no more than 100 employees. *See* Small Business Administration (''SBA''), Table of Small Business Size Standards Matched to North American Industry Classification System Codes (Aug. 22, 2008), *available at* (*http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*).

[177] The SBA publication providing data on the number of firms and number of employees by firm does not provide sufficient precision to gauge the number of small businesses that may be impacted by the final Rule accurately. The data are provided in increments of 0-4 employees, fewer than 20 employees, and fewer than 500 employees. SBA, Employer Firms, & Employment by Employment Size of Firm by NAICS Codes, 2006, *available at* (*http://www.sba.gov/advo/research/us06_n6.pdf*). Thus, for the 228 petroleum refiners listed, 188 show that they have less than 500 employees. Although the Commission is unaware of more than five refiners with less than 125,000 barrels of crude distillation capacity, the data may be kept by refinery, rather than refiner. Similar problems exist for the bulk terminal and bulk wholesale categories listed above, in which the relevant small business cut-off is greater than 100 employees. Although the Commission sought additional comment on the number of small entities covered by the revised proposed Rule, it received none. Accordingly, the small business data set forth in this FRFA are the best estimates available to the Commission at this time.

[178] Final Rule Section 317.3(b) applies only if a covered entity voluntarily provides information – or is compelled to provide information by statute, order, or regulation – but then intentionally fails to disclose a material fact that makes the information misleading. *See* Section IV.D.3 above.

[179] 44 U.S.C. 3501-3521. Under the PRA, 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'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3)(A).

(e) *Petroleum distillates* means:

(1) Jet fuels, including, but not limited to, all commercial and military specification jet fuels; and

(2) Diesel fuels and fuel oils, including, but not limited to, No. 1, No. 2, and No. 4 diesel fuel, and No. 1, No. 2, and No. 4 fuel oil.

(f) *Wholesale* means:

(1) All purchases or sales of crude oil or jet fuel; and

(2) All purchases or sales of gasoline or petroleum distillates (other than jet fuel) at the terminal rack or upstream of the terminal rack level.

§ 317.3 Prohibited practices.

It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, to:

(a) Knowingly engage in any act, practice, or course of business – including the making of any untrue statement of material fact – that operates or would operate as a fraud or deceit upon any person; or

(b) Intentionally fail to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or is likely to distort market conditions for any such product.

§ 317.4 Preemption.

The Federal Trade Commission does not intend, through the promulgation of this Rule, to preempt the laws of any state or local government, except to the extent that any such law conflicts with this Rule. A law is not in conflict with this Rule if it affords equal or greater protection from the prohibited practices set forth in § 317.3.

§ 317.5 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission, Commissioner Kovacic dissenting.

Donald S. Clark

Secretary

Note: The following text will not be codified in Title 16 of the Code of Federal Regulations.

Statement of Chairman Jon Leibowitz

When Congress passed the Energy Independence and Security Act of 2007, it authorized the Commission to develop a rule to prevent manipulation in wholesale energy markets.[1] The goal of Congress was for the Commission to detect and prevent market manipulation that might lead to higher gas prices for consumers. After a thorough and intensive process, the Commission has started to do just that. The rule issued by the Commission today is a broad anti-fraud measure that will help us prohibit conduct that harms consumers but that may not violate antitrust laws.

We are going to use this authority as aggressively as possible to stop market manipulation that drives up prices at the pump.

Trade associations representing the oil industry have voiced concern about the new rule. They argue that it will chill business conduct in the service of stopping something that they don't believe is happening in the first place. These industry advocates have proposed several specific changes that would weaken the rule – requiring a higher scienter standard under the general liability provision, requiring an explicit market distortion element for the entire rule, and entirely eliminating liability for omissions.[2]

I am fundamentally opposed to these proposals. They would effectively neuter the rule and, as my colleague Commissioner Rosch notes in his concurring statement, they would undermine Congressional intent. For example, the proposed changes would make it harder – if not impossible – to prosecute those who manipulate the market by intentionally omitting critical information from their communications, even when those omissions distort market conditions and raise gasoline prices for all Americans. Such omissions can be every bit as deceptive as any other type of fraudulent conduct, so it is crucial that we have the ability to prevent and prosecute them. A rule that does not allow us to go after such conduct would limit our ability to protect consumers.

The rule as proposed already takes into account legitimate industry concerns. In fact, we responded directly to those concerns by modifying the more expansive proposal in the draft rule we released last summer, originally based on the Securities and Exchange Commission rule 10b-5, to accommodate industry worries.[3] The current rule, as modified, strikes the right balance; it gives the Commission the authority to stop fraudulent conduct in energy markets but does not undermine appropriate business activity.

It is only the fact that gas prices were over four dollars per gallon a year ago that keeps us from thinking that prices are too high today. If we water down this rule as suggested by the industry, it would hinder our ability to stop manipulation of wholesale petroleum markets. That would undermine the intent of Congress, and undermine the efforts of the Commission to protect consumers and do our job.

Dissenting Statement of Commissioner William E. Kovacic

Since early 2008, a task force of the staff of the Federal Trade Commission (FTC) has devoted extraordinary care, skill, and effort to the development of a rule to implement Title VIII of The Energy Independence and Security Act of 2007.[1] Their performance on this project – from the early research on the possible content of a rule through the public consultations and drafting of options for the Commission's consideration – is a model of superb public administration. I thank and congratulate them.

I disagree with the choices taken by the Commission today in promulgating a Final Rule. In connection with wholesale transactions involving ''crude oil, gasoline, or petroleum distillates,'' Section 317.3(a) of the Commission's Final Rule makes it illegal to ''Knowingly engage in any act, practice, or course of business . . . that operates or would operate as a fraud or deceit'' on any person.[2] Section 317.3(b) of the Final Rule makes it illegal for a party ''[i]ntentionally'' to ''fail to state a material fact'' where ''such omission distorts or is likely to distort market conditions . . . .''[3] Compared to Paragraph 3(a), Paragraph 3(b) imposes a more demanding scienter requirement. To violate Paragraph 3(b), the person must act ''intentionally'' rather than ''knowingly,'' a state of mind that exists when the person ''knew or must have known that his or her conduct was

[1] Congress authorized the rule in section 811 of the Act using language from an earlier bill offered by Senator Maria Cantwell. *See* Petroleum Consumer Price Gouging Protection Act, S. 1263, 110th Cong. §§ 4 and 5(a) (2007).

[2] *See generally,* Comments of the American Petroleum Institute and the National Petrochemical and Refiners Association in Response to Revised Notice of Proposed Rulemaking (May 20, 2009), *available at (http://www.ftc.gov/os/comments/marketmanipulation3/541354-00009.pdf).*

[3] *See, e.g., id.* at 1 (''In particular, API and NPRA welcome the Commission's recognition that wholesale petroleum markets differ significantly from securities markets and the Commission's efforts to tailor the proposed rule to reflect those differences.'').

[1] 42 U.S.C. §§ 17301-17305.

[2] Prohibitions on Market Manipulation, Statement of Basis and Purpose and Final Rule (to be codified at 16 C.F.R. § 317.3(a)).

[3] *Id.* (to be codified at 16 C.F.R. § 317.3(b)).

fraudulent or deceptive.''[4] Paragraph 3(b) also contains the requirement, missing in Paragraph 3(a), that the behavior ''distort market conditions.''

I dissent from the Commission's promulgation of the Final Rule. To my mind, a minimally acceptable rule would have departed from the Commission's Final Rule in two major respects. First, it would have incorporated into Paragraph 3(a) the requirements that the conduct be intentional and either actually or likely distorts market conditions. Second, the rule would not have contained a separate command dealing with omissions, thus deleting Paragraph 3(b) of the Commission's Final Rule.[5] As it stands, I cannot say that the Final Rule is in the public interest.[6]

When implemented, the Final Rule will cover a vast number of routine transactions – literally thousands daily – in petroleum products. These transactions are the indispensable means by which gasoline, diesel fuel, and jet fuel move from refineries to end users. Society has an immense stake in avoiding unnecessary disruption to these undertakings. Violations of the Commission's Final Rule are punishable with civil penalties of $1 million per violation, and each day on which the misconduct continues is treated as a separate offense.[7]

By reason of the drafting choices described above, the Commission has taken inadequate precautions to ensure that the aims of the underlying legislation are attained without imposing social costs that swamp the benefits Congress sought to achieve. Because the Final Rule's requirements are unlikely to proscribe only genuinely harmful conduct, there is a serious danger that it will impede routine contracting that is benign or procompetitive and thereby make Americans worse off by damaging the flow of commerce in petroleum products. The Commission's extensive work since the 1960s in reviewing petroleum industry mergers and allegations of anticompetitive conduct ought to have made the agency more attentive to these considerations. The FTC's previous inquiries have determined that price fluctuations for petroleum products result principally from market forces: prices decline when supply rises or demand falls.[8] This experience does not gainsay the potential harm that consumers *could* suffer from manipulation of market prices. It does suggest, however, that the contributions of a rule against market manipulation for petroleum products to the solution of the nation's larger energy problems are likely to be small. At the same time, the breadth of the substantive commands of the Commission's Final Rule, its applicability to an expansive range of routine contracting, and the severity of the penalties for violations create serious possibilities for deterring suppliers from participating in transactions that pose no threat to consumers. By incorporating the scienter and market distortion elements of Paragraph 3(b) into Paragraph 3(a), the Commission could have minimized these hazards. It unfortunately chose not to do so.

The inclusion in the Final Rule of the omissions provision, Paragraph 3(b), is a second regrettable decision. A proscription on certain acts, practices, or courses of business, alone is sufficiently broad to capture fraudulent omissions. Because the Final Rule is modeled on SEC Rule 10b-5, a separate and distinct omissions prohibition could invite subsequent interpretations that the Final Rule requires affirmative disclosures. Although the Commission explains in the Statement of Basis and Purpose that accompanies the Final Rule that it does not interpret Paragraph 3(b) as requiring an affirmative duty to disclose,[9] it is likely that other adjudicators will be called on to interpret the Final Rule. These adjudicators may not reach the same conclusion as the Commission, especially to the extent that the Final Rule becomes the subject of litigation in state courts under state consumer protection laws.[10]

In light of this substantial liability risk, the omissions component may well force the many firms that engage in legitimate transactions with their competitors on a daily basis to choose between two problematic paths of conduct: one way to avoid a potentially wrongful omission is to disclose more private information to your rival; a second approach is to limit investments in acquiring potentially relevant marketplace information and to reduce the number of encounters that could be examined through the lens of the Commission's Final Rule. Neither alternative is good for consumers. Excessive disclosure of private information among competitors threatens competition and is precisely the type of conduct that the FTC investigates and challenges under the antitrust laws. A competition agency should not be in the business of telling rivals to give each other more information about their business operations. A decision to gather less marketplace information or to engage in fewer transactions promises to translate into higher prices that may not accurately reflect underlying supply and demand conditions.

Last, the Commission's Final Rule has the capacity to deflect needed attention away from root causes of the country's energy problems and to divert effort away from the pursuit of effective solutions. For example, there is a legitimate debate to be had about whether gasoline prices adequately reflect external costs, such as those associated with environmental damage, national security, or traffic congestion. We also might usefully debate the proper mix of increased domestic oil production, nuclear power, or renewable energy sources to enhance energy security. By focusing valuable attention on measures that have little capacity to address these and other fundamental issues, the Commission's Final Rule may serve to relax the urgency that the nation ought to feel to devise approaches that truly come to grips with the larger dimensions of the energy problem.

Concurring Statement of Commissioner J. Thomas Rosch

I concur in the form of the Oil Price Manipulation Rule that the Commission has adopted. In doing so, however, I want to make it clear that I agree with Commissioner Kovacic's misgivings. The ''conduct'' prong of the Rule does

[4] *Id.* (to be codified at 16 C.F.R. § 317.2(c)).

[5] Such a rule would be similar to the alternative rule proposed in the Revised Notice of Proposed Rule Making, 74 Fed. Reg. 18304, 18327 (Apr. 22, 2009).

[6] *See* 42 U.S.C. § 17301 (permitting the Commission to adopt a rule to implement the Energy Independence and Security Act if it finds such a rule to be in the ''public interest'').

[7] 42 U.S.C. § 17304.

[8] *See* Federal Trade Commission, Investigation of Gasoline Price Manipulation and Post-Katrina Gas Price Increases (2006), *at* (*http://www.ftc.gov/reports/060518PublicGasolinePricesInvestigationReportFinal.pdf*); Federal Trade Commission, Gasoline Price Changes: The Dynamic of Supply, Demand, and Competition (2005), *at* (*http://www.ftc.gov/reports/gasprices05/050705gaspricesrpt.pdf*).

[9] *See* Statement of Basis and Purpose and Final Rule at 33 n.92 (''Consistent with its position in the NPRM and the RNPRM, the Commission currently does not expect to impose specific conduct or duty requirements such as . . . a duty to disclose, or a duty to update or correct information.'').

[10] Some states model their consumer protection laws on the FTC Act, and some allow private causes of action under these laws. Because the Energy Independence and Security Act provides that a violation of the Act ''shall be treated as an unfair or deceptive act or practice proscribed under a rule issued under Section 18(a)(1)(B) of the [FTC Act],'' 42 U.S.C. § 17303, it is not unreasonable to assume that the Final Rule may provide a cause of action under some state consumer protection laws.

not require proof of an exercise of market power having an adverse impact on the market as a whole, as is normally required in challenges to conduct under the Sherman Act. Further, it is not clear that the state of mind that must be proved establishes a sufficient limiting principle. On the other hand, although the ''omissions'' prong of the Rule does arguably require proof that the omission adversely impacts the market as a whole, like Rule 10b-5 it does not require proof of the state of mind that the ''conduct'' prong requires and hence may not establish a sufficiently limiting principle either. The net result is that the Rule may chill oil companies from, among other things, voluntarily providing their data to independent data-reporting firms, as they do now, for fear that they may be held liable for an inadvertent omission. That would be unfortunate because at least in some circumstances, having abundant data of that sort can be pro-competitive. *See United States v. United States Gypsum Co.*, 438 U.S. 422 (1978); *see also* U.S. Dep't of Justice and Federal Trade Comm'n, *Statement of Antitrust Enforcement Policy in Health Care*, Statement 6 (''Provider Participation in Exchanges of Price and Cost Information'') (August 1996), *available at* (*http://www.usdoj.gov/atr/public/guidelines/0000.pdf*). It would be especially unfortunate if the Rule were interpreted or applied so as to permit follow-on private actions.

All of this said, however, Congress apparently intended that the Commission fashion a Rule that goes beyond the Sherman Act and that resembles SEC Rule 10b-5. *See* Federal Trade Commission, Prohibitions on Market Manipulation in Subtitle B of Title VIII of the Energy Independence and Security Act of 2007, at 14 n.44 (July 28, 2009).[1] I believe that we must adhere to the Congressional intent in this regard. In exercising prosecutorial discretion, however, I, for one, intend to keep these misgivings in mind.

Federal Register

Attachment A

RNPRM Commenters

Association of Oil Pipe Lines (''AOPL'')
American Petroleum Institute and the National Petrochemical and Refiners Association (''API'')
Argus Media Inc. (''Argus'')
Air Transport Association of America, Inc. (''ATAA'')
Maria Cantwell, United States Senator, State of Washington (''Senator Cantwell'')
Canadian Association of Petroleum Producers (''CAPP'')
Consumer Federation of America, Mark Cooper, Director of Research (''CFA'')
New York City Bar Association Committee on Futures & Derivatives Regulation (''CFDR'')
U. S. Commodity Futures Trading Commission, Terry S. Arbit, General Counsel (''CFTC'')
Michael Greenberger (''Greenberger'')
Illinois Petroleum Marketers Association (''IPMA'')
International Swaps and Derivatives Association, Inc. (''ISDA'')
Futures Industry Association, CME Group, Managed Funds Association, Intercontinental Exchange, Inc., National Futures Association (''MFA'')
Platts (''Platts'')
Petroleum Marketers Association of America (''PMAA'')
Society of Independent Gasoline Marketers of America (''SIGMA'')
Sutherland Asbill & Brennan LLP (''Sutherland'')

Federal Register

Attachment B

NPRM Commenters

Association of Oil Pipe Lines (''AOPL'')
American Petroleum Institute (''API'')
Argus Media Inc. (''Argus'')
American Trucking Associations, Inc. (''ATA'')
Air Transport Association of America, Inc. (''ATAA'')
Andrew Boxer, Ellis Boxer & Blake (''Boxer'')
Sharon Brown-Hruska, National Economic Research Associates, Inc. (''Brown-Hruska'')
California Attorney General, Edmund G. Brown Jr. (''CA AG'')
Canadian Association of Petroleum Producers (''CAPP'')
Consumer Federation of America, Mark Cooper, Director of Research (''CFA1''; ''CFA2'')
New York City Bar Association, Committee on Futures & Derivatives Regulation (''CFDR'')
U. S. Commodity Futures Trading Commission, Terry S. Arbit, General Counsel(''CFTC (Arbit)'')
U. S. Commodity Futures Trading Commission, Bart Chilton, Commissioner (''CFTC (Chilton)'')
John Q. Public (''Consumer'')
Flint Hills Resources, LP (''Flint Hills'')
Winfried Fruehauf, National Bank Financial (''Fruehauf'')
James D. Hamilton, University of California, San Diego (''Hamilton'')
Illinois Petroleum Marketers Association (''IPMA'')
International Swaps and Derivatives Association, Inc. (''ISDA'')
Futures Industry Association, CME Group, Managed Funds Association, Intercontinental Exchange, Inc., National Futures Association (''MFA'')
Michigan Petroleum Association/ Michigan Association of Convenience Stores (''MPA'')
Mississippi Attorney General, Jim Hood (''MS AG'')
Lisa Murkowski, United State Senator, State of Alaska (''Murkowski'')
Timothy J. Muris and J. Howard Beales, III (''Muris'')
Navajo Nation, Resolute Natural Resources Company, and Navajo Nation Oil and Gas Company (''Navajo Nation'')
Nebraska Petroleum Marketers & Convenience Store Association (''NPCA'')
National Petrochemical and Refiners Association (''NPRA'')
Craig Pirrong, The University of Houston: Bauer College of Business (''Pirrong'')
Plains All American Pipeline, L.P. (''Plains'')
Platts (''Platts'')
Petroleum Marketers Association of America (''PMAA'')
Society of Independent Gasoline Marketers of America (''SIGMA'')
Sutherland Asbill & Brennan LLP (''Sutherland'')
David J. Van Susteren, Fulbright & Jaworski LLP (''Van Susteren'')

Federal Register

Attachment C

Workshop Participants

American Bar Association Section of Antitrust Law's Fuel & Energy Industry Committee (''ABA Energy''): Bruce McDonald, Jones Day LLP
Association of Oil Pipe Lines (''AOPL''): Linda G. Stuntz, Stuntz, Davis & Staffier, PC
American Petroleum Institute (''API''): Jonathan Gimblett, Covington & Burling LLP

[1] In addition to the text of Section 811, which reflects congressional intent that the Commission look to SEC Rule 10b-5 in crafting a market manipulation rule, I also find the statements of Sen. Cantwell (the bill's sponsor) which are consistent with this text persuasive. *See* 151 Cong. Rec. S10238 (daily ed. Sept. 20, 2005) (statement of Sen. Cantwell introducing S. 1735, a bill to Improve the Federal Trade Commission's Ability to Protect Consumers from Price-Gouging During Energy Emergencies, which was reintroduced in the 110th Congress as S.1263); *New Haven Bd. of Educ. v. Bell*, 465 U.S. 512, 526-27 (1982) (''Although the statements of one legislator made during debate may not be controlling, Senator Bayh's remarks, as those of the sponsor of the language ultimately enacted'' – in a context where ''no committee report discusses the provisions'' – ''are an authoritative guide to the statute's construction.'').

American Petroleum Institute (''API''): Robert A. Long, Jr., Covington & Burling LLP
Argus Media Inc. (''Argus''): Dan Massey
Consumer Federation of America (''CFA''): Mark Cooper
New York City Bar Association, Committee on Futures & Derivatives Regulation (''CFDR''): Charles R. Mills, K&L Gates
CME Group (''CME''): De'Ana Dow
Flint Hills Resources, LP (''Flint Hills''): Alan Hallock
International Swaps and Derivatives Association, Inc. (''ISDA''): Athena Y. Velie, McDermott, Will & Emery LLP
Futures Industry Association, CME Group, Managed Funds Association, Intercontinental Exchange, Inc., National Futures Association (''MFA''): Mark D. Young, Kirkland & Ellis LLP
Resolute Natural Resources Company (''Navajo Nation''): James Piccone
Navajo Nation Oil and Gas Corporation (''Navajo Nation''): Perry Shirley
National Petrochemical and Refiners Association (''NPRA''): Susan S. DeSanti, Sonnenschein Nath & Rosenthal LLP
National Petrochemical and Refiners Association (''NPRA''): Charles T. Drevna
Craig Pirrong, The University of Houston: Bauer College of Business (''Pirrong'')
Platts (''Platts''): John Kingston
Petroleum Marketers Association of America (''PMAA''):
Robert Bassman, Bassman, Mitchell & Alfano, Chtd.
Society of Independent Gasoline Marketers of America (''SIGMA''): James D. Barnette, Steptoe & Johnson LLP
Society of Independent Gasoline Marketers of America (''SIGMA''): R. Timothy Columbus, Steptoe & Johnson LLP
David J. Van Susteren, Fulbright & Jaworski LLP (''Van Susteren'')

Federal Register

Attachment D

ANPR Commenters

American Bar Association/Section of Antitrust Law (''ABA'')
Association of Oil Pipe Lines (''AOPL'')
American Petroleum Institute and the National Petrochemical and Refiners Association (''API'')
Patrick Barrett (''Barrett'')
Lawrence Barton (''Barton'')
Dave Beedle (''Beedle'')
Stanley Bergkamp (''Bergkamp'')
Louis Berman (''Berman'')
Bezdek Associates, Engineers PLLC (''Bezdek'')
Katherine Bibish (''Bibish'')
John Booke (''Booke'')
Bradley (''Bradley'')
Jeremy Bradley (''J. Bradley'')
Charles Bradt (''Bradt'')
Wendell Branham (''Branham'')
Lorraine Bremer (''Bremer'')
Gloria Briscolino (''Briscolino'')
Rick Brownstein (''Brownstein'')
Byrum (''Byrum'')
Canadian Association of Petroleum Producers (''CAPP'')
Jeff Carlson (''Carlson'')
Jacquelynne Catania (''Catania'')
Marie Cathey (''Cathey'')
New York City Bar, Association Committee on Futures & Derivatives Regulation (''CFDR'')
U. S. Commodities Futures Trading Commission (''CFTC'')
Manuel Chavez (''Chavez'')
Michael Chudzik (''Chudzik'')
D. Church (''Church'')
Earl Clemons (''Clemons'')
Dan Clifton (''Clifton'')
Kim Cruz (''Cruz'')
Jerry Davidson (''Davidson'')
Don Deresz (''Deresz'')
Charlene Dermond (''Dermond'')
Kimberly DiPenta (''DiPenta'')
Penny Donaly (''Donaly1'')
Penny Donaly (''Donaly2'')
Penny Donaly (''Donaly3'')
Penny Donaly (''Donaly4'')
Deep River Group, Inc. (''DRG'')
Harold Ducote (''Ducote'')
Mary Dunaway (''Dunaway'')
Econ One Research, Inc. (''Econ One'')
Terri Edelson (''Edelson'')
Kevin Egan (''Egan'')
DJ Ericson (''Ericson'')
Mark Fish (''Fish'')
Flint Hills Resources, LP (''Flint Hills'')
Bob Frain (''Frain'')
Joseph Fusco (''Fusco'')
Tricia Glidewell (''Glidewell'')
Robert Gould (''Gould'')
James Green (''Green'')
Michael Greenberger (''Greenberger'')
Christine Gregoire, Governor, State of Washington (''Gregoire'')
Hagan (''Hagan'')
Toni Hagan (''Toni'')
Charles Hamel (''Hamel'')
Chris Harris (''Harris'')
Thomas Herndon (''Herndon'')
Johnny Herring (''Herring'')
Hess Corporation (''Hess'')
David Hill (''Hill'')
Hopper (''Hopper'')
Sharon Hudecek (''Hudecek'')
IntercontinentalExchange, Inc. (''ICE'')
Institute for Energy Research (''IER'')
Independent Lubricant Manufacturers Association (''ILMA'')
Illinois Petroleum Marketers Association (''IPMA'')
International Swaps and Derivatives Association, Inc. (''ISDA'')
Micki Jay (''Jay'')
Kenneth Jensen (''Jensen'')
Paul Johnson (''Johnson'')
Tacie Jones (''Jones'')
Joy (''Joy'')
John Kaercher (''Kaercher'')
Kas Kas (''Kas'')
Kipp (''Kipp'')
Paola Kipp (''P. Kipp'')
Jerry LeCompte (''LeCompte'')
Kurt Lennert (''Lennert'')
Loucks (''Loucks'')
Robert Love (''Love'')
R. Matthews (''Matthews'')
Catherine May (''May'')
Mike Mazur (''Mazur'')
Sean McGill (''McGill'')
Kathy Meadows (''Meadows'')
Futures Industry Association, CME Group, Managed Funds Association, IntercontinentalExchange, National Futures Association (''MFA'')
Bret Morris (''Morris'')
Theresa Morris-Ramos (''Morris-Ramos'')
Scott Morosini (''Morosini'')
Timothy J. Muris and J. Howard Beales, III (''Muris'')
Navajo Nation Resolute Natural Resources Company and Navajo Nation Oil and Gas Company (''Navajo Nation'')
Laurie Nenortas (''Nenortas'')
James Nichols (''Nichols'')
Virgil Noffsinger (''Noffsinger'')
Noga (''Noga'')
Richard Nordland (''Nordland'')
National Propane Gas Association (''NPGA'')
Kerry O'Shea, (''O'Shea'')
Jeffery Parker (''Parker'')
Pamela Parzynski (''Parzynski'')
Brook Paschkes (''Paschkes'')
Brijesh Patel (''Patel'')
Stefanie Patsiavos (''Patsiavos'')
P D (''PD'')
Guillermo Pereira (''Pereira'')
James Persinger (''Persinger'')
Mary Phillips (''Phillips'')
Plains All American Pipeline, LLP (''Plains'')
Platts (''Platts'')
Betty Pike (''Pike'')
Petroleum Marketers Association of America (''PMAA'')
Joel Poston (''Poston'')
Radzicki (''Radzicki'')
Gary Reinecke (''Reinecke'')
Steve Roberson (''Roberson'')
Shawn Roberts (''Roberts'')
Linda Rooney (''Rooney'')
Mel Rubinstein (''Rubinstein'')secret (''secret'')
Joel Sharkey (''Sharkey'')
Society of Independent Gasoline Marketers of America (''SIGMA'')
Daryl Simon (''Simon'')
David Smith (''D. Smith'')

Donald Smith (''Do. Smith'')
Mary Smith (''M. Smith'')
Donna Spader (''Spader'')
Stabila (''Stabila'')
Alan Stark (''A. Stark'')
Gary Stark (''G. Stark'')
Robert Stevenson (''Stevenson'')
Ryan Stine (''Stine'')
Maurice Strickland (''Strickland'')
Sutherland, Asbill, and Brennan, LLP (''Sutherland'')
L. D. Tanner (''Tanner'')
Dennis Tapalaga (''Tapalaga'')
Tennessee Oil Marketers Association (''TOMA'')
Theisen (''Theisen'')
Greg Turner (''Turner'')
U. S. citizen (''U.S. citizen'')
U. S. Department of Justice, Criminal Fraud Section (''USDOJ'')
Jeff Van Hecke (''Van Hecke'')
Louis Vera (''Vera'')
Thomas Walker (''Walker'')
Victoria Warner (''Warner'')
Lisa Wathen (''Wathen'')
Watson (''Watson'')
Gary Watson (''G. Watson'')
Joseph Weaver (''Weaver'')
Webb (''Webb'')
Vaughn Weming (''Weming'')
Douglas Willis (''Willis'')

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Federal Register

Wednesday,
August 12, 2009

Part IV

Postal Regulatory Commission

39 CFR Part 3020
Express Mail & Priority Mail Contract 8; Final Rule

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–33 and CP2009–44; Order No. 257]

39 CFR Part 3020

Express Mail & Priority Mail Contract 8

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail & Priority Mail Contract 8 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements under the law.

DATES: Effective August 12, 2009 and is applicable beginning July 27, 2009.

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

SUPPLEMENTARY HISTORY: *Regulatory history,* 74 FR 34373, Jul. 15, 2009.

I. Introduction

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 8 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On July 2, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30, *et seq.,* to add Express Mail & Priority Mail Contract 8 to the Competitive Product List.[1] On July 6, 2009, the Postal Service filed a revised version of its filing which includes attachments inadvertently omitted from the July 2, 2009 request.[2] The Postal Service asserts that the Express Mail & Priority Mail Contract 8 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009–33.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* The contract has been assigned Docket No. CP2009–44.

On July 8, 2009, the Postal Service filed under seal revised versions of the financial analysis workbooks originally filed under seal on July 2, 2009.[3]

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Express Mail & Priority Mail Contract 8 and certification of the Governors' vote;[4] (2) a redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;[5] (3) requested changes in the Mail classification Schedule product list;[6] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[7] and (5) certification of compliance with 39 U.S.C. 3633(a).[8]

In the Statement of Supporting Justification, Mary Prince Anderson, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.,* Attachment D. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.* W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.,* Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted contract, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. *Id.* at 2–3.

In Order No. 241, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[9]

III. Information Request

On July 14, 2009, the Chairman issued an information request seeking responses to six questions.[10] The information request was filed under seal. *Id.* On July 20, 2009, the Postal Service filed its responses to CHIR No. 1.[11]

IV. Comments

Comments were filed by the Public Representative.[12] No filings were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and concludes that the Express Mail & Priority Mail Contract 8 agreements comports with the requirements of title 39. *Id.* at 3. He further states that the agreement appears beneficial to the general public. *Id.* at 1.

The Public Representative notes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2–3. He also points out several contractual provisions that he believes are mutually beneficial to the parties and general public. *Id.* at 3.

V. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal, the Revised Workbooks, the Response to CHIR No. 1, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Express Mail & Priority Mail Contract 8 to either

[1] Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 8 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 2, 2009.

[2] Errata to Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 8 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 6, 2009 (Request).

[3] *See* Notice of the United States Postal Service of Filing Under Seal of Revised Financial Analysis Workbooks for Express Mail & Priority Mail Contract 8, July 8, 2009 (Revised Workbooks).

[4] Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

[5] Attachment B to the Request.

[6] Attachment C to the Request.

[7] Attachment D to the Request.

[8] Attachment E to the Request.

[9] PRC Order No. 241, Notice and Order Concerning Express Mail & Priority Mail Contract 8 Negotiated Service Agreement, July 7, 2009 (Order No. 241).

[10] Chairman's Information Request No. 1 and Notice of Filing of Questions under Seal, July 14, 2009 (CHIR No. 1).

[11] *See* Notice of the United States Postal Service of Filing Response to Chairman's Information Request No. 1 Under Seal, July 20, 2009 (Response to CHIR No. 1).

[12] Public Representative Comments in Response to United States Postal Service Request to Add Express Mail & Priority Mail Contract 8 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 15, 2009 (Public Representative Comments).

the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Express Mail & Priority Mail Contract 8 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, at ¶ (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at ¶ (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at ¶ (h).

No commenter opposes the proposed classification of Express Mail & Priority Mail Contract 8 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail & Priority Mail Contract 8 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Express Mail & Priority Mail Contract 8 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Express Mail & Priority Mail Contract 8 should cover its 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 proposed Express Mail & Priority Mail Contract 8 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Express Mail & Priority Mail Contract 8 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

VI. Ordering Paragraphs

It is ordered:

1. Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if termination occurs prior to that date, as discussed in this Order.

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

Issued: July 27, 2009.

By the Commission.

Ann C. Fisher,

Acting Secretary.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

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

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 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 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
  - Inbound International

Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services
Market Dominant Product Descriptions
First-Class Mail
[Reserved for Class Description]
Single-Piece Letters/Postcards
[Reserved for Product Description]
Bulk Letters/Postcards
[Reserved for Product Description]
Flats
[Reserved for Product Description]
Parcels
[Reserved for Product Description]
Outbound Single-Piece First-Class Mail International
[Reserved for Product Description]
Inbound Single-Piece First-Class Mail International
[Reserved for Product Description]
Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
High Density and Saturation Letters
[Reserved for Product Description]
High Density and Saturation Flats/Parcels
[Reserved for Product Description]
Carrier Route
[Reserved for Product Description]
Letters
[Reserved for Product Description]
Flats
[Reserved for Product Description]
Not Flat-Machinables (NFMs)/Parcels
[Reserved for Product Description]
Periodicals
[Reserved for Class Description]
Within County Periodicals
[Reserved for Product Description]
Outside County Periodicals
[Reserved for Product Description]
Package Services
[Reserved for Class Description]
Single-Piece Parcel Post
[Reserved for Product Description]
Inbound Surface Parcel Post (at UPU rates)
[Reserved for Product Description]
Bound Printed Matter Flats
[Reserved for Product Description]
Bound Printed Matter Parcels
[Reserved for Product Description]
Media Mail/Library Mail
[Reserved for Product Description]
Special Services
[Reserved for Class Description]
Ancillary Services
[Reserved for Product Description]
Address Correction Service
[Reserved for Product Description]
Applications and Mailing Permits
[Reserved for Product Description]
Business Reply Mail
[Reserved for Product Description]
Bulk Parcel Return Service
[Reserved for Product Description]
Certified Mail
[Reserved for Product Description]
Certificate of Mailing
[Reserved for Product Description]
Collect on Delivery
[Reserved for Product Description]
Delivery Confirmation
[Reserved for Product Description]
Insurance
[Reserved for Product Description]
Merchandise Return Service
[Reserved for Product Description]
Parcel Airlift (PAL)
[Reserved for Product Description]
Registered Mail
[Reserved for Product Description]
Return Receipt
[Reserved for Product Description]
Return Receipt for Merchandise
[Reserved for Product Description]
Restricted Delivery
[Reserved for Product Description]
Shipper-Paid Forwarding
[Reserved for Product Description]
Signature Confirmation
[Reserved for Product Description]
Special Handling
[Reserved for Product Description]
Stamped Envelopes
[Reserved for Product Description]
Stamped Cards
[Reserved for Product Description]
Premium Stamped Stationery
[Reserved for Product Description]
Premium Stamped Cards
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
Address List Services
[Reserved for Product Description]
Caller Service
[Reserved for Product Description]
Change-of-Address Credit Card Authentication
[Reserved for Product Description]
Confirm
[Reserved for Product Description]
International Reply Coupon Service
[Reserved for Product Description]
International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
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)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Royal Mail Group Inbound Air Parcel Post Agreement
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 (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
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 & 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 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)
Outbound International
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts

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Part V

Postal Regulatory Commission

39 CFR Part 3020
Express Mail Contract; Final Rule

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. CP2009–45 and MC2009–34; Order No. 258]

Express Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail Contract 4 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements under the law.

DATES: Effective August 12, 2009 and applicable beginning July 27, 2009.

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

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 33483 (July 13, 2009.)

I. Introduction

The Postal Service seeks to add a new product identified as Express Mail Contract 4 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On July 6, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30, *et seq.,* to add Express Mail Contract 4 to the Competitive Product List.[1] On July 14, 2009, the Postal Service filed a notice of correction to the caption of the July 6, 2009 Request.[2] The Postal Service asserts that the Express Mail Contract 4 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009–34.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* The contract has been assigned Docket No. CP2009–45.

On July 8, 2009, the Postal Service filed under seal revised versions of the financial analysis workbooks originally filed under seal on July 6, 2009.[3]

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Express Mail Contract 4 and certification of the Governors' vote;[4] (2) a redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;[5] (3) requested changes in the Mail classification Schedule product list;[6] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[7] and (5) certification of compliance with 39 U.S.C. 3633(a).[8]

In the Statement of Supporting Justification, Mary Prince Anderson, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.,* Attachment D. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.* W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See Id.,* Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted contract, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. *Id.* at 2–3.

In Order No. 242, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[9]

III. Information Request

On July 13, 2009, the Chairman issued an information request seeking responses to two questions.[10] The information request was filed under seal. *Id.* On July 20, 2009, the Postal Service filed its responses to CHIR No. 1.[11]

IV. Comments

Comments were filed by the Public Representative.[12] No filings were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and concludes that the Express Mail Contract 4 agreements comports with the requirements of title 39. *Id.* at 2–4; and 5. She further states that the agreement appears beneficial to the general public. *Id.* at 4–5.

The Public Representative notes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 4. She also points out several contractual provisions that she believes are mutually beneficial to the parties and general public. *Id.* at 4–5. Finally, the Public Representative observes that although the analysis accompanying the Request shows some risk of not meeting expected cost coverage, the Postal Service appears confident that any such risk is manageable and that it expects that overall the contract will ''generate significant contribution.'' *Id.* at 5.

V. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal, the Revised Workbooks, the Response to CHIR No. 1, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Express Mail Contract 4 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C.

[1] Request of the United States Postal Service to Add Express Mail Contract 4 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 6, 2009 (Request).

[2] Notice of the United States Postal Service Filing of Corrected Caption to First Page of Request and Notice, July 14, 2009.

[3] *See* Notice of the United States Postal Service of Filing Under Seal of Revised Financial Analysis Workbooks for Express Mail Contract 4, July 8, 2009 (Revised Workbooks).

[4] Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

[5] Attachment B to the Request.

[6] Attachment C to the Request.

[7] Attachment D to the Request.

[8] Attachment E to the Request.

[9] PRC Order No. 242, Notice and Order Concerning Express Mail Contract 4 Negotiated Service Agreement, July 7, 2009 (Order No. 242).

[10] Chairman's Information Request No. 1 and Notice of Filing of Questions under Seal, July 13, 2009 (CHIR No. 1).

[11] *See* Notice of the United States Postal Service of Filing Response to Chairman's Information Request No. 1 Under Seal, July 20, 2009 (Response to CHIR No. 1).

[12] Public Representative Comments in Response to Notice and Order Concerning Express Mail Contract 4 Negotiated Service Agreement, July 15, 2009 (Public Representative Comments).

3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Express Mail Contract 4 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, at ¶ (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at ¶ (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at ¶ (h).

No commenter opposes the proposed classification of Express Mail Contract 4 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail Contract 4 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Express Mail Contract 4 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Express Mail Contract 4 should cover its 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 Express Mail Contract 4 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Express Mail Contract 4 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

VI. Ordering Paragraphs

It is ordered:

1. Express Mail Contract 4 (MC2009–34 and CP2009–45) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if termination occurs prior to that date, as discussed in this Order.

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

List of Subjects in 39 CFR Part 3020

Admininistrative practice and procedure, Postal Service.

Issued: July 27, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

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

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 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
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail
[Reserved for Class Description]
- Single-Piece Letters/Postcards
- [Reserved for Product Description]
- Bulk Letters/Postcards
- [Reserved for Product Description]
- Flats

[Reserved for Product Description]
Parcels
[Reserved for Product Description]
Outbound Single-Piece First-Class Mail International
[Reserved for Product Description]
Inbound Single-Piece First-Class Mail International
[Reserved for Product Description]
Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
High Density and Saturation Letters
[Reserved for Product Description]
High Density and Saturation Flats/Parcels
[Reserved for Product Description]
Carrier Route
[Reserved for Product Description]
Letters
[Reserved for Product Description]
Flats
[Reserved for Product Description]
Not Flat-Machinables (NFMs)/Parcels
[Reserved for Product Description]
Periodicals
[Reserved for Class Description]
Within County Periodicals
[Reserved for Product Description]
Outside County Periodicals
[Reserved for Product Description]
Package Services
[Reserved for Class Description]
Single-Piece Parcel Post
[Reserved for Product Description]
Inbound Surface Parcel Post (at UPU rates)
[Reserved for Product Description]
Bound Printed Matter Flats
[Reserved for Product Description]
Bound Printed Matter Parcels
[Reserved for Product Description]
Media Mail/Library Mail
[Reserved for Product Description]
Special Services
[Reserved for Class Description]
Ancillary Services
[Reserved for Product Description]
Address Correction Service
[Reserved for Product Description]
Applications and Mailing Permits
[Reserved for Product Description]
Business Reply Mail
[Reserved for Product Description]
Bulk Parcel Return Service
[Reserved for Product Description]
Certified Mail
[Reserved for Product Description]
Certificate of Mailing
[Reserved for Product Description]
Collect on Delivery
[Reserved for Product Description]
Delivery Confirmation
[Reserved for Product Description]
Insurance
[Reserved for Product Description]
Merchandise Return Service
[Reserved for Product Description]
Parcel Airlift (PAL)
[Reserved for Product Description]
Registered Mail
[Reserved for Product Description]
Return Receipt
[Reserved for Product Description]
Return Receipt for Merchandise
[Reserved for Product Description]
Restricted Delivery
[Reserved for Product Description]
Shipper-Paid Forwarding
[Reserved for Product Description]
Signature Confirmation
[Reserved for Product Description]
Special Handling
[Reserved for Product Description]
Stamped Envelopes
[Reserved for Product Description]
Stamped Cards
[Reserved for Product Description]
Premium Stamped Stationery
[Reserved for Product Description]
Premium Stamped Cards
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
Address List Services
[Reserved for Product Description]
Caller Service
[Reserved for Product Description]
Change-of-Address Credit Card Authentication
[Reserved for Product Description]
Confirm
[Reserved for Product Description]
International Reply Coupon Service
[Reserved for Product Description]
International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
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)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Royal Mail Group Inbound Air Parcel Post Agreement
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 (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
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 & 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 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)
Outbound International
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
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H.R. 3357/P.L. 111–46

To restore sums to the Highway Trust Fund and for other purposes. (Aug. 7, 2009; 123 Stat. 1970)

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Making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program. (Aug. 7, 2009; 123 Stat. 1972)

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